

PAN AMERICAN SILVER CORP
Form 6-K
February 09, 2009

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 6-K

Report of Foreign Private Issuer
Pursuant to Rule 13a-16 or 15d-16 of
the Securities Exchange Act of 1934

For the month of, February
Commission File Number 001-14620

2009

Pan American Silver Corp.
(Translation of registrant's name into English)

1500-625 Howe Street, Vancouver BC Canada V6C 2T6
(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40F:

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes No

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82- _____

DOCUMENTS INCLUDED AS PART OF THIS REPORT

Document

- 1 Underwriting Agreement, dated February 5, 2009

This report on Form 6-K is incorporated by reference into the registration statement on Form F-10 (File No. 333-156707) that the Registrant has filed with the Securities and Exchange Commission.



EXECUTION COPY

COMMON SHARES

PAN AMERICAN SILVER CORP.

UNDERWRITING AGREEMENT

February 5, 2009

GOLDMAN SACHS CANADA INC.

CIBC WORLD MARKETS INC.

As Representatives of the
several Underwriters named in
Schedule I attached hereto (the "Representatives")
c/o Goldman Sachs Canada Inc.
77 King Street West
Suite 3400
Toronto, Ontario M5K 1B7

Ladies/Gentlemen:

Pan American Silver Corp., a corporation organized and existing under the laws of British Columbia (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell to the several underwriters named in Schedule I hereto (the "Underwriters") an aggregate of 5,540,000 of its common shares (the "Firm Shares"), without par value, and, for the sole purpose of covering over-allotments in connection with the sale of the Firm Shares, at the option of the Underwriters, up to an additional 831,000 of its common shares (the "Additional Shares"), without par value. The Firm Shares and any Additional Shares purchased by the Underwriters are referred to herein as the "Shares". Goldman Sachs Canada Inc. and CIBC World Markets Inc. are acting as lead managers (the "Lead Managers") in connection with the offering and sale of the Shares contemplated herein (the "Offering").

1. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, each of the Underwriters that:

(a) The Company has prepared and filed a preliminary short form base shelf prospectus dated January 13, 2009 (the "Preliminary Base Short Prospectus") and a final short form base shelf prospectus dated January 20, 2009 (the "Final Base Shelf Prospectus") in respect of up to US\$200,000,000 of the Company's common shares, debt securities, warrants and subscription receipts with the British Columbia Securities Commission (the "Reviewing Authority") and the Canadian securities regulatory authorities (collectively, the "Canadian Qualifying Authorities") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, Prince Edward Island,

Saskatchewan, Yukon, Nunavut and Northwest Territories (the “Qualifying Provinces”); and the Reviewing Authority has issued a prospectus receipt under National Policy 11-202: Process for Prospectus Reviews in Multiple Jurisdictions (a “Decision Document”) on behalf of the Canadian Qualifying Authorities for each of the Preliminary Base Shelf Prospectus and the Final Base Shelf Prospectus. The term “Canadian Base Prospectus” means the Final Base Shelf Prospectus, including documents incorporated therein by reference, at the time the Reviewing Authority issued a Decision Document with respect thereto in accordance with the rules and procedures established under all applicable securities laws in each of the Qualifying Provinces and the respective regulations and rules under such laws together with applicable published policy statements and instruments of the securities regulatory authorities in the Qualifying Provinces (“Canadian Securities Laws”), National Instrument 44-101: Short Form Prospectus Distributions and National Instrument 44-102: Shelf Distributions (together, the “Shelf Procedures”). The term “Canadian Preliminary Prospectus” means the prospectus supplement (the “Canadian Preliminary Prospectus Supplement”) relating to the Offering, which excluded certain pricing information, filed with the Canadian Qualifying Authorities in accordance with the Shelf Procedures on February 4, 2009, together with the Canadian Base Prospectus, including all documents incorporated therein by reference. The term “Canadian Prospectus” means the prospectus supplement (the “Canadian Prospectus Supplement”) relating to the Offering, which includes the pricing information omitted from the Canadian Preliminary Prospectus, to be dated the date hereof and filed with the Canadian Qualifying Authorities in accordance with the Shelf Procedures, together with the Canadian Base Prospectus, including all documents incorporated therein by reference.

(b) The Reviewing Authority has issued a Decision Document dated January 20, 2009 with respect to the Canadian Base Prospectus, and no order suspending the distribution of any of the securities of the Company has been issued by any of the Canadian Qualifying Authorities and no proceeding for that purpose has been initiated or, to the best of the Company’s knowledge, threatened by any of the Canadian Qualifying Authorities, and any request on the part of any of the Canadian Qualifying Authorities for additional information has been complied with.

