

October 20, 2010

Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

**Re: Concept Release on the US Proxy System
SEC File No. S7-14-10
RIN 3235-AK43**

Dear Ms. Murphy:

We are writing this letter in response to the SEC's request for comment on its recently published Concept Release on the U.S. Proxy System (the "**Concept Release**").

Kinross Gold Corporation ("**Kinross**") is a Canadian-based gold mining company with mines and projects in Canada, the United States, Brazil, Chile, Ecuador, Russia, Ghana and Mauritania, employing approximately 7,000 people worldwide. Kinross is an SEC registrant and its common shares are listed for trading on both the New York Stock Exchange and the Toronto Stock Exchange. Kinross has a current equity market capitalization of approximately \$20 billion, ranking it the fifth largest gold producer by equity market capitalization in the world, and has a substantial U.S. shareholder base.

As a general matter, Kinross strongly supports the project represented by the Concept Release, ie. a comprehensive review of the proxy voting and shareholder communication system, as long overdue and important to the continued functioning of the North American capital markets.

This letter will be confined to the issues raised by Section V.A of the Concept Release, ie. the section of the Concept Release that addresses the issues related to proxy advisory firms. Our interest in this group of issues is in part a result of our recent experience with proxy advisory firms in the context of our recent US \$7.7 billion acquisition of Red Back Mining Inc. ("**Red Back**"). While Kinross is a foreign private issuer, and therefore as a technical matter the proxy process in question was governed by the Canadian proxy rules rather than the U.S. regime, we believe that our experience with Institutional Shareholder Services, Inc. ("**ISS**") during the Red Back transaction is directly comparable to the equivalent U.S. experience, and is therefore directly relevant to the discussion set forth in the Concept Release.

A. Background

On August 2, 2010, Kinross announced a friendly combination transaction pursuant to which Kinross agreed to acquire all of the issued and outstanding common shares of Red Back for consideration consisting of 1.778 Kinross common shares and 0.11 of a Kinross common share purchase warrant (the "**Red Back Transaction**"). Red Back was a publicly-traded gold producer, whose properties are located in Africa. Red Back's most significant asset is an early-stage mining project called Tasiast, located in Mauritania. The offer terms represented a

premium of 21% for the Red Back shareholders, based on the 20-day volume-weighted average trading price of the Red Back common shares prior to announcement.

Following extensive analysis and due diligence, Kinross had come to believe that Tasiast was a property of enormous growth potential, and was likely to ultimately prove to be one of a small number of genuinely premier gold properties globally. At the time of announcement, the market capitalizations of Kinross and Red Back were approximately \$13 billion and \$7.8 billion, respectively. As a result, this was a strategically critical and potentially transformative transaction for Kinross.

The transaction required the approval of the shareholders of both Red Back (66^{2/3}% of shareholders in person or by proxy) and Kinross (50% plus one of shareholders in person or by proxy) under applicable Canadian corporate law, and accordingly the two shareholder meetings were scheduled for September 15, 2010, and management information circulars were prepared by both companies and mailed to their respective shareholders on August 17, 2010.

Following a meeting among the senior management of Kinross, Red Back and ISS, late in the evening of Thursday, September 2, 2010, ISS/RiskMetrics published a report (the “ISS Report”) relating to the Red Back Transaction. The Report included, among other things, the recommendation of ISS that shareholders of Kinross vote against the Red Back Transaction. The issuance of the ISS Report followed reports in the financial press that ISS was going to issue a negative recommendation in respect of the transaction, and a concurrent increase in the “spread” between the trading price of the Red Back common shares and the implied offer price of the transaction. The ISS Report was released only five business days prior to the proxy cut-off of 10 a.m. on Monday, September 13, 2010 (Monday, September 6, 2010 was Labor Day). Unlike the ISS Report, ISS/RiskMetrics subsequently published a different report for Red Back shareholders recommending they vote in favour of the Red Back transaction.

The principal basis for the recommendation that Kinross shareholders vote against the Red Back Transaction was that ISS had concluded that that Kinross was overpaying for Red Back assets, ie. that Kinross had provided insufficient justification for the dilution to Kinross shareholders proposed under the economic terms of the Red Back Transaction. ISS noted that it had no concerns regarding the governance associated with the transaction and that Kinross appeared to have conducted a “disciplined” negotiation process – its recommendation was therefore based entirely upon a limited valuation analysis of the relative value of the two companies.

