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Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8

Attention: John Stevenson
Secretary of the Commission

Dear Mr. Stevenson:

Re: Rusoro Mining Ltd. (“Rusoro”) offer (the “Rusoro Offer” or the “Offer”) to purchase all of the issued and outstanding Class A common shares and equity units of Gold Reserve Inc. (“Gold Reserve”)
re: Application for relief under section 127 of the *Securities Act* (Ontario) (the “Act”)

This firm is counsel to Rusoro in respect of the above matter.

RELIEF REQUESTED

1. Rusoro hereby applies for an order pursuant to section 127 of the Act in connection with the Rusoro Offer and the shareholder rights plan of Gold Reserve dated October 5, 1998, as amended (the “Gold Reserve Rights Plan” or the “Plan”).
2. In particular, Rusoro seeks the following relief:
 - (a) a permanent order pursuant to paragraph 127(1) of the Act that trading cease in respect of any securities issued, or to be issued, under or in connection with the Gold Reserve Rights Plan, including without limitation, in respect of the rights issued under the Plan (the “Rights”) and any common shares of Gold Reserve to be issued upon the exercise of the Rights;
 - (b) a permanent order removing prospectus exemptions in respect of the distribution of the Rights on the occurrence of the Separation Time (as defined in the Gold Reserve Rights Plan and as extended by the Gold Reserve Board of Directors) and in respect of the exercise of the Rights;

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- (c) to the extent necessary, a temporary order pursuant to subsection 127(5) of the Act suspending the operation of the Gold Reserve Rights Plan, or providing that any rights that have been or may be issued thereunder shall not separate from the Gold Reserve shares or become exercisable or trade separately from the Gold Reserve shares until such time as the matters raised in this request for a hearing have been finally disposed of by the Commission; and
- (d) such further and other relief as the Commission deems appropriate in the public interest.

3. The following are our initial submissions on why the Commission should grant Rusoro the requested relief. As we have already discussed with staff, we are reserving our final submissions until we have had the opportunity to review any responding materials that Gold Reserve might file. The submissions rely upon the evidence contained in the affidavit of George Salamis sworn January 28, 2009, a copy of which is attached.

Overview of Rusoro's Position

4. Rusoro submits that it is in the public interest to cease trade immediately the Gold Reserve Rights Plan for the following reasons:

- (a) Rusoro has extended the Rusoro Offer to February 18, 2009. That is 65 days since the Offer was first announced on December 15, 2008. Gold Reserve's directors have had ample time to consider the Offer as have the company's shareholders. The period exceeds the time required for an offer to constitute a Permitted Bid under the Gold Reserve Rights Plan.
- (b) There is absolutely no evidence that there is a reasonable prospect that if the Plan is permitted to continue an alternative bid or transaction superior to the one offered by Rusoro will emerge. Rusoro has been making proposals to Gold Reserve for some five months now. Gold Reserve's directors have elected not to pursue alternatives to Rusoro's proposals either now or in the past. Unlike most cases involving rights plans, there is no evidence of any auction in this case. That will not change if the Gold Reserve Rights Plan is left in place.
- (c) There is nothing improper, coercive, or unfair about the Rusoro Offer. The purpose of any rights plan in general, and the Gold Reserve Rights Plan in particular, is to ensure shareholders are treated fairly by allowing them sufficient time to evaluate an offer, and to allow directors time to consider and pursue alternatives. Shareholders have had sufficient time to consider the Rusoro Offer. Gold Reserve's directors have had time enough to decide upon their response to the offer, a response which involves asking shareholders to approve their strategy of continuing with their current strategy for the

company. Shareholders should be allowed to decide for themselves whether that is their preferred approach.

FACTUAL OVERVIEW

Rusoro

5. Rusoro is a public corporation incorporated under the laws of the Province of British Columbia headquartered in Vancouver, British Columbia, with offices in Vancouver and Moscow, Russia and mining operations in Venezuela. The corporation trades on the TSXV under the symbol RML. It is a reporting issuer or the equivalent in the provinces of Ontario, British Columbia, Alberta, and Quebec.¹

6. Rusoro is a growth-oriented gold producer engaged in the acquisition, exploration, development and operation of gold mining properties in Venezuela. It currently has annual gold production in excess of 100,000 attributable ounces from its Choco 10 and Isidora mines, both located near the town of El Callao, Venezuela, and a significant growth pipeline of development and exploration properties located across its large land position in the Bolivar State mining region in Southern Venezuela.²

Gold Reserve

7. Gold Reserve is a corporation incorporated under the laws of the Yukon Territory. It has a registered office in Whitehorse, Yukon, but its main office is in the City of Spokane, Washington. Like Rusoro, Gold Reserve is a public company. Its shares trade on the TSX and the NYSE Alternext Exchange.³

8. Like Rusoro, Gold Reserve's operations are based in Venezuela. Gold Reserve's only significant asset is the Las Brisas del Cuyuni gold and copper deposit ("Brisas") which is in the Km88 Mining District in Bolivar State, Venezuela. To date Gold Reserve has been unable to turn Brisas into a producing mine. In fact, in May 2008, Gold Reserve's permit to commence the construction of the Brisas project was revoked by the Venezuelan Ministry of the Environment. As a result, at this point, Gold Reserve cannot proceed any further with the Brisas project.⁴

The Gold Reserve Rights Plan

9. Gold Reserve has a rights plan.⁵ It first adopted the Plan in October 1998. The Plan was amended as of March 20, 2002 and June 2, 2000, and amended and restated as of March 14, 2003 and

¹ Affidavit of George Salamis, para. 5.

² Affidavit of George Salamis, para. 6.

³ Affidavit of George Salamis, para. 8.

⁴ Affidavit of George Salamis, paras. 9-10.

⁵ Gold Reserve Rights Plan, Exhibit C, Affidavit of George Salamis.

January 29, 2006.⁶ As set out below, it was also amended after the launch of the Rusoro Offer to redefine what qualifies as a “Permitted Bid” under the Plan.⁷

10. According to the 2006 Circular, the primary objective of the Gold Reserve Rights Plan is:

[T]o provide the Board with sufficient time to consider and, if appropriate, to explore and develop alternatives for maximizing shareholder value if a take-over bid is made for the Company, and to provide every shareholder with an equal opportunity to participate in such a bid.⁸

11. The 2006 Circular specifically advised shareholders that the Gold Reserve Rights Plan was not intended to prevent all take-overs:

While the Rights Plan is intended to regulate certain aspects of take-over bids for the Company, it is not intended to deter a *bona fide* attempt to acquire control of the Company if the offer is made fairly. The Rights Plan does not affect the duty of the Board to give due and proper consideration to any offer that is made and to act honestly, in good faith and in the best interests of the Company and its Shareholders. **The Rights Plan utilizes the mechanism of the Permitted Bid to ensure that a person seeking control of the Company allows Shareholders and the Board sufficient time to evaluate the bid. [Emphasis Added]**⁹

12. The Gold Reserve Rights Plan provides for a massive dilution of shares if a person becomes the beneficial owner of 20% or more of the outstanding common shares of Gold Reserve (an “Acquiring Person”), unless the acquisition is through an exempt transaction such as a “Permitted Bid” or “Competing Permitted Bid” as those terms are defined in the Plan. To constitute a Permitted Bid a bid must, amongst other things, be open for acceptance for a minimum of 60 days.

13. If a triggering event occurs, each holder of Gold Reserve common shares (other than the Acquiring Person) has the right after the “Separation Time” (as defined in the Plan) to purchase a corresponding number of Gold Reserve Shares at a 50% discount to the then current market price.

Discussions Between Rusoro and Gold Reserve about a Possible Transaction

14. Rusoro and Gold Reserve first discussed a possible business combination of the two companies in early 2007 in meetings between representatives of the two companies.¹⁰ In July 2008, Rusoro began

⁶ Affidavit of George Salamis, para. 11.

⁷ Affidavit of George Salamis, para. 31; Gold Reserve Press Release, Exhibit K, Affidavit of George Salamis.

⁸ Gold Reserve Circular, page 5; Exhibit B, Affidavit of George Salamis.

⁹ *Ibid*, page 8.