(c) The Canadian Prospectus and each document filed or to be filed with the Canadian Qualifying Authorities and incorporated by reference in the Canadian Prospectus complied, as at the applicable filing date, or will comply when so filed, in all material respects with the requirements of Canadian Securities Laws and the Shelf Procedures and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(d) Since the time that the Reviewing Authority issued a Decision Document on behalf of the Canadian Qualifying Authorities for the Canadian Base Prospectus, no document with respect to the Canadian Base Prospectus or the Registration Statement (as defined below), any amendment thereto or any document incorporated by reference therein, has been filed or transmitted for filing with the Canadian Qualifying Authorities or the Commission (as defined below) by or on behalf of the Company, except for the Canadian Prospectus Supplement in the form previously delivered to the Underwriters and any other document, of which copies have been provided to the Underwriters;

(e) As of the date of the execution of this Agreement and as of the Closing Date (as defined below) the information and statements contained in the Canadian Prospectus constitute, and will constitute, full, true and plain disclosure of all material facts relating to the Company; provided, however, that this representation and warranty shall not apply to any information contained in or omitted from the Canadian Prospectus in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Lead Managers specifically for use therein. The parties hereto agree that such information provided by or on behalf of any Underwriter through the Lead Managers consists solely of the material referred to in Section 16 hereof.

(f) The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and the rules and regulations of the Commission (the "Rules and Regulations") on Form F-10 (Registration No. 333-156707) on January 13, 2009 and Amendment No. 1 thereto on January 20, 2009, providing for the registration of up to US\$200,000,000 of the Company's common shares, debt securities, warrants and subscription receipts. Such registration statement, as amended, which includes the Canadian Base Prospectus (with such deletions therefrom and additions thereto as are permitted or required by Form F-10 and the applicable Rules and Regulations), each in the form previously delivered to you, including exhibits to such registration statement and all documents incorporated by reference in the prospectus contained therein, became effective on January 21, 2009 pursuant to Rule 467(b) under the Securities Act. Such registration statement, as amended, including any exhibits and all documents incorporated therein by reference, as of the time it became effective, is referred to herein as the "Registration Statement". In connection with the filing of the Registration Statement, the Company has filed with the Commission on January 13, 2009 an appointment of agent for service of process upon the Company on Form F-X under the Securities Act. The prospectus included in the Registration Statement at the time it became effective is referred to herein as the "U.S. Base Prospectus", and the U.S. Base Prospectus together with the final prospectus supplement relating to the Shares and including the pricing information omitted from the U.S. Preliminary Prospectus (as defined below), in the form first filed with the Commission pursuant to General Instruction II.L. of Form F-10 (the "U.S. Prospectus Supplement") is referred to herein as the "U.S. Prospectus". Any preliminary prospectus supplement that excludes certain pricing information and is filed with the Commission pursuant to General Instruction II.L. of Form F-10 together with the U.S. Base Prospectus is hereafter referred to as a "U.S. Preliminary Prospectus"; and the U.S. Preliminary Prospectus relating to the Shares, as amended or supplemented immediately prior to the Applicable Time (as defined below), is hereafter referred to as the "Pricing Prospectus". Any "issuer free writing prospectus" (as defined in Rule 433 under the Securities Act) relating to the Shares is hereafter referred to as an "Issuer Free Writing Prospectus"; and the Pricing Prospectus, as supplemented by the information listed in Annex IV hereto, taken together, are hereafter referred to collectively as the "Pricing Disclosure Package". Any reference herein to any U.S. Preliminary Prospectus or the U.S. Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Form F-10 that were filed with the Reviewing Authority or the Commission on or before the date of such U.S. Preliminary Prospectus or U.S. Prospectus, as the case may be; and any reference herein to any "amendment" or "supplement" to any U.S. Preliminary Prospectus or the U.S. Prospectus shall be deemed to refer to and include (i) the filing of any document with the Reviewing Authority or the

Commission after the date of such U.S. Preliminary Prospectus or U.S. Prospectus, as the case may be, which is incorporated therein by reference and (ii) any such document so filed.

The Company was not an “ineligible issuer” (as defined in Rule 405 under the Securities Act) as of the eligibility determination date for purposes of Rules 164 and 433 under the Securities Act with respect to the Offering contemplated hereby.

All references in this Agreement to the Registration Statement, any U.S. Preliminary Prospectus, Issuer Free Writing Prospectus or the U.S. Prospectus, or any amendments or supplements to any of the foregoing, shall be deemed to include any copy thereof filed with the Commission.

(g) The Registration Statement complies and the U.S. Prospectus and any further amendments or supplements to the Registration Statement or the U.S. Prospectus will comply in all material respects with the applicable provisions of the Securities Act, the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the Rules and Regulations, and do not and will not, as of the applicable effective date as to each part of the Registration Statement and as of the applicable filing date as to the U.S. Prospectus and any amendment thereof or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the light of the circumstances under which they were made, in the case of the U.S. Prospectus) not misleading; provided, however, that this representation and warranty shall not apply to any information contained in or omitted from the Registration Statement or the U.S. Prospectus or any amendment thereof or supplement thereto in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Lead Managers specifically for use therein. The parties hereto agree that such information provided by or on behalf of any Underwriter through the Lead Managers consists solely of the material referred to in Section 16 hereof.

