

2002 BCSECCOM 114

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from the registration and prospectus requirements for certain trades in connection with a statutory arrangement where exemptions not available for technical reasons - Canadian subsidiary granted relief from the continuous disclosure and insider reporting requirements as long US parent's documents are filed and delivered

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 85, 87, 91, 117 and 119
Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149, 151 and 184

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

AND

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

AND

IN THE MATTER OF NEWMONT MINING CORPORATION AND
FRANCO-NEVADA MINING CORPORATION LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker"), in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Québec, the Yukon Territory, the Northwest Territories and Nunavut (collectively, the "Jurisdictions") has received an application from Newmont Mining Corporation (together with its successor corporations, "Newmont"), and two of its affiliates, Newmont Callco ("Callco"), and Newmont Canada ("Exchangeco") (collectively, the "Applicant"), for a decision under the securities legislation, regulations, rules and/or policies of the Jurisdictions (the "Legislation") that:

- (i) certain trades in securities made in connection with or resulting from the proposed acquisition (the "Acquisition") pursuant to an arrangement agreement dated November 14, 2001 (the "Arrangement Agreement") by Newmont of all of the common shares in the capital of Franco-Nevada Mining Corporation Limited ("Franco-Nevada"), to be effected by way of a plan of arrangement (the "Arrangement") under section 192 of the *Canada Business Corporations Act*, as amended (the "CBCA") shall be exempt from the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Prospectus Requirements");

- (ii) Exchangeco be exempt from any requirements of the Legislation, where applicable, to (a) issue press releases and file reports regarding material changes, to deliver to its security holders and file with the applicable Decision Makers annual reports, interim and annual financial statements (including interim and annual management discussion and analysis), to file and deliver information circulars, (the "Continuous Disclosure Requirements"), and (b) file with the Decision Makers in Ontario, Québec and Saskatchewan an annual information form and management discussion and analysis thereon (the "Local AIF and MD&A Requirements"); and
- (iii) insiders of Exchangeco be exempt from the requirement contained in the Legislation to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of Exchangeco (the "Insider Reporting Requirement");

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 the Applicant has represented to the Decision Makers that:

1. Newmont is incorporated under the laws of the State of Delaware. Newmont is engaged in the production of gold, the exploration for gold and the acquisition and development of gold properties worldwide. Newmont has operations in Canada, United States, Mexico, Peru, Bolivia, Australia, Mexico and Uzbekistan.
2. Newmont's corporate headquarters are in Denver, Colorado.
3. As at November 30, 2001, Newmont's share capital consisted of (i) 250,000,000 shares of Newmont common stock (the "Newmont Common Shares"), par value US\$1.60 per share, of which 196,129,592 were outstanding; and (ii) 5,000,000 shares of US\$3.25 convertible preferred stock, par value US\$5.00 per share, of which 2,299,980 were outstanding. As part of the Arrangement, Newmont will issue the Newmont Special Voting Share (as defined below) to the Trustee pursuant to the Voting and Exchange Trust Agreement (as defined below).
4. The Newmont Common Shares are listed and trade principally on the New York Stock Exchange (the "NYSE") under the symbol "NEM" and are also listed on the Brussels Stock Exchange and the Swiss Stock Exchange. Application has been made by Newmont to the NYSE to list the Newmont Common Shares issued pursuant to the Arrangement, or issuable from time to time in exchange for exchangeable shares in the capital of Exchangeco (the "Exchangeable Shares") and upon exercise of Franco-Nevada Options (as defined below).
5. Newmont is subject to the reporting requirements of securities legislation in the United States. Newmont is currently a "reporting issuer" or the equivalent under the Legislation of each of British Columbia, Alberta, Saskatchewan, Manitoba and Québec.
6. Callco will be incorporated as a direct or indirect wholly-owned subsidiary of Newmont. Callco will hold the various call rights related to the Exchangeable Shares.
7. The authorized capital of Callco will consist of 1,000,000,000 common shares. Upon completion of the Arrangement, all of the issued and outstanding common shares of Callco will be held directly or indirectly by Newmont.

