NEWMONT MINING CORP /DE/
Form DEFA14A
March 04, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported):

March 4, 2019

Newmont Mining Corporation

(Exact name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-31240

(Commission File Number)

84-1611629

(I.R.S. Employer Identification No.)

6363 South Fiddlers Green Circle, Greenwood Village, Colorado 80111

(Address of principal executive offices) (zip code)

(303) 863-7414

(Registrant s telephone number, including area code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

x Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Item 8.01. Other Events.

As previously announced on February 25, 2019, Newmont Mining Corporation, a Delaware corporation (Newmont or the Company) received an unsolicited acquisition proposal from Barrick Gold Corporation (Barrick) proposing an all-stock acquisition of Newmont, at a negative premium based on market prices as of the close of business on February 22, 2019 (the Barrick proposal).

On March 4, 2019, Newmont s board of directors issued a response letter to the Barrick proposal determining that the Barrick proposal does not constitute, and would not reasonably be expected to constitute, a Newmont Superior Proposal, as such term is defined in the arrangement agreement dated January 14, 2019, as amended on February 19, 2019 (the arrangement agreement), between Newmont and Goldcorp Inc. (Goldcorp). Accordingly, Newmont is not permitted to engage in discussions and negotiations with Barrick with respect to the Barrick proposal. Therefore, Newmont will proceed with its previously announced strategic business combination transaction with Goldcorp pursuant to the arrangement agreement.

In addition, to facilitate the realization of the potential synergies with Barrick, Newmont proposed a term sheet for a joint venture (the Nevada joint venture proposal) that would combine Newmont and Barrick s Nevada operations, which was attached to the response letter. The Nevada joint venture proposal provides for Barrick to hold an economic interest equal to 55 percent and Newmont to hold a 45 percent economic interest. The proposed economic interests are based upon analyst consensus net present values for each company s Nevada-related assets and an equal split of Barrick s estimated Nevada synergies. Newmont and Barrick will have an equal number of representatives on the management and technical committees in the proposed Nevada joint venture. Decisions by the management committee shall be determined by majority vote, with the voting power of the parties representatives based on their respective economic interests, subject to a list of customary material matters requiring joint approval. The proposed Nevada joint venture s operational management will be jointly appointed by both parties and will be responsible for day-to-day operations. A copy of the Nevada joint venture proposal is furnished as Exhibit 99.1 and is incorporated into this Item 8.01 by reference.

Notwithstanding anything in the arrangement agreement to the contrary (including, without limitation, Sections 5.2(c) and 5.9(a)), among other things, Goldcorp has expressly consented to the Nevada joint venture proposal and Newmont will keep Goldcorp informed of material developments with respect to that proposal and, in certain cases, will seek Goldcorp s consent prior to making certain communications regarding the Nevada joint venture proposal.

On March 4, 2019, Newmont issued a press release that includes, among other matters, information related to the response letter to the Barrick proposal and the Nevada joint venture proposal. A copy of the press release, including the response letter, is furnished as Exhibit 99.2 and is incorporated into this Item 8.01 by reference.

Additionally, on March 4, 2019, Newmont posted on the Investor Relations section of Newmont s website, www.newmont.com, an investor presentation that includes, among other matters, information related to the response letter to the Barrick proposal and the Nevada joint venture proposal. Newmont held a related live webcast presentation on Monday, March 4, 2019 at 9:00 a.m. Eastern Time. A copy of the investor presentation posted by Newmont and a transcript of the webcast are furnished as Exhibits 99.3 and 99.4 hereto and are incorporated into this Item 8.01 by reference.

The information, including Exhibits 99.1, 99.2, 99.3 and 99.4 attached hereto, in this Current Report on Form 8-K is being furnished and shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section. The information in this Current Report on Form 8-K shall not be incorporated by reference into any registration statement or other document pursuant to the Securities Act, except as otherwise stated in such filings. Similarly, the information on Newmont s website shall not be

deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section.