(h) No order preventing or suspending the use of any U.S. Preliminary Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and each U.S. Preliminary Prospectus, at the time of filing thereof, complied in all material respects with the applicable provisions of the Securities Act, the Exchange Act and the Rules and Regulations, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any information contained in or omitted from any U.S. Preliminary Prospectus in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Lead Managers specifically for use therein. The parties hereto agree that such information provided by or on behalf of any Underwriter through the Lead Managers consists solely of the material referred to in Section 16 hereof.

(i) For purposes of this Agreement, the “Applicable Time” is 9:32 a.m. (Eastern) on the date of this Agreement. The Pricing Disclosure Package, as of the Applicable Time, did not, and as of the Closing Date and the Additional Closing Date, if any (each as defined below), will not, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under

which they were made, not misleading. Each Issuer Free Writing Prospectus complies in all material respects with the applicable provisions of the Securities Act and the Rules and Regulations, and does not include information that conflicts with the information contained in the Registration Statement, the Pricing Prospectus or the U.S. Prospectus, and each Issuer Free Writing Prospectus not listed in Annex IV hereto, as supplemented by and taken together with the Pricing Disclosure Package as of the Applicable Time, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. No representation and warranty is made in this Section 1(i) with respect to any information contained in or omitted from the Pricing Disclosure Package or any Issuer Free Writing Prospectus in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Lead Managers specifically for use therein. The parties hereto agree that such information provided by or on behalf of any Underwriter through the Lead Managers consists solely of the material referred to in Section 16 hereof.

(j) Deloitte & Touche LLP, who have audited the financial statements of the Company and its subsidiaries that are included or incorporated by reference in the Canadian Prospectus, the Registration Statement, the Pricing Prospectus or the U.S. Prospectus and whose reports appear or are incorporated by reference in the Canadian Prospectus, the Registration Statement, the Pricing Prospectus or the U.S. Prospectus are independent with respect to the Company as required by Canadian Securities Laws and are independent as required by the Securities Act, the Exchange Act and the Rules and Regulations.

(k) Subsequent to the respective dates as of which information is given in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, except as disclosed in the Canadian Preliminary Prospectus and the Pricing Prospectus, (i) the Company has not declared or paid any dividends, or made any other distribution of any kind, on or in respect of its share capital, (ii) there has not been any material change in the share capital or long-term or short-term debt of the Company or any of its subsidiaries listed in Exhibit A hereto (each, a “Subsidiary” and, collectively, the “Subsidiaries”), (iii) neither the Company nor any Subsidiary has sustained any material loss or interference with its business or properties from fire, explosion, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding, and (iv) there has not been any material adverse change or any development involving a prospective material adverse change, whether or not arising from transactions in the ordinary course of business, in or affecting the business, general affairs, management, condition (financial or otherwise), results of operations, shareholders’ equity or properties of the Company and the Subsidiaries, individually or taken as a whole (a “Material Adverse Change”). Since the date of the latest balance sheet included, or incorporated by reference, in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, neither the Company nor any Subsidiary has incurred or undertaken any liabilities or obligations, whether direct or indirect, liquidated or contingent, matured or unmatured, or entered into any transactions, including any acquisition or disposition of any business or asset, which are material to the Company and the Subsidiaries, individually or taken as a whole, except for liabilities, obligations and transactions which are disclosed in the Canadian Preliminary Prospectus and the Pricing Prospectus.

(l) The Company has an authorized and outstanding capitalization as set forth in the Canadian Preliminary Prospectus and the Pricing Prospectus, and all of the issued and outstanding share capital of the Company are fully paid and non-assessable, have been duly and validly authorized and issued and have been issued in compliance with all applicable Canadian, United States and other securities laws and not in violation of or subject to any preemptive or similar right that entitles any person to acquire from the Company or any subsidiary any common shares of the Company or other security of the Company or any security convertible into, or exercisable or exchangeable for, common shares of the Company or any other such security (any “Relevant Security”), except for such rights as may have been fully satisfied or waived prior to the effectiveness of the Registration Statement. All of the issued share capital of or other ownership interests in each Subsidiary have been duly and validly authorized and issued and are fully paid and non-assessable and (except as otherwise set forth in the Canadian Preliminary Prospectus and the Pricing Prospectus) are owned directly or indirectly by the Company free and clear of any lien, charge, mortgage, pledge, security interest, claim, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever (any “Lien”).

