Davis Graham & Stubbs LLP

March 2, 2011

Via Email (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-41-10
Release Number 33-9164; 34-63548 (the "Release")
Proposed Rules to Implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

On behalf of our clients, we submit the following comments on the Commission's proposed rules (the "Proposed Rules") to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). We acknowledge and appreciate the Commission's stated goal of codifying the requirements of Section 1503, which are already in effect, so as to "facilitate consistent compliance" by reporting issuers. We, therefore, offer the following comments with respect to aspects of the Proposed Rules which we believed are ambiguous or would otherwise cause undue burden or uncertainty for issuers and offer feedback on certain contemplated extensions of the Proposed Rules that we believe would exceed the scope of Section 1503 of the Act or further burden reporting issuers.

Application Solely to U.S. Mines Subject to Mine Act

We strongly believe that the disclosure requirements under the Proposed Rules should apply only to mines that are subject to the Federal Mine Safety and Health Act of 1977 (the "Mine Act") as administered by the United States Department of Labor's Mine Safety and Health Administration ("MSHA") and not to mines in other jurisdictions. This comports with the scope and intent of Section 1503 as adopted by Congress. Section 1503 of the Act is clearly sculpted to interact specifically with the Mine Act and its implementing regulations. Reporting issuers operate mines all over the world, which are subject to a myriad of varying rules, regulations and enforcement regimes. Any extension of the Proposed Rules to mines in foreign jurisdictions would require the comprehensive revision of the scope and tenure of the Proposed Rules in order to attempt to approximate the different levels of violations and notices reflected in

the current rules. Furthermore, even if the Proposed Rules were substantially revised to attempt to accommodate foreign legal systems and regulatory structures, the application of such rules in foreign jurisdictions would cause substantial complexity and uncertainty for issuers and their investors. Notices of purported violations may not be received on a timely or consistent basis and may be in languages other than English, which could cause delays and affect the issuer's ability to assess and disclose any such notices. The process of addressing and resolving such citations may be substantially different in foreign jurisdictions than under the Mine Act and MSHA regulations, which could further complicate compliance with disclosure obligations.

Application to Foreign Private Issuers

The requirements of Section 1503(a) of the Act, as interpreted by the Proposed Rules, should apply to all issuers that are required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act and that operate coal or other mines in the United States, including foreign private issuers. This is the obvious intent of Section 1503(a) of the Act and there is no compelling reason to exclude foreign private issuers operating in the United States. Further, to do so would further penalize domestic issuers who are already subject to various competitive and disclosure disadvantages due to the more stringent disclosure and reporting requirements applicable to U.S. domestic issuers.

Clarification that Disclosure Relates Only to Citations Received by the Issuer

We believe that the intent of the Act and the Proposed Rules is to require mine operator issuers and their subsidiaries to disclose orders, violations and citations issued by MSHA directly to these entities. Orders, violations and citations received by contractors or other entities operating at the issuers' mine sites, however, are beyond the scope of the Proposed Rules. This interpretation is consistent with the Act's purpose. Issuers do not necessarily have access to current, real time data regarding the receipt or legal status of third-party contractor citations. Moreover, issuers do not have standing to challenge or contest such citations. Therefore, we respectfully request confirmation that the scope of the disclosure requirement is limited to the issuer and its subsidiaries and does not include citations received by contractors or other entities operating on the issuers' or their subsidiaries' mine sites.

Exclusion of Dismissed, Reduced or Vacated Citations

The Proposed Rules require the reporting of all orders, violations or citations received during the period covered by the report, regardless of whether the order, violation or citation is dismissed or the severity otherwise reduced below the reportable threshold prior to the filing date of the report. This is true with respect to periodic reports, as well as current reports on Form 8-K. It is unclear whether orders, violations or citations that are "vacated," or effectively rescinded, by MSHA, would be required to be reported or not. Vacated citations are removed entirely from the MSHA data retrieval site and represent MSHA's conclusion that no violation in fact occurred.

We believe the interests of investors are best served by presenting accurate and timely information about an issuer's safety record. To the extent that an issuer moves quickly to resolve issues raised by MSHA, and MSHA vacates, dismisses or otherwise reduces the severity of a citation below the reporting threshold, the issuer should have the benefit of reporting the most current and accurate information available and not cluttering its reported safety record with resolved or inaccurate items. With respect to matters that are vacated, fairness dictates this result as such citations are voided *ab initio*. This is especially compelling with respect to imminent danger orders required to be reported on Form 8-K, as the disclosure of orders that are vacated or dismissed within the four (4) day reporting period provides no useful information to investors while imposing reporting burdens and potential reputational harm on the issuer through the very prominent Form 8-K disclosure. To the extent that the Commission requires reissuance of first, second and third quarter information in the Form 10-K for the year, all items which are dismissed, reduced below the reporting threshold or vacated, prior to the filing of the Form 10-K should likewise be allowed to be excluded from the report.

Duplicative Disclosure in Forms 10-Q and 10-K

The Proposed Rules would require issuers to make all required disclosures on Form 10-Qs filed during the first fiscal quarters and then to reissue this same data, along with fourth quarter information, in the Form 10-K for the year. Issuers should only be required to report fourth quarter information and perhaps to provide limited summary information for the annual period in the Form 10-K. At the time of the filing of the Form 10-K, the safety information reported via Form 10-Q clearly remains easily available to investors. As the Commission is not proposing a requirement to update the earlier-reported data, it is hard to fathom what further benefit is provided to investors by the reissuance of this information. However, to the extent that many of the items have been dismissed, reduced or otherwise resolved, the issuer, although not required to do so, may feel compelled to provide further updates with respect to individual citations in order to ensure that it is providing accurate information regarding its mine safety record. This would create substantial additional burden and expense for such issuer and further complicate the likely voluminous disclosure presented, with little, if any, benefit to the average investor.

Disclosure of Total Dollar Amount of Assessments

The Proposed Rules would require disclosure of the cumulative total of all proposed assessments of penalties outstanding as of the date of the report, as well as the total dollar amounts of all assessments of penalties proposed by MSHA during the time period covered by the report. As proposed, it would not be possible for issuers to exclude proposed assessments of penalties that are being contested. Based on the current backlog of actions before the Federal Mine Safety and Health Review Commission (the "Mine Safety Commission"), it could take up to two years to resolve a contested matter, thus requiring issuers to carry forward potential penalties over several reporting periods. The presented cumulative dollar amount of outstanding penalties could be misleading to investors who are already receiving a quarter-by-quarter update on safety matters and penalties assessed and may have difficulty reconciling the presented data.

For these reasons, we propose that it would be better for both issuers and investors to eliminate the proposed requirement to include cumulative outstanding penalty information. If such cumulative information were required, the issuer should be able to exclude contested items or, at the very least, to note the contested items separately.

Exclusion of Non-Chargeable Fatalities

We believe that fatalities determined to be "non-chargeable" under MSHA regulations should not be reportable under the Proposed Rules. Such fatalities do not reflect upon the issuer's mine safety conditions or practices, and thus the disclosure of such matters does not advance the purposes of