

SEC Proposes Rules to Implement Dodd-Frank Mine Safety Disclosure Requirements

The SEC has [proposed rules](#) that would implement the requirements of Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Act. This Section is already in effect and calls for operators of coal or other mines 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, while not yet final, clarify and provide insight into the SEC's current interpretation of the provisions. The proposing release also requests comment on several aspect of the rules. Comments are due by January 31, 2011.

Highlights of the proposed rules are below.

Disclosure Required for Mines Located in the United States Only

The proposed rules would confirm that the Dodd-Frank mine safety disclosures are required only for those coal or other mines that are (1) subject to the Mine Safety Act and (2) located in the United States. Therefore, a company, whether a U.S. company or foreign private 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.

Disclosure to be Provided in Exhibits to Quarterly and Annual Reports

Companies would be required to briefly mention in the body of their Form 10-Q, Form 10-K, Form 20-F or 40-F that they have mine safety violations to report and refer readers to an exhibit to the report that would provide the detailed disclosures. The disclosure would be required to cover any orders, violations or citations received, penalties assessed or legal actions initiated during the quarter covered by each quarterly report. Annual reports would be required to report such information for the year covered by the report as well as the fourth quarter.

The proposed rules would require disclosure of any citations, orders or violations to be provided for each distinct mine covered by the Mine Act and would not permit mines to be grouped by project or geographic region for disclosure purposes.

The proposed rules would not permit companies to exclude information about orders, violations or citations that were received during the time period covered by the periodic report but subsequently dismissed or reduced. Companies would, however, be permitted to provide additional information to put these violations in context.

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.

U.S. reporting companies would be required to file a Form 8-K within four days of the receipt of:

- an imminent danger order under Section 107(a) of the Mine Act;
- written notice 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; or
- written notice from MSHA of the potential to have a pattern of such violations.

Unlike certain other Form 8-K filing requirements, failure to file the Form 8-K within this four-day timeframe would not cause a company to lose S-3 eligibility as long as the company is current in its Form 8-K reporting at the time the Form S-3 is filed.

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.

This 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.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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