(m) The Company has full power and authority (corporate or otherwise) to issue the Shares and to perform its obligations hereunder. The Shares to be delivered on the Closing Date and the Additional Closing Date, if any (as defined below), have been duly and validly authorized and, when issued and delivered in accordance with this Agreement, will be duly and validly issued, fully paid and non-assessable, will have been issued in compliance with all applicable Canadian, United States and other securities laws and will not have been issued in violation of or subject to any preemptive or similar right that entitles any person to acquire any Relevant Security from the Company. The common shares of the Company and the Shares conform to the descriptions thereof contained in the Canadian Preliminary Prospectus, the Registration Statement, the Pricing Prospectus and the U.S. Prospectus. Except as disclosed in the Canadian Preliminary Prospectus and the Pricing Prospectus, the Company has no outstanding warrants, options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, or any contracts or commitments to issue or sell, any Relevant Security. Except as disclosed in the Canadian Preliminary Prospectus and the Pricing Prospectus, no holder of any Relevant Security has any rights to require registration under the Securities Act of any Relevant Security in connection with the offer and sale of the Shares contemplated hereby, and any such rights so disclosed have either been fully complied with by the Company or effectively waived by the holders thereof.

(n) The Subsidiaries are the only “significant subsidiaries” of the Company (within the meaning of Rule 1-02 of Regulation S-X under the Securities Act). Each of the Company and each Subsidiary has been duly organized and validly exists as a corporation, partnership or limited liability company in good standing as to its corporate existence, where such concept is recognized, under the laws of its jurisdiction of organization. The Company and each Subsidiary is duly qualified to do business and is in good standing in each jurisdiction in which the character or location of its properties (owned, leased or licensed) or the nature or conduct of its business makes such qualification necessary, except for those failures to be so qualified or in good standing which (individually and in the aggregate) could not reasonably be expected to have a material adverse effect on (i) the business, general affairs, management, condition (financial or otherwise), results of operations, shareholders’ equity, properties or

prospects of the Company and its subsidiaries, taken as a whole; or (ii) the ability of the Company to consummate the Offering or any other transaction contemplated by this Agreement or the Canadian Preliminary Prospectus and the Pricing Prospectus (a “Material Adverse Effect”).

(o) Each of the Company and each Subsidiary has all requisite power and authority, and all necessary consents, approvals, authorizations, orders, registrations, qualifications, licenses, filings and permits of, with and from all judicial, regulatory and other legal or governmental agencies and bodies and all third parties, Canadian, United States or other (collectively, the “Consents”), to own, lease and operate its properties and conduct its business as it is now being conducted and as disclosed in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, and each such Consent is valid and in full force and effect, except with respect to the ownership of certain surface rights at the Morococho mine, which are as described in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, and except in each case as could not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received notice of any investigation or proceedings which, if decided adversely to the Company or any such Subsidiary, could reasonably be expected to result in, the revocation of, or imposition of a materially burdensome restriction on, any such Consent, except in each case as could not reasonably be expected to have a Material Adverse Effect.

(p) This Agreement has been duly and validly authorized, executed and delivered by the Company.

(q) The issue and sale of the Shares, the compliance by the Company with this Agreement and the consummation of the transactions herein contemplated do not and will not (i) conflict with or result in a breach or violation of any of the terms and provisions of, or constitute a default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the creation or imposition of any Lien upon any property or assets of the Company or any Subsidiary pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement, instrument, franchise, license or permit to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or their respective properties, operations or assets may be bound or (ii) violate or conflict with any provision of the certificate or articles of incorporation, by-laws, certificate of formation, limited liability company agreement, partnership agreement or other organizational documents of the Company or any Subsidiary, or (iii) violate or conflict with any statute, law, rule, regulation, ordinance, directive, judgment, decree or order of any judicial, regulatory or other legal or governmental agency or body, Canadian, United States or other, except (in the case of clauses (i) and (iii) above) as could not reasonably be expected to have a Material Adverse Effect.

(r) No Consent of, with or from any judicial, regulatory or other legal or governmental agency or body or any third party, Canadian, United States or other, is required for the execution, delivery and performance of this Agreement or consummation of the transactions contemplated by this Agreement, except the registration under the Securities Act of the Shares, acceptance of notice of the Offering by the Toronto Stock Exchange (the “TSX”), the submission of a notification to The NASDAQ Stock Market (“Nasdaq”) relating to the issuance of the Shares and any consents as may be required under state or foreign securities or blue sky laws,

each of which has been obtained and is in full force and effect or shall be made within the time period prescribed therefor.

(s) Except as disclosed in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, there is no judicial, regulatory, arbitral or other legal or governmental proceeding or other litigation or arbitration, Canadian, United States or other, pending to which the Company or any Subsidiary is a party or of which any property, operations or assets of the Company or any Subsidiary is the subject which, individually or in the aggregate, if determined adversely to the Company or any Subsidiary, could reasonably be expected to have a Material Adverse Effect; to the Company's knowledge, no such proceeding, litigation or arbitration is threatened or contemplated; and the defense of all such proceedings, litigation and arbitration against or involving the Company or any Subsidiary could not reasonably be expected to have a Material Adverse Effect.