8. Exchangeco will be incorporated as a direct or indirect subsidiary of Newmont for the purpose of implementing the Arrangement and will be the continuing corporation following the amalgamation of Exchangeco, Franco-Nevada and others as contemplated by the Arrangement. Exchangeco's only material assets prior to such amalgamation will be the issued and outstanding Franco-Nevada Common Shares and shares of holding companies, the only assets of which will be Franco-Nevada Common Shares.
9. The authorized share capital of Exchangeco will consist of an unlimited number of common shares, an unlimited number of preference shares, an unlimited number of Special Shares (as hereinafter defined) and an unlimited number of Exchangeable Shares. Upon completion of the Arrangement, all of the outstanding common shares and Special Shares of Exchangeco will be held directly or indirectly by Newmont and all of the outstanding Exchangeable Shares will be held by the former Franco-Nevada Shareholders who elect to receive Exchangeable Shares in exchange for their Franco-Nevada Common Shares under the Arrangement.
10. Exchangeco will initially be a "closely-held issuer" within the meaning of that term under Ontario Securities Commission Rule 45-101: Exempt Distributions. Upon the completion of the Arrangement and if Exchangeable Shares are issued pursuant to the Arrangement, the Exchangeable Shares will be listed on the TSE and Exchangeco will become a reporting issuer under the provisions of applicable Canadian provincial and territorial securities legislation. It is a condition precedent of the Arrangement that the Exchangeable Shares be conditionally approved for listing on The Toronto Stock Exchange (the "TSE"). On December 28, 2001, the TSE conditionally approved the Exchangeable Shares for listing.
11. Franco-Nevada was originally incorporated under the CBCA by articles of incorporation dated October 5, 1982. It amalgamated with Euro-Nevada Mining Corporation Limited effective September 20, 1999 pursuant to articles of arrangement dated September 20, 1999 to form the current Franco-Nevada.
12. The primary business of Franco-Nevada is the acquisition of: (i) direct interests in mineral properties and, when appropriate, developing those properties; (ii) royalty interests in producing precious metals mines and precious metals properties in the development or advanced exploration stage; (iii) direct interests in mineral properties for the purpose of exploration, when appropriate, and selling, leasing or joint venturing those properties to established mine operators and retaining royalty interests; and (iv) indirect interests in mineral deposits through strategic interests in companies that own interests in mineral deposits. Franco-Nevada's principal executive offices are located at Suite 1900, 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8.
13. In the year ended March 31, 2001, Franco-Nevada generated revenue of approximately CDN\$284.3 million, earnings before tax of approximately CDN\$164.6 million and earnings of approximately CDN\$113.4 million. Total shareholders' equity at March 31, 2001 was approximately CDN\$1.55 billion.
14. Franco-Nevada's authorized capital consists of an unlimited number of Franco-Nevada Common Shares and an unlimited number of first preferred shares issuable in series. As at November 14, 2001, 158,420,430 Franco-Nevada Common Shares were issued and outstanding, Stock Options to acquire 5,040,356 Franco-Nevada Common Shares were granted and outstanding, Class A Warrants to acquire 8,895,344 Franco-Nevada Common Shares were issued and outstanding and Class B Warrants to acquire an aggregate of 6,571,953 Franco-Nevada Common shares were issued and outstanding.
15. Franco-Nevada Common Shares are listed on the TSE under the symbol "FN". The Class A Warrants are listed on the TSE under the symbol "FN.WT". The Class B

Warrants are quoted on the Canadian Venture Exchange under the symbol "YFN WT.B". Franco-Nevada is reporting issuer in all provinces of Canada.