Kinross strongly believed that the ISS report and recommendation was misguided, and reflected a total lack of understanding of how value creation in the mining sector generally takes place, particularly in the case of early-stage growth companies where proven and probable reserve and resource disclosure is limited by the early stage of the property in question and the regulatory requirements applicable to such disclosure. A press release to this effect was released by Kinross and Red Back on September 3, 2010. It is worth noting that Glass Lewis and Proxy Governance Inc. (advisory firms that are competitors of ISS) recommended that Kinross Shareholders vote in favour of the transaction.

Kinross made two supplemental pieces of disclosure in an effort to address the concerns of ISS, through press releases dated September 1 and September 7, 2010, respectively. The first press release was made following the appearance of the press reports of a possible negative ISS recommendation, while the second followed the release of the ISS Report. Among other things,

the supplemental disclosure set forth certain additional information regarding Kinross's views regarding the potential of the Tasiast property, including a "conceptual estimate", by grade and tonnage, of the size of the Tasiast deposit – a highly unusual step that reflected an attempt to provide shareholders with every possible piece of relevant data while still complying with applicable regulatory requirements regarding mineral reserve and resource disclosure.

Late on the evening of September 8, 2010 (or two days before the proxy deadline for the Kinross shareholders meeting), ISS released a supplementary report reaffirming its recommendation that Kinross shareholders vote against the Red Back Transaction. This ISS reaffirmation was made despite the supplemental Kinross disclosure and was again based largely on valuation concerns (specifically the recommendation focused on a lack of concrete evidence and proof that the amount of gold contained at the Tasiast property was large enough to justify the valuation being placed on Red Back).

On September 15, 2010, at meetings of the shareholders of each of Kinross and Red Back held to approve the Transaction, approximately 66.4% of the Kinross shareholders and 99% of the Red Back shareholders approved the Transaction, respectively exceeding the required thresholds. On September 17, 2010, Kinross and Red Back completed the Transaction.

B. Discussion

Our experience in dealing with ISS in the context of the Red Back Transaction has resulted in a number of significant concerns about the role of proxy advisory firms in the M&A process, many of which are entirely consistent with those described in the Concept Release. These concerns can be summarized as follows:

(i) Excessive and Enhanced power

As noted in the Concept Release, ISS is by far the largest and highest-profile proxy advisory firm, and accordingly exercises an outsized influence on the outcome of most corporate actions requiring a shareholder vote by public companies with significant institutional shareholders. Kinross estimates that ISS clients represented between 38% and 40% of its shareholder base at the time of the record date for the shareholder meeting in connection with the Transaction, while no other proxy advisory firm represented clients holding anything close to that amount. As noted above, both Glass Lewis and Proxy Governance Inc., recommended that Kinross shareholders vote in favor of the Red Back Transaction, but neither represented anywhere near as many Kinross shares as ISS.

As is noted in the Concept Release and elsewhere, it appears that the dramatic growth in the voting power represented by ISS is at least in part a direct result of regulatory steps taken by the SEC and other regulators to ensure that mutual fund managers and other fiduciaries systematically exercise their voting rights as part of their fiduciary responsibilities. Many such fund managers appear to have effectively outsourced that function to ISS, resolving the regulatory pressure to exercise their voting rights by finding a relatively cheap and simple one-stop solution that requires no further input or effort on their part other than the payment of a monthly fee, and confident in the knowledge that regulators appear to be satisfied with such an approach. Indeed, in the case of many index funds and other passive investors, the voting process and mechanics appear to be carried out entirely by ISS on their behalf – in other words a sizeable portion of the shares held by ISS clients are voted automatically by ISS on behalf of the

investors in accordance with ISS's "recommendations", which might for such shareholders be better described as "determinations"¹. It is also important to note that in cases where the internal policy of institutional shareholders does permit them to disagree with an ISS recommendation, such fund managers are often required to make a presentation to and obtain the approval from their investment committee, which creates a potentially significant practical impediment and hurdle for managers that may otherwise be inclined to follow a particular ISS recommendation..

