

2007 BCSECCOM 174

March 30, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – all continuous disclosure requirements - General - A reporting issuer wants relief from all the requirements of NI 51-102 - A reporting issuer is a wholly-owned subsidiary of a parent reporting issuer; the subsidiary issuer has the following securities outstanding - warrants entitling the holder to acquire common shares of the parent and notes convertible into common shares of the parent; neither the warrants nor the notes qualify as “designated exchangeable securities” under section 13.3 of NI 51-102; the notes will be redeemed within 3 weeks; warrants will remain outstanding; the requested relief is on terms substantially similar to section 13.3 of NI 51-102

Multilateral Instrument 52-109 Certification of Disclosure in Issuers’ Annual and Interim Filings, s. 4.5 – certification requirements – An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Securities Act s. 91 – insider reporting obligations - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 Continuous Disclosure Obligations because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has been granted discretionary relief from NI 51-102 requirements

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 85, 87, 87.1 and 91

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, s. 4.5

National Instrument 55-102, ss. 2.1 and 6.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick, Newfoundland and Labrador, Northwest Territories,
Yukon Territory and Nunavut
(the “Jurisdictions”)

and

2007 BCSECCOM 174

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Kinross Gold Corporation, on its own behalf
and on behalf of Eastwest Gold Corporation
(Kinross or Eastwest, as applicable)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from Kinross, on its own behalf and on behalf of EastWest, for a decision under the securities legislation of the Jurisdictions (the Legislation) for the following exemptions under the Legislation:

- pursuant to section 13.1 of National Instrument 51-102 - *Continuous Disclosure Obligations* (NI 51-102), EastWest be exempted from the requirements contained in Parts 4, 5, 6, 7, 8, 9, 11 and 12 of NI 51-102 except in the Northwest Territories (NWT), where NI 51-102 has been adopted as a policy only (the Continuous Disclosure Requirements);
- pursuant to section 4.5 of Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109), EastWest be exempted from the requirements contained in MI 52-109 (the Certification Requirements); and
- that, except in the NWT where such requirements are not applicable, EastWest be exempted from the insider reporting requirements and the requirements to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (the Insider Reporting Requirements).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and

2007 BCSECCOM 174

(b) this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by EastWest:

1. Kinross is a corporation subsisting under the laws of the province of Ontario. Its head office is located at 40 King Street West, 52nd Floor, Toronto, Ontario, M5H 3Y2. Kinross is authorized to issue an unlimited number of common shares (Kinross Common Shares), of which, as at February 26, 2007, 362,927,698 were issued and outstanding. Kinross is a reporting issuer or the equivalent under the Legislation in each of the Jurisdictions except for the territories, and the Kinross Common Shares are listed on the Toronto Stock Exchange (the TSX) under the symbol "K" and the New York Stock Exchange (the NYSE) under the symbol "KGC".
2. As at February 26, 2007, Bema Gold Corporation (Bema) had the following issued and outstanding securities:
 - a. 485,794,544 common shares (the Bema Common Shares);
 - b. 18,398,536 options (the Bema Options), each exercisable into one Bema Common Share;
 - c. 45,165,351 warrants (the Bema Warrants), each exercisable into one Bema Common Share; and
 - d. unsecured 3.25% convertible notes of Bema in bearer form due February 25, 2011 (the Bema Convertible Notes), in the aggregate principal amount of US\$70 million, convertible into Bema Common Shares.
3. As at February 26, 2007 Bema was a reporting issuer or the equivalent in each of the Jurisdictions, and the Bema Common Shares were listed and traded on the TSX under the symbol "BGO".
4. As at February 26, 2007, the outstanding Bema Warrants included warrants to purchase 23,731,950 Bema Common Shares at a price of \$1.90 per Bema Common Share, expiring October 22, 2007 (the First Public Bema Warrants) and warrants to purchase 10,580,000 Bema Common Shares at a price of

2007 BCSECCOM 174

\$10.00 per Bema Common Share, expiring September 7, 2011 (the Second Public Bema Warrants), which warrants were listed and traded on the TSX under the symbols “BGO.WT” and “BGO.WT.A”, respectively. The remaining 10,853,401 Bema Warrants were held privately. The Bema Convertible Notes were privately placed by Bema to holders resident in Europe and were listed and traded only on the Luxembourg Stock Exchange.