Cautionary Statement Regarding Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by the safe harbor created by such sections and other applicable laws and forward-looking information within the meaning of applicable Canadian securities laws. Where a forward-looking statement expresses or implies an expectation or belief as to future events or results, such expectation or belief is expressed in good faith and believed to have a reasonable basis. However, such statements are subject to risks,

uncertainties and other factors, which could cause actual results to differ materially from future results expressed, projected or implied by the forward-looking statements. Forward-looking statements often address our expected future business and financial performance and financial condition, and often contain words such as anticipate, intend, plan, will, would, estimate, expect, believe, target, indicative, potential. Forward-looking statements in this Current Report on Form 8-K may include, without limitation: (i) statements relating to Newmont s planned acquisition of Goldcorp (the proposed transaction) and the expected terms, timing and closing of the proposed transaction, including receipt of required approvals and satisfaction of other customary closing conditions; (ii) estimates of future production and sales, including expected annual production range; (iii) estimates of future costs applicable to sales and all-in sustaining costs; (iv) expectations regarding accretion; (v) estimates of future capital expenditures; (vi) estimates of future cost reductions, efficiencies and synergies; (vii) expectations regarding future exploration and the development, growth and potential of Newmont s and Goldcorp s operations, project pipeline and investments, including, without limitation, project returns, expected average IRR, schedule, decision dates, mine life, commercial start, first production, capital average production, average costs and upside potential; (viii) expectations regarding future investments or divestitures; (ix) expectations of future dividends and returns to stockholders; (x) expectations of future free cash flow generation, liquidity, balance sheet strength and credit ratings; (xi) expectations of future equity and enterprise value; (xii) expectations of future plans and benefits; (xiii) expectations regarding future mineralization, including, without limitation, expectations regarding reserves and resources, grade and recoveries; (xiv) estimates of future closure costs and liabilities; (xv) statements relating to the proposed acquisition of Newmont by Barrick, including potential dilution, synergies and value creation, and (xvi) the possible joint venture in Nevada, including the potential terms and benefits thereof. Estimates or expectations of future events or results are based upon certain assumptions, which may prove to be incorrect. Such assumptions, include, but are not limited to: (i) there being no significant change to current geotechnical, metallurgical, hydrological and other physical conditions; (ii) permitting, development, operations and expansion of Newmont s and Goldcorp s operations and projects being consistent with current expectations and mine plans, including, without limitation, receipt of export approvals; (iii) political developments in any jurisdiction in which Newmont and Goldcorp operate being consistent with its current expectations; (iv) certain exchange rate assumptions for the Australian dollar or the Canadian dollar to the U.S. dollar, as well as other exchange rates being approximately consistent with current levels; (v) certain price assumptions for gold, copper, silver, zinc, lead and oil; (vi) prices for key supplies being approximately consistent with current levels; (vii) the accuracy of current mineral reserve, mineral resource and mineralized material estimates; and (viii) other planning assumptions. Risks relating to forward-looking statements in regard to the Newmont s and Goldcorp s business and future performance may include, but are not limited to, gold and other metals price volatility, currency fluctuations, operational risks, increased production costs and variances in ore grade or recovery rates from those assumed in mining plans, political risk, community relations, conflict resolution governmental regulation and judicial outcomes and other risks. In addition, material risks that could cause actual results to differ from forward-looking statements include: the inherent uncertainty associated with financial or other projections; the prompt and effective integration of Newmont s and Goldcorp s businesses and the ability to achieve the anticipated synergies and value-creation contemplated by the proposed transaction; the risk associated with Newmont s and Goldcorp s ability to obtain the approval of the proposed transaction by their stockholders required to consummate the proposed transaction and the timing of the closing of the proposed transaction, including the risk that the conditions to the transaction are not satisfied on a timely basis or at all and the failure of the transaction to close for any other reason; the risk that a consent or authorization that may be required for the proposed transaction is not obtained or is obtained subject to conditions that are not anticipated; the outcome of any legal proceedings that may be instituted against the parties and others related to the arrangement agreement; unanticipated difficulties or expenditures relating to the transaction, the response of business partners and retention as a result of the announcement and pendency of the transaction; potential volatility in the price of Newmont Common Stock due to the proposed transaction; the anticipated size of the markets and continued demand for Newmont s and Goldcorp s resources and the impact of competitive responses to the announcement of the transaction; and the diversion of management time on transaction-related issues. For a more detailed discussion of such risks and other factors, see Newmont s 2018 Annual Report on Form 10-K, filed with the Securities and Exchange Commission (SEC) as well as the Company s other SEC filings, available on the SEC website or www.newmont.com, Goldcorp s most recent annual information form as well as Goldcorp s other filings made with Canadian securities regulatory authorities and available on SEDAR, on the SEC website or www.goldcorp.com. Newmont is not affirming or

