

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82946 / March 26, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3930 / March 26, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18407

<p>In the Matter of</p> <p>KINROSS GOLD CORPORATION,</p> <p>Respondent.</p>
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (the “Exchange Act”) against Kinross Gold Corporation (“Kinross” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This matter concerns violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”) by Kinross Gold Corporation, a gold mining company. From September 2010 through at least 2014, Kinross operated gold mines in Mauritania and Ghana without devising and maintaining a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management’s specific or general authorization. As a result, Kinross paid vendors and consultants, often in connection with government interactions, without reasonable assurances that transactions were consistent with their stated purpose or the prohibition against making improper payments to government officials. For certain of these transactions, the company used petty cash to pay consultants which it then failed to accurately and fairly describe in its books and records.

2. In 2014, Kinross also failed to maintain its internal accounting controls around contracting and awarded a lucrative logistics contract to a company preferred by government officials without following its own bidding and tendering procedures. Internal documentation provided incomplete information concerning the contract award. Additionally, Kinross contracted with a politically-well-connected third-party consultant to facilitate contacts with high-level government officials without conducting the heightened due diligence required by the company’s policies and procedures.

Respondent

3. Kinross Gold Corporation (“Kinross”) is a Canadian gold mining company. Founded in 1993, the company conducts development and mining operations in North and South America, West Africa, and Russia. Kinross is headquartered in Toronto, Canada. During the relevant time period, its common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and listed on the New York Stock Exchange (NYSE: KGC) and Toronto Stock Exchange (TSX: K).

Other Relevant Entities

4. Tasiast Mauritanie Limited S.A. (“Tasiast”) is a wholly-owned indirect subsidiary of Kinross. Tasiast owns and operates the Tasiast mine in the Islamic Republic of Mauritania. Throughout the relevant time period, Tasiast’s financial results were included in the consolidated financial statements that Kinross filed with the Commission.

5. Chirano Gold Mines Ltd. (Chirano) is a 90 percent-owned indirect subsidiary of Kinross. Chirano owns and operates the Chirano mine in Ghana. Throughout the relevant time period, Chirano’s financial results were included in the consolidated financial statements that Kinross filed with the Commission.

Facts

Kinross Failed to Timely Implement Sufficient Internal Accounting Controls and Remediate Known Issues

6. On September 17, 2010, Kinross acquired Tasiast and Chirano, and their assets and mining operations in Mauritania and Ghana from Red Back Mining, Inc. (“Red Back”), a Vancouver-based mining company, for approximately \$7.1 billion. Kinross viewed the development of the Tasiast mine, which was much larger than Chirano, as key and critical to the realization of the value of the transaction. In the few months prior to the purchase of the mines from Red Back, Kinross conducted due diligence on Red Back. As part of the process, Red Back acknowledged that it lacked an anti-corruption compliance program and associated internal accounting controls.

7. As part of this initial due diligence, and following the acquisition, Kinross failed to timely address the adequacy of the internal accounting controls at Red Back pertaining to the procurement and payment of vendors for goods and services or consider the risks of corruption associated with the high percentage of vendors that were controlled by government officials or their relatives. As a result, Kinross failed to make necessary improvements to Red Back’s inadequate controls in a timely manner. Kinross continued the same practices from Red Back that allowed low-level employees to contract with vendors and make payments with petty cash without appropriate controls.

8. In April 2011 Kinross’ internal audit group concluded that the internal accounting controls surrounding vendor selection and disbursement for goods and services at Tasiast and Chirano were not adequate to meaningfully assess transactions for accuracy or compliance with the FCPA. The internal audit group faulted the Enterprise Resource Planning (“ERP”) accounting and disbursements system, which did not “include much detail on the nature of disbursements” thus making it “not possible” to identify suspect payments such as excessive rebates and discounts, advance payments, government commissions and unjustified business expenses. While internal audit conducted a manual review, this was still not adequate to meaningfully assess transactions for FCPA compliance. Internal audit also found that the lack of contract administration procedures prevented it from adequately reviewing the contracting and tendering processes.