16. On September 21, 2000, Franco-Nevada and Montreal Trust Company of Canada entered into a shareholder rights agreement providing for a shareholder rights plan which was approved by shareholders of Franco-Nevada on the same date. In the Arrangement Agreement, Franco-Nevada confirmed that its board of directors acting in good faith considered it necessary and desirable to extend the Separation Time (as such term is defined in the shareholder rights agreement) until after the vote by Franco-Nevada Shareholders at the Franco-Nevada Meeting and has agreed to obtain the consent of the Franco-Nevada Shareholders to waive the application of the shareholder rights agreement to the Arrangement and the transactions contemplated thereby.
17. The Acquisition will be effected by way of Arrangement, which will require: (i) the approval of holders of the Franco-Nevada Common Shares (the "Franco-Nevada Shareholders") holding not less than 66 and 2/3% of the votes cast at the meeting of such Franco-Nevada Shareholders (the "Franco-Nevada Meeting") (currently scheduled to be held on or about January 30, 2002) by Franco-Nevada Shareholders present in person or represented by proxy; and (ii) the final approval of the Court (as defined below). Each holder of Franco-Nevada Common Shares will be entitled to one vote for each Franco-Nevada Common Share held.
18. In connection with the Arrangement, Franco-Nevada has mailed to the Franco-Nevada Shareholders a management information circular (the "Circular"). The Circular contains, among other things, prospectus-level disclosure of the business and affairs of each of Newmont and Exchangeco and the particulars of the Arrangement, the Exchangeable Shares and Newmont Common Shares. The Circular also discloses that Newmont and Exchangeco will apply for exemptive relief from prospectus and registration requirements for certain trades to be made in connection with Acquisition, and that Exchangeco be exempt from certain continuous disclosure requirements and that insiders of Exchangeco be exempt from certain insider reporting requirements of the Legislation.
19. On December 27, 2001, the Superior Court of Justice (Ontario) (the "Court") granted an interim order in respect of the Arrangement providing for the calling and holding of the Franco-Nevada Meeting and certain other procedural matters including providing for approval of the Arrangement to be made by the affirmative vote of not less than 66 and 2/3% of the votes cast at the Franco-Nevada Meeting by Franco-Nevada Shareholders present in person or represented by proxy.
20. Upon the Arrangement becoming effective, in accordance with elections made by holders of Franco-Nevada Common Shares, the outstanding Franco-Nevada Common Shares (except those held by shareholders who exercise their rights of dissent and are ultimately entitled to be paid the fair value thereof) will be acquired, at the option of the holder thereof, by either Exchangeco or Callco and each holder of Franco-Nevada Common Shares shall be entitled to receive in consideration therefor either: (i) 0.80 Exchangeable Shares per Franco-Nevada Common Share acquired by Exchangeco; or (ii) 0.80 Newmont Common Shares per Franco-Nevada Common Share acquired by Callco.
21. Alternatively, holders of Franco-Nevada Common Shares shall be entitled to transfer their Franco-Nevada Common Shares to a newly incorporated corporation ("Holdco") and sell all issued and outstanding shares in the capital of Holdco ("Holdco Shares") to either Callco or Exchangeco, provided certain conditions are satisfied, including, among other things that the holder is a resident of Canada for the purposes of the ITA, Holdco has no indebtedness or liabilities and owns no assets other than the Franco-Nevada Common Shares and the holder transfers its Franco-Nevada Common Shares to Holdco solely in consideration for the Holdco Shares. If the Holdco Shares are sold to Exchangeco, the

holder of such Holdco Shares shall be entitled to receive in consideration therefor, 0.80 Exchangeable Shares per Franco-Nevada Common Share owned by Holdco. If the Holdco Shares are sold to Callco, the holder of such Holdco Shares shall be entitled to receive in consideration therefor, 0.80 Newmont Common Shares per Franco-Nevada Common Share owned by Holdco.

22. Each issued and outstanding Franco-Nevada Common Share and Holdco Share acquired by Callco will be transferred by Callco to Exchangeco in consideration for the issuance of 1,000 special shares (the "Special Shares") in the capital of Exchangeco.
23. Pursuant to the Arrangement, each holder: of (i) options to acquire Franco-Nevada Common Shares ("Stock Options") issued pursuant to the Franco-Nevada employee stock option plan; (ii) Class A Warrants to acquire Franco-Nevada Common Shares issued by Franco-Nevada ("Class A Warrants"); or (iii) Class B Warrants to acquire Franco-Nevada Common Shares issued by Franco-Nevada ("Class B Warrants") (the Stock Options, the Class A Warrants and the Class B Warrants collectively referred to herein as the "Franco-Nevada Options") shall be entitled to receive upon the subsequent exercise of such holder's Franco-Nevada Options, in accordance with its terms, and shall accept in lieu of the number of Franco-Nevada Common Shares to which such holder was theretofore entitled upon such exercise but for the same aggregate consideration payable therefor, the aggregate number of Newmont Common Shares, that such holder would have been entitled to receive as a result of the transactions contemplated by the Arrangement if, on the effective date of the Arrangement, such holder had been the registered holder of the number of Franco-Nevada Common Shares to which such holder was theretofore entitled upon such exercise, subject to adjustment to account for fractional shares.
24. Subject to adjustments, each Exchangeable Share will be exchangeable by the holder at any time for one Newmont Common Share. Each Exchangeable Share shall be redeemed for one Newmont Common Share on the seventh anniversary of the date on which Exchangeable Shares are first issued or earlier in certain circumstances, including when fewer than 1,000,000 Exchangeable Shares are held by non-Newmont entities. Provided the Exchangeable Shares are listed on a prescribed stock exchange in Canada (which currently includes the TSE), the Exchangeable Shares will be "qualified investments" under the *Income Tax Act* (Canada), as amended (the "ITA") for certain investors. In addition, provided that the Exchangeable Shares are so listed and certain other criteria is satisfied (which criteria Newmont has agreed to use its best efforts to satisfy), the Exchangeable Shares will not be "foreign property" under the ITA.
25. In connection with the Arrangement, Newmont, Exchangeco and a trustee (the "Trustee") will enter into a voting and exchange trust agreement (the "Voting and Exchange Trust Agreement") and Newmont, Callco and Exchangeco will enter into a support agreement (the "Support Agreement"). These agreements, together with the rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions") and the rights attaching to the special voting share in the capital of Newmont ("Newmont Special Voting Share") issued to the Trustee pursuant to the Voting and Exchange Trust Agreement, which allows the Trustee, as trustee for and on behalf of all registered holders of the Exchangeable Shares (other than affiliates of Newmont) to receive for no additional consideration, the Voting Rights, the Automatic Exchange Right, the Automatic Exchange Rights on Liquidation (each of which are hereinafter defined) and any other similar rights that may be available from time to time to holders of the Exchangeable Shares, result in the economic attributes of the Exchangeable Shares being substantially equivalent in all material respects to the economic attributes of the Newmont Common Shares.

26. Franco-Nevada, Exchangeco and all of the Holdcos will amalgamate and continue as one corporation under the CBCA to continue under the name "Franco-Nevada Mining Corporation". Each common share in the capital of Exchangeco shall become one common share in the capital of the amalgamated corporation. Each Special Share in the capital of Exchangeco shall become one Special Share in the capital of the amalgamated corporation. Each Exchangeable Share in the capital of Exchangeco shall become one Exchangeable Share in the capital of the amalgamated corporation. Each share in the capital of Franco-Nevada and each share in the capital of each Holdco shall be cancelled. For the purposes of this Decision, Exchangeco means the corporation that issues the Exchangeable Shares pursuant to the Arrangement and following the amalgamation described in the first sentence of this clause, the corporation continuing as a result of that amalgamation.
27. The Exchangeable Shares will be entitled to a preference over the common shares of Exchangeco, the Special Shares and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and equivalent to, each dividend paid by Newmont on a Newmont Common Share. Subject to the overriding Liquidation Call Right of Callco or Newmont, as the case may be, defined below, on the liquidation, dissolution or winding-up of Exchangeco, a holder of Exchangeable Shares will be entitled, subject to applicable law, to receive from the assets of Exchangeco for each Exchangeable Share held, an amount equal to the current market price of a Newmont Common Share on the last business day prior to the liquidation date, to be satisfied by the delivery of one Newmont Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the liquidation date (such aggregate amount, the "Liquidation Amount"). Upon a proposed liquidation, dissolution or winding-up of Exchangeco, Callco or Newmont, as the case may be, will have an overriding call right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares from the holders thereof for a price per share equal to the Liquidation Amount.
28. The Exchangeable Shares will be non-voting (except as required by applicable law) and will be retractable at the option of the holder at any time. Subject to the overriding Retraction Call Right of Callco or Newmont, as the case may be, defined below, upon retraction, the holder will be entitled to receive from Exchangeco, for each Exchangeable Share retracted, an amount equal to the current market price for a Newmont Common Share, to be satisfied by the delivery of one Newmont Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the retraction date (such aggregate amount, the "Retraction Price"). Upon being notified by Exchangeco of a proposed retraction of Exchangeable Shares, Callco or Newmont, as the case may be, will have an overriding call right (the "Retraction Call Right") to purchase from the holder all of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price.
29. Subject to applicable law and to the overriding Redemption Call Right of Callco or Newmont, as the case may be, referred to below in this paragraph, Exchangeco shall redeem all the Exchangeable Shares then outstanding on the date (the "Redemption Date"), if any, fixed by the board of directors of Exchangeco for the redemption of the Exchangeable Shares, such Redemption Date not being earlier than the seventh anniversary of the date on which the Exchangeable Shares are first issued. The Redemption Date may be earlier than the seventh anniversary of the date on which the