¹⁰ Affidavit of George Salamis, para. 16.

exploring a possible friendly transaction with Gold Reserve. Rusoro was attracted to some type of transaction with Gold Reserve given its common base in Venezuela and their contiguous properties. With a successful track-record of operating two recently-acquired mines in Venezuela, Rusoro believed that it was better placed to be able to realize on the potential of Gold Reserve's Brisas property, development of which by that point had largely halted. Mining development in Venezuela is particularly challenging and Rusoro was having a great deal of success in working with the Government of Venezuela as joint venturers. It believed that it could bring that experience to work in advancing the Brisas project.¹¹

15. On August 21, 2008, Rusoro wrote Gold Reserve proposing a combination of the two companies by Rusoro acquiring 100% of Gold Reserve's shares on the basis of two Rusoro common shares for each share of Gold Reserve.¹² Gold Reserve rejected that proposal.¹³

16. In the following two months, there were a few additional discussions between representatives of Gold Reserve and representatives of either Rusoro or its financial advisor, Endeavour Financial International Corporation ("Endeavour"). The Rusoro representatives conveyed Rusoro's continued interest in pursuing a transaction with Gold Reserve. Gold Reserve seemed uninterested in a possible transaction.

Rusoro Sends Gold Reserve Another Offer

17. Based on the fact that Gold Reserve appeared uninterested in a friendly transaction, in November 2008, Rusoro decided to begin preparing a direct offer to Gold Reserve's shareholders.¹⁴

18. On December 12, 2008, the Rusoro Board of Directors approved the execution and delivery of an offer letter to Gold Reserve that detailed the terms of a proposed business combination between Rusoro and Gold Reserve, subject to customary conditions. The letter indicated that Rusoro would launch a take-over bid on Monday December 15, 2008 if Gold Reserve did not accept the offer.¹⁵

Gold Reserve's Response to the Offer Letter

19. On December 14, 2008, Gold Reserve wrote to Rusoro indicating that in its view the bid could not proceed. Gold Reserve claimed that in advising Rusoro, Rusoro's financial advisor Endeavour, had used confidential information it had previously received from Gold Reserve.¹⁶ Although Endeavour had

¹¹ Affidavit of George Salamis, para. 17.

¹² Affidavit of George Salamis, para. 18; Letter from Rusoro to Gold Reserve dated August 21, 2008, Exhibit D, Affidavit of George Salamis.

¹³ Affidavit of George Salamis, para. 19; Gold Reserve Press Release, Exhibit E, Affidavit of George Salamis.

¹⁴ Affidavit of George Salamis, para. 21.

¹⁵ Affidavit of George Salamis, para. 22; Letter from Rusoro to Gold Reserve dated December 12, 2008, Exhibit F, Affidavit of George Salamis.

¹⁶ Affidavit of George Salamis, para. 23; Letter from Gold Reserve to Rusoro dated December 14, 2008, Exhibit G, Affidavit of George Salamis.

a previous mandate with Gold Reserve, to its knowledge, Rusoro had not received any Gold Reserve confidential information from Endeavour.¹⁷ Endeavour has at all times advised Rusoro that its advice has been based entirely on information which is publicly available.¹⁸

Launch of the Takeover Bid

20. On December 15, 2008, Rusoro formally commenced its take-over bid for Gold Reserve by advertisement in the *Globe and Mail* and *Le Devoir* newspapers, and filing its offer and circular (the “Rusoro Circular”) on SEDAR.¹⁹

The Rusoro Offer

21. As set out in the Rusoro Circular, at the time it was first made, the essential terms of the Rusoro Offer were as follows:

- (a) the Offer was for all of the issued and outstanding Class A common shares (the “Gold Reserve Shares”) and equity units of Gold Reserve (“Gold Reserve Equity Units” and together with the Gold Reserve Shares, the “Gold Reserve Equity”);
- (b) under the Offer, each holder of Gold Reserve Equity would receive three Rusoro shares for each Gold Reserve Share or Gold Reserve Equity Unit tendered under the Offer;
- (c) the Rusoro Offer was open for acceptance until 12:00 midnight Eastern Standard Time at the end of January 21, 2009, unless the offer was extended or withdrawn by Rusoro.²⁰

22. The Rusoro Offer offered shareholders a substantial premium based on the average trading price and closing price of Gold Reserve shares on the TSXV prior to the offer’s announcement. As of December 12, 2008, the last trading day prior to the announcement of the Rusoro Offer, the closing price of Rusoro Shares on the TSXV was \$0.36 CDN and the closing prices of the Gold Reserve Shares on the TSX and NYSE Alternex were \$0.45 CDN and \$0.39 CDN, respectively. Based on the closing price of the Rusoro Shares on the TSXV on December 12, 2008, the Offer represented a premium of approximately 140% over the closing price of the Gold Reserve Share on the TSX for the same date. Based on the volume-weighted average price of the Rusoro Shares on the TSXV for the 30 trading days ended December 12, 2008, the Rusoro Offer represented a premium of approximately 209% over the volume-weighted average price of the Gold Reserve Shares on the TSX for the same period.²¹

¹⁷ Affidavit of George Salamis, para. 24.

¹⁸ *Ibid.*

¹⁹ Affidavit of George Salamis, para. 25; Rusoro Circular, Exhibit H, Affidavit of George Salamis.

²⁰ Affidavit of George Salamis, para. 27.

²¹ Affidavit of George Salamis, para. 28.

Gold Reserve's Response to the Rusoro Offer

23. On December 15, 2008, Gold Reserve issued a press release indicating that it had received the Rusoro Offer and asking its shareholders to wait for its Board to make its recommendation before making a decision with respect to the Offer.²² That same day Gold Reserve commenced an action in the Ontario Superior Court of Justice seeking \$550 million in monetary damages against Endeavour and Rusoro, as well as an interim, interlocutory and permanent injunction restraining Rusoro and Endeavour from proceeding with the Rusoro Offer.²³ On December 30, 2008, Gold Reserve moved for the interlocutory injunction requested in its statement of claim. That motion is scheduled to be heard by the Ontario Superior Court of Justice on February 4, 2009.²⁴

Gold Reserve Board of Directors Extends Separation Time and Revises Gold Reserve Rights Plan

24. On December 18, 2008, the directors of Gold Reserve extended until January 20, 2009, the Separation Time as defined in the Gold Reserve Plan.²⁵ At the same time they also amended the Plan to change the definition of "Permitted Bid" to add a clause prohibiting the possession of confidential information by individuals involved in a Permitted Bid. This amendment was effective immediately. It has not been approved by Gold Reserve's shareholders.²⁶

25. On December 30, 2008, the directors of Gold Reserve announced that they had voted unanimously to reject the Rusoro Offer. That same day, the Gold Reserve also issued and filed a Directors' Circular to Gold Reserve shareholders (the "Gold Reserve Directors' Circular") advising shareholders to not tender their Gold Reserve shares.²⁷

Gold Reserve Seeks no Alternatives to the Rusoro Offer

26. According to statements in the Gold Reserve Directors' Circular, Gold Reserve's directors are not exploring alternatives to the Rusoro Offer:

There are no negotiations currently underway or transactions, Board of Directors' resolutions, agreement in principle or signed contracts that relate to or would result in: (a) an extraordinary transaction such as a merger, reorganization or liquidation involving Gold Reserve or any of its subsidiaries; (b) the purchase, sale or transfer of a material amount of assets of Gold Reserve or any of its subsidiaries, (c) an issuer bid, other tender offer for or other acquisition of Gold Reserve Shares by Gold Reserve, any of its

²² Affidavit of George Salamis, para. 29; Gold Reserve Press Release, Exhibit J, Affidavit of George Salamis.

²³ Affidavit of George Salamis, para. 30.

²⁴ *Ibid.*

²⁵ Following Rusoro's extension of the Rusoro Offer on January 19, 2009, the Gold Reserve Board further extended the Separation Time to February 17, 2009.

²⁶ Affidavit of George Salamis, para. 31; Gold Reserve Press Release, Exhibit K, Affidavit of George Salamis.

²⁷ Affidavit of George Salamis, para. 33; Gold Reserve Directors' Circular, Exhibit M, Affidavit of George Salamis.

subsidiaries or any other person; or (d) any material change in the present capitalization, indebtedness or dividend rate or policy of Gold Reserve.