9. Despite these findings by the internal audit group, company management failed to take immediate action. Employees in the finance department became increasingly concerned about the poor internal accounting controls associated with disbursements in Africa and the continued risk of corrupt activities. These employees suggested internal audits of Chirano and Tasiast be repeated so that the internal accounting control issues would be found and then, hopefully, prioritized for solution by regional and international management. In April 2012, Kinross’ internal audit group issued a nearly-identical memorandum reaching the same conclusions.

10. Internal audit conducted reviews at Chirano in January 2012 and Tasiast in February 2012. The audits found issues requiring significant improvements at both mines.

- A. The mines variously lacked formal site Delegations of Authority by which disbursements were approved; lacked formalized procedures for contract approval and tendering; and lacked a fully functioning ERP system. As a result, Kinross relied on manual controls to mitigate against any potential control issues, but they did not consistently adhere to the manual controls.
- B. At Chirano, specific internal accounting controls in key purchasing and disbursement areas were adhered to only sporadically. For instance, for 41% of the disbursement sample, the purchase order was dated and created after the invoice was received and, for 75% of the sample, there was no contract at all. At Tasiast, there was a widespread lack of adherence to basic internal accounting controls. For each and every of the sampled transactions, there was either no purchase order or the purchase order was created after the invoice was received.
- C. At both mines, most disbursements were made without approval by the required level of signatories, or based on signatures that did not provide adequate detail, such as names and positions, to verify whether appropriate approval had been provided. Kinross failed to maintain supporting documentation required for disbursements, including invoices, purchase orders, and/or good receipts. Internal audit found minimal evidence of a functioning bidding or tendering process.

11. The internal audit reports for the Chirano and Tasiast mines contained recommendations for extensive remediation steps. While management agreed to swiftly implement the needed remediation, it failed to follow through on its commitments in a timely manner. As a result, follow-up internal audits indicated that the issues largely remained. For example,

- A. At Tasiast, an October 2012 internal audit found no evidence of required bidding or tendering for any of the sampled transactions for goods or services and no purchase orders or contracts for the vast majority of them. Fourteen months later, in December 2013, internal audit reported that of the transactions it reviewed; only 53% possessed a contract and 57% had any evidence of bidding and tendering.
- B. At Chirano, a July 2013 internal audit found that only 56% of the sampled transactions possessed a contract and only 44% showed evidence of being the result of required bidding or tendering. As noted by the internal auditor, “100% of the contracts reviewed were awarded directly by the functional area or department,” rather than by the procurement department, an indication that the Red Back practice of low-level employees awarding contracts without independent accounting control or oversight continued nearly three years after Kinross assumed control of the mine.

12. As a result of the known control weaknesses, payments were made for a period of years without reasonable assurances that the payments were for their stated purpose or with management’s approval. For example,

- A. Kinross paid a fixed amount to a Ghanaian government customs officer for his expenses in traveling to the mine weekly in order to sign papers necessary for the transfer of the gold's title and attendant shipping risk from Kinross to the buyer. While the agreement did not provide for it, during 2012 through 2014, personnel at Chirano regularly paid the customs officer for weeks in which he did not travel to the mine and bore no travel expenses.
- B. In 2012, the Ghana Environmental Protection Agency ("Ghana EPA") delayed granting Kinross a mining production permit for a planned mine expansion due to unresolved questions about an Environmental Impact Study that Kinross had previously submitted with the assistance of a third-party consultant. The consultant organized a public hearing for the community to discuss the planned expansion's impact on infrastructure and employment opportunities. During the delay of several months, Kinross received a \$12,000 invoice from the third-party consultant with no documentation for services the consultant purportedly provided to Kinross one year earlier. The consultant represented that the amount was based on an oral contract between the consultant and the company. Kinross personnel used petty cash to pay the third-party consultant the \$12,000 without obtaining any documentation to evidence the services were actually provided. Kinross' books and records did not fairly and accurately reflect in reasonable detail the nature or intended recipients of the payment. About a month after the payment, the Ghana EPA approved the mining production permit.
- C. From 2012 through 2015, Kinross paid the Ghanaian government fees in connection with the issuance of visas and work permits for expatriate personnel. During this same period, Kinross paid a consultant, a former government employee, to expedite the process. With no evidence of actual services being provided, and with no reasonably detailed description in the books and records, the consultant was paid approximately \$1,000 per visa or permit from petty cash. As a result, the processing time for visas and work permits decreased from ten weeks to three weeks.