(t) The financial statements and pro forma data, including the notes thereto, included or incorporated by reference in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus present fairly, in all material respects, the financial position as of the dates indicated and the cash flows and results of operations for the periods specified of the Company and its consolidated subsidiaries and the other entities for which financial statements are included or incorporated by reference in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus; except as otherwise stated in the Registration Statement and the Pricing Prospectus, said financial statements have been prepared in conformity with Canadian generally accepted accounting principles applied on a consistent basis throughout the periods involved; and the audited financial statements of the Company have been reconciled to United States generally accepted accounting principles in accordance with Item 18 of Form 20-F under the Exchange Act. No other financial statements or supporting schedules are required to be included in the Canadian Preliminary Prospectus, the Registration Statement or the Pricing Prospectus by Canadian Securities Laws, the Securities Act, the Exchange Act or the Rules and Regulations. The other financial and statistical information included or incorporated by reference in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus present fairly the information included therein and have been prepared on a basis consistent with that of the financial statements that are included or incorporated by reference in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus and the books and records of the Company.

(u) The statistical, industry-related and market-related data included in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data agree with the sources from which they are derived.

(v) The common shares of the Company have been registered pursuant to Section 12(g) of the Exchange Act. The common shares of the Company are listed on the TSX and on Nasdaq, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the common shares of the Company under the Exchange Act or de-listing the common shares of the Company from the TSX or Nasdaq, nor has the Company received any notification that the Commission, the TSX or Nasdaq is contemplating terminating such registration or listing.

(w) The Company and its Subsidiaries maintain a system of internal accounting and other controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with United States generally accepted accounting principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(x) The Company maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in Rule 13a-15 under the Exchange Act and Canadian Securities Laws) that comply with the requirements of the Exchange Act and Canadian Securities Laws; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company's principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures and internal control over financial reporting are effective.

(y) Since the date of the latest audited financial statements included or incorporated by reference in the Canadian Preliminary Prospectus and the Pricing Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(z) There is and has been no failure on the part of the Company or any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including, without limitation, Section 402 related to loans and Sections 302 and 906 related to certifications.

(aa) Neither the Company nor, to the Company's knowledge, any of its affiliates (within the meaning of Rule 144 under the Securities Act) has taken, directly or indirectly, any action which constitutes or is designed to cause or result in, or which could reasonably be expected to constitute, cause or result in, the stabilization or manipulation of the price of any security to facilitate the sale or resale of the Shares.

(bb) Neither the Company nor, to the Company's knowledge, any of its affiliates (within the meaning of Rule 144 under the Securities Act) has, prior to the date hereof, made any offer or sale of any securities which could be "integrated" (within the meaning of the Securities Act and the Rules and Regulations) with the offer and sale of the Shares pursuant to the Registration Statement.

(cc) The statements set forth in the Canadian Preliminary Prospectus, the Pricing Prospectus and the U.S. Prospectus under the caption "Description of Share Capital", insofar as it purports to constitute a summary of the terms of the common shares of the Company, and under the captions "Taxation" and "Underwriting," insofar as they purport to describe the

provisions of the laws and documents referred to therein, are accurate, complete and fair in all material respects.

(dd) The Company is subject to the reporting requirements of Section 13 of the Exchange Act and files periodic reports with the Commission, and the conditions for use of Form F-10 to register the Shares under the Securities Act have been satisfied. The documents incorporated or deemed to be incorporated by reference in the Pricing Prospectus and the U.S. Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Securities Act, the Exchange Act and the Rules and Regulations and, when read together with the other information in the Pricing Prospectus or the U.S. Prospectus, as applicable, do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(ee) The Company is not and, at all times up to and including consummation of the transactions contemplated by this Agreement, and after giving effect to application of the net proceeds of the Offering as described in the Pricing Prospectus, will not be, required to register as an “investment company” under the Investment Company Act of 1940, as amended, and is not and will not be an entity “controlled” by an “investment company” within the meaning of such act.

(ff) Except as disclosed in the Canadian Preliminary Prospectus and the Pricing Prospectus, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with the transactions contemplated by this Agreement or, to the Company’s knowledge, any arrangements, agreements, understandings, payments or issuance with respect to the Company or any of its officers, directors, shareholders, partners, employees, Subsidiaries or affiliates that may affect the Underwriters’ compensation as determined by the Financial Industry Regulatory Authority, Inc. (“FINRA”).