5. Effective February 27, 2007, Kinross acquired all of all of the issued and outstanding Bema Common Shares, by way of plan of arrangement (the Arrangement) under section 192 of the *Canada Business Corporations Act*, as amended (the CBCA).
6. Under the Arrangement, in addition to other matters, the following occurred:
 - a. Kinross acquired all of the issued and outstanding Bema Common Shares in exchange for the payment to holders of the Bema Common Shares (Bema Shareholders) of 0.4447 of a Kinross Common Share and \$0.01 in cash for each Bema Common Share;
 - b. each Bema Option was exchanged for a Kinross replacement option to acquire 0.4447 of a Kinross Common Share plus the portion of a Kinross Common Share that, at the effective time of the Arrangement, had a fair market value equal to \$0.01 for each Bema Common Share that such holder was entitled to receive under its Bema Option, and the exercise price of such Bema Option was adjusted in accordance with the terms of the Arrangement;
 - c. each holder of a Bema Warrant outstanding immediately prior to the effective time of the Arrangement is entitled to receive upon the subsequent exercise of such holder’s Bema Warrant in accordance with its terms, in lieu of each Bema Common Share to which such holder was entitled upon such exercise but for the same aggregate consideration payable therefore, 0.4447 of a Kinross Common Share and \$0.01 in cash;
 - d. each holder of a Bema Convertible Note outstanding immediately prior to the effective time of the Arrangement is entitled to receive regularly scheduled interest payments and the principal amount of the Bema Convertible Note upon redemption from EastWest; in the alternative, if such a holder elects to exercise the conversion rights provided for in the terms and conditions of the Bema Convertible Notes, such holder shall be entitled to receive upon the conversion of such holder’s Bema Convertible Note in accordance with its terms, in lieu of each Bema Common Share to which such holder was entitled upon such exercise but for the same

2007 BCSECCOM 174

aggregate consideration payable therefore, 0.4447 of a Kinross Common Share and \$0.01 in cash; and

- e. Kinross transferred all of the Bema Common Shares held by it to a wholly-owned subsidiary of Kinross (Kinross Subco) in exchange for common shares of Kinross Subco, following which, Kinross Subco and Bema amalgamated (the Amalgamation) to form EastWest and continued as one corporation under the CBCA.
7. On February 27, 2007, 216,032,834 additional Kinross Common Shares were listed and posted for trading on the TSX and NYSE as a result of the Arrangement, and 34,951,940 Kinross Common Shares were reserved for issuance upon exercise of the Bema Options and the Bema Warrants. The Bema Common Shares were delisted from the TSX on or about the close of business on February 28, 2007 and from the NYSE at the close of business on February 27, 2007. The First Public Bema Warrants and the Second Public Bema Warrants commenced trading under the symbols "K.WT.A" and "K.WT.B", respectively, at the opening of business on March 1, 2007.
8. Bema shareholders approved the Arrangement at a meeting of shareholders held on January 30, 2007.
9. In connection with the Arrangement, on December 27, 2006, Bema mailed to the Bema Shareholders a management information circular (the Circular) containing prospectus-level disclosure of the business and affairs of each of Bema and Kinross and information on the Arrangement. The Circular disclosed that Kinross, on behalf of the corporation that would exist as the successor company to Bema following the Plan, applied for certain exemptive relief, including relief from the Continuous Disclosure Requirements.
10. Bema provided the holders of all Bema Warrants with prior notice of the Arrangement, including a statement that a copy of the Circular was available for review on SEDAR. In addition, Bema provided a copy of the Circular to holders of the Second Bema Public Warrants in accordance with the terms of the indenture governing these warrants.
11. Notice of the Arrangement and of the consideration holders are entitled to received upon conversion of the Bema Convertible Notes was provided to holders of the Bema Convertible Notes as required by the terms of the indenture governing the Bema Convertible Notes.
12. On March 6, 2007 EastWest provided an irrevocable notice to holders of the Bema Convertible Notes advising that it will redeem the Bema Convertible

2007 BCSECCOM 174

Notes on April 12, 2007. In connection with the redemption, Kinross has made arrangements for a Canadian chartered bank to provide a letter of credit to EastWest in order to pay any redemption amount due under the Bema Convertible Notes. Holders of Bema Convertible Notes have until the close of business on April 2, 2007 to convert their notes to Kinross Common Shares and cash, otherwise, the Bema Convertible Notes will be redeemed for an amount of cash equal to the principal amount thereof plus accrued but unpaid interest to the redemption date.

13. On completion of the Arrangement, EastWest became a reporting issuer as Bema, one of the amalgamating companies, was a reporting issuer for a period of at least twelve months prior to the Amalgamation. Consequently, EastWest is required to comply with the Continuous Disclosure Requirements, Certification Requirements and Insider Reporting Requirements.
14. As of the date hereof, the only securities of EastWest that are held publicly are the First Bema Public Warrants, the Second Bema Public Warrants and the Bema Convertible Notes. The Bema Warrants are exercisable for a combination of Kinross Common Shares and a nominal amount of cash. Holders of the Bema Convertible Notes also have the right to convert the Bema Convertible Notes for a combination of Kinross Common Shares and a nominal amount of cash; however, if holders do not elect to convert their Bema Convertible Notes, upon redemption they will receive a cash payment equal to the principal amount of the Bema Convertible Note and accrued but unpaid interest to the redemption date.
15. EastWest and Kinross are both parties to supplemental warrant indentures applicable to the First Public Bema Warrants and the Second Public Bema Warrants pursuant to which Kinross is obligated to deliver the Kinross Common Shares (upon the exercise of a warrant) to either EastWest for delivery to the warrant holder or directly to the warrant holder if so directed by EastWest. Holders of the privately held Bema Warrants are entitled to receive Kinross Common Shares pursuant to and in accordance with the terms of their respective Bema Warrants and the Arrangement. Pursuant to the arrangement agreement between Kinross and Bema dated December 21, 2006, Kinross has agreed to deliver the Kinross Common Shares (upon the exercise of a warrant) to either EastWest for delivery to the warrant holder or directly to the warrant holder if so directed by EastWest.
16. Following the redemption of the Bema Convertible Notes on April 12, 2007, the only outstanding securities of EastWest will be its common shares held by Kinross and the Bema Warrants.