adopting any statements or reports attributed to Goldcorp (including prior mineral reserve and resource declaration) in this Current Report on Form 8-K or made by Goldcorp outside of this Current Report on Form 8-K. Goldcorp is not affirming or adopting any statements or reports attributed to Newmont (including prior mineral reserve and

resource declaration) in this Current Report on Form 8-K or made by Newmont outside of this Current Report on Form 8-K. Newmont and Goldcorp do not undertake any obligation to release publicly revisions to any forward-looking statement, including, without limitation, outlook, to reflect events or circumstances after the date of this Current Report on Form 8-K, or to reflect the occurrence of unanticipated events, except as may be required under applicable securities laws. Investors should not assume that any lack of update to a previously issued forward-looking statement constitutes a reaffirmation of that statement. Continued reliance on forward-looking statements is at investors own risk.

Additional Information about the Proposed Transaction and Where to Find It

This Current Report on Form 8-K is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote or approval in any jurisdiction, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. This Current Report on Form 8-K is being made in respect of the proposed transaction involving the Company and Goldcorp pursuant to the terms of an arrangement agreement by and among the Company and Goldcorp and may be deemed to be soliciting material relating to the proposed transaction. In connection with the proposed transaction, the Company will file a proxy statement relating to a special meeting of its stockholders with the SEC. Additionally, the Company will file other relevant materials in connection with the proposed transaction with the SEC. Security holders of the Company are urged to read the proxy statement regarding the proposed transaction and any other relevant materials carefully in their entirety when they become available before making any voting or investment decision with respect to the proposed transaction because they will contain important information about the proposed transaction and the parties to the transaction. The definitive proxy statement will be mailed to the Company s stockholders. Stockholders of the Company will be able to obtain a copy of the proxy statement, the filings with the SEC that will be incorporated by reference into the proxy statement as well as other filings containing information about the proposed transaction and the parties to the transaction made by the Company with the SEC free of charge at the SEC s website at www.sec.gov, on the Company s website at www.newmont.com/investor-relations/default.aspx or by contacting the Company s Investor Relations department at jessica.largent@newmont.com or by calling 303-837-5484. Copies of the documents filed with the SEC by Goldcorp will be available free of charge at the SEC s website at www.sec.gov.

Participants in the Proposed Transaction Solicitation

The Company and its directors, its executive officers, members of its management, its employees and other persons, under SEC rules, may be deemed to be participants in the solicitation of proxies of the Company s stockholders in connection with the proposed transaction. Investors and security holders may obtain more detailed information regarding the names, affiliations and interests of certain of the Company s executive officers and directors in the solicitation by reading the Company s 2018 Annual Report on Form 10-K filed with the SEC on February 21, 2019, its proxy statement relating to its 2018 Annual Meeting of Stockholders filed with the SEC on March 9, 2018 and other relevant materials filed with the SEC when they become available. Additional information regarding the interests of such potential participants in the solicitation of proxies in connection with the proposed transaction will be set forth in the proxy statement filed with the SEC relating to the transaction when it becomes available. Additional information concerning Goldcorp s executive officers and directors is set forth in its 2017 Annual Report on Form 40-F filed with the SEC on March 23, 2018, its management information circular relating to its 2018 Annual Meeting of Stockholders filed with the SEC on March 16, 2018 and other relevant materials filed with the SEC when they become available.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Description

Exhibit No.	
99.1	Nevada joint venture proposal, dated as of March 4, 2019.
99.2	Press release and response letter, dated March 4, 2019.
99.3	Investor presentation, dated March 4, 2019.
99.4	Transcript of investor presentation, held on March 4, 2019.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Newmont Mining Corporation

Date: March 4, 2019

By: /s/ Logan Hennessey
Logan Hennessey
Vice President, Associate General Counsel and Corporate Secretary