It appears likely that shareholders that have in form and substance outsourced the act and process of voting to ISS or another proxy advisory firm are often shareholders that would likely not have voted at all in the period prior to regulatory pressure in this area, as they represent institutions without the mandate, interest, or resources to take regular positions on matters submitted to them by the large number of issuers usually present in their portfolios. The effect of regulatory action to force them to "exercise" their voting rights appears to have been not to empower them as shareholders, but rather to empower ISS in its capacity as an unaccountable intermediary. That intermediary now often (as in the case of the Kinross vote with respect to the Red Back Transaction) represents by far the largest single effective block of shares voted, and is often as a result in a position to be effectively single-handedly dispositive of the matters submitted to shareholders.

While Kinross was ultimately successful in being able to successfully convince a requisite majority of its shareholders that the ISS recommendation in respect of the friendly Red Back Transaction was both misguided and ill-informed and to instead vote in favor of the transaction, it represented a very significant hurdle to overcome, and put at risk a multi-billion transaction of enormous importance to the shareholders of both companies. This risk (and reliance by shareholders on the ISS recommendation) manifested itself in the unusually large trading volumes of stock on both the New York and Toronto Stock Exchanges leading up to and following the ISS recommendation. We believe that the voting power delivered into hands of ISS and other intermediaries by prior regulatory actions represents a significant flaw in the modern proxy voting system, and appears to undermine rather than enhance effective shareholder democracy and decision-making.

(ii) *Lack of expertise and resources*

ISS as an institution has historically focused most of its efforts and resources on matters relating to corporate governance, and its credentials, resources and expertise outside the corporate governance arena are far less established, making its ability to make sophisticated "independent" judgments regarding matters of public company valuation very much open to question. It is our view that in fact ISS lacks the specialized industry expertise to conduct a sophisticated analysis of a strategic transaction in the mining sector. In their verbal discussions with us over the course of the Red Back Transaction, ISS staff were forthright in admitting that they did not have any geologists or mining engineers on their staff, nor had they retained any external consultants as part of their process of reviewing the Red Back Transaction. The degree of understanding at ISS of the fundamentals of mining operations and geology was therefore in our view demonstrably inferior to even the smallest financial analysts (approximately 25 research analysts

¹ One estimate is that 15-20% of the ISS client base subscribes to such a service. See Tamara C. Belinfanti, "The Proxy Advisory and Corporate Governance Industry: The case for increased oversight and control", 14:2 Stanford Journal of Law, Business and Finance 384

cover the gold sector) that provide any degree of coverage of the sector. At no time did any ISS conduct a site visit to the Tasiast project or any other assets in either company, a step that would be regarded as an elementary building block to a valuation analysis by normal industry analysts.

By contrast, Kinross employed a large team of technical experts (including two outside engineering firms, outside geologists, outside accounting and law firms and four investment banks) for over six months in evaluating a proposed transaction and the deposits held by Red Back in Mauritania and Ghana, and had a highly sophisticated understanding of geological data based on its status as a major global mining enterprise. Recommending to our shareholders that they vote in favor of the Red Back Transaction was something that our company and our board of directors did not take lightly, and significant resources and expertise were committed in the exercise of the fiduciary obligations that our directors and officers owed to our shareholders. Despite several offers by Kinross, ISS showed no interest in obtaining the benefits of that labor and expertise by engaging in a dialogue with the technical personnel at Kinross and Red Back – indeed, it appeared clear that ISS did not consider themselves to be qualified to engage in such a discussion, and preferred to rely on the assessment of other unidentified market actors in this area.

It appears indefensible to us that an institution with the market power and decision-making impact of ISS should be making decisions with such enormous business implications on the basis of little or no industry sector expertise and what appears to us to be limited resources generally in the valuation area. Based on our experience, the emphasis at ISS appears to be providing its clients with a low-cost, as opposed to a high-quality, outsourcing experience in the proxy voting arena.

All of this appears to us to be inconsistent with the notion of owing their clients true fiduciary duties, which we understand to be the case under the Investment Advisers Act of 1940. We do not comment in this regard on their role in the governance area, which has been the traditional area where ISS has focused its attention and resources – but it appears to us that the extraordinary impact of their recommendations in the non-governance-related mergers and acquisitions space should result in them being held to the very highest fiduciary standards to the extent that they choose (or continue to be permitted) to play a role. Based on our experience, we find it difficult to believe that such standards are currently being met.