**After Implementing New Internal Accounting Controls,
Kinross Failed to Maintain Them**

13. In 2013, Kinross took steps to enhance internal accounting controls concerning the procurement and payment of goods and services designed, in part, to provide reasonable assurances that transactions did not violate the FCPA and Kinross' code of conduct, which prohibits providing improper inducements to government officials. However, on at least two occasions in 2014, Kinross failed to maintain these internal accounting controls.

14. The first instance arose in April 2014 as Kinross prepared to award an approximately \$50 million, three-year logistical support contract to an international shipping company. Consistent with Kinross' new supply chain policy, Kinross was prepared to award the contract to the bidder that offered the lowest price and possessed the best ability to fulfill the technical requirements of the contract. Kinross personnel soon learned, however, that a very high-level Mauritanian government official was unhappy with Kinross' choice because the

shipper's local affiliate was controlled by persons allegedly active with the political opposition. Kinross also learned that the official preferred another international shipping company whose local affiliate recently was acquired by a prominent and influential Mauritanian businessman with ties to the official.

15. In July 2014, Kinross regional management in West Africa made a presentation to Kinross senior management, that showed that Kinross' original preferred shipper remained by far the best based on cost, technical capabilities, and ability to provide logistical support in both Mauritania and Ghana, but its "political affiliations may pose business risk." The presentation further noted that the shipper associated with the prominent Mauritanian businessman was unable to provide support in Ghana, its costs were high and technical capabilities were poor but excelled in "political risk" as it was the "preferred option of Gov[ernment] stakeholders." After the presentation, Kinross management decided to award the approximately \$50 million three-year logistics contract to the shipping company preferred by the high-level government official.

16. In making this decision, Kinross senior management failed to maintain the internal accounting controls, which directed that company personnel primarily focus on the commercial and technical qualifications of bidders when making awards. The internal accounting controls also required that when multiple bidders met the basic commercial and technical qualifications company personnel were to make an "in-depth evaluation" from a list of elements, which included compliance with health/safety/environmental standards and liability for cost, performance and delay. The preference of government officials was not among those elements.

17. In September 2014 Kinross internal contract award recommendation documents did not, in reasonable detail, accurately and fairly reflect the transaction. As drafted, the award documents did not reveal that the primary reason for awarding the contract was to satisfy the preference of a high-level government official.

18. The concerns about awarding this contract to a vendor with low technical capabilities and high costs were borne out. After one year, due to its poor performance, Kinross refused to grant the shipper associated with the prominent Mauritanian businessman an option to renew. After a subsequent tendering process, Kinross awarded the business to another company in accordance with company policy.

19. The second instance also arose in 2014 when an individual Kinross understood was well-connected with high-level government officials in Mauritania approached Kinross government-relations department personnel and proposed to work for Kinross in a government-relations capacity. Specifically, the individual offered to establish a continuing, semi-formal liaison relationship between a senior executive at Kinross and a particular government official influential with the same high-level government official who had influenced the award of the logistical support contract. Initially, Kinross considered hiring the individual as Government Relations Director for Mauritania and conducted the minimal due diligence required for prospective employees – checking for an arrest and criminal record. But because the amount of money the individual demanded for his services was excessive for a salaried employee, senior

executives in Kinross' government-relations department retained him as an independent consultant.

20. The consulting agreement was treated as a contract for "Corporate, General, and Non-Routine Expenditures," which required "authorization in accordance with [the] procure-to-pay process set out in Kinross' Supply Chain Policy" The Supply Chain Policy required that prospective vendors undergo a due diligence procedure to determine the FCPA risks in using the vendor. Greater due diligence was required where there were higher potential risk indicators. As Kinross' agent in dealing directly with government officials where known risks of corruption existed, Kinross' internal accounting controls required that the consultant be subjected to the company's highest level of due diligence, necessitating, among other things, a credit report, a search of government sanctions and watch lists, a reference check of business partners and associates, confidential in-field inquiries about his reputation and an enhanced asset search. However, Kinross did not perform the required due diligence on the consultant and, between September 2014 and August 2015, paid the consultant approximately \$715,000.

21. Relatedly, Kinross also failed to provide adequate training to its senior decision-makers, especially in the government relations department, to recognize the corruption risks in hiring a consultant to work as a liaison with government officials.

