

New Gold Inc. /FI  
Form 40-F  
March 31, 2008

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 40-F

(Check One)

Registration statement pursuant to Section 12 of the Securities Exchange Act of 1934  
or

Annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934  
For the fiscal year ended 12/31/07

Commission File Number 1-31722

## NEW GOLD INC.

(Exact Name of Registrant as Specified in its Charter)

(formerly DRC Resources Corporation)

British Columbia, Canada

(Province or Other Jurisdiction of Incorporation or Organization)

Edgar Filing: New Gold Inc. /FI - Form 40-F

Suite 601, 595 Howe Street

Vancouver, British Columbia, Canada V6C 2T5

(604) 687-1629

(Address and Telephone Number of Registrant's Principal Executive Offices)

Susan K. Shapiro, Esq.

Burns & Levinson LLP

125 Summer Street, Boston, MA 02110

(617) 345-3000

(Name, Address and Telephone Number of Agent for Service in the United States)

**Securities registered or to be registered pursuant to Section 12(b) of the Act:**

<b>Title of Each Class</b>	<b>Name of Each Exchange on Which Registered</b>
<b>Common Shares without Par Value</b>	<b>American Stock Exchange</b>

Securities registered or to be registered pursuant to Section 12(g) of the Act:

None

(Title of Class)

**Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:**

N/A

(Title of Class)

For annual reports, indicate by check mark the information filed with this Form:

Annual information form  Audited annual financial statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

36,949,717 Common Shares without Par Value

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Indicate by check mark whether the Registrant by filing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934 (the Exchange Act ). If Yes is marked, indicate the filing number assigned to the Registrant in connection with such Rule.

YES  NO

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES  NO

**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Certain of the statements made and information contained in this Annual Report on Form 40-F (the "Annual Report") of New Gold Inc. (the "Company"), including statements made or incorporated by reference in the Annual Information Form for the year ended December 31, 2007 (the "Annual Information Form"), Audited Financial Statements for the year ended December 31, 2007 and in the Management's Discussion and Analysis for the year ended December 31, 2007 (the "Management's Discussion and Analysis"), included herewith as Exhibits 1, 2 and 3, respectively, may contain forward-looking information within the meaning of the Ontario *Securities Act* and Alberta *Securities Act* or forward-looking statements within the meaning of Section 21E of the U.S. Securities Exchange Act of 1934. Such forward-looking statements include but are not limited to statements concerning the Company's plans at its New Afton Project (as defined in the Annual Information Form included herein) and other mineral properties, which involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Company, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking information and forward-looking statements. Generally forward-looking information and forward-looking statements can often, but not always, be identified by the use of forward-looking terminology such as "plans", "expects" or "does not expect", "is expected", "budget", "envisaged", "scheduled", "estimates", "forecasts", "proposes", "intends", "anticipates" or "believes", or variations of such words and phrases, or statements that certain actions, events or results "may", "could", "would", "might" or "will" be taken, occur or be achieved.

Forward-looking information and forward-looking statements are subject to a variety of risks and uncertainties which could cause actual events or results to differ from those reflected in the forward-looking statements, including, without limitation, risks and uncertainties relating to the interpretation of drill results and the estimation of mineral resources and mineral reserves, the geology, grade and continuity of mineral deposits, the possibility that future exploration, development or mining results will not be consistent with the Company's expectations, metal recoveries, the saleability of the New Afton Project's copper/gold concentrate, accidents, equipment breakdowns, title matters, labor disputes or other unanticipated difficulties with or interruptions in production, the potential for delays in exploration or development activities, the inherent uncertainty of production and cost estimates and the potential for unexpected costs and expenses, commodity price fluctuations, currency fluctuations, failure to obtain adequate financing on a timely basis, failure to obtain all necessary permits to satisfy the Note holders (as defined in the Annual Information Form) and the mining regulations, and other risks and uncertainties, including those described under "Narrative Description of the Business" "Risk Factors" in the Annual Information Form and in the Management's Discussion and Analysis, included herein as Exhibits 1 and 3, respectively.

Forward-looking information and forward-looking statements for time periods subsequent to 2007 involve longer term assumptions and estimates than forward-looking information and forward-looking statements for 2007 and are consequently subject to greater uncertainty. Should one or more of these risks and uncertainties materialize, or should underlying assumptions prove

incorrect, actual results may vary materially from those described in forward-looking information or forward-looking statements. Accordingly, readers are advised not to place undue reliance on forward-looking information and forward-looking statements. Forward-looking information and forward-looking statements include information and statements regarding the expectations and beliefs of management, the assumed long-term price of gold and exchange rates, the estimation of mineral reserves and resources, the realization of mineral reserve estimates in future expected production, anticipated future capital and operating costs, and the potential of the Company's properties and expectations of growth. Forward-looking information and forward-looking statements made in the Annual Information Form and other documents incorporated by reference therein are made as at the date of the original document, and have not been updated by the Company except as stated in the Annual Information Form. Except as required under applicable securities legislation, the Company undertakes no obligation to publicly update or revise forward-looking information and forward-looking statements, whether as a result of new information, future events or otherwise.

As the Feasibility Study (as defined in the Annual Information Form) relies on probable mineral reserves and not proven mineral reserves, there is a higher risk associated with its conclusions than one incorporating proven mineral reserves.

### **RESERVE AND RESOURCE ESTIMATES**

All estimates of mineral reserves and resources incorporated by reference in this Annual Report have been prepared in accordance with Canadian National Instrument 43-101 ( NI 43-101 ) and the Canadian Institute of Mining and Metallurgy Classification System. These standards differ significantly from the requirements of the United States Securities and Exchange Commission ( SEC ). Accordingly, information concerning descriptions of mineralization, reserves and resources contained in this Annual Report may not be comparable to information from U.S. companies subject to the SEC's reporting and disclosure requirements. In particular, the term resource does not equate to the term reserves . Resources are sometimes referred to as mineralization or mineral deposits. The definitions of proven and probable reserves used in NI 43-101 differ from the definitions in SEC Industry Guide 7. Under U.S. standards, mineralization may not be classified as a reserve unless the determination has been made that the mineralization could be economically and legally produced or extracted at the time the reserve determination is made. The SEC's disclosure standards normally do not permit the inclusion of information concerning measured , indicated , or inferred mineral resources in documents filed with the SEC, unless such information is required to be disclosed by the laws of the Company's principal jurisdiction or of a jurisdiction in which its securities are traded. U.S. investors should also understand that inferred mineral resources have a great amount of uncertainty as to their existence and great uncertainty as to their economic and legal feasibility. It cannot be assumed that all or any part of an inferred mineral resource will ever be upgraded to a higher category. Under Canadian rules, estimated inferred mineral resources may not form the basis of feasibility or pre-feasibility studies except in rare cases. Readers are cautioned not to assume that all or any part of an inferred mineral resource exists or is economically or legally mineable. Disclosure of contained ounces is permitted disclosure under Canadian regulations; however, the SEC normally only permits issuers to report resources as in-place tonnage and grade.

## **CURRENCY**

Unless otherwise indicated, all dollar amounts in the Annual Report on Form 40-F are Canadian dollars. On December 31, 2007, the noon buying rate in the City of New York for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York was Canadian \$1.00 = U.S. \$1.0120, and on December 29, 2006, the rate was Canadian \$1.00 = U.S. \$0.8582.

## **ANNUAL INFORMATION FORM**

The Annual Information Form of the Company for the year ended December 31, 2007 is included herein as Exhibit 1.

## **AUDITED ANNUAL FINANCIAL STATEMENTS AND**

## **MANAGEMENT DISCUSSION AND ANALYSIS**

### *Audited Annual Financial Statements*

The Company's audited financial statements for the years ended December 31, 2007 and 2006, including the auditors' report thereon dated March 31, 2008, are included herein as Exhibit 2. Please refer to Note 19 to the audited financial statements for a reconciliation of the differences between Canadian and United States Generally Accepted Accounting Principles.