2007 BCSECCOM 174

17. EastWest cannot rely on the exemption available in s. 13.3 of NI 51-102 for issuers of exchangeable securities because the Bema Warrants and the Bema Convertible Notes are not “designated exchangeable securities” as defined in NI 51-102. None of the holders of the Bema Warrants or the Bema Convertible Notes will have voting rights in respect of Kinross.
18. The terms of certain of the indentures and other instruments governing the Bema Warrants include a covenant that Bema will remain a reporting issuer in some or all of the provinces of Canada.
19. EastWest has no intention of accessing the capital markets in the future by issuing any further securities to the public and has no intention of issuing any securities to the public other than those that are outstanding on completion of the Arrangement.
20. It is the information relating to Kinross, and not to EastWest, that is of primary importance to holders of Bema Warrants as each of these securities is exercisable into Kinross Commons Shares, along with a nominal amount of cash. In addition, as EastWest is a wholly-owned subsidiary of Kinross, Kinross will consolidate EastWest with Kinross for the purposes of financial statement reporting. As such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements would not be meaningful or of any significant benefit to the holders of the Bema Warrants and would impose a significant cost on EastWest.

Decision

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.

1. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements shall not apply to EastWest provided that:
 - a. Kinross is the beneficial owner of all of the issued and outstanding voting securities of EastWest;
 - b. Kinross is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
 - c. all outstanding Bema Convertible Notes are redeemed on April 12, 2007 for cash;

2007 BCSECCOM 174

- d. Kinross has made arrangements for a Canadian chartered bank to provide a letter of credit to EastWest in order to pay any redemption amount due under the Bema Convertible Notes;
- e. EastWest does not issue any securities, and does not have any securities outstanding other than:
 - (i) the Bema Warrants and, until April 13, 2007, the Bema Convertible Notes;
 - (ii) securities issued to and held by Kinross or an affiliate of Kinross;
 - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (iv) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions*;
- f. EastWest files in electronic format,
 - (i) a notice indicating that it is relying on the continuous disclosure documents filed by Kinross and setting out where those documents can be found in electronic format, if Kinross is a reporting issuer in the local jurisdiction; or
 - (ii) copies of all documents Kinross is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by Kinross of those documents with a securities regulatory authority or regulator;
- g. Kinross concurrently sends to all holders of Bema Warrants all disclosure materials that would be required to be sent to holders of similar warrants of Kinross in the manner and at the time required by securities legislation;
- h. Kinross
 - (i) complies with securities legislation in respect of making public disclosure of material information on a timely basis; and

2007 BCSECCOM 174

- (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs; and
- i. EastWest issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of EastWest that are not also material changes in the affairs of Kinross.

Dated this 30th day of March 2007.

Jo-Anne Matear
Assistant Manager, Corporate Finance

- 2. The further Decision of the Decision Makers under the Legislation is that the Certification Requirements shall not apply to EastWest provided that:
 - a. EastWest is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under MI 52-109);
 - b. EastWest files in electronic format under its SEDAR profile either (i) copies of Kinross' annual certificates and interim certificates at the same time as Kinross is required under MI 52-109 to file such documents or (ii) a notice indicating that it is relying on Kinross' annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
 - c. EastWest is exempt from or otherwise not subject to the Continuous Disclosure Requirements and EastWest and Kinross are in compliance with the conditions set out in paragraph 1 above.

Dated this 30th day of March 2007.

Jo-Anne Matear
Assistant Manager, Corporate Finance

- 3. The further Decision of the Decision Makers is that the Insider Reporting Requirements shall not apply to any insider of EastWest in respect of securities of EastWest provided that:
 - a. if the insider is not Kinross

2007 BCSECCOM 174

- (i) the insider does not receive, in the ordinary course, information as to material facts of material changes concerning Kinross before the material facts or material changes are generally disclosed; and
 - (ii) the insider is not an insider of Kinross in any capacity other than by virtue of being an insider of EastWest;
- b. Kinross is the beneficial owner of all of the issued and outstanding voting securities of EastWest;
- c. if the insider is Kinross, the insider does not beneficially own any Bema Warrants other than securities acquired through the exercise of the Bema Warrants and not subsequently traded by the insider;
- d. Kinross is a reporting issuer in a designated Canadian jurisdiction; and
- e. EastWest has not issued any securities, and does not have any securities outstanding, other than
 - (i) the Bema Warrants and, until April 13, 2007, the Bema Convertible Notes;
 - (ii) securities issued to and held by Kinross or an affiliate of Kinross;
 - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (iv) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of NI 45-106; and
- f. EastWest is exempt from or otherwise not subject to the Continuous Disclosure Requirements and EastWest and Kinross are in compliance with the conditions set out in paragraph 1 above.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission