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Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Attention: File Number S7-41-10

Re: Proposed Rules to Implement Sec. 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

To Whom It May Concern:

The National Mining Association (NMA) appreciates the opportunity to provide comments on the Securities and Exchange Commission's (SEC's) Proposed Rule implementing Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act or Dodd-Frank Act) published on Dec. 22, 2010 (75 Fed. Reg. 80,374). This letter and the attachment, providing responses to the specific questions contained in the proposed rule, constitute NMA's comments.

NMA is a national trade association that includes the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. The issues discussed in the Proposed Rule are of extreme importance to NMA's members, as mining companies both nation-wide and abroad will be subject to the regulations promulgated pursuant to Section 1503. As such, the reporting scheme adopted by the Commission will have a direct effect on NMA's members. Following are general comments NMA would like to make regarding the Proposed Rule. Attached, please also find NMA's more detailed comments specifically addressing the individual questions posed by the Commission in the Proposed Rule.

As a general matter, NMA strongly encourages the application of a materiality standard wherever practicable in implementing the mine safety disclosure provisions of the Dodd-Frank Act. NMA understands that the SEC is confined by the

detailed language contained in Section 1503. However, the Commission is also bound by its mission of protecting investors and maintaining fair, orderly and efficient markets. Where disclosures become too complex and voluminous, they ultimately become less meaningful to and protective of investors. Moreover, where actions at individual facilities have no impact on a company's overall financial performance it behooves the Commission to enhance investor understanding by not requiring companies to disclose such non-material occurrences. Therefore, to the extent that such action does not conflict with the statutory text, NMA encourages the SEC to craft its regulations so as to require the disclosure of only such information as may be material to informed investment decisions, and to minimize the burden placed on reporting companies.

Mines Included Within the Scope of Section 1503

NMA endorses the Commission's decision to limit the scope of the regulations to include only those mines subject to the U.S. Mine Act. The disclosure requirements listed in Section 1503 make specific reference to the Mine Act, and including mines outside the reach of the Mine Act would exceed the statutory authority granted by Section 1503. Furthermore, such an interpretation is consistent with the legislative intent of the Dodd-Frank Act. NMA would however ask the Commission to clarify that only those orders, violations or citations issued to mines with an MSHA ID are to be included in the reporting requirements.

Aggregation of Mines

The SEC has stated that "the language of the Act referring to 'each coal or other mine' is intended to elicit disclosure of any citations, orders or violations for each distinct mine covered by the Mine Act, and is not intended to permit disclosure by grouping mines by project or geographic region." The Commission has also pointed out that, although such an approach "may result in issuers reporting a significant volume of information in their periodic reports," because "Section 1503 does not appear to contemplate materiality thresholds; [it] is not proposing to include such a threshold for the disclosure requirement." However, allowing mining issuers to aggregate disclosures would provide the most benefit to investors while greatly lessening the burden on reporting companies, and is permissible under the statutory language.

A number of mining companies operate, administer, and manage groups of smaller mines out of a central location. Because issuers in effect treat them as a single operation, they can collectively be understood to be a "coal or other mine of which the issuer or a subsidiary of the issuer is an operator." More importantly, from an investor's perspective such groupings are integral to understanding the larger picture of a company's violation status. In other words, under the proposed mine-by-mine disclosure approach, the Commission will not be helping investors to understand a company's total violation status, as investors may not be able to discern the forest for the trees. This is particularly so in light of the fact that

throughout their periodic reports mining companies present other disclosures in reference to mining operations as a whole. A specific mine-by-mine analysis of safety citations has the potential therefore to lead to investor confusion. Rather, by allowing companies to group appropriate mines for purposes of mine safety disclosures, the SEC will be facilitating investor understanding of an issuer's mining operations, allowing for consistency throughout the periodic reports of mining issuers, and substantially limiting the length and complexity of disclosures and the burden placed on reporting companies.

If the Commission is not inclined to allow such groupings of mines without additional information, companies could further be required to provide a brief description of each group, including types, numbers and locations of mines, or a list of all mines associated with the company along with an aggregate report of the total citations received by the company. The latter information could be particularly useful, as it would allow investors, should they be interested in a specific mine's violations, to find such information through the Mine Safety and Health Administration's (MSHA's) data retrieval system under the mine's individual name.

Citations to be Disclosed

NMA is not supportive of the treatment by the Proposed Rule of orders, violations, or citations received during the reporting period and subsequently dismissed or reduced. The inclusion of these items in periodic reports, even when combined with explanatory disclosure, is misleading to investors and serves no rational policy objective. Furthermore, requiring the disclosure of such information amounts to a denial of due process, as reporting such information has the potential to cause reputational harm to mining issuers in the eyes of investors before a resolution of the matter has been reached.

In addition to being modified or vacated, orders, violations and citations may also be immediately vacated. For example, in response to an anonymous tip, MSHA may issue an imminent danger order without first conducting an inspection of the mine in question. Upon realizing that no danger actually exists at the site, MSHA will then vacate the order, potentially within the four day 8-K reporting period. In such situations, the Proposed Rule as written would necessitate a reporting company to report a violation that is not contained in MSHA's data retrieval system. Such an outcome would not serve any rational policy objective, nor would it serve the underlying intent of the statute as it would not provide investors with useful information.

NMA recommends that the final rule allow issuers to exclude those orders, citations and violations that have been subsequently vacated, dismissed or reduced below a reportable level prior to the filing of a periodic report. Such an approach would provide consistency with the data reported in MSHA's data retrieval system, and would avoid potentially misleading disclosure that is immaterial to an investor's understanding of an issuer's business, financial condition, operating results or

liquidity. Should the reporting of such violations be required, they should at the very least be correctable in subsequent reports.

Disclosure Requirements Outside the Scope of Section 1503

As a general matter, necessitating lengthy additional disclosures not called for by Section 1503 exceeds the scope of the statute and will lead to investor confusion. The enforcement provisions contained in Sec. 1503(d)(1) note that "a violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934." As desirable as any disclosures above and beyond the requirements of Section 1503 may seem, they will unavoidably be exposing issuers to potential securities enforcement actions not contemplated by the legislature. NMA encourages the Commission to use caution when creating new exposure to 1934 Act violations, and to avoid subjecting mining companies to potential enforcement where such exposure was never intended.

Description of Each Category of Violations

The proposed regulations are unclear as to what is expected to be included in a "brief description of each category of violations, orders and citations reported under new Items 106(a)(1) and 106(a)(2) of Regulation S-K." While the Commission admits that such disclosure is not required by Section 1503, it states that the purpose of such a requirement is to "provide investors with context to the disclosure required by Sec. 1503(a)." Clarification is needed in the final regulations as to what a brief description of categories of violations, orders and citations entails.

NMA does not oppose the inclusion in periodic reports of a limited, generic legal description of any types of enforcement actions being taken. Such a description would help investors to understand the general nature of the citation in question without having to reference the Mine Act. NMA encourages the Commission to clarify that this sort of generic glossary describing relevant legal terms which can be inserted by way of a narrative statement in periodic reports is all that this requirement entails.

Additionally, to decrease the amount of complex information included in reports, as well as the burden on reporting companies, NMA also endorses limiting this disclosure to a general description of given citations, orders, and categories of violations, rather than a description of each mandatory standard violated. The technical nature of mine safety standards, the industry-specific terms used in their descriptions, and the number of potential violations associated with each standard make writing a brief, easily-understood description of such standards for an average investor extremely difficult, and such a requirement should not be included in the final regulations.

NMA also strongly opposes any requirements that would mandate the inclusion of additional disclosure regarding the context or facts involved in any specific citation. Such disclosures would not only be impermissible under Section 1503, but would also require the compilation and inclusion of a voluminous amount of information that would provide no additional benefit to investors. Furthermore, given the general nature of the directive, different reporting companies would likely see fit to include different types of explanatory information, thereby leading to investor confusion and major inconsistencies in reporting.

Disclosure of Outstanding Assessments

In addition to the requirement that issuers disclose the total dollar value of proposed assessments for the time period covered by a periodic report, the Commission is also proposing "that the disclosure include the cumulative total of all proposed assessments of penalties outstanding as of the last day of the period covered by the report." The Commission suggests that such disclosure is necessary to "provide a clearer picture of the most current health and safety issues for the issuer, as well as information about the magnitude of outstanding penalty assessments."

NMA opposes this additional requirement, which is not necessitated by Section 1503 and which involves assessment totals that could conceivably go back several years. Such disclosure would present an undue hardship for companies with outstanding assessments tied up in lengthy litigation or the huge backlogs of contested cases. At the same time, it would not help investors to understand an issuer's financial condition or liquidity, as it would not provide investors with an accurate picture of the current violation dollar amount of the issuer. The inclusion of the assessment information on a quarterly and annual basis is sufficient to serve the purposes of the statute, and no additional reporting requirements should be placed on mining issuers with respect to cumulative assessment totals.

Updates to Pending Legal Actions

The Commission also seeks to go outside the bounds of the language of Section 1503 with respect to disclosure regarding pending legal actions. Not only does the Proposed Rule mandate the disclosure of specific information regarding each contested action, but it also requires that companies list any "material" developments to each action occurring during a reporting period.

NMA sees several problems with this additional disclosure. Firstly, there is no indication that the legislature contemplated requiring companies to keep up a running narrative of their litigation when it required disclosure of pending legal actions. The Proposed Rule, however, would require just that – companies to keep an updated tally of each legal matter for purposes of its financial filings.

Furthermore, this additional disclosure is unlikely to provide investors with useful and meaningful information. As noted previously, a definition of what constitutes a "material" development is not included in the Proposed Rule, and companies are likely to interpret this standard very differently in terms of what kinds of motions, decisions, and ancillary actions need to be reported. Investors will be confused as to how to compare the disclosures of different companies, and may not understand the significance, if any, of the listed actions. This issue is exacerbated by the fact that, due to the strict statutory language of Section 1503, no materiality standard can be applied to limit the number of legal actions that must be reported generally. Determining what constitutes a material development in a case that may very well not be material to investors in the first place could be problematic for mining issuers.

In light of the substantial burdens this additional requirement would impose on issuers, coupled with the potential such disclosure has to confuse rather than enlighten investors, NMA strongly discourages the Commission from including this additional reporting requirement in its final regulations implementing Section 1503.

In conclusion, NMA appreciates this opportunity to provide the SEC with important concerns and feedback regarding the proposed mine safety disclosure rules implemented pursuant to the Dodd-Frank Act.

Sincerely,

Bruce Watzman

Response of the National Mining Association to Questions Contained

In the Proposed Regulation

(1) Section 1503 of the Act provides definitions of the terms "operator" and "coal or other mine" but does not define the term "subsidiary." Under Item 1-02(x) of Regulation S-X, a "subsidiary" of a specified person is "an affiliate controlled by such person directly or indirectly through one or more intermediaries," which would apply to this disclosure in the absence of another definition. Is this definition appropriate for purposes of Section 1503, or should we include a different definition of "subsidiary" for purposes of Section 1503 disclosure? If so, how should we define that term?

Response: The definition of "subsidiary" under Item 1-02(x) of Regulation S-X is appropriate for purposes of Section 1503.

(2) In conformity with the language of Section 1503(a), we are proposing to apply the Act's periodic report disclosure requirement only to mines that are subject to the Mine Act, and not to mines in other jurisdictions. Is this approach appropriate? Will issuers that operate (or have subsidiaries that operate) mines in the United States be at a competitive advantage or disadvantage compared to issuers that operate mines in other jurisdictions because of the lack of disclosure about non-U.S. mines? Should we instead expand the disclosure requirement to cover mines in all jurisdictions? If so, how would we address disclosure requirements for mines not subject to the Mine Act? How would we address the disclosure requirements if a jurisdiction does not have clear mine safety regulations?

Response: The regulation should only apply to mines that are regulated by MSHA. To do otherwise would exceed the scope of Section 1503.

(3) Section 1503 of the Act does not contemplate an exception from disclosure for smaller reporting companies. Should the requirements apply to smaller reporting companies, as proposed, or should we exempt smaller reporting companies from the disclosure requirement or some portion of the disclosure requirement? Are there alternative accommodations we should consider for smaller reporting companies?

Response: All reporting companies should be required to report the same materials.

(4) Section 1503 of the Act also does not contemplate any exception from disclosure for foreign private issuers. Should the requirements apply to foreign private issuers, as proposed? If not, why not?

Response: The requirements should apply to all issuers, including foreign private issuers that operate or have one or more subsidiaries that operate a coal or other mine in the U.S. consistent with our response above to #2.

(5) As proposed, the required disclosure must be provided for each mine for which the issuer or a subsidiary of the issuer is an operator. How burdensome would such disclosure be for issuers to prepare? Could this approach produce such a volume of information that investors will be overwhelmed? Should we instead require disclosure by project or geographic region? Would this approach be consistent with Section 1503(a) of the Act?

Response: The required disclosures, as proposed for each mine for which the issuer or a subsidiary of the issuer is an operator, is very burdensome for the issuers to prepare and will result in a volume of information that is not useful to investors and could be overwhelming to them. Investors would be better served and informed by disclosures limited to mines, projects or regions material to the issuer, as provided in the Commission's regulations regarding other types of information that issuers are required to disclose. We recommend that the final rule permit operators to group facilities that relate to the same mine, notwithstanding the fact that for MSHA reporting purposes these facilities have separate identification numbers.

(6) General Instruction I to Form 10-K and General Instruction H to Form 10-Q contain special provisions for the omission of certain information by wholly-owned subsidiaries. General Instruction J to Form 10-K contains special provisions for the omission of certain information by asset-backed issuers. Should either or both of these types of registrants be permitted to omit the proposed mine safety disclosure in the annual reports on Form 10-K and quarterly reports on Form 10-Q?

Response: Yes, if the information is disclosed by the wholly-owned subsidiary's parent entity so as to avoid costly burden without adding any value to the investor community.

(7) Because the Act states that issuers must include the mine safety disclosure in each periodic report filed with the Commission, we are proposing to require the disclosure in each filing on Forms 10-Q, 10-K, 20-F and 40-F. For issuers that file using the domestic forms (Forms 10-Q and 10-K), should we instead only require the disclosure annually? Would such an approach be consistent with the Act?

Response: The Act provides that the information must be disclosed in "each periodic report" filed with the Commission. Therefore, the final regulation

should be consistent with the statutory language and require that operators file such information consistent with existing reporting requirements.

(8) As proposed, we would not specify a particular presentation for the disclosure. Should we require a specific presentation, tabular or otherwise? If so, please provide details on an appropriate presentation.

Response: We do not believe that a presentation format should be specified by the regulations.

(9) We are proposing to require the information to be presented in an exhibit to the periodic report, with brief disclosure in the body of the report noting that the issuer has mine safety matters to report and referring to the required exhibit. Is this approach appropriate? Should we instead require the information to be presented in the body of the periodic report?

Response: The proposed approach is appropriate because it will aid investors by limiting the volume of information provided in the body of the report and organizing the disclosure in a more reader-friendly format.

(10) As noted above, Section 1503(a) requires the disclosure to be included in periodic reports. Should we also require the information to be included in registration statements?

Response: No, requiring such disclosures in registration statements is beyond the scope of the Act and could overwhelm potential investors.

(11) Should we require the disclosure to be provided in an interactive data format? Why or why not? Would investors find interactive data to be a useful tool to analyze the information provided and generate statistics for their own use? If so, what format would be most appropriate for providing standardized data disclosure – for example, eXtensible Markup Language (XML) or eXtensible Business Reporting Language (XBRL)? Could the use of interactive data make it possible for issuers to reduce reporting costs by using the same data that is already available through MSHA's data retrieval system?

Response: No, investors could be overwhelmed and are more likely to be confused by an interactive data format. Issuers would not be able to reduce reporting costs by using data available through MSHA's data retrieval system because MSHA's system is not user friendly and the data on the system not updated with daily changes.

(12) We are proposing to require the Form 10-K to include both disclosure regarding orders, citations, violations, assessments and legal actions received or initiated during the fourth quarter and the aggregate data for the whole year. Is this approach consistent with Section 1503(a)? Would it be consistent with Section 1503(a) to limit the information to the fourth quarter

data? Alternatively, should we require the Form 10-K to include only fourth quarter information, or only the full year information?

Response: It would be more consistent with the Act to limit the information to fourth quarter data. Investors will be informed of the required information for each quarter in previously filed Forms 10-Q, and the information disclosed on Form 10-K should be for a comparable period – particularly for the fourth quarter of 2010 because the Act was not in effect during the full year and data for the first two quarters of 2010 may not be readily available to issuers.

(13) As proposed, issuers would be required to report all orders, violations or citations received during the period covered by the report, regardless of whether such order, violation or citation was subsequently dismissed or reduced below a reportable level prior to the filing of the periodic report. Should we instead allow such orders, violations or citations to be excluded from the disclosure?

Response: Only the citations and orders outstanding at the time of the report should be required to be reported. To require a listing of the initial citation status and the various changes made to each citation is an unnecessary burden on the reporting company. During each quarter, written citations and orders are vacated or resolved informally by conference (MSHA District Manager's Conferences) or are adjudicated through the administrative hearing process. Also, citations initially issued below the present reporting level are occasionally modified to a more severe and reportable level.

In any of these cases, the investors are interested in the results that presently reflect the reporting mine or company's current results, not a system where reporting would include extensive footnoting of changes made in the initial citation. If the reporting company wishes to add clarity via footnotes or other information on citations then that should be also encouraged. However, requiring the disclosure of citations and orders that have been vacated under the Mine Act before the end of the reporting period would not provide information that is useful to investors and flies in the face of the U.S. typical due process approach.

(14) Is it appropriate to limit this disclosure item to only S&S violations, or should we require disclosure of every violation under section 104 of the Mine Act?

Response: Only S & S violations should be required for disclosure. The non-S & S violations by definition are not contributing to a health or safety hazard and would just "clutter" the information required. As noted in the proposed rule, about 66 percent of citations issued fall into the non-S &S category. Adding this significant additional number to the report is a costly burden without adding any value to the investing community. Requiring a disclosure of non-S&S violations would also exceed the scope of the Act.

(15) As proposed, the new rules would require disclosure of the total dollar amounts of assessments of penalties proposed by MSHA during the time period covered by the report, and also the cumulative total of all proposed assessments of penalties outstanding as of the date of the report. Is this approach appropriate?

Response: We believe the report should only include the total dollar amount of proposed assessments from MSHA received under the Mine Act during the period covered by the report. The cumulative total of all proposed penalties, if required at all, should only be required for the fourth quarter 10 (K) report (annual reporting of total proposed penalties).

(16) As proposed, issuers would be required to include the total dollar amount of any proposed assessments of penalties being contested. Should issuers be permitted to exclude proposed assessments that are being contested? Should issuers be permitted to note the contested amounts separately?

Response: For consistency with the Act and in reporting among issuers, only disclosure of the dollar amount of the proposed assessment should be required. Issuers should be permitted, but not required, to note the contested amounts separately.

(17) As proposed, we would require disclosure of mining-related fatalities only at mines that are subject to the Mine Act. However, many foreign jurisdictions already require mine operators to report mining-related fatalities.[65] Would it be more appropriate to instead require disclosure of mining-related fatalities at all mines operated by companies that file periodic reports with the Commission, regardless of the location of the mine? For example, under such an approach, a foreign private issuer would have to disclose all mining-related fatalities at mines in its home country or any other jurisdiction, and domestic issuers would be required to disclose mining-related fatalities at mines outside of the United States. Would this be appropriate? How difficult would it be for issuers to compile and report this information? Would such an approach impose significant costs on issuers?

Response: As outlines in § 1503, the regulation should only encompass those operations that are under the jurisdiction of MSHA.

(18) Should we, as proposed, require disclosure of all fatalities required to be reported pursuant to MSHA regulations, unless the fatality has been determined to be "nonchargeable" to the mining industry? Should we add an instruction to the rule specifying this interpretation of the disclosure requirement? Would it be more appropriate to instead require disclosure of all fatalities regardless of the determination that it was "non-chargeable"? Should we provide further guidance as to the timing of reporting for fatalities that are under review by MSHA's Fatality Review Committee?

Response: As outlined in § 1503, only MSHA fatalities that are charged by MSHA as work related should be reported.

(19) If we were to require disclosure of mining-related fatalities regardless of the location of the mine, what standard, if any, should we apply for determining whether a fatality is related or unrelated to mining activity? For example, would it be appropriate to apply the MSHA framework to non-U.S. jurisdictions, or to look to each non-U.S. jurisdiction's mine safety regulatory scheme for guidance?

Response: This question is the reason that only MSHA jurisdictional mines should be reported. Other countries may have different standards as to chargeability for the less straightforward events such as heart attacks.

(20) As proposed, information about pending legal actions would be disclosed in the periodic report covering the period in which the action was initiated, with updates in subsequent reports for developments material to the pending action. Is this appropriate? Should we instead limit the disclosure to only those legal actions initiated during the period covered by the periodic report? Should we specifically require issuers to provide disclosure when a contested assessment has been vacated during the time period covered by the report?

Response: The Act requires only reporting of the legal actions pending. Many, if not all, such actions would not be material to the issuer. Information about developments in such actions and whether particular assessments have been vacated would produce an overwhelming volume of information that is not useful to an investor. Legal actions and liabilities of the issuer unrelated to mine safety are reportable only if they are material to the issuer – and the same standard should apply to mine safety data.

(21) Is the contextual information we are proposing to require to be included for each pending legal action appropriate? Should we require any other information about pending legal actions to be disclosed?

Response: No, the contextual information that the Commission is proposing to require exceeds the scope of the Act and would only produce voluminous information about matters that are not material to the issuer, which could overwhelm and confuse the investor. Such disclosures are not required with respect to other immaterial legal actions and liabilities.

(22) Will the proposed disclosure providing a brief description of each category of violations, orders and citations reported be useful for investors, or would the information otherwise provided in the proposed exhibit to the periodic report be sufficient? Is there any other disclosure we should require in order to put the disclosures required by Section 1503(a) of the Act in context for investors?

Response: The Commission should specify the description of each category of violations, orders and citations to be used in the required disclosures. Otherwise, issuers may describe the same category of information differently, which will tend to confuse investors.

(23) The events that would trigger filing under proposed Item 1.04 are also events that are required to be disclosed in periodic reports under Section 1503(a) of the Act and our proposed Item 106 of Regulation S-K. Should we revise our proposal to minimize duplicative disclosure such as by not requiring repetition of information previously reported? Would such an approach be consistent with the Act? Would our proposed disclosure approach be unduly burdensome for issuers or confusing to investors?

Response: Yes, the Commission should revise the proposal to minimize duplicative disclosures. Information previously reported should not have to be repeated. The required disclosures are very burdensome for issuers and the required volume of information about matters that are not material to the issuer tends to confuse investors.

(24) Is there any other information that should be required to be disclosed under proposed Item 1.04 of Form 8-K? Will the information that we are proposing to require in the Form 8-K be useful for investors?

Response: The issuance of 107 (a) orders (Imminent Danger Orders) should only be required if the order is not vacated prior to the reporting time required in 8-K.

(25) Should the filing period for a Form 8-K under proposed Item 1.04 be four business days, as proposed, or should the filing period be longer? What factors should we consider in deciding whether to make the filing period longer?

Response: Extending the filing period for a Form 8-K under proposed Item 1.04 to seven business days would allow the issuer to provide greater detail about the events giving rise to and following the issuance of a 107(a) order, which would better inform investors.

(26) Should we require foreign private issuers to file disclosure about the receipt of imminent danger orders or notices of a pattern or potential pattern of violations within four days under cover of Form 8-K, Form 6-K or a special report on Form 20-F? Should we otherwise require a foreign private issuer to promptly disclose the receipt of such order or notices? Does a divergent treatment of U.S. issuers and foreign private issuers in connection with current reporting disadvantage U.S. issuers? Should this be addressed in our rules, and if so, how? To what extent, if any, would foreign private issuers have additional burdens or costs associated with reporting these events on a current basis?

Response: Reporting by foreign issuers should follow the overall reporting scheme that foreign private issuers currently follow. As such, we recommend that foreign private issuers report this information in conjunction with the filing requirements for 40-F.

(27) Should we, as proposed, amend General Instruction I.A.3(b) of Form S-3 to add proposed Item 1.04 to the list of items on Form 8-K with respect to which an issuer's failure timely to file the Form 8-K will not result in the loss of Form S-3 eligibility? Why or why not? If we were to adopt a current reporting requirement for foreign private issuers for the information covered by Section 1503(b) of the Act, should we approach Form F-3 eligibility in the same manner?

Response: Yes, an issuer's failure to timely file a Form 8-K with respect to Item 1.04 should not result in the loss of Form S-3 eligibility because a delay in reporting information that is typically not material to the issuer should not affect the issuer's Form S-3 eligibility.

(28) As proposed, we would not include proposed Item 1.04 in the list of items in Rules 13a-11(c) and 15d-11(c) with respect to which the failure to file a report on Form 8-K will not be deemed to be a violation of Section 10(b) or Rule 10b-5. Should we instead add proposed Item 1.04 to the safe harbor? Why or why not?

Response: Yes, an issuer's failure to timely file a Form 8-K with respect to Item 1.04 should be added to the safe harbor – disclosures regarding mine safety are typically relatively immaterial events and the failure to timely report them on Form 8-K should not be considered a violation of 10b-5 liability.