(gg) Except as disclosed in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, (i) the Company and each Subsidiary owns or leases all such properties as are necessary to the conduct of its business as presently operated and as proposed to be operated as described in the Canadian Preliminary Prospectus and the Pricing Prospectus, except with respect to the ownership of certain surface rights at the Morococha mine, which are as described in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus; (ii) the Company and the Subsidiaries have good and marketable title to all real property and good and marketable title to all personal property owned by them, in each case free and clear of any and all Liens except such as are described in the Canadian Preliminary Prospectus and the Pricing Prospectus or such as do not (individually or in the aggregate) materially affect the value of such property or materially interfere with the use made or proposed to be made of such property by the Company and the Subsidiaries; and any real property and buildings held under lease or sublease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material to, and do not materially interfere with, the use made and proposed to be made of such property and

buildings by the Company and the Subsidiaries; and (iii) neither the Company nor any Subsidiary has received any notice of any claim adverse to its ownership of any real or personal property or of any claim against the continued possession of any real property, whether owned or held under lease or sublease by the Company or any Subsidiary, except as could not have a Material Adverse Effect.

(hh) The Company and the Subsidiaries maintain insurance in such amounts and covering such risks as the Company reasonably considers adequate for the conduct of its business and the value of its properties and as is customary for companies engaged in similar businesses in similar industries, all of which insurance is in full force and effect, except where the failure to maintain such insurance could not reasonably be expected to have a Material Adverse Effect. There are no material claims by the Company or any Subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause. The Company reasonably believes that it will be able to renew its existing insurance as and when such coverage expires or will be able to obtain replacement insurance adequate for the conduct of the business and the value of its properties at a cost that would not have a Material Adverse Effect.

(ii) Each of the Company and each Subsidiary has accurately prepared and timely filed all U.S., Canadian and other tax returns that are required to be filed by it and has paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including without limitation, all sales and use taxes and all taxes which the Company or any Subsidiary is obligated to withhold from amounts owing to employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return), except where such failure to do so would not have a Material Adverse Effect. No deficiency assessment with respect to a proposed adjustment of the Company's or any Subsidiary's Canadian federal and provincial, U.S. federal and state, local or other taxes is pending or, to the best of the Company's knowledge, threatened. The accruals and reserves on the books and records of the Company and the Subsidiaries in respect of tax liabilities for any taxable period not finally determined are adequate to meet any assessments and related liabilities for any such period and, since the date of the most recent audited financial statements, the Company and the Subsidiaries have not incurred any liability for taxes other than in the ordinary course of its business. There is no tax lien, whether imposed by any U.S., Canadian or other taxing authority, outstanding against the assets, properties or business of the Company or any Subsidiary.

(jj) No labor disturbance by the employees of the Company or any Subsidiary exists or, to the best of the Company's knowledge, is imminent and the Company is not aware of any existing or imminent labor disturbances by the employees of any of its or any Subsidiary's principal suppliers, manufacturers, customers or contractors, which, in either case (individually or in the aggregate), could reasonably be expected to have a Material Adverse Effect.

(kk) There has been no storage, generation, transportation, handling, use, treatment, disposal, discharge, emission, contamination, release or other activity involving any kind of hazardous, toxic or other wastes, pollutants, contaminants, petroleum products or other hazardous or toxic substances, chemicals or materials ("Hazardous Substances") by, due to, on behalf of, or caused by the Company or any Subsidiary (or, to the Company's knowledge, any

other entity for whose acts or omissions the Company is or may be liable) upon any property now or previously owned, operated, used or leased by the Company or any Subsidiary, or upon any other property, which would be a violation of or give rise to any liability under any applicable law, rule, regulation, order, judgment, decree or permit, common law provision or other legally binding standard relating to pollution or protection of human health and the environment (“Environmental Law”), except for violations and liabilities which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There has been no disposal, discharge, emission contamination or other release of any kind at, onto or from any such property or into the environment surrounding any such property of any Hazardous Substances with respect to which the Company or any Subsidiary has knowledge, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no pending or, to the best of the Company’s knowledge, threatened administrative, regulatory or judicial action, claim or notice of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any Subsidiary. No property of the Company or any Subsidiary is subject to any Lien under any Environmental Law. Except as disclosed in the Canadian Preliminary Prospectus, the Registration Statement and the Pricing Prospectus, neither the Company nor any Subsidiary is subject to any order, decree, agreement or other individualized legal requirement related to any Environmental Law, which, in any case (individually or in the aggregate), could reasonably be expected to have a Material Adverse Effect .