Exchangeable Shares are first issued in certain circumstances, as described in the Circular, including if there are fewer than 1,000,000 Exchangeable Shares outstanding (other than Exchangeable Shares held by Newmont and its affiliates and subject to necessary adjustments to such number of shares to reflect permitted changes to Exchangeable Shares). Upon such redemption, a holder will be entitled to receive from Exchangeco, for each Exchangeable Share redeemed, an amount equal to the current market price of a Newmont Common Share, to be satisfied by the delivery of one Newmont Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the redemption date (such aggregate amount, the "Redemption Price"). Upon being notified by Exchangeco of a proposed redemption of Exchangeable Shares, Calco and Newmont, as the case may be, will have an overriding call right (the "Redemption Call Right") to purchase from the holders all of the outstanding Exchangeable Shares for a price per share equal to the Redemption Price.

30. Any approval required to be given by the holders of the Exchangeable Shares to add to, change or remove any right, privilege, restriction or condition attaching to the Exchangeable Shares or any other matter requiring the approval or consent of the holders of the Exchangeable Shares in accordance with applicable law will be deemed to have been sufficiently given if it has been given in accordance with applicable law, subject to a minimum requirement that such approval be evidenced by a resolution passed by not less than two-thirds of the votes cast on such resolution at a meeting of holders of Exchangeable Shares duly called and held at which the holders of at least 10% of the outstanding Exchangeable Shares are present or represented by proxy.
31. The Exchangeable Shares, together with the Voting and Exchange Trust Agreement will provide holders thereof with a security of a Canadian issuer having economic rights which are, as nearly as practicable, equivalent to those of Newmont Common Shares. Exchangeable Shares may be received by certain holders of Franco-Nevada Common Shares on a Canadian tax-deferred rollover basis and, provided such shares are listed on a prescribed stock exchange (which currently includes the TSE), will be "qualified investments" for certain investors. In addition, provided that the Exchangeable Shares are so listed and certain other criteria are satisfied (which criteria Newmont has agreed to use its best efforts to satisfy), the Exchangeable Shares will not constitute "foreign property" under the ITA.
32. Pursuant to the Voting and Exchange Trust Agreement, Newmont will issue to the Trustee one Newmont Special Voting Share to be held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of, the registered holders from time to time of Exchangeable Shares (other than affiliates of Newmont) and in accordance with the provisions of the Voting and Exchange Trust Agreement. During the term of the Voting and Exchange Trust Agreement, Newmont is not permitted to issue any additional Newmont Special Voting Shares without the consent of the holders of Exchangeable Shares.
33. Under the Voting and Exchange Trust Agreement, the Trustee will be entitled to all of the voting rights, including the right to vote in person or by proxy, attaching to the Newmont Special Voting Share on all matters that may properly come before the shareholders of Newmont at a meeting of shareholders. The Newmont Special Voting Share has a number of votes, which may be cast by the Trustee at any meeting at which Newmont shareholders are entitled to vote, equal to the lesser of the number of outstanding Exchangeable Shares (other than shares held by Newmont or its affiliates) and 10% of the total number of votes attached to the Newmont Common Shares then outstanding.
34. Each holder of an Exchangeable Share (other than Newmont or its affiliates) on the record date for any meeting at which Newmont shareholders are entitled to vote will be

entitled to instruct the Trustee to exercise the lesser of one of the votes attached to the Newmont Special Voting Share for (i) such Exchangeable Share, or (ii) every 10 votes attaching to the outstanding Newmont Common Shares. The Trustee will exercise each vote attached to the Newmont Special Voting Share only as directed by the relevant holder and, in the absence of instructions from a holder as to voting, the Trustee will not have voting rights with respect to such Exchangeable Shares. A holder may, upon instructing the Trustee, obtain a proxy from the Trustee entitling the holder to vote directly at the relevant meeting the votes attached to the Newmont Special Voting Share to which the holder is entitled.

35. The Trustee will send to the holders of the Exchangeable Shares the notice of each meeting at which the Newmont shareholders are entitled to vote, together with the related meeting materials and a statement as to the manner in which the holder may instruct the Trustee to exercise the votes attaching to the Newmont Special Voting Share, at the same time as Newmont sends such notice and materials to the Newmont shareholders. The Trustee will also send to the holders of Exchangeable Shares copies of all information statements, interim and annual financial statements, reports and other materials sent by Newmont to the Newmont shareholders at the same time as such materials are sent to the Newmont shareholders. To the extent such materials are provided to the Trustee by Newmont, the Trustee will also send to the holders all materials sent by third parties to Newmont shareholders generally, including under U.S. securities laws, including dissident proxy circulars and tender and exchange offer circulars, as soon as possible after such materials are first sent to Newmont shareholders.
36. All rights of a holder of Exchangeable Shares to exercise votes attached to the Newmont Special Voting Share will cease upon the exchange of such holder's Exchangeable Shares for Newmont Common Shares.
37. Under the Voting and Exchange Trust Agreement, upon the liquidation, dissolution or winding-up of Exchangeco, Newmont will be required to purchase each outstanding Exchangeable Share and each holder will be required to sell all of its Exchangeable Shares (such purchase and sale obligations are hereafter referred to as the "Automatic Exchange Right"). The purchase price for each Exchangeable Share purchased by Newmont will be satisfied by the delivery to the Trustee, on behalf of the holder, of one Newmont Common Share, together with, on the designated payment date therefor and to the extent not already paid by Exchangeco, all declared and unpaid dividends on each such Exchangeable Share.
38. Under the Voting and Exchange Trust Agreement, upon the liquidation, dissolution or winding-up of Newmont, Newmont will be required to purchase on the fifth business day prior to the effective date of such liquidation, dissolution or winding-up each outstanding Exchangeable Share and each holder will be required to sell all of its Exchangeable Shares (such purchase and sale obligations are hereafter referred to as the "Automatic Exchange Rights on Liquidation"). The purchase price will be satisfied by the delivery to the Trustee, on behalf of the holder, of one Newmont Common Share, together with, on the designated payment date therefor and to the extent not already paid by Exchangeco, all declared and unpaid dividends on each such Exchangeable Share.
39. Contemporaneously with the closing of the Arrangement, Newmont, Exchangeco and Callco will enter into a Support Agreement. Pursuant to the Support Agreement, Newmont has covenanted that, so long as Exchangeable Shares not owned by Newmont or its affiliates are outstanding, Newmont will, among other things: (a) not declare or pay any dividend on the Newmont Common Shares unless (i) on the same day Exchangeco declares or pays, as the case may be, an equivalent dividend on the Exchangeable Shares and (ii) Exchangeco has sufficient money or other assets or authorized but

unissued securities available to enable the due declaration and the due and punctual payment, in accordance with applicable law, of an equivalent dividend on the Exchangeable Shares; (b) advise Exchangeco in advance of the declaration of any dividend on the Newmont Common Shares and take other actions reasonably necessary to ensure that the declaration date, record date and payment date for dividends on the Exchangeable Shares are the same as those for any corresponding dividends on the Newmont Common Shares; (c) ensure that the record date for any dividend declared on the Newmont Common Shares is not less than seven days after the declaration date of such dividend; and (d) take all actions and do all things reasonably necessary or desirable to enable and permit Exchangeco, in accordance with applicable law, to pay the Liquidation Amount, the Retraction Price or the Redemption Price to the holders of the Exchangeable Shares in the event of a liquidation, dissolution or winding-up of Exchangeco, a retraction request by a holder of Exchangeable Shares or a redemption of Exchangeable Shares by Exchangeco, as the case may be.

40. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, actions such as distributions of stock dividends, options, rights and warrants for the purchase of securities or other assets, subdivisions, reclassifications, reorganizations and other changes cannot be taken in respect of the Newmont Common Shares without the same or an economically equivalent action being taken in respect of the Exchangeable Shares.
41. The steps under the Arrangement and the attributes of the Newmont Common Shares and Exchangeable Shares involve a number of trades and/or distributions of securities, including trades and/or distributions related to the issuance of Newmont Common Shares and Exchangeable Shares pursuant to or in connection with the Arrangement or upon the issuance of Newmont Common Shares in exchange for Exchangeable Shares or the exercise of Franco-Nevada Options. The trades and/or distributions and possible trades and/or distributions in securities to which the Arrangement gives rise (the "Trades") include the following:
 - (a) the issuance by Newmont of Newmont Common Shares to enable Callco to deliver Newmont Common Shares in connection with the Arrangement;
 - (b) the delivery of Newmont Common Shares by Callco to certain holders of Franco-Nevada Common Shares and Holdco Shares and the transfer of Franco-Nevada Common Shares or Holdco Shares by such holders to Callco;
 - (c) the issuance by Exchangeco of Exchangeable Shares in connection with the Shares or Holdco Shares and the transfer of Franco-Nevada Common Shares or Holdco Shares by such holders to Exchangeco;
 - (d) the transfer by Callco of the Franco-Nevada Common Shares and Holdco Shares to Exchangeco and the issuance of Special Shares to Callco;
 - (e) the issuance and delivery of Newmont Common Shares by Newmont to a holder of a Franco-Nevada Option upon the exercise thereof;
 - (f) the grant to the Trustee for the benefit of holders of Exchangeable Shares pursuant to the Voting and Exchange Trust Agreement, the Automatic Exchange Right, the Automatic Exchange Rights on Liquidation and the voting rights pursuant to the Newmont Special Voting Share;
 - (g) the grant of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right;

