

PHELPS DODGE CORP

Form 10-K/A

April 15, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

AMENDMENT NO. 1

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2002

Commission file number 1-82

PHELPS DODGE CORPORATION

(a New York corporation)

13-1808503

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

One North Central Avenue, Phoenix, AZ 85004-2306

Registrant's telephone number: (602) 366-8100

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

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Common Shares, \$6.25 par value per share	New York Stock Exchange
Mandatory Convertible Preferred Shares, \$1.00 par value per share	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 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 .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 126-2 of the Act). Yes No .

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The aggregate market value of Common Shares of the issuer held by nonaffiliates at April 9, 2003, was approximately \$2,892,046,398.

Number of Common Shares outstanding at April 9, 2003: 88,986,043 shares.

Documents Incorporated by Reference:

Document	Location in 10-K
Proxy Statement for 2003 Annual Meeting	Part III

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Explanatory Note

This Form 10-K/A constitutes Amendment No. 1 to the Registrant's 10-K for the fiscal year ended December 31, 2002. This Form 10-K/A is being filed solely to file herewith the form of Change of Control Agreement of the Registrant.

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Part III

Item 15. Exhibits, Financial Statement Schedule and Reports on Form 8-K

- (a) 1. Financial Statements: Index on page 110.
2. Financial Statement Schedule: Index on page 110.
3. Exhibits:
- 3.1 Restated Certificate of Incorporation of the Corporation (incorporated by reference to Exhibit 3.1 to the Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999) as amended by the Certificate of Amendment to the Restated Certificate of Incorporation of Phelps Dodge Corporation (incorporated by reference to Exhibit 2.3 to the Corporation's Registration Statement on Form 8-A, filed with the SEC on June 10, 2002 (SEC File No. 1-82)).
- 3.2 Amended and Restated By-Laws of the Corporation, effective as of September 5, 2001 (incorporated by reference to Exhibit 3.2 to the Corporation's Form 10-Q for the quarter ended September 30, 2001 (SEC File No. 1-82)).
- 4.1 Credit Agreement, effective May 10, 2000, among the Corporation, the Lenders parties thereto, Salomon Smith Barney Inc., Bank of Tokyo-Mitsubishi Trust Company, and Citibank, N.A., as agent (incorporated by reference to Exhibit 4.2 of the Corporation's Form 10-Q for the quarter ended March 31, 2000 (SEC File No. 1-82)).
- 4.2 Rights Agreement, dated as of February 5, 1998 between the Corporation and The Chase Manhattan Bank (which replaces the Rights Agreement dated as of July 29, 1988 as amended and restated as of December 6, 1989, the rights issued thereunder having been redeemed by the Corporation), which includes the form of Certificate of Amendment setting forth the terms of the Junior Participating Cumulative Preferred Shares, par value \$1.00 per share, as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C (incorporated by reference to Exhibit 1 to the Corporation's Current Report on Form 8-K and in the Corporation's Form 8-A, both filed on February 6, 1998 (SEC File No. 1-82)).
- Note: Certain instruments with respect to long-term debt of the Corporation have not been filed as Exhibits to this Report since the total amount of securities authorized under any such instrument does not exceed 10 percent of the total assets of the Corporation and its subsidiaries on a consolidated basis. The Corporation agrees to furnish a copy of each such instrument upon request of the Securities and Exchange Commission.
- 4.3 Form of Indenture, dated as of September 22, 1997, between the Corporation and The Chase Manhattan Bank, as Trustee (incorporated by reference
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to the Corporation's Registration Statement and Post-Effective Amendment No. 1 on Form S-3 (Registration Nos. 333-36415 and 33-44380) filed with the Securities and Exchange Commission on September 25, 1997 (incorporated by reference to Exhibit 4.3 to the Corporation's Form 10-Q for the quarter ended September 30, 1997 (SEC File No. 1-82)).