Kinross' Remediation Efforts

22. Kinross has taken steps to remediate the above-described internal control and recordkeeping issues, including conducting audits, generating management remediation plans and tracking their progress, implementing a new ERP system to enable finance personnel to more effectively track and manage expenditures, and replacing personnel at Tasiast and Chirano. Kinross also increased compliance personnel, updated relevant policies and procedures, and conducted compliance training. Kinross terminated the use of the third-party consultant described above to obtain visas and work permits and has instituted more formalized controls over the use, documentation and approval of petty cash. Kinross continues to improve its internal accounting controls around third-party consultants and vendors, and enhanced FCPA training. Kinross also recently hired a consulting firm to assist it in evaluating its current controls for additional enhancements. Also, Kinross has taken steps to improve training of its senior decision-makers, especially in the government-relations department, to recognize the corruption risks in hiring a consultant to work as a liaison.

Books and Records and Internal Accounting Controls Violations

23. As a result of the conduct described above, Kinross violated Sections 13(b)(2)(A) and (B) of the Exchange Act by failing to devise and maintain internal accounting controls sufficient to provide reasonable assurances that transactions at Chirano and Tasiast were executed in accordance with management's general or specific authorization and by failing to make and keep certain records which, in reasonable detail, fairly reflected the transactions and disposition of assets.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Kinross cease-and-desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent shall, within fourteen days of the entry of this Order, pay a civil penalty of \$950,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- 1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- 2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- 3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payment by check or money order must be accompanied by a cover letter identifying Kinross as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Steven A. Susswein, Senior Counsel, Division of Enforcement, United States Securities and Exchange Commission, 100 F Street, Northeast, Washington, District of Columbia, 20549-5631.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order

granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. With respect to its operations in Africa, Respondent undertakes to:

- 1) Report to the Commission staff periodically during a one-year term, the status of its remediation and implementation of compliance measures, particularly as to the areas of due diligence on prospective and existing third-party consultants and vendors, FCPA training and the testing of relevant controls including the collection and analysis of compliance data. During this period, should Respondent discover credible evidence, not already reported to Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of value may have been offered, promised, paid, or authorized by Respondent, or any entity or person acting on behalf of Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this one year period, Respondent shall: (1) conduct an initial review and submit an initial report and (2) conduct and prepare one follow-up review and report, as described below: Respondent shall submit to the Commission staff a written report within 180 calendar days of the entry of this Order setting forth a complete description of its FCPA and anti-corruption related remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Respondent for ensuring compliance with the FCPA and other applicable anticorruption laws, and the parameters of the subsequent review (the "Initial Report"). The Initial Report shall be transmitted to Steven A. Susswein, Senior Counsel, United States Securities and Exchange Commission, 100 F Street, Northeast, Washington, District of Columbia, 20549-5631. Respondent may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.
 - a. Respondent shall undertake a follow-up review, incorporating any comments provided by the Commission staff on the Initial Report, to further monitor and assess whether the policies and procedures of Respondent are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the "Follow-Up Report").
 - b. The Follow-up Report shall be completed by no later than 180 days after the Initial Report. Respondent may extend the time period for issuance of the Follow-up Report with prior written approval of the Commission staff.
 - c. The periodic reviews and reports submitted by Respondent will likely include proprietary, financial, confidential, and competitive business information.

Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain nonpublic, except (a) pursuant to court order, (b) as agreed by the parties in writing, (c) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (d) is otherwise required by law.

- d. During this one-year period of review, Respondent shall provide its external auditors with its annual internal audit plan and reports of the results of internal audit procedures and its assessment of its FCPA compliance policies and procedures.
 - e. During the one-year period of review, Respondent shall provide Commission staff with any written reports or recommendations provided by Respondent's external auditors in response to Respondent's annual internal audit plan, reports of the results of internal audit procedures, and its assessment of its FCPA compliance policies and procedures.
- 2) Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Steven A. Susswein, Senior Counsel, United States Securities and Exchange Commission, 100 F Street, Northeast, Washington, District of Columbia, 20549-5631 no later than sixty (60) days from the date of the completion of the undertakings.

By the Commission.

Brent J. Fields
Secretary