- (h) the issuance by Newmont, pursuant to the Voting and Exchange Trust Agreement, of the Newmont Special Voting Share to the Trustee for the benefit of the holders of the Exchangeable Shares;
- (i) the issuance by Newmont of Newmont Common Shares to enable Exchangeco to deliver Newmont Common Shares to a holder of Exchangeable Shares upon its retraction of Exchangeable Shares, and the subsequent delivery thereof by Newmont (at the direction of Exchangeco) upon such retraction;
- (j) the transfer of Exchangeable Shares by the holder to Exchangeco upon the holder's retraction of Exchangeable Shares;
- (k) the issuance by Newmont of Newmont Common Shares to enable Callco to deliver Newmont Common Shares to a holder of Exchangeable Shares in connection with Callco's exercise of the Retraction Call Right, and the subsequent delivery thereof by Newmont (at the direction of Callco) upon such exercise of the Retraction Call Right;
- (l) the transfer of Exchangeable Shares by the holder to Callco or Newmont, as the case may be, upon Callco or Newmont, as the case may be, exercising the Retraction Call Right;
- (m) the issuance by Newmont of Newmont Common Shares to enable Exchangeco to deliver Newmont Common Shares to holders of Exchangeable Shares upon the redemption of the Exchangeable Shares, and the subsequent delivery thereof by Newmont (at the direction of Exchangeco) upon such redemption;
- (n) the transfer of Exchangeable Shares by the holder to Exchangeco upon the redemption of Exchangeable Shares;
- (o) the issuance by Newmont of Newmont Common Shares to enable Callco to deliver Newmont Common Shares to holders of Exchangeable Shares in connection with Callco's exercise of the Redemption Call Right, and the subsequent delivery thereof by Newmont (at the direction of Callco) upon such exercise of the Redemption Call Right;
- (p) the transfer of Exchangeable Shares by the holder to Callco or Newmont, as the case may be, upon Callco or Newmont, as the case may be, exercising the Redemption Call Right;
- (q) the issuance by Newmont of Newmont Common Shares to enable Exchangeco to deliver Newmont Common Shares to holders of Exchangeable Shares on the liquidation, dissolution or winding-up of Exchangeco and the subsequent delivery thereof by Exchangeco upon such liquidation, dissolution or winding-up;
- (r) the transfer of Exchangeable Shares by the holder to Exchangeco on the liquidation, dissolution or winding-up of Exchangeco;
- (s) the issuance by Newmont of Newmont Common Shares to enable Callco to transfer Newmont Common Shares to holders of Exchangeable Shares in connection with Callco's exercise of the Liquidation Call Right, and the subsequent delivery thereof by Newmont (at the direction of Callco) upon such exercise of the Liquidation Call Right;
- (t) the transfer of Exchangeable Shares by the holder to Callco or Newmont, as the case may be, upon Callco or Newmont, as the case may be, exercising the Liquidation Call Right;