- 4.4 Form of 6.375 percent Note, due November 1, 2004, of the Corporation issued on November 5, 1997, pursuant to the Indenture, dated as of September 22, 1997, between the Corporation and The Chase Manhattan Bank, as Trustee (incorporated by reference to the Corporation's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 3, 1997 and Exhibit 4.4 of Form 10-Q for the quarter ended September 30, 1997 (SEC File No. 1-82)).
 - 4.5 Form of 7.125 percent Debenture, due November 1, 2027, of the Corporation issued on November 5, 1997, pursuant to the Indenture, dated as of September 22, 1997, between the Corporation and The Chase Manhattan Bank, as Trustee (incorporated by reference to the Corporation's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 3, 1997 and Exhibit 4.5 of the Corporation's Form 10-Q for the quarter ended September 30, 1997 (SEC File No. 1-82)).
 - 4.6 Tripartite/Conversion Agreement, dated as of August 8, 2000, among Chase Manhattan Bank and First Union National Bank, and acknowledged by the Corporation, pursuant to which First Union National Bank succeeded Chase Manhattan Bank as trustee under the Indenture dated as of September 22, 1997 (incorporated by reference to the Corporation's Registration Statement on Form S-3 (Reg. No. 333-43890) filed with the Securities and Exchange Commission on August 16, 2000).
 - 4.7 Form of 8.75 percent Note due June 1, 2011, of the Corporation issued on May 30, 2001, pursuant to the Indenture dated September 22, 1997, between the Company and First Union National Bank, as successor Trustee (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on May 30, 2001 (SEC File No. 1-82)).
 - 4.8 Form of 9.5 percent Note due June 1, 2031, of the Corporation issued on May 30, 2001, pursuant to the Indenture dated September 22, 1997, between the Company and First Union National Bank, as successor Trustee (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission May 30, 2001 (SEC File No. 1-82)).
 - 4.9 Form of Common Share Certificate of the Corporation (incorporated by reference to Exhibit 4.9 of the Corporation's Form 10-Q for the quarter ended June 30, 2002 (SEC File No. 1-82)).
 - 4.10 Form of 6.75 percent Series A Mandatory Convertible Preferred Share Certificate of the Corporation (incorporated by reference to Exhibit 4.10 of the Corporation's Form 10-Q for the quarter ended June 30, 2002 (SEC File No. 1-82)).
 10. Management contracts and compensatory plans and agreements.
 - 10.1 The Corporation's 1989 Directors Stock Option Plan (the 1989 Directors Plan), as amended to and including June 3, 1992, suspended effective November 6, 1996 (incorporated by reference to Exhibit 10.3 to the Corporation's Form 10-Q for the quarter ended June 30, 1992 (SEC File No. 1-82)). Form of Stock Option Agreement under the 1989 Directors Plan (incorporated by reference to the Corporation's Registration Statement on Form S-8 (Reg. No. 33-34362)).
 - 10.2 The Corporation's 1993 Stock Option and Restricted Stock Plan (the 1993 Plan), as amended through December 1, 1993, and form of Restricted Stock letter under the 1993 Plan (incorporated by reference to Exhibit 10.4 to the Corporation's 1993 Form 10-K (SEC File No. 1-82)). Amendment to 1993 Plan effective May 7, 1997 (incorporated by reference to Exhibit 10.15 to the Corporation's Form 10-Q for the quarter ended June 30, 1997 (SEC File No. 1-82)). Amended and restated form of Stock
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Option Agreement, amended through February 5, 1997 (incorporated by reference to Exhibit 10.3 of the Corporation's 1997 Form 10-K (SEC File No. 1-82)). Form of Reload Option Agreement, amended through November 2, 1994, under the 1993 Plan (incorporated by reference to Exhibit 10.3 to the Corporation's 1994 Form 10-K (SEC File No. 1-82)).

Note: Omitted from filing pursuant to the Instruction to Item 601(b) (10) are actual Stock Option Agreements between the Corporation and certain officers, under the 1993 Plan, and certain Directors, under the 1989 Directors Plan, which contain substantial similar provisions to Exhibits 10.1 and 10.2 above.

- 10.3 Description of the Corporation's Incentive Compensation Plan (incorporated by reference to Exhibit 10.5 to the Corporation's 1993 Form 10-K (SEC File No. 1-82)).
 - 10.4 Amended and restated Deferred Compensation Plan for the Directors of the Corporation, dated as of December 3, 1998, effective January 1, 1999 (incorporated by reference to Exhibit 10.5 to the Corporation's 1998 Form 10-K (SEC File No. 1-82)).
 - 10.5 Form of Change-of-Control Agreement between the Corporation and certain executives, including all of the current executive officers to be listed in the summary compensation table to the 2003 Proxy Statement.
 - 10.6 Amended and restated form of Severance Agreement between the Corporation and certain executives, including all of the current executive officers to be listed in the summary compensation table to the 2003 Proxy Statement (incorporated by reference to Exhibit 10.7 of the Corporation's 1997 Form 10-K (SEC File No. 1-82)).
 - 10.7 The Corporation's Retirement Plan for Directors, effective January 1, 1988, terminated for active directors effective December 31, 1997 (incorporated by reference to Exhibit 10.13 to the Corporation's 1987 Form 10-K (SEC File No. 1-82)).
 - 10.8 The Corporation's Supplemental Retirement Plan (which amends, restates and re-names the provisions of the Corporation's Comprehensive Executive Nonqualified Retirement and Savings Plan other than the supplemental savings provisions of such plan), effective (except as otherwise noted therein) as of January 1, 1997 (incorporated by reference to Exhibit 10.9 to the Corporation's 1997 Form 10-K (SEC File No. 1-82)). First Amendment to Plan, effective January 1, 1998 (incorporated by reference to Exhibit 10.9 to the Corporation's 1998 Form 10-K (SEC File No. 1-82)). Second Amendment to Plan, effective January 1, 1999 (incorporated by reference to Exhibit 10.9 to the Corporation's Form 10-Q for the quarter ended June 30, 1999 (SEC File No. 1-82)). Third Amendment to Plan, effective as of January 1, 2000 (incorporated by reference to Exhibit 10.9 of the Corporation's Form 10-Q for the quarter ended June 30, 2000 (SEC File No. 1-82)).
 - 10.9 The Corporation's Supplemental Savings Plan (SSP) (which amends, restates, and replaces the supplemental savings provisions of the Corporation's Comprehensive Executive Nonqualified Retirement and Savings Plan), effective (except as otherwise noted therein) as of January 1, 1997 (incorporated by reference to Exhibit 10.10 of the Corporation's 1997 Form 10-K (SEC File No. 1-82)); as amended by the First Amendment to such SSP, effective as of January 1, 1999 (incorporated by reference to Exhibit 10.10 of the Corporation's Form 10-Q for the quarter ended September 30, 1999 (SEC File No. 1-82)). Second Amendment to SSP, effective as of January 1, 2000 (incorporated by reference to Exhibit 10.10 to the Corporation's Form 10-Q for the quarter ended June 30, 2000 (SEC File No. 1-82)).
 - 10.10 The Corporation's Directors Stock Unit Plan effective January 1, 1997 (incorporated by reference to Exhibit 10.10 to the Corporation's 1996 Form 10-K (SEC File No. 1-82)) as amended and restated, effective January 1, 1998 (incorporated by reference to Exhibit 10.11 of the Corporation's 1997 Form 10-K (SEC File No. 1-82)). First Amendment to Plan, effective as of January 1, 2001 (incorporated by reference to Exhibit 10.11 of the Corporation's Form 10-Q for the quarter
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ended June 30, 2000 (SEC File No. 1-82)).

- 10.11 The Corporation's 1998 Stock Option and Restricted Stock Plan (the 1998 Plan) and forms of Reload Option Agreement and Restricted Stock Agreement under the 1998 Plan, effective March 4, 1998 (incorporated by reference to Exhibit 10.12 to the Corporation's Form 10-Q for the quarter ended June 30, 1998 (SEC File No. 1-82)), and amended form of Stock Option Agreement, effective June 22, 1999 (incorporated by reference to the Corporation's Form 10-Q for the quarter ended June 30, 1999 (SEC File No. 1-82)) and amended Form of Restricted Stock Letter Agreement, effective as of July 8, 2002 (incorporated by reference to the Corporation's Form 10-Q for the quarter ended September 30, 2002 (SEC File No. 1-82)). First Amendment to the 1998 Plan, effective as of May 4, 2000 (incorporated by reference to Exhibit 10.12 of the Corporation's Form 10-Q for the quarter ended June 30, 2000 (SEC File No. 1-82)).

Note: Omitted from filing pursuant to the Instruction to Item 601(b) (10) are actual Stock Option Agreements between the Corporation and certain officers under the 1998 Plan, which contain substantially similar provisions to Exhibit 10.11 above.

- 10.12 Retirement Agreement, dated March 6, 2002, between the Corporation and Manuel J. Iraola (incorporated by reference to Exhibit 10.14 of the Corporation's Form 10-Q for the quarter ended March 31, 2002 (SEC File No. 1-82)).
- 10.13 Waiver and Release, effective July 8, 2002, between the Corporation and Manuel J. Iraola (incorporated by reference to Exhibit 10.15 of the Corporation's Form 10-Q for the quarter ended September 30, 2002 (SEC File No. 1-82)).
- 11 Computation of per share earnings (previously filed).
- 12 Computation of ratios of total debt to total capitalization (previously filed).
- 21 List of Subsidiaries and Investments (previously filed).
- 23 Consent of PricewaterhouseCoopers LLP (previously filed).
- 24 Powers of Attorney executed by certain officers and directors who signed this Annual Report on Form 10-K (previously filed).

Note: Shareholders may obtain copies of Exhibits by making written request to the Secretary of the Corporation and paying copying costs of 10 cents per page, plus postage.

(b) Reports on Form 8-K:

A report on Form 8-K was filed on November 13, 2002, to disclose the CEO and CFO certifications related to the Company's Form 10-Q filed on November 13, 2002.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PHELPS DODGE CORPORATION
(Registrant)

April 14, 2003

By: /s/ Ramiro G. Peru

Ramiro G. Peru
Senior Vice President
and Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

/s/ J. Steven Whisler
Chairman, President, Chief Executive Officer
and Director
(Principal Executive Officer) April 14, 2003

J. Steven Whisler

/s/ Ramiro G. Peru
Senior Vice President
and Chief Financial Officer
(Principal Financial Officer) April 14, 2003

Ramiro G. Peru

/s/ Stanton K. Rideout
Vice President and Controller
(Principal Accounting Officer) April 14, 2003

Stanton K. Rideout

(Robert N. Burt, Archie W. Dunham, William A. Franke, Marie L. Knowles, Robert D. Krebs,
Jon C. Madonna, Southwood J. Morcott, Gordon R. Parker, William J. Post, Jack E. Thompson, Directors) April 14, 2003

By: /s/ Ramiro G. Peru

Ramiro G. Peru
Attorney-in-fact

Certifications

I, J. Steven Whisler, Chairman, President and Chief Executive Officer, certify that:

1. I have reviewed this Amendment No. 1 to the annual report on Form 10-K of Phelps Dodge Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this

annual report;

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4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the Evaluation Date); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

April 14, 2003

/s/ J. Steven Whisler

J. Steven Whisler
Chairman, President and Chief Executive Officer

I, Ramiro G. Peru, Senior Vice President and Chief Financial Officer, certify that:

1. I have reviewed this Amendment No. 1 to the annual report on Form 10-K of Phelps Dodge Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

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- b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
- a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

April 14, 2003

/s/ Ramiro G. Peru

Ramiro G. Peru
Senior Vice President and Chief Financial Officer

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Exhibit Index

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- Note: Certain instruments with respect to long-term debt of the Corporation have not been filed as Exhibits to this Report since the total amount of securities authorized under any such instrument does not exceed 10 percent of the total assets of the Corporation and its subsidiaries on a consolidated basis. The Corporation agrees to furnish a copy of each such instrument upon request of the Securities and Exchange Commission.
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- 10.5 Form of Change-of-Control Agreement between the Corporation and certain executives, including all of the current executive officers to be listed in the summary compensation table to the 2003 Proxy Statement.
- 10.6 Amended and restated form of Severance Agreement between the Corporation and certain executives, including all of the current executive officers to be listed in the summary compensation table to the 2003 Proxy Statement (incorporated by reference to Exhibit 10.7 of the Corporation's 1997 Form 10-K (SEC File No. 1-82)).
- 10.7 The Corporation's Retirement Plan for Directors, effective January 1, 1988, terminated for active directors effective December 31, 1997 (incorporated by reference to Exhibit 10.13 to the Corporation's 1987 Form 10-K (SEC File No. 1-82)).
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Note: Omitted from filing pursuant to the Instruction to Item 601(b) (10) are actual Stock Option Agreements between the Corporation and certain officers under the 1998 Plan, which contain substantially similar provisions to Exhibit 10.11 above.

- 10.12 Retirement Agreement, dated March 6, 2002, between the Corporation and Manuel J. Iraola (incorporated by reference to Exhibit 10.14 of the Corporation's Form 10-Q for the quarter ended March 31, 2002 (SEC File No. 1-82)).
- 10.13 Waiver and Release, effective July 8, 2002, between the Corporation and Manuel J. Iraola (incorporated by reference to Exhibit 10.15 of the Corporation's Form 10-Q for the quarter ended September 30, 2002 (SEC File No. 1-82)).
- 11 Computation of per share earnings (previously filed).
- 12 Computation of ratios of total debt to total capitalization (previously filed).
- 21 List of Subsidiaries and Investments (previously filed).
- 23 Consent of PricewaterhouseCoopers LLP (previously filed).
- 24 Powers of Attorney executed by certain officers and directors who signed this Annual Report on Form 10-K (previously filed).

Note: Shareholders may obtain copies of Exhibits by making written request to the Secretary of the Corporation and paying copying costs of 10 cents per page, plus postage.