(II) None of the Company, any Subsidiary or, to the Company’s knowledge, any of its employees or agents, has at any time during the last five years (i) made any unlawful contribution to any candidate for non-United States office, or failed to disclose fully any such contribution in violation of law, or (ii) made any payment to any federal or state governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or permitted by the laws of the United States of any jurisdiction thereof. Without limiting the generality of the foregoing, none of the Company, any Subsidiary or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, each Subsidiary and, to the knowledge of the Company, affiliates of the Company have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith. The operations of the Company and each Subsidiary are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or

any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened. Neither the Company nor any Subsidiary nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the Offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(mm) Neither the Company nor any Subsidiary (i) is in violation of its certificate or articles of incorporation, by-laws, certificate of formation, limited liability company agreement, partnership agreement or other organizational documents, (ii) is in default under, and no event has occurred which, with notice or lapse of time or both, would constitute a default under or result in the creation or imposition of any Lien upon any property or assets of the Company or any Subsidiary pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject, or (iii) is in violation of any statute, law, rule, regulation, ordinance, directive, judgment, decree or order of any judicial, regulatory or other legal or governmental agency or body, Canadian, United States or other, except (in the case clauses (ii) and (iii) above) for violations or defaults that could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

(nn) The Company has complied with the requirements of Rule 433 under the Securities Act with respect to each Issuer Free Writing Prospectus including, without limitation, all prospectus delivery, filing, record retention and legending requirements applicable to any such Issuer Free Writing Prospectus. The Company has not (i) distributed any offering material in connection with the Offering other than any Canadian Preliminary Prospectus or any U.S. Preliminary Prospectus, the Pricing Prospectus, the Canadian Preliminary Prospectus, the U.S. Prospectus, and any Issuer Free Writing Prospectus set forth on Annex IV hereto, or (ii) filed, referred to, approved, used or authorized the use of any “free writing prospectus” as defined in Rule 405 under the Securities Act with respect to the Offering or the Shares, except for any Issuer Free Writing Prospectus set forth in Annex IV hereto and any electronic road show previously approved by the Lead Managers.

(oo) All outlooks or projections, if any, disclosed in the Canadian Preliminary Prospectus, the Registration Statement or the Pricing Prospectus, have been prepared based upon reasonable assumptions in the circumstances and, with respect to write downs and charges, using accounting principles consistent with the audited financial statements of the Company for the year ended December 31, 2007.

(pp) The Company does not believe it is a “passive foreign investment company”, as such term is defined in the United States Internal Revenue Code of 1986, as amended.

Any certificate signed by or on behalf of the Company and delivered to the Representatives or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

2. Purchase, Sale and Delivery of the Shares.

(a) On the basis of the representations, warranties, covenants and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter and each Underwriter, severally and not jointly, agrees to purchase from the Company, at a purchase price per share of US\$16.25, the number of Firm Shares set forth opposite their respective names on Schedule I hereto together with any additional number of Shares which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof. As compensation for the services rendered to the Company by the Underwriters in respect of the Offering, the Company will pay to the Underwriters a commission of US\$0.771875 per share sold to the Underwriters under this Agreement, payable on the Closing Date (as defined below), which may be netted against payment from the Underwriters to the Company for the Firm Shares.

(b) Payment of the purchase price for, and delivery of certificates representing, the Firm Shares shall be made at the office of Borden Ladner Gervais LLP or at such other place as shall be agreed upon by the Lead Managers and the Company, at 5:45 A.M., Vancouver time, on February 12, 2009, or such other time and date as the Lead Managers and the Company may agree upon in writing (such time and date of payment and delivery being herein called the "Closing Date"). Payment of the purchase price for the Firm Shares shall be made by wire transfer in same day funds to or as directed in writing by the Company upon delivery of certificates for the Firm Shares to the Representatives through the facilities of The Depository Trust Company ("DTC") or CDS Clearing and Depository Services, Inc. ("CDS"), as applicable, for the respective accounts of the several Underwriters. Certificates for the Firm Shares shall be registered in such name or names and shall be in such denominations as the Lead Managers may request. The Company will permit the Lead Managers to examine and package such certificates for delivery at least one full business day prior to the Closing Date.

(c) In addition, on the basis of the representations, warranties, covenants and agreements herein contained, but subject to the terms and conditions herein set forth, the Company hereby grants to the Underwriters, acting severally and not jointly, the option to purchase up to 831,000 Additional Shares at the same purchase price per share to be paid by the Underwriters for the Firm Shares and at the same commission per share to be received by the Underwriters as set forth in Section 2(a) above, for the sole purpose of covering over-allotments in the sale of Firm Shares by the Underwriters. This option may be exercised at any time and from time to time, in whole or in part on one or more occasions, on or before the thirtieth day following the date of the Canadian Prospectus and the U.S. Prospectus, by written notice from the Lead Managers to the Company. Such notice shall set forth the aggregate number of Additional Shares as to which the option is being exercised and the date and time, as reasonably determined by the Lead Managers, when the Additional Shares are to be delivered (any such date and time being herein sometimes referred to as the "Additional Closing Date"); provided, however, that no Additional Closing Date shall occur earlier than the Closing Date or earlier than the second full business day after the date on which the option shall have been exercised nor later than the eighth full business day after the date on which the option shall have been exercised. Upon any exercise of the option as to all or any portion of the Additional Shares, each Underwriter, acting severally and not jointly, agrees to purchase from the Company the number of Additional Shares that bears the same proportion of the total number of Additional Shares

then being purchased as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto (or such number increased as set forth in Section 10 hereof) bears to the total number of Firm Shares that the Underwriters have agreed to purchase hereunder, subject, however, to such adjustments to eliminate fractional shares as the Lead Managers in their sole discretion shall make.

