

Headnote:

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the registration and prospectus requirements for the issue of common shares and first trade relief, in connection with a proposed amendment to the terms of outstanding notes

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1), 48, 61, 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND, NOVA SCOTIA, PRINCE EDWARD ISLAND, Qu罇c, SASKATCHEWAN, YUKON, NUNAVUT AND THE NORTHWEST TERRITORIES

AND

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

AND

IN THE MATTER OF TVX GOLD INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, Qu罇c, Saskatchewan, Yukon, Nunavut and the Northwest Territories (collectively, the "Jurisdictions") has received an application from TVX Gold Inc. ("TVX") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements"), shall not apply to the issuance of TVX Common Shares (defined below) or the first trade in TVX Common Shares in connection with the exchange of certain notes for TVX Common Shares in accordance with a proposed amendment (the "Note Amendment") of a note indenture (the "Note Indenture") between TVX and Montreal Trust Company of Canada ("Montreal Trust");

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the British Columbia Securities Commission is the principal regulator for this application;

AND WHEREAS TVX has represented to the Decision Makers that:

1. TVX was incorporated under the *Canada Business Corporations Act* and its authorized capital is an unlimited number of common shares ("TVX Common Shares"), of which 35,722,353 were issued and outstanding as of June 1, 2001;
2. TVX is a reporting issuer, or the equivalent, under the Legislation; the TVX Common Shares are traded on The Toronto Stock Exchange (the "TSE") and the New York Stock Exchange (the "NYSE");
3. on March 24, 1997, TVX and Montreal Trust entered into the Note Indenture for US\$250,000,000 of transferable gold-linked convertible notes (the "Notes") bearing interest at 5% per annum payable semi-annually and maturing on March 28, 2002 (the "Maturity Date");
4. the Notes were qualified in the Jurisdictions under a prospectus and are listed and posted for trading on the TSE;
5. the Notes are held by parties that are at arm's length to TVX (the "Noteholders");
6. under the Note Indenture, Noteholders can elect to convert each US\$1,000 principal amount of Notes into a number of TVX Common Shares using a predetermined calculation;
7. a Noteholder on its own behalf, or in certain circumstances Montreal Trust on behalf of a Noteholder, may elect to convert the Notes;
8. if the right to convert in respect of a Note has not been exercised by the Maturity Date, the principal amount plus accrued and unpaid interest will be repaid to the Noteholder by TVX either,
  - (a) in cash; or
  - (b) by delivering a number of TVX Common Shares using a predetermined calculation;
9. under the terms of the Note Indenture, the Notes cannot be repaid or redeemed at the option of TVX at any time before the Maturity Date;
10. the Note Indenture allows TVX and Montreal Trust to enter into a supplemental indenture to modify and/or amend the Notes;
11. TVX and Montreal Trust require the approval of at least 2/3rds of the Noteholders, present in person or by proxy at a meeting of the Noteholders, before the parties can enter into any supplemental indenture which materially modifies or alters the terms of the Notes;
12. due to the declining price of TVX Common Shares, the board of directors of TVX established a special committee (the "Special Committee") to consider strategic alternatives available to maximize shareholder value;

13. the Special Committee:

- (a) retained independent legal advisors and financial advisors;
- (b) was unable to identify a transaction which would increase shareholder value and was not successful in attempts to refinance the Notes;
- (c) initiated discussions with certain Noteholders about the possibility of exchanging the Notes for TVX Common Shares; and
- (d) after several months of negotiations, recommended to the TVX board of directors that it should enter into lock-up and support agreements (the "Support Agreements") with Sunrise Partners LLC ("Sunrise"), Bank of America Securities LLC and Blue Ridge Investments LLC (collectively the "Key Noteholders"), which together hold approximately 44% of the Notes;

14. the Note Amendment provides that:

- (a) Montreal Trust, on behalf of the Noteholders, exchange the outstanding principal amount of the Notes for TVX Common Shares, on the basis of 1,286.004708 TVX Common Shares per U.S. \$1,000 principal amount of Notes, five days after the date that the Note Amendment is signed;
- (b) TVX will not be required to issue fractional TVX Common Shares to Noteholders on exchange of the Notes and instead will pay cash in accordance with a predetermined formula;
- (c) the interest payable under the Notes shall be paid to Noteholders in cash by TVX; and
- (d) approximately 321,501,177 TVX Common Shares will be issued on the exchange of the Notes, representing approximately 90% of all issued and outstanding TVX Common Shares;

15. the Support Agreements provide that the Key Noteholders will vote in favour of the Note Amendment at the Noteholders' meeting;

16. on May 10, 2001, TVX issued a press release in regard to the proposed Note Amendment and the fact that TVX had entered into Support Agreements with the Key Noteholders;

17. the Special Committee's financial advisors have provided an opinion to the TVX board of directors that the Note Amendment is fair to the shareholders from a financial point of view;

18. based on the report and recommendation of the Special Committee and the opinion of the financial advisors, the TVX board of directors recommended that the shareholders of TVX approve the Note Amendment;

19. on June 28, 2001, a Noteholders' meeting was held and the Noteholders approved the Note Amendment;

20. prior to the Noteholders' Meeting, TVX mailed each Noteholder on record as of May 24, 2001: (i) notice of the special meeting; (ii) a form of proxy; (iii) the text of the resolution approving the Note Amendment; and (iv) an information circular containing prospectus level disclosure regarding the current terms and conditions of the Notes and the terms of the Note Amendment;

21. on June 28, 2001 an annual and special meeting of the shareholders of TVX was held, and the shareholders approved the issuance of 321,501,177 TVX Common Shares in exchange for the Notes in accordance with the terms of the Note Amendment and elected seven new directors to the TVX board of directors;

22. prior to the shareholders' meeting, TVX mailed each shareholder on record as of May 17, 2001: (i) notice of the special meeting; (ii) a form of proxy; (iii) the text of the resolution approving the Note Amendment; and (iv) an information circular containing prospectus level disclosure regarding the current terms and conditions of the Notes and the terms of the Note Amendment;

23. on completion of the exchange of Notes for TVX Common Shares made under the Note Amendment, Sunrise will hold approximately 30% of the issued and outstanding TVX Common Shares;

24. on the effective date of the Note Amendment, Sunrise and TVX will enter into a registration rights agreement under which Sunrise will have the right to cause TVX to prepare and file a prospectus relating to a secondary offering of TVX Common Shares held by Sunrise;

25. TVX has notified the TSE and the NYSE about the Note Amendment and of the 321,501,177 TVX Common Shares that will be issued on exchange of the Notes, and the TSE has conditionally approved the listing of these shares; and

26. TVX believes that the Note Amendment will help to preserve value for the shareholders;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that:

1. the Registration and Prospectus Requirements of the Legislation will not apply to the issuance of TVX Common Shares on the exchange of Notes made under the Note Amendment, so long as no commission or other remuneration is paid or given to others in respect of such issuances

except for administrative or professional services or for services performed by a registered dealer; and

2. first trades in TVX Common Shares acquired by Noteholders under the Note Amendment in a Jurisdiction will be deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") unless:

(a) at the time of such first trade, TVX is and has been a reporting issuer or the equivalent under the Applicable Legislation for the 12 months immediately preceding the trade;

(b) no unusual effort is made to prepare the market or to create a demand for such shares;

(c) no extraordinary commission or consideration is paid to a person or company in respect of the trade;

(d) if the seller of the shares is an insider or officer of TVX, the seller has no reasonable grounds to believe that TVX is in default of any requirement of the Applicable Legislation; and

(e) except in Québec, the first trade is not from the holdings of a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of TVX to affect materially the control of TVX, or each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of TVX to affect materially the control of TVX, and, if a person or company or combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of TVX, the person or company or combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of TVX.

DATED July 9, 2001.

*"Derek E. Patterson"*  
Acting Director