There are no transactions, resolutions of the Board of Directors, agreements in principle or signed agreements in response to the Rusoro Offer that relate to or would result in one or more of the events referred to in the preceding paragraph. Notwithstanding the foregoing, the Board of Directors may in the future engage in negotiations or take other actions in response to the Rusoro Offer that could have one or more of the effects specified in the preceding paragraph. The Board of Directors has determined that disclosure with respect to the parties to, and the possible terms of, any transactions or proposals of the type referred to in the preceding paragraph might jeopardize any discussions, negotiations or actions that Gold Reserve may conduct. Accordingly, Gold Reserve does not intend to disclose the possible terms of any such transaction, proposal or action until an agreement in principle or action relating thereto has been reached or as otherwise may be required by law. **[Emphasis Added]**²⁸

27. Gold Reserve's public statements have confirmed that the corporation is still not exploring any alternatives to the Rusoro Offer. To the contrary, the directors of Gold Reserve have advised shareholders that they intend to continue with their existing long-term strategy. In response to the question "What is the Board of Directors doing in response to the Rusoro Offer", the Gold Reserve Directors' Circular states as follows:

Our plan has been and will continue to be to extract the maximum value possible from Gold Reserve's assets, including the Brisas Project. We believe Rusoro's attempt to acquire our valuable investment in the Brisas Project and our cash, without offering adequate consideration, is inconsistent with the Board's objective of enhancing shareholder value. **We believe that by continuing to execute our long-term strategy, we can better realize significantly more value for Gold Reserve Shareholders.**

We plan to continue to work with the Venezuelan government to finalize the necessary pre-production permits for the Brisas Project. If we are unable to obtain the necessary permits from the Venezuelan government, we have alternative courses of action available to us in Venezuela that we may pursue for Gold Reserve Shareholders. **[Emphasis added]**²⁹

²⁸ Gold Reserve Directors' Circular, page ii and page 2, Exhibit L, Affidavit of George Salamis.

²⁹ *Ibid* at page 32.

Rusoro Extends the Rusoro Offer

28. On January 19, 2009, Rusoro announced that it was extending the Rusoro Offer to February 18, 2009 at 5:00 p.m.³⁰

RUSORO'S SUBMISSIONS

29. The Applicants submit that the OSC should exercise its public interest jurisdiction under section 127 of the Act to cease trade the Plan.

30. The paramount consideration underlying the take-over bid provisions in Canadian securities legislation is the protection of the *bona fide* interests of the target company's shareholders. Section 1.1(2) of National Policy 62-202 describes the take-over bid provisions of the Canadian securities legislation as follows:

The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are concerned that certain defensive measures taken by management of a target company may have the effect of denying to shareholders the ability to make such a decision and of frustrating an open take-over bid process. [emphasis added]³¹

31. In adopting National Policy 62-202, the Canadian securities regulators recognized that, while defensive tactics may sometimes be legitimately used by a target corporation as a means of maximizing shareholder value, it is inappropriate for the target corporation to adopt defensive tactics "that are likely to deny or limit severely the ability of shareholders to respond to a take-over bid or to a competing bid."³²

32. The implementation or retention of a shareholder rights plan is a common defensive tactic employed by the management of a target corporation, as the effect of such a plan is to prevent a take-over bid from succeeding without the board's approval. As is described in greater detail below, and consistent with the objectives of National Policy 62-202, the Commission has repeatedly held that a

³⁰ Notice of Variation dated January 19, 2009, Exhibit N, Affidavit of George Salamis.

³¹ National Policy 62-202 – Take-Over Bids – Defensive Tactics.

³² *Ibid.*, at s. 1.1(6).

shareholder rights plan will be set aside as an improper defensive tactic where it is being used to prevent shareholders of a target corporation from exercising their fundamental right to determine whether to accept or reject an offer to acquire their shares.

33. All shareholder rights plans must at some time, be set aside in order that shareholders may determine whether to tender their shares to an outstanding offer. Therefore, the fundamental issue on this application is not whether the Gold Reserve Rights Plan will be set aside, but *when* it will be set aside. The paramount consideration in reaching this decision is the best interests of Gold Reserve's shareholders.³³

34. As the British Columbia Securities Commission stated in *BGC Acquisition Inc.*, "At some point... the shareholders themselves must be allowed to decide whether to accept an offer for their shares. If an issuer's directors attempt to maintain a poison pill beyond that point, security commissions will use their powers to remove it and let the shareholders decide."³⁴

35. In determining whether a rights plan should be set aside, the target company bears the initial burden of justifying the plan by proving that "there appears to be a real and substantial possibility that, given a reasonable period of further time, the board of the target corporation can increase shareholder choice and maximize shareholder value".³⁵ It is only in circumstances where the target is able to discharge this burden of proof that the burden falls on the applicant to show that the rights plan should go.³⁶

36. In *Royal Host* and the subsequent cases which have followed it,³⁷ the Commission has set out a non-exhaustive list of factors to consider in determining whether a rights plan should be allowed to continue:

- (a) when the plan was adopted;
- (b) whether shareholder approval of the rights plan was obtained;
- (c) whether there is broad shareholder support for the continued operation of the plan;
- (d) the length of time since the bid was announced and made;
- (e) the size and complexity of the target company;

³³ *BGC Acquisition Inc. and Argentina Gold Corp. (Re); Re Canadian Toren*, (1992), 15 O.S.C.B. 287; *Re Lac Minerals* (1994), 5 L.L.L.S. 99.

