

2009 BCSECCOM 449

Headnote

Business Corporations Act (British Columbia), s. 91(3) - An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the Securities Act in respect of the debentures; the filer is not distributing securities under MJDS in Canada; the trust indenture will be governed by the Trust Indenture Act of 1939 of the United States, which contains provisions that are substantially similar to the requirements of the Act; the trustee has filed a Submission to Jurisdiction and Appointment of Agent of Process in the form similar to that under the MJDS rule (i.e. Form 71-101F1)

Securities Act s. 169 - Confidentiality - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Exemption Order

Kinross Gold Corporation

Subsection 91(3) of the *Business Corporations Act*, S.B.C. 2002, c. 57
Subsection 169(4) of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

¶ 1 Kinross Gold Corporation (Kinross) applied for:

- (a) an exemption from sections 90 to 101 of the *Business Corporations Act* (the Act); and
- (b) a decision that this order be kept confidential until the earliest to occur of:
 - (i) the date that Kinross publicly announces the filing of the Shelf Prospectus (defined below); and
 - (ii) the date that is 90 days from the date that the requested relief is granted by the Commission.

Representations

¶ 2 Kinross represents that:

1. Kinross is incorporated under the *Business Corporations Act* (Ontario);

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2. Kinross is a reporting issuer under the *Securities Act* (British Columbia) (the BCSA) and is not in default of any requirement of the BCSA, the *Securities Rules*, B.C. Reg. 194/97 or the *Securities Regulation*, B.C. Reg. 196/97;
3. Wells Fargo Bank, National Association (Wells Fargo) is a United States based financial institution that is incorporated and conducts business under the laws of the State of South Dakota; Wells Fargo is neither resident nor authorized to do business in British Columbia;
4. Wells Fargo is the trustee under the trust indenture (the Indenture) that will be entered into between Kinross and Wells Fargo on or about May 18, 2009;
5. Kinross proposes to issue from time to time debt securities (the Securities) in Canada under the Indenture;
6. the Indenture will be governed by the laws of the State of New York and the applicable federal laws of the United States;
7. Kinross will file a short form base shelf prospectus (the Shelf Prospectus) with the Commission pursuant to National Instrument 44-102 *Shelf Distributions* to qualify the distribution of the Securities, and any Securities distributed in Canada, or to a resident of Canada, will be distributed in compliance with applicable securities legislation;
8. the Securities will be offered from time to time to the public in the United States, and will be registered under the United States *Securities Act of 1933*, as amended, pursuant to a shelf registration statement on Form F-10 (the Registration Statement) that Kinross will file under the United States multijurisdictional disclosure system; the Shelf Prospectus will form a part of the Registration Statement;
9. because the Shelf Prospectus will be filed under the BCSA, sections 90 to 101 of the Act will apply to the Indenture by virtue of subsection 91(1) of the Act;
10. the Indenture is subject to and will be governed by the provisions of the United States *Trust Indenture Act of 1939*, as amended (the TIA), which regulates trustees and the issue of debt securities under trust indentures in the United States in a manner that is substantially similar to the provisions of section 90 to 101 of the Act; and
11. it is not currently anticipated that the Securities issued in Canada pursuant to the Indenture will be listed on any stock exchange in Canada, but listing may occur in the future.

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Order

- ¶ 3 Because it is not prejudicial to the public interest, the commission orders under subsection 91(3) of the act that sections 90 to 101 of the act do not apply to the indenture provided that:
- (a) the Indenture complies in all material respects with the provisions of the *Trust Indenture Act* of 1939 that are substantially similar to the provisions of sections 90 to 101 of the Act;
 - (b) Kinross, or any trustee that replaces Kinross under the terms of the Indenture, has filed with the Commission a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of British Columbia and appointment of an agent for service of process in Canada and
 - (c) under subsection 169(4) of the BCSA that the application and this order will be held in confidence by the Commission until the earlier of (i) the date that Kinross publicly announces the filing of the Shelf Prospectus; and (ii) the date that is 90 days from the date of this order.

¶ 4 May 12, 2009

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission