

## SEC Proposes Rules for Disclosure Concerning Mine Safety

March 03, 2011

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#### Client Advisory

March 3, 2011 by Guy P. Lander and Steven J. Glusband

The SEC has proposed rules that would implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This Section is already in effect. The proposed rules apply to U.S. and non-U.S. reporting companies that directly or through subsidiaries operate coal or other mines subject to the U.S. Federal Mine Safety and Health Act of 1977 (the "Mine Safety Act"). The proposed rules require these companies to (1) provide disclosure about mine safety violations in their periodic reports, and (2) file Form 8-Ks reporting receipt of certain mine safety violation notices. Although mine operators should already be complying with these requirements, the proposed rules clarify and provide guidance concerning the SEC's current interpretation of the provisions.

#### Disclosure Required Only for Mines Located in the United States

The proposed rules would apply only to those coal or other mines that are (1) subject to the Mine Safety Act and (2) located in the United States. Consequently, a U.S. company or foreign provide issuer that operates mines in both the United States and outside the United States would only be required to provide the disclosure for its U.S. mines.

The information is required to be reported in periodic reports for each mine of the mine operating company and include the following, among other things:

- a. specified health and safety violations;
- b. details about orders, citations, flagrant violations and imminent danger orders issued by the Mine Safety and Health Administration;
- c. the dollar value of proposed assessments under the Federal Mine Safety Act; and
- d. the total number of mining-related fatalities.

The proposed rules would require the mine safety information be submitted as an exhibit to quarterly reports on Form 10-Q and annual reports on Form 10-K, Form 20-F and Form 40-F. Companies would also include brief disclosure in the body of the report indicating that such an exhibit has been filed. Any mine health and safety issues, whether in the United States or outside the United States, that raise material issues under the SEC's other disclosure requirements are required to be addressed in the appropriate section of the Form 10-Q, Form 10-K, Form 20-F or Form 40-F.

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Quarterly reports would cover the mine safety information for that quarter, and annual reports would cover the information for the year covered by the report and the fourth quarter.

#### **Form 8-K Filing Requirement**

Foreign private issuers would not be required to file a Form 6-K upon receipt of a notice of a mine safety violation, unless it is required to make public or file such information under the laws of its jurisdiction of incorporation, under any rules of any stock exchange or otherwise distributes the information to its security holders. But, U.S. reporting companies would be required to file a Form 8-K within four days of the receipt of:

1. an imminent danger order under Section 107(a) of the Mine Act;
2. written notice from MSHA of a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under Section 104(e) of the Mine Act; and
3. written notice from MSHA of the potential to have a pattern of such violations.

Failure to file the Form 8-K within four-days would not cause a company to lose Form S-3 eligibility as long as the company is current in its Form 8-K reporting when it files the Form S-3.

The company would be required to disclose in the Form 8-K, the date of receipt of the order or notice, category of order or notice and name and location of the mine involved.

The same disclosure would be repeated in the Form 10-Q for the quarter in which the notice or order was received and in the Form 10-K or Form 20-F or 40-F for the year in which the notice or order was received.

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