³⁴ *BGC Acquisition Inc. and Argentina Gold Corp. (Re)*, p. 11.

³⁵ *Re MDC Corporation and Regal Greetings & Gifts Inc.* (1994), 17 O.S.C.B. 4971 at 4979.

³⁶ *Re Samson Canada Ltd.* (1999), 8 A.S.C.S. 1791 at 1793; *Re 1153298 Alberta Ltd.*, [2005] A.S.C.D. No. 1004 at para. 52.

³⁷ *Re Royal Host Real Estate Investment Trust* (1999), 22 O.S.C.B. 7820 at 7828; *Re Falconbridge Ltd.* (2006), 29 O.S.C.B. 6783 at para. 7.

- (f) the other defensive tactics, if any, implemented by the target company;
- (g) the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
- (h) the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
- (i) the number of potential, viable offerors;
- (j) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company; and
- (k) the likelihood that the bid will not be extended if the rights plan is not terminated.

37. There are six factors from the above list relevant to this case. They are:

- (a) the length of time the Rusoro Offer has been in the market;
- (b) Gold Reserve's relatively small size and complexity and the availability of public information about it;
- (c) the lack of any steps taken by Gold Reserve's directors to obtain an alternative transaction, and the unlikelihood of an alternative offer emerging;
- (d) the defensive tactics adopted by the Gold Reserve directors;
- (e) the fairness of the Rusoro Offer to Gold Reserve's shareholders; and
- (f) the possibility that the Rusoro Offer will not be extended if the Plan is left in place.

Length of Time the Rusoro Offer has been in the Market

38. Subsection 98(1) of the Act requires that an offer be open for at least 35 days. In this case, as at February 18, 2009, the date on which the Rusoro Offer expires, it will have been open for acceptance for 65 days, or 30 days more than the minimum period.

39. The above noted period is more than enough time for shareholders to have considered the Rusoro Offer and decide whether or not it meets with their approval. They will not benefit from additional time. The period is also more than enough time for the Gold Reserve Directors to evaluate and pursue alternatives. What is clear from the record before the Commission, in particular, what is

clear from the Gold Reserve Directors Circular, is that the directors of Gold Reserve have decided not to look for alternatives to the Rusoro Offer. They have known their company was a potential target since at least August 2008, if not early 2007, and yet have done nothing to actively pursue alternatives. Instead they have advised shareholders that they will be better served by continuing with current management's plans for their company. This situation will not change if the Plan is left in place. Gold Reserve's management has no interest in any transaction. The company's shareholders should be allowed to decide for themselves now whether or not to continue with that approach.

Gold Reserve's Size and Complexity

40. This factor is important in terms of how easy or difficult it might be for a potential bidder to value the target company. Companies which are large and complex tend to require more due diligence than companies which are small and simple, making a longer period of operation for a rights plan more likely in the former situation than the latter. Given that its directors are not actually pursuing an alternative transaction this factor is of limited importance, but to the extent it has any relevance it tends to support cease trading the Plan now rather than later.

41. Gold Reserve is neither large nor particularly complex. As such it is relatively easy to value. Aside from its cash on hand, Gold Reserve has essentially one asset, the Brisas project. There is a substantial amount of publicly available information about the project as a result of the public filing requirements imposed on Gold Reserve as a resource company. That again tends to make valuing the company relatively easy. The difficulty with Gold Reserve is not so much assessing the hard value of its main asset, as it is assessing the political situation in Venezuela and how it affects both Gold Reserve's ability to exploit its asset and the ability of any potential bidder to do the same. That is one item any potential bidder must consider and decide upon for itself. It will be driven by the potential bidder's assessment of its ability to do business successfully in a challenging environment in which thus far Gold Reserve has been unable to succeed. More time will not assist any potential bidder to make that assessment.