(d) Payment of the purchase price for, and delivery of certificates representing, the Additional Shares shall be made at the office of Borden Ladner Gervais LLP, or at such other place as shall be agreed upon by the Lead Managers and the Company, at 5:45 A.M., Vancouver time, on the Additional Closing Date, or such other time as shall be agreed upon by the Lead Managers and the Company. Payment of the purchase price for the Additional Shares shall be made by wire transfer in same day funds to or as directed in writing by the Company upon delivery of certificates for the Additional Shares to the Representatives through the facilities of DTC or CDS, as applicable, for the respective accounts of the several Underwriters. Certificates for the Additional Shares shall be registered in such name or names and shall be in such denominations as the Lead Managers may request. The Company will permit the Lead Managers to examine and package such certificates for delivery at least one full business day prior to the Additional Closing Date.

(e) The Company acknowledges and agrees that (i) the terms of this Agreement and the Offering (including the price of the Shares and commission with respect to the Shares) were negotiated at arm's length between sophisticated parties represented by counsel; (ii) no fiduciary, advisory or agency relationship between the Company and the Underwriters has been created as a result of any of the transactions contemplated by this Agreement or the process leading to such transactions, irrespective of whether any Underwriter has advised or is advising any such party on other matters, (iii) the Underwriters' obligations to the Company in respect of the Offering are set forth in this Agreement in their entirety and (iv) it has obtained such legal, tax, accounting and other advice as it deems appropriate with respect to this Agreement and the transactions contemplated hereby and any other activities undertaken in connection therewith, and it is not relying on the Underwriters with respect to any such matters.

3. Offering. Upon authorization of the release of the Firm Shares by the Lead Managers, the Underwriters propose to offer the Shares for sale to the public upon the terms and conditions set forth in the Prospectus.

4. Covenants of the Company. In addition to the other covenants and agreements of the Company contained herein, the Company further covenants and agrees with each of the Underwriters that:

(a) The Company shall prepare the Canadian Prospectus and the U.S. Prospectus in a form approved by you and file such Canadian Prospectus with the Canadian Qualifying Authorities promptly thereafter in accordance with Canadian Securities Laws and the Shelf Procedures and such U.S. Prospectus pursuant to, and within the time period specified in, General Instruction II.L. of Form F-10; prior to the last date on which an Additional Closing Date, if any, may occur, the Company shall file no further amendment to the Registration Statement or amendment or supplement to the Canadian Prospectus or the U.S. Prospectus to which you shall object in writing after being furnished in advance a copy thereof and given a

reasonable opportunity to review and comment thereon; the Company shall notify you promptly (and, if requested by Goldman Sachs Canada Inc. or CIBC World Markets Inc., confirm such notice in writing) (i) when the Registration Statement and any amendments thereto become effective, (ii) of any request by the Canadian Qualifying Authorities or the Commission for any amendment of or supplement to the Canadian Prospectus, the Registration Statement or the U.S. Prospectus, as applicable, or for any additional information, (iii) of the Company's intention to file, or prepare any supplement or amendment to, the Canadian Prospectus, the Registration Statement, any Canadian Preliminary Prospectus or any U.S. Preliminary Prospectus, the U.S. Prospectus or any Issuer Free Writing Prospectus, (iv) of the time when any amendment to the Canadian Prospectus has been filed with or received by the Reviewing Authority, or of the filing with or mailing or the delivery to the Commission for filing of any amendment of or supplement to the Registration Statement or the U.S. Prospectus, (v) of the issuance by any of the Canadian Qualifying Authorities or the Commission of any stop order suspending the effectiveness of the Canadian Prospectus or the Registration Statement, as applicable, or any post-effective amendment thereto, or suspending the use of any Canadian Preliminary Prospectus or any U.S. Preliminary Prospectus, the U.S. Prospectus or any Issuer Free Writing Prospectus or, in each case, of the initiation or threatening of any proceedings therefore, (vi) of the receipt of any comments from the Reviewing Authority or the Commission, and (vii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for that purpose. If any of the Canadian Qualifying Authorities or the Commission shall propose or enter a stop order at any time, the Company will make every reasonable effort to prevent the issuance of any such stop order and, if issued, to obtain the lifting of such order as soon as possible.

(b) If at any time when a prospectus relating to the Shares (or, in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is required to be delivered under the Securities Act, any event shall have occurred as a result of which the Pricing Disclosure Package (prior to the availability of the U.S. Prospectus) or the U.S. Prospectus as then amended or supplemented would, in the judgment of the Under