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## DODD-FRANK ACT AND MINING

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") contains under a section called "Miscellaneous" a couple of nuggets for publicly held mining companies. The bill will require regular public reporting of serious violations of mine safety regulations, the filing of Form 8-Ks upon receipt of an imminent danger order, reporting of any payment by a mine operator to any "foreign government," including government owned companies, and finally, will require manufacturers to list any "conflict minerals" used in their processes or products that may have originated in the Democratic Republic of Congo ("DRC") or any adjoining country.

### Reporting Mine Safety Information (Section 1503)

This provision requires that in each periodic report (Form 10-Qs and Form 10-Ks) filed with the SEC, a mining company must include: (i) the total number of violations of mandatory health or safety standards that could "significantly and substantially" contribute to a safety or health hazard under the Federal Mine Safety and Health Act of 1977 (the "Mine Safety Act") for which the operator received a citation from the Mine Safety and Health Administration ("MSHA"); (ii) the total number of orders and citations issued under Section 104(b) of the Mine Safety Act (a "failure to abate"); (iii) the total number of citations and orders for unwarrantable failure to comply with mandatory health and safety standards under Section 104(b); (iv) the total number of imminent danger orders under Section 107(a) of the Mine Safety Act issued to the Company; (v) the total dollar value of proposed assessments from MSHA; and (vi) the total number of mining related fatalities (no period specified). The periodic report must also list mines for which the operator has received written notice of a pattern of violations or the potential to have such a pattern, and any pending legal action before the Mine Safety and Health Review Commission. A Form 8-K must be filed upon receipt of an imminent danger order or a written notice of a pattern or potential pattern of serious violations.

This provision will take effect August 20, 2010, 30 days after the enactment of Dodd-Frank. The SEC is authorized to issue related rules, but the provisions are effective immediately and do not require implementing regulations.

### Payments by Resource Extraction Issuers (Section 1504)

This section requires disclosure of any payment by a public mining company to a foreign government (including any instrumentality such as state-owned institutions) of any payment made to further the commercial development of oil, gas or minerals, and that is not de minimis. The information will be stored in interactive data format by the SEC. The SEC is required to issue final rules governing the disclosure within 270 days. These provisions will take effect for the fiscal year that ends not earlier than one year after the date that the Commission issues final rules. Accordingly, required compliance is not imminent and additional information will be available before reporting begins that will presumably clarify ambiguities in the bill. Rep. Frank had introduced similar legislation two years ago for the stated purpose of enhancing transparency concerning payments to foreign governments of countries where resources are extracted. The SEC is to consider the guidelines of the Extractive Industries Transparency Initiative in developing its rules, so companies that have participated in EITI may have a head start on compliance.

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### **“Conflict Minerals” Disclosure (Section 1502)**

All SEC reporting companies must disclose annually whether a specified list of “conflict minerals” (defined as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives) necessary to the functionality or production of a product manufactured by the reporting company, originate in the DRC or an adjoining country. The SEC is charged with adopting rules within 180 days that will clarify the scope of the rules, but mining companies that produce these minerals should begin considering what information regarding country of origin and chain of custody for such minerals a reporting manufacturer may request. Existing processes for certifications and supply chain involving “conflict diamonds” and gold jewelry, such as the Kimberley Process and the Responsible Jewelry Council’s Certification System, may be indicative of the methods that will be required to comply with the SEC requirements.

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