Lack of Any Auction

42. Typically once a target company is put into play, its directors begin steps to maximize shareholder value by engaging financial advisors which then set up a data room, contact prospective purchasers, sign up non-disclosure agreements and if all goes well from the target's point of view, entice someone to make a competing offer. In this case, Gold Reserve appears to have two financial advisors on retainer, yet has done little or nothing to encourage an auction. It would appear that Gold Reserve's advisors have not contacted any prospective purchasers, presumably because Gold Reserve's directors are not interested in an alternative transaction. Whether that accords with their fiduciary obligations to the company is a question best left for another forum. Insofar as this application is concerned, what it means is that there is no need to continue the operation of the Plan because there is no auction in process. There is no expression of a "real and substantial interest" nor sufficient evidence of a

“reasonable possibility” that a rival proposal will emerge. There is therefore no reason to keep the Plan in place.

The Defensive Tactics Adopted by the Gold Reserve Directors

43. The decision of the Gold Reserve directors to commence an action seeking a half billion dollars and damages as well as an injunction to restrain the Rusoro Offer is a purely defensive tactic adopted to delay and disparage Rusoro and the Rusoro Offer which should not pass without comment by the Commission. NP 62-202 subsection 1.1(2) decries tactics which “may have the effect of denying to shareholders the ability to make . . . a decision and of frustrating an open take-over bid process.” That is precisely what both the action and the injunction motion are. The action was initiated within a day of the Rusoro Offer’s announcement and was the subject of a press release even before it was served on Rusoro. The directors followed this by waiting two weeks to commence their injunction motion which again was publicly announced in a press release. Both events were calculated to damage and delay the progress of the Rusoro Offer. Instead of searching for an alternative transaction, the Gold Reserve directors have focused on attempting to discredit the one party that has made an offer. That is not a proper take-over bid tactic.

44. In assessing any request to prolong the operation of the Plan, the Commission should consider the conduct of the Gold Reserve directors in their response to the Rusoro Offer.

The Rusoro Offer is a Fair One

45. There is nothing improper, coercive or unfair about the Rusoro Offer. It is for all the shares of Gold Reserve and not just some of them. As of today’s date it has been open for acceptance for some 45 days. By the time the bid expires it will have been open for more than 60 days, the length of time required for a bid to qualify as a Permitted Bid under the Gold Reserve Rights Plan. Rusoro has expressed its intention to acquire directly or indirectly all of the shares not deposited under the Offer. As a result, any Gold Reserve shareholder who does not tender to the Offer will likely still be able to receive the equivalent consideration for his or her shares if the Rusoro Offer succeeds.

46. The Rusoro Offer represents a substantial premium to the closing price of Gold Reserve’s shares prior to the bid’s announcement. It allows Gold Reserve shareholders the opportunity to share any success Rusoro might enjoy in the future if it is able to bring the Brisas project into operation. It is not coercive, improper or unfair.

Rusoro Bid May Expire

47. The Rusoro Offer will expire on February 18, 2009. It has already been extended once. There is no assurance it will be extended beyond its current expiry. This factor tends to support an immediate cease trade order.

CONCLUSION

48. The time has come for the Gold Reserve Rights Plan to go. As of its expiry date, February 18, 2009, the Rusoro Offer will have been open for acceptance for 65 days, a substantial period of time. There is no auction for Gold Reserve, a company with one significant asset which is relatively easy to value based on publicly available information, but subject to the vagaries inherent in operations based in developing countries. The Rusoro Offer is from a natural purchaser, a company active in the same country in which Gold Reserve has its resource assets. It offers Gold Reserve shareholders a premium over the pre-announcement trading price of their shares as well as the opportunity to share in the development potential of the company's most significant asset.

49. The continued operation of the Gold Reserve Rights Plan is contrary to the public interest. It should be cease traded effective immediately, giving Gold Reserve's shareholders the ability to decide for themselves whether or not to accept the Rusoro Offer.

Yours very truly,

R. Seumas M. Woods

c: S. O'Hearn, OSC Staff Counsel
R. Harrison/B. Sells, *Fasken Martineau DuMoulin LLP*
E. Kolers, A. Rose, E. Tait, *Stikeman Elliott LLP*
B. Gray/R. Gilliland, *Blake, Cassels & Graydon LLP*