(iii) Lack of transparency

ISS generally provides little or no disclosure regarding the process that leads to any of its proxy recommendations, particularly when providing recommendations in the M&A space. Further, ISS does not disclose the fees it receives from its shareholder members and the potential conflict inherent in making a transaction recommendation that may be subject to undue influence by certain of its paying shareholder members (such as arbitragers) whose interests in a transaction may not align with and do not represent the interests of all the shareholders voting on such a transaction. The opaque nature of the ISS process, the lack of appeal avenues and general lack of accountability have all been cited as sources of concern and basis for the possible need for regulatory oversight by various third parties. Based on our recent experience, Kinross believes that all of these concerns are fully justified.

It became clear to us over the course of the Red Back Transaction that ISS was engaging in an active dialogue with a number of unidentified market participants, whose motives and trading

strategies were completely unknown to us or our shareholders generally, and who may have been pursuing strategies in respect of the Red Back Transaction that were in fact directly at odds with those of most Kinross and Red Back shareholders as a whole. In a context where, as noted, ISS does not appear to have the depth of industry expertise and experience to make a truly sophisticated and informed decision, it appears to us that there is a particularly high risk that ISS may be prone to being unduly influenced by market participants for their own purposes, which may well be to the detriment of ISS's own client base and of that of shareholders more generally.

(iv) Lack of Oversight and Accountability

In light of the enormous influence currently wielded by ISS (and to a lesser extent other proxy advisory firms), it is of significant concern that it operates with little or no oversight, whether regulatory or otherwise. There is no formal avenue of appeal from an ISS decision, however misguided or uninformed it may be. Our hope is that market forces will eventually result in the ISS client base acting to enforce better advice based on greater resources and information, as well as empower rival advisory firms to capture greater market share, such that at the very least no single intermediary will dominate the proxy voting process any longer. Unfortunately, to date there has been little evidence of this taking place.

C. Conclusion

Kinross is generally supportive of regulatory initiatives that would address the problems identified above. These might include:

- Requiring increased disclosure regarding the credentials and prior experience of the ISS team members responsible for a particular recommendation and report, including prior experience within the relevant industry sector;
- Requiring increased disclosure regarding the depth and allocated resources with respect to a particular recommendation, and the extent and effectiveness of its controls and procedures in ensuring the accuracy of its recommendations;
- Requiring increased disclosure regarding the policies, procedures and specifics relating to interactions with issuers, shareholders and other market participants with respect to a particular recommendation (especially those interactions with arbitrageurs whose interests may not be aligned with or reflect general shareholder and investor sentiments) and the fees it receives from paying shareholder members; and
- Requiring some form of appeal process with respect to particular kinds of recommendations, eg. in respect of a transaction material to an issuer.

Perhaps most fundamentally, our view is that the various regulatory interventions in the area of voting by institutional shareholders are worth re-examining, as they appear to have had the unintended consequence of empowering an unaccountable intermediary rather than empowering shareholders themselves. This might include reconsidering whether it is truly in the public interest to effectively force passive or short-term investors that might not otherwise be inclined to participate in the voting process to do so (thereby effectively delivering their votes to ISS and other intermediaries), or alternatively, if it is viewed as important to prioritize the exercise of

voting rights by such investors, to reconsider whether it is appropriate that they be permitted or encouraged to satisfy such an obligation by effectively outsourcing the function to a third party.

By way of postscript, we note that the trading price of the Kinross common stock rose by approximately 11.5% in the five trading sessions following the approval of the transaction by the Kinross and Red Back shareholders, effectively increasing the market capitalization of the combined company by over \$2.2 billion. We view this outcome as further evidence of the misguided approach adopted by ISS in respect of this matter.

We applaud the initiative represented by the publication of the Concept Release, and look forward to progress in addressing the various issues and shortcomings in the current proxy system that it describes.

Respectfully,

A handwritten signature in black ink, appearing to read 'Geoffrey P. Gold', written over a horizontal line.

Geoffrey P. Gold

Executive Vice-President and Chief Legal Officer, Kinross Gold Corporation

cc: Naizam Kanji, Deputy Director, *Ontario Securities Commission*
Doug Bryce, *Osler, Hoskin & Harcourt LLP*
Tye Burt, President and Chief Executive Officer, *Kinross Gold Corporation*