

APEX SILVER MINES LTD
Form S-4
January 25, 2005

As filed with the Securities and Exchange Commission on January 25, 2005.

Registration No. 333-_____

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-4
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

APEX SILVER MINES LIMITED
(Exact name of registrant as specified in its charter)

Cayman Islands, British West Indies (State or other jurisdiction of incorporation or organization)	N/A (I.R.S. Employer Identification No.)
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**Walker House
Mary Street
George Town, Grand Cayman
Cayman Islands, British West Indies
(345) 949-0050**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Mark A. Lettes
Chief Financial Officer
Apex Silver Mines Corporation
1700 Lincoln Street, Suite 3050
Denver, Colorado 80203
Telephone: (303) 839-5060**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:
**Deborah J. Friedman
Katelin R. Oakley
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202
Telephone: (303) 892-9400**

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after this registration statement becomes effective.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Amount of registration fee (2)
Ordinary Shares, \$.01 par value		
Warrants		
Total	\$20,000,000	\$2,354.00

(1) Includes an indeterminate number of ordinary shares and warrants as may be offered from time to time with an aggregate offering price not to exceed \$20,000,000 (other than additional amounts that may be registered under Rule 462(b)(3)) of the Securities Act of 1933. This registration statement also covers ordinary shares that may be issued upon exercise of warrants. In addition, any securities registered hereunder may be sold separately or as units with other securities registered hereunder. The securities registered also include, pursuant to Rule 416 of the Securities Act, such number of ordinary shares as may be issued from time to time as a result of stock splits, stock dividends or similar transactions. The aggregate amount of ordinary shares is further limited to that which is permissible under Rule 415(a)(4) under the Securities Act.

(2) Pursuant to Rule 457(o) under the Securities Act of 1933, as amended, the registration fee has been calculated on the basis of the maximum aggregate offering price and the number of shares and warrants being registered has been omitted.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

The information in this prospectus is not complete and may be changed. We may not sell these securities pursuant to this prospectus until the registration statement filed with the Securities and Exchange Commission becomes effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

PROSPECTUS
Subject to Completion, dated January 25, 2005

APEX SILVER MINES LIMITED

\$20,000,000

ORDINARY SHARES
WARRANTS

This prospectus relates to up to \$20,000,000 of ordinary shares and warrants that Apex Silver Mines Limited (together with its subsidiaries, Apex Silver, we, us, or our company) may offer and sell from time to time in connection with acquisitions of other businesses, assets, properties or securities.

The amount and type of consideration we will offer and the other specific terms of each acquisition will be determined by negotiations with the owners or controlling persons of the businesses, assets, properties or securities to be acquired. We may structure business acquisitions in a variety of ways, including acquiring stock, other equity interests or assets of the acquired business or merging the acquired business with us or one of our subsidiaries. We do not expect to receive any cash proceeds from the sale of securities issued pursuant to this prospectus. We may be required to provide further information by means of a post-effective amendment to the registration statement or a supplement to the prospectus once we know the actual information concerning a specific acquisition.

We will pay all the expenses of this offering. We will not pay underwriting discounts or commissions in connection with issuing these shares, although we may pay finder s fees in specific acquisitions. Any person receiving a finder s fee may be deemed an underwriter within the meaning of the Securities Act of 1933, as amended.

We may also permit individuals or entities who have received or will receive ordinary shares or warrants in connection with the acquisitions described above to use this prospectus to cover resales of those securities. See Selling Securityholders for the identity of such individuals or entities.

Our ordinary shares are traded on the American Stock Exchange under the symbol SIL.

Investing in the securities offered in this prospectus involves risk. See Risk Factors beginning on page 6 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2005.

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You should rely only on information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with information different from that contained or incorporated in this prospectus.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any of these documents at the SEC's public reference room at 450 Fifth Street N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public at the SEC's website at <http://www.sec.gov>.

The SEC allows us to incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered part of this prospectus, and information that we file later with the SEC will automatically update and supersede the information in this prospectus.

The following documents, which were previously filed with the SEC pursuant to the Securities Exchange Act of 1934, or the Exchange Act, are hereby incorporated by reference:

- our Annual Report on Form 10-K for the year ended December 31, 2003;
- our Quarterly Reports on Form 10 Q for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004 except for the financial statements and Management's Discussion and Analysis included therein which have been restated in our amended Quarterly Report on Form 10 Q/A for the quarter ended September 30, 2004 which includes our restated financial statements for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004 and revised Management's Discussion and Analysis for the quarter ended September 30, 2004;
- our Current Reports on Form 8 K filed January 28, 2004, February 13, 2004, March 11, 2004, March 17, 2004, April 2, 2004, October 6, 2004, October 18, 2004, November 15, 2004, December 2, 2004, December 17, 2004 and January 13, 2005 (two reports); and
 - the description of the ordinary shares and other classes or series of shares contained under the caption Description of Ordinary Shares in our registration statement on Form S 1, as amended (File No. 333 34685), and incorporated by reference into the Registration Statement on Form 8-A under the Securities Exchange Act of 1934 filed with the SEC on November 18, 1997.

All reports and other documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this prospectus and prior to the termination of this offering shall be deemed to be incorporated by reference into this prospectus and shall be a part hereof from the date of filing of such reports and documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus shall be deemed modified, superseded or replaced for purposes of this prospectus to the extent that a statement contained in this prospectus, or in any subsequently filed document that also is deemed to be incorporated by reference in this prospectus, modifies, supersedes or replaces such statement. Any statement so modified, superseded or replaced shall not be deemed, except as so modified, superseded or replaced, to constitute a part of this prospectus. Subject to the foregoing, all information appearing in this prospectus is qualified in its entirety by the information appearing in the documents incorporated by reference.

Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete, and in each instance we refer you to the copy of the contract or document filed as an exhibit to the registration statement or the documents incorporated by reference in this prospectus, each such statement being qualified in all respects by such reference.

You may receive a copy of any of these filings (excluding exhibits to those documents unless they are specifically incorporated by reference in those documents), at no cost, by writing or calling Apex Silver Mines Corporation, 1700 Lincoln Street, Suite 3050, Denver, Colorado 80203, Attention: Vice President, Investor Relations and Corporate Development, telephone (303) 839-5060.

ENFORCEABILITY OF CIVIL LIABILITIES UNDER UNITED STATES LAWS

Apex Silver is a Cayman Islands exempted company and some of our directors reside in jurisdictions outside of the United States. At any one time, all or a substantial portion of our assets and directors are or may be located in jurisdictions outside of the United States. Therefore, it could be difficult for investors to effect within the United States service of process on us or any of our directors who reside outside the United States. Further, it could be difficult to recover against us or such directors judgments of courts in the United States, including judgments based upon civil liability under U.S. federal securities laws and similar state laws. Notwithstanding the foregoing, we have irrevocably agreed that we may be served with process with respect to actions based on offers of the securities offered by this prospectus in the United States by serving Apex Silver Mines Corporation, 1700 Lincoln Street, Suite 3050, Denver, Colorado 80203, our U.S. agent appointed for that purpose.

Walkers, our Cayman Islands counsel, has advised us that there may be circumstances where the courts of the Cayman Islands would not enforce:

- judgments of U.S. courts obtained in actions against us or our directors that are not resident within the United States that are based upon the civil liability provisions of U.S. federal securities laws and similar state laws; or
- original actions brought in the Cayman Islands against us or such persons based solely upon U.S. federal securities laws.

There is no treaty in effect between the United States and the Cayman Islands providing for such enforcement. There are grounds upon which Cayman Islands courts may not enforce judgments of U.S. courts. In addition, some remedies that are available under the laws of U.S. jurisdictions, including certain remedies under U.S. federal securities laws, may not be allowed in Cayman Islands courts as being contrary to public policy.

FORWARD-LOOKING STATEMENTS

Some information contained or incorporated by reference in this prospectus may contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934. These statements include comments regarding mine development and construction plans, costs, grade, production and recovery rates, permitting, financing needs, the availability of financing on acceptable terms, the timing of engineering studies and environmental permitting, and the markets for silver, zinc and lead.

The use of any of the words anticipate, continue, estimate, expect, may, will, project, should, believe expressions are intended to identify uncertainties. We believe the expectations reflected in those forward-looking statements are reasonable. However, we cannot assure you that these expectations will prove to be correct. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of the risk factors set forth below and other factors described in more detail in this prospectus:

- worldwide economic and political events affecting the supply of and demand for silver, zinc and lead;
- political and economic instability in Bolivia and other developing countries in which we conduct business;
 - volatility in market prices for silver, zinc and lead;
 - financial market conditions, and the availability of financing on terms acceptable to Apex Silver;
- uncertainties associated with developing a new mine, including potential cost overruns and the unreliability of estimates in early stages of mine development;
- variations in ore grade and other characteristics affecting mining, crushing, milling and smelting operations and mineral recoveries;
 - geological, technical, permitting, mining and processing problems;
 - the availability and timing of acceptable arrangements for power, transportation, water and smelting;
 - the availability, terms, conditions and timing of required government approvals;
 - uncertainties regarding future changes in tax legislation or implementation of existing tax legislation;
 - variations in smelting operations and capacity;
 - the availability of experienced employees; and
 - the factors discussed under Risk Factors.

Many of those factors are beyond our ability to control or predict. You should not unduly rely on these forward-looking statements. These statements speak only as of the date of this prospectus. Except as required by law, we are not obligated to publicly release any revisions to these forward-looking statements to reflect future events or developments. All subsequent written and oral forward-looking statements attributable to us and persons acting on our behalf are qualified in their entirety by the cautionary statements contained in this section and elsewhere in this prospectus.

SUMMARY

This summary contains basic information about us and the ordinary shares and warrants that we may offer and sell from time to time in connection with acquisitions of other businesses, assets, properties or securities. Because it is a summary, it does not contain all of the information that you should consider before investing. You should read this entire prospectus carefully, including the section entitled Risk Factors and our financial statements and the related notes contained elsewhere or incorporated by reference in this prospectus, before making an investment decision.

Our Company

Apex Silver Mines Limited, incorporated under the laws of the Cayman Islands in 1996, is engaged in the exploration and development of silver properties in South America, and Mexico. Our exploration efforts have produced our first development property, our 100% owned San Cristobal project located in southern Bolivia. San Cristobal's proven and probable reserves, based on \$4.62 per ounce silver, \$0.38 per pound zinc and \$0.22 per pound lead, total approximately 211 million tonnes of ore grading 65.81 grams per tonne of silver, 1.63% zinc and 0.61% lead, containing approximately 446 million ounces of silver, 7.6 billion pounds of zinc and 2.8 billion pounds of lead.

Based on recently completed evaluations for our updated life-of-mine development plan, we expect San Cristobal to produce an annual average of approximately 21 million contained ounces of silver, 438 million contained pounds of zinc and 148 million contained pounds of lead over a mine life of approximately 17 years. Assuming that metals markets remain favorable and that we are able to complete the additional financing required for the project, we expect to commence construction at San Cristobal in 2005 and start-up and production in 2007.

We also have a large diversified portfolio of privately owned and controlled silver exploration properties. We have rights to or control over 100 silver and other mineral exploration holdings, divided into approximately 50 property groups, located in or near the traditional silver producing regions of Bolivia, Mexico, and Peru. None of our properties is in production, and consequently we have no operating income or cash flow.

We are managed by a team of seasoned mining professionals with significant experience in the construction, development and operation of large scale, open pit and underground, precious and base metals mining operations, as well as in the identification and exploration of mineral properties.

Our principal executive office is located at 1700 Lincoln Street, Suite 3050, Denver, Colorado 80203, and our telephone number is (303) 839-5060. Our internet address is www.apexsilver.com. Information on our website is not incorporated into this prospectus and is not a part of this prospectus.

Our Strategy

Apex Silver is one of a limited number of mining companies which focus on silver exploration, development and production. Our strategy is to capitalize on the San Cristobal project and our sizeable portfolio of silver exploration properties in order to achieve long-term profits and growth and to enhance shareholder value.

The principal elements of our business strategy are to:

- secure financing for and proceed to develop the San Cristobal project as a large scale open pit mining operation;

- continue to explore and develop those properties which we believe are most likely to contain significant amounts of silver and divesting those properties that are not of continuing interest; and
- identify and acquire additional mining and mineral properties that we believe contain significant amounts of silver or have exploration potential.

Certain Tax Considerations

We believe that we likely were a passive foreign investment company (PFIC) with respect to 2004, and likely will be a PFIC in 2005 as well as potentially with respect to future years. If we are a PFIC, U.S. holders of ordinary shares and warrants to acquire ordinary shares will be subject to certain adverse U.S. federal income tax rules. Under the PFIC rules, a U.S. holder who disposes or is deemed to dispose of ordinary shares or warrants at a gain, or who receives or is deemed to receive certain distributions with respect to ordinary shares, generally will be required to treat such gain or distributions as ordinary income and pay an interest charge on the tax imposed with respect thereto. Certain elections may sometimes be used to reduce the adverse impact of the PFIC Rules for holders of ordinary shares(so-called "QEF elections" and "mark-to-market" elections), but these elections may accelerate the recognition of taxable income and may result in the recognition of ordinary income. In addition, elections that may be used to reduce the adverse impact of the PFIC rules will not be available with respect to warrants to acquire ordinary shares. The PFIC rules are extremely complex, and prospective investors are urged to consult their own tax advisers regarding the potential consequences to them of Apex Silver being classified as a PFIC. See Certain Tax Considerations.

Use of Proceeds

We will be offering and issuing our ordinary shares and/or warrants from time to time in connection with the acquisition of other businesses, assets, properties or securities. We will not receive any cash proceeds from these offerings.

RISK FACTORS

You should carefully consider the risk factors set forth below as well as the other information included in this prospectus before deciding to purchase any shares. The risks described below are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also impair our business operations. Any of these risks may have a material adverse effect on our business, financial condition, results of operations and cash flows. In that case, you may lose all or part of your investment in the securities.

Risks Related to the Business

We have identified a material weakness in our internal controls over financial reporting.

Section 404 of the Sarbanes-Oxley Act of 2002 requires management to make an assessment of the design and operating effectiveness of our internal controls and our auditors to audit the design and operating effectiveness of our internal controls as well as forming an opinion on management's assessment. We have reported a material weakness in internal controls related to the financial reporting process with respect to our ability to properly apply generally accepted accounting principles to non-routine transactions or to transactions subject to new or complex accounting pronouncements, as the result of a lack of adequate staffing in our accounting department. We have retained the public accounting firm currently assisting in our Section 404 compliance effort to assist us in preparing our financial statements and to provide technical expertise in the proper application of generally accepted accounting principles to various transactions and other financial statement matters. We are continuing to evaluate the hiring of additional personnel for our accounting department, including personnel with technical expertise in the application of generally accepted accounting principles. We have not yet been able to test and assess the operating effectiveness of our internal controls, including these mitigating steps, surrounding the financial reporting process and testing may reveal similar or additional weaknesses in the design and effectiveness related to the financial reporting process. In the event that the reported material weakness is not effectively remediated, or additional weaknesses are revealed, it is reasonably possible that management may conclude that the Company's controls are ineffective and that an adverse opinion or disclaimer of opinion on our internal controls as of December 31, 2004 may be issued by our independent registered public accounting firm. Because opinions on internal controls have not been issued in the past, it is uncertain what impact an adverse opinion or disclaimer of opinion would have on our company or our stock price.

We have no history of production.

We have no history of producing silver or other metals. The development of our San Cristobal project will require the construction or rehabilitation and operation of mines, processing plants and related infrastructure. As a result, we are subject to all of the risks associated with establishing new mining operations and business enterprises. There can be no assurance that we will successfully establish mining operations or profitably produce silver or other metals at any of our properties.

We have a history of losses and we expect losses to continue for at least the next three years.

As an exploration and development company that has no production history, we have incurred losses since our inception, and we expect to continue to incur additional losses for at least the next three years. As of September 30, 2004, we had an accumulated deficit of \$94.7 million. There can be no assurance that we will achieve or sustain profitability in the future.

The estimates of our reserves and other mineralization estimates are potentially inaccurate.

Unless otherwise indicated, reserves and other mineralization figures presented in our filings with the SEC, press releases and other public statements that may be made from time to time are based on estimates of contained silver and other metals made by independent geologists or our own personnel. These estimates are imprecise and depend on geological interpretation and statistical inferences drawn from drilling and sampling which may prove to be unreliable. There can be no assurance that:

- these estimates will be accurate;
- reserves and other mineralization figures will be accurate; or
- reserves or mineralization could be mined and processed profitably.

Since we have not commenced production on any of our properties, reserves and other mineralization estimates may require adjustments or downward revisions based on actual production experience. Extended declines in market prices for silver, zinc and lead may render portions of our reserves uneconomic and result in reduced reported reserves. Any material reductions in estimates of our reserves and other mineralization, or of our ability to extract these reserves or mineralization, could have a material adverse effect on our results of operations, financial condition and cash flows.

We have not established the presence of any proven or probable reserves at any of our mineral properties other than the San Cristobal project. There can be no assurance that subsequent testing or future feasibility studies will establish additional reserves at our properties. The failure to establish additional reserves could restrict our ability to successfully implement our strategies for long term growth beyond the San Cristobal project.

The San Cristobal project is subject to risks including delays in commencement and completion and we may be unable to achieve anticipated production volume or manage cost increases.

Completion of the development of the San Cristobal project is subject to various factors, including the maintaining of recent price levels for silver and zinc; the availability, terms, conditions and timing of acceptable arrangements for financing, power, transportation, construction, contract mining and smelting; required government approvals, including renewal of the construction and operations permit; and the performance of our engineering and construction contractor and suppliers and consultants. The lack of availability on acceptable terms or the delay in any one or more of the other items listed above could also delay or prevent the development of San Cristobal. There can be no assurance:

- when or whether the San Cristobal project will be completed;
- whether the resulting operations will achieve the anticipated production volume; or
- that the construction costs and ongoing operating costs associated with the development of the San Cristobal project will not be higher than anticipated.

We have never developed or operated a mine or managed a significant mine development project. We cannot assure you that the development of San Cristobal will be completed at the cost and on the schedule predicted, or that silver, zinc and lead grades and recoveries, production rates or anticipated capital or operating costs will be achieved.

If the actual cost to complete the development of the San Cristobal project is significantly higher than currently expected, there can be no assurance that we will have enough funds to cover these costs or that we would be able to obtain alternative sources of financing to cover these costs. Unexpected cost increases, reduced silver and zinc prices or the failure to obtain necessary project financing on acceptable terms to commence or complete the development of the San Cristobal project on a timely basis, or to achieve anticipated production capacity, could have a material adverse effect on our future results of operations, financial condition and cash flows.

The successful development of the San Cristobal project is also subject to the other risk factors described herein.

We depend on a single mining project.

We anticipate that the majority, if not all, of any revenues for the next few years and beyond will be derived from the sale of metals mined at the San Cristobal project. Therefore, if we are unable to complete and successfully mine the San Cristobal project, our ability to generate revenue and profits would be materially adversely affected.

Our success will depend on our ability to manage our growth.

As we increase our development activity at San Cristobal, we are experiencing significant growth in our operations, which we expect to continue and accelerate over the next three years as construction commences and production begins. This growth has created and will continue to create new positions and responsibilities for management personnel and will substantially increase demands on our operating and financial systems. There can be no assurance that we will successfully meet these demands and manage our anticipated growth.

Our profitability will be affected by changes in the prices of metals.

Our profitability and long-term viability depend, in large part, on the market price of silver, zinc, lead and other metals. The market prices for these metals are volatile and are affected by numerous factors beyond our control, including:

- global or regional consumption patterns;
- supply of, and demand for, silver, zinc, lead and other metals;
- speculative activities;
- expectations for inflation; and
- political and economic conditions.

The aggregate effect of these factors on metals prices is impossible for us to predict. Decreases in metals prices have delayed, and could in the future adversely affect, our ability to finance the development of the San Cristobal project and the exploration and development of our other properties, which would have a material adverse effect on our financial condition and results of operations, cash flows. There can be no assurance that metals prices will not decline.

The following table sets forth for the periods indicated (1) the Comex nearby active silver futures contract's high and low price of silver in U.S. dollars per troy ounce and (2) the London Metals Exchange's high and low settlement prices of zinc and lead in U.S. dollars per pound.

Year	Silver		Zinc		Lead	
	High	Low	High	Low	High	Low
1999	\$ 5.77	\$ 4.86	\$ 0.56	\$ 0.41	\$ 0.25	\$ 0.21
2000	5.57	4.62	0.58	0.46	0.26	0.18
2001	4.83					