### *Management's Discussion and Analysis*

The Company's Management's Discussion and Analysis for the year ended December 31, 2007 is included herein as Exhibit 3.

## **CONTROLS AND PROCEDURES**

### **A. Evaluation of Disclosure Controls and Procedures**

The Company's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of December 31, 2007. Based on the evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures in place are effective to ensure that information required to be disclosed by the Company in reports that the Company files or submits

under the Exchange Act, is recorded, processed, summarized and reported on a timely basis in accordance with applicable time periods specified by the SEC rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and financial officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

**B. Management's Annual Report on Internal Control over Financial Reporting**

The Company's management, including the Chief Executive Officer and the Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) and Rule 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, the Company's principal executive and principal financial officers and effected by the Company's Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that:

pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;

provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and

provide reasonable assurance regarding prevention or timely detections of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2007. In making this assessment, it used the criteria set forth in the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on our assessment, management has concluded that, as of December 31, 2007, the Company's internal control over financial reporting is effective based on those criteria.

The effectiveness of the Company's internal control over financial reporting as at December 31, 2007 has been audited by PricewaterhouseCoopers LLP as stated in their report which appears herein as Exhibit 2.

### **C. Changes in Internal Control over Financial Reporting**

During the fiscal year ended December 31, 2007, the Company effected material changes in internal control over financial reporting. These changes were in part necessitated by the expanding operational activity, especially in the latter two quarters of the year, at the Company's development Project, the New Afton Project. The Company contracted a third party firm to assist the Company in enhancing its internal controls and to test the enhanced controls as part of management's assessment of internal control over financial reporting as required by Rules 13a-15(c) and 15d-15(c) promulgated under the Exchange Act. The Company has a) in general, enhanced its internal control processes across the material financial cycles; b) more specifically, improved its financial controls over period end closing, and procurement processes; and c) implemented compensating procedures around the segregation of duties in the information technology area due to limited staffing.

### **NOTICES PURSUANT TO REGULATION BTR**

None.

### **AUDIT COMMITTEE**

#### *Identification of Audit Committee; Independence*

The Company has an Audit Committee established by the Board of Directors for the purpose of overseeing the accounting and financial reporting processes of the Company and audits of the financial statements of the Company, in accordance with Section 3(a)(58)(A) of the Exchange Act. The members of the Audit Committee are R. Gregory Laing, Michael Muzykowski and Paul Sweeney (Chairman). Each of Mr. Sweeney, Mr. Laing and Mr. Muzykowski is independent as that term is defined under the rules of the American Stock Exchange.

#### *Audit Committee Financial Expert*

The Board has designated Paul Sweeney as the Audit Committee Financial Expert as that term is defined under Section 407 of the Sarbanes-Oxley Act of 2002.

### **CODE OF ETHICS**

The Company has adopted a Code of Business Conduct and Ethics that applies to all directors, officers and employees, including its Chief Executive Officer, Chief Financial Officer and principal accounting officer. The Company's Code of Business Conduct and Ethics is posted on its website, at [www.newgoldinc.com](http://www.newgoldinc.com).



**PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Effective September 25, 2006, the Company appointed PricewaterhouseCoopers LLP ( PwC ) as its auditors, replacing former auditors DeVisser Gray, Chartered Accountants ( DeVisser Gray ). The aggregate amounts billed by PwC to the Company for the fiscal year ended December 31, 2007, and the aggregate amounts billed by PwC and by DeVisser Gray to the Company for the fiscal year ended December 31, 2006, for audit fees, audit-related fees, tax fees and all other fees are set forth below:

	<b>Year Ended December 31, 2007</b>	<b>Year Ended December 31, 2006</b>
Audit Fees (1)	\$ 186,633	\$ 31,000
Audit-Related Fees (2)	40,701	135,831
Tax Fees (3)	15,652	6,375
Other Fees (4)	139,434	8,500
<b>Totals</b>	<b>\$ 382,420</b>	<b>\$ 181,706</b>

(1) The audit fees billed which, for 2007 include billings related to the integrated Sarbanes-Oxley audit of internal controls. The amount shown for 2006 includes payments to the former auditor for the audit of the 2005 financial year and interim billings paid to the current auditor relating to the audit of the 2006 financial year. The amount paid to the current auditor is \$30,000 and the amount paid to the former auditor \$1,000.

