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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Variation of existing relief from continuous disclosure obligations to allow reporting issuer to distribute debt securities fully, unconditionally and irrevocably guaranteed by parent issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 171

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD
ISLAND, NEWFOUNDLAND AND LABRADOR, THE YUKON
TERRITORY, THE NORTHWEST TERRITORIES AND NUNAVUT**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

IN THE MATTER OF BARRICK GOLD CORPORATION

AND

BARRICK GOLD INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (the Jurisdictions) has received an application from Barrick Gold Corporation (Barrick) and Barrick Gold Inc. (formerly Homestake Canada Inc.) (BGI) (collectively, the Filer), for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that the decision dated September 18, 2001 granted to Barrick and BGI by the Decision Maker in each Jurisdiction (the Original Decision), as varied pursuant to the decision (the Variation) dated May 30, 2003 granted to Barrick and BGI by the Decision Makers, (together with the Original Decision, the Existing Decision) be further varied (i) so that BGI shall be permitted to issue debt obligations which are fully, unconditionally and

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irrevocably guaranteed by Barrick and (ii) to set forth certain additional provisions which shall apply in respect of the Continuous Disclosure Requirements (as defined in the Original Decision) to which BGI would otherwise be subject in the event of the issuance of any such debt obligations to the public;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the System), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 or in Québec Commission Notice 14-101;

AND WHEREAS the Filer has represented to the Decision Makers as follows:

1. On December 14, 2001, Homestake Merger Co., a U.S. subsidiary of Barrick, merged with Homestake Mining Company pursuant to an agreement and plan of merger dated June 24, 2001 (the Merger). In connection with the Merger, the Exchangeable Shares remained outstanding, but each such Exchangeable Share became exchangeable for 0.53 Barrick common shares, rather than for one share of Homestake Mining Company common stock.
2. In contemplation of the Merger, the Original Decision was obtained to, among other things, exempt BGI from the requirements contained in the Legislation of the Jurisdictions in which BGI is a reporting issuer (or equivalent) to issue a press release and file a report upon the occurrence of a material change, to file and deliver an annual report, where applicable, to file and deliver interim and annual financial statements and to file an information circular or analogous report, provided that the conditions of the Original Decision, including in particular the requirement that holders of Exchangeable Shares receive all disclosure material furnished to holders of Barrick common shares pursuant to the Legislation, were satisfied.
3. The Variation was obtained on May 30, 2003 in contemplation of a proposed internal borrowing by BGI from Barrick or one of its subsidiaries.
4. Barrick was formed by the amalgamation of three mining companies on July 14, 1984 under the *Business Corporations Act* (Ontario). Its head office is located at BCE Place, Canada Trust Tower, Suite 3700, 161 Bay Street, P.O. Box 212, Toronto, ON M5J 2S1.
5. The authorized capital of Barrick consists of (i) an unlimited number of common shares, (ii) an unlimited number of first preferred shares, issuable in series of which one has been designated as first preferred shares, series C

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special voting share, and (iii) an unlimited number of second preferred shares, issuable in series. As of April 30, 2003, Barrick had 541,460,118 common shares, one first preferred share series C special voting share and no second preferred shares outstanding.

6. As at March 31, 2003, Barrick had approximately U.S. \$757 million in long-term debt outstanding. All rated debt of Barrick is currently rated "A" by Standard & Poor's and "A3" by Moody's Investor Services.
7. Barrick is a reporting issuer (or equivalent) in each of the provinces and territories of Canada and is not on the list of reporting issuers in default in any of those Jurisdictions.
8. The Barrick common shares are listed and posted for trading on The Toronto Stock Exchange, the New York Stock Exchange, the London Stock Exchange, the Swiss Exchange and the Paris Bourse.
9. BGI is a corporation governed by the *Business Corporations Act* (Ontario).
10. BGI is an indirect subsidiary of Barrick.
11. The authorized capital of BGI consists of (i) an unlimited number of Class A common shares, (ii) an unlimited number of Class B common shares, (iii) an unlimited number of Exchangeable Shares, (iv) an unlimited number of third preference shares, issuable in series, of which 10,000,000 have been designated as third preference shares, series 1, and (v) an unlimited number of fourth preference shares. As of April 30, 2003, 100,000 Class A common shares, 1,570,522 Exchangeable Shares (excluding shares held by Barrick and its affiliates), 103,986,397 Class B common shares, no third preference shares and 277,775,266 fourth preference shares were outstanding. All of BGI's outstanding shares, other than the Exchangeable Shares held by the public, are held by Barrick and its affiliates.
12. BGI is a reporting issuer (or equivalent) in Ontario, Québec, British Columbia, Saskatchewan, Manitoba and Nova Scotia and is not on the list of reporting issuers in default in any of those Jurisdictions.
13. The Exchangeable Shares are listed and posted for trading on The Toronto Stock Exchange.
14. Each Exchangeable Share provides the holder thereof with the economic and voting equivalent, to the extent practicable, of 0.53 Barrick common shares

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and the holders of Exchangeable Shares receive the same disclosure that Barrick provides to holders of Barrick common shares.