- (u) the issuance of Newmont Common Shares by Newmont to a holder of Exchangeable Shares upon its exercise of the Automatic Exchange Rights on Liquidation; and
 - (v) the transfer of Exchangeable Shares by a holder to Newmont upon its exercise of the Automatic Exchange Rights on Liquidation.
- 42. The fundamental investment decision to be made by a holder of Franco-Nevada Common Shares, Franco-Nevada Options and Holdco Shares is made at the time of the Franco-Nevada Meeting when such holder votes in respect of the Arrangement and on February 15, 2002 (or such later date prior to the closing of the Arrangement) which is the deadline for holders to elect between receiving Exchangeable Shares or Newmont Common Shares. As a result of this decision, any holder of Franco-Nevada Common Shares or Holdco Shares (other than a holder who exercises its right of dissent) receives Exchangeable Shares or Newmont Common Shares in exchange for such Franco-Nevada Common Shares or Holdco Shares. Moreover, holders of Franco-Nevada Options will be entitled to Newmont Common Shares upon exercise thereof. As the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise have economic rights that are, as nearly as practicable, equivalent to that of the Newmont Common Shares, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision to acquire Newmont Common Shares on the Arrangement. Moreover, it is the information relating to Newmont not Exchangeco that will be relevant to holders of Newmont Common Shares and the Exchangeable Shares. As mentioned above, that investment decision will be made on the basis of the Circular, which contains prospectus-level disclosure of the business and affairs of each of Newmont, Exchangeco, the particulars of the Arrangement and the securities to be issued in connection therewith. The Circular also contains consolidated financial statements of Newmont and Franco-Nevada, as well as *pro forma* combined condensed financial statements of Newmont.
- 43. Newmont will send to all holders of Newmont Common Shares resident in Canada contemporaneously all disclosure material sent to holders of Newmont Common Shares resident in the United States.

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:

- 1. the Trades are not subject to the Registration and Prospectus Requirements, provided that:
 - (a) except in Québec, the first trade in Exchangeable Shares acquired as contemplated by this Decision will be a distribution or primary distribution to the public unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102: Resale of Securities ("MI 45-102") are satisfied, and for the purpose of determining the period of time that Exchangeco has been a reporting issuer under section 2.6, the period of time that Franco-Nevada was a reporting issuer may be included; and
 - (b) except in Québec, the first trade in Newmont Common Shares acquired as contemplated by this Decision (including, for greater certainty, upon the

exchange of an Exchangeable Share or upon the exercise of a Franco-Nevada Option) will be a distribution or primary distribution to the public unless, at the time of the trade:

- (i) if Newmont is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; and
 - (ii) if Newmont is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada.
- 2. in Québec, to the extent that there is no exemption available from the Registration and Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration and Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Franco-Nevada) is and has been a reporting issuer in Québec and has complied with the applicable requirements for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Franco-Nevada was a reporting issuer may be included).
- 3. the Continuous Disclosure Requirements and the Insider Reporting Requirements shall not apply to Exchangeco or any insider of Exchangeco, so long as:
 - (a) Newmont sends to all holders of Exchangeable Shares resident in Canada contemporaneously, all disclosure material furnished to holders of Newmont Common Shares in the United States including, without limitation, copies of its annual and interim financial statements and sends to holders of Exchangeable Shares resident in Canada all proxy solicitation materials;
 - (b) Newmont files with each Decision Maker copies of all documents required to be filed by it with the United States Securities and Exchange Commission under the United States *Securities and Exchange Act of 1934* including, without limitation, copies of any Form 20-F, Form 6-K and proxy solicitation material, and all such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
 - (c) Newmont complies with the requirements of the United States Securities and Exchange Commission and the NYSE in respect of making public disclosure of material information on a timely basis and forthwith issues and files any press release that discloses a material change in Newmont's affairs;
 - (d) Exchangeco complies with the requirements in the Legislation to issue press releases and file reports regarding material changes in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of Newmont Common Shares;
 - (e) Newmont includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Newmont and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Newmont, Common Shares and the right to direct voting at Newmont's shareholders meetings

pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);

- (f) Newmont remains the direct or indirect beneficial owner of all the issued and outstanding common shares of Exchangeco;
- (g) Exchangeco has not issued any securities to the public other than the Exchangeable Shares and the Franco-Nevada Options; and

with respect to relief from complying with the Insider Reporting Requirements, further provided that:

- (h) such insider of Exchangeco does not receive or have access to information as to material facts or material changes concerning Newmont before the material facts or material changes are disclosed; or
- (i) such insider of Exchangeco is not also an insider of a "major subsidiary" of Newmont (as such term is defined in National Instrument 55-101: Exemptions from Certain Insider Reporting Requirements as if Newmont were a reporting issuer).

DATED this 30th day of January 2002

R Stephen Paddon

H. Lorne Morphy

AND THE FURTHER DECISION of the Decision Makers is that the Local AIF and MD&A Requirements shall not apply to Exchangeco provided that the conditions set out in paragraphs 3(a) to (g) of the operative portion of the Decision are complied with.

DATED this 30th day of January 2002.

Margo Paul