(2) The aggregate fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements which are not included under the heading Audit Fees . The amount shown for 2006 includes \$98,912 paid to the current auditor and \$36,919 to the former auditor related to the restatement of the 2005 audited financial statements and the unaudited interim financial statements for the six months ended June 30, 2006.

(3) The aggregate fees billed for professional services rendered for tax compliance, tax advice and tax planning. All of the amounts shown in this category for 2006 were paid to the current auditor.

(4) The aggregate fees billed for product and services other than as set out under the headings Audit Fees , Audit-Related Fees and Tax Fees . The 2007 fee is for fees related to an equity and debt offering.

(4) The aggregate fees billed for product and services other than as set out under the headings Audit Fees , Audit Related Fees and Tax Fees . All of the amounts shown in this category for 2006 were paid to the former auditor.

For information regarding the Audit Committee s pre-approval procedures and policies, see Audit Committee Pre-Approval Policies and Procedures in the Registrant s Annual Information Form included herein as Exhibit 1.

#### **OFF-BALANCE SHEET ARRANGEMENTS**

The Company has no off-balance sheet arrangements required to be disclosed in this Annual Report on Form 40-F.

#### **TABULAR DISCLOSURE OF CONTRACTUAL OBLIGATIONS**

The required disclosure is included under the heading Contractual Obligations in Management s Discussion and Analysis for the year ended December 31, 2007, included herein as Exhibit 3.

#### **AMEX CORPORATE GOVERNANCE**

The Company s common shares are listed on the American Stock Exchange ( AMEX ). Section 110 of the AMEX company guide permits AMEX to consider the laws, customs and practices of foreign issuers in relaxing certain AMEX listing criteria, and to grant exemptions from AMEX listing criteria based on these considerations. A company seeking relief under these provisions is required to provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law. A description of the significant ways in which the Company s governance practices differ from those followed by domestic companies pursuant to AMEX standards is contained on the Company s website at [www.newgoldinc.com](http://www.newgoldinc.com).

#### **UNDERTAKING AND CONSENT TO SERVICE OF PROCESS**

##### **A. Undertaking**

The Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the securities registered pursuant to Form 40-F; the securities in relation to which the obligation to file an annual report on Form 40-F arises; or transactions in said securities.

**B. Consent to Service of Process**

The Registrant has previously filed with the Commission a written irrevocable consent and power of attorney on Form F-X in connection with the filing of its Annual Report on Form 40-F for the year ended December 31, 2005.

**EXHIBITS**

The following exhibits are filed as part of this report:

1. Annual Information Form for the year ended December 31, 2007
2. Audited Financial Statements for the years ended December 31, 2007 and 2006, together with the auditors' report thereon dated March 27, 2008 (Note 19 to the audited financial statements relates to differences between Canadian and United States Generally Accepted Accounting Principles)
3. Management's Discussion and Analysis for the year ended December 31, 2007
4. Consent of PricewaterhouseCoopers LLP
- 5.1 Consent of AMC Consultants Pty. Ltd.
- 5.2 Consent of Scott Wilson Roscoe Postle Associates Inc.
- 5.3 Consent of Engineer (David W. Rennie)
- 5.4 Consent of Engineer (Mike Thomas)
- 6.1 Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended
- 6.2 Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended
- 7.1 Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 7.2 Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

**SIGNATURES**

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40-F and has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorized.

NEW GOLD INC.  
Registrant

By: /s/ Clifford Davis  
Name: Clifford Davis  
Title: President and Chief Executive Officer

Date: March 31, 2008