15. BGI carries on more than minimal operations that are independent of Barrick.
16. Barrick and BGI propose to file a preliminary shelf prospectus (the Preliminary Shelf Prospectus) and final shelf prospectus (the Final Shelf Prospectus) pursuant to National Instruments 44-101 and 44-102 (collectively, the Shelf Requirements) pursuant to which they may issue up to a fixed aggregate principal amount of debentures, notes and/or other similar evidences of indebtedness (Debt Securities) from time to time over the period of effectiveness of the Final Shelf Prospectus. Any Debt Securities issued by BGI (BGI Debt Securities) will be fully, unconditionally and irrevocably guaranteed by Barrick as to payment of principal, interest and all other amounts due thereunder. The BGI Debt Securities will not be convertible into equity securities of BGI, Barrick or any other entity. The Preliminary Shelf Prospectus and the Final Shelf Prospectus will be filed in Canada only in the Province of Ontario and will also be filed in the United States under the Multijurisdictional Review System.
17. In connection with any offering of Debt Securities (any such offering, an Offering):
 - (a) the Final Shelf Prospectus and a prospectus supplement or supplements (collectively, the Prospectus) will be prepared pursuant to the Shelf Requirements, with the disclosure required by:
 - (i) Item 4.1 of Form 44-101F3 being addressed by including the required disclosure with respect to Barrick only;
 - (ii) Item 7 of Form 44-101F3 being addressed by including the required disclosure with respect to Barrick only;
 - (iii) Item 12 of Form 44-101F3 being addressed by incorporating by reference Barrick's public disclosure documents, including Barrick's most recent annual report; and
 - (iv) Item 13 of Form 44-101F3 being addressed by incorporating by reference the audited annual financial statements of Barrick for the year ended December 31, 2002, including the note thereto which contains a summary of selected consolidated financial information for BGI, including information as to its consolidated revenues and other income, costs and expenses, income before taxes, net

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income, current assets, non-current assets, current liabilities and non-current liabilities;

- (b) a separate application has been made in the Province of Ontario for a decision permitting the variation from the requirements of Form 44-101F3 described in clauses (a)(i) through (a)(iii) above in connection with the filing of the Preliminary Shelf Prospectus and the Final Shelf Prospectus;
- (c) the Prospectus will include all material disclosure required by the Shelf Requirements concerning Barrick and BGI;
- (d) the Prospectus will incorporate by reference Barrick's current and future public disclosure documents as required by Item 12 of Form 44-101F3 and will state that purchasers of BGI Debt Securities will not receive separate continuous disclosure information regarding BGI;
- (e) Barrick will fully, unconditionally and irrevocably guarantee payment of the principal and interest on any BGI Debt Securities, together with any other amounts that may be due under any provisions of the trust indenture relating to such BGI Debt Securities;
- (f) the Debt Securities will have an approved rating (as defined in National Instrument 44-101);
- (g) Barrick will sign the Prospectus as issuer and credit supporter; and
- (h) Barrick will continue to file with the securities regulatory authorities in each of the Jurisdictions all documents required to be filed by it under the Legislation.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Existing Decision is varied to replace the existing paragraph 4(f) with the following:

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“BGI does not issue any third preference shares or fourth preference shares or debt obligations, other than (i) debt obligations issued to Barrick and/or its subsidiaries, banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions or (ii) debt obligations which are fully, unconditionally and irrevocably guaranteed by Barrick; and”

and to add to the Existing Decision the following paragraph 4(g):

- “(g) from the date that BGI first issues debt obligations to the public pursuant to clause (f)(ii) above by way of prospectus or prospectus supplement and continuing for such time as such debt obligations remain outstanding and BGI continues to be a reporting issuer (or equivalent) in the Jurisdictions:
- (i) Barrick sends or causes to be sent to all holders of such debt obligations resident in the Jurisdictions all disclosure material that would have been required to be sent by Barrick pursuant to the Legislation had such debt obligations been direct obligations of Barrick;
 - (ii) Barrick continues to fully, unconditionally and irrevocably guarantee payment of the principal, interest on such debt obligations, together with any other amounts that may be due under any provisions of the trust indenture or other instrument relating to such debt obligations, such that the debtors thereunder shall be entitled to receive payment from Barrick in the event of any failure by BGI to make a payment as stipulated in such trust indenture or other instrument;
 - (iii) either: (A) the audited annual financial statements of Barrick filed in any Jurisdiction in which such prospectus or prospectus supplement is filed include as a note thereto a summary of annual comparative selected financial information for BGI; or (B) Barrick or BGI file, in electronic format, in any Jurisdiction in which such prospectus or prospectus supplement is filed annual comparative selected financial information for BGI derived from the audited annual financial statements of Barrick for its most recently completed financial year and the financial year immediately

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preceding such financial year, accompanied by a selected procedures report of the auditors to Barrick;

- (iv) either: (A) the unaudited interim financial statements of Barrick filed in any Jurisdiction in which such prospectus or prospectus supplement is filed include as a note thereto a summary of interim comparative selected financial information for BGI; or (B) Barrick or BGI file, in electronic format, in any Jurisdiction in which such prospectus or prospectus supplement is filed interim comparative selected financial information for BGI derived from the unaudited interim financial statements of Barrick for its most recently completed interim period and the corresponding interim period of the immediately preceding financial year;
- (v) the selected consolidated financial information for BGI referred to in items (iii) and (iv) above includes information as to the consolidated revenues and other income, costs and expenses, income before taxes, net income, current assets, non-current assets, current liabilities and non-current liabilities of BGI; and
- (vi) the audited annual financial statements of Barrick or annual comparative selected financial information for BGI referred to in item (iii) above and the unaudited interim financial statements of Barrick or interim comparative selected financial information for BGI referred to in item (iv) above are filed on the System for Electronic Document Analysis and Retrieval (SEDAR) by BGI”.

DATED this 27th day of June, 2003.

Paul M. Moore, Q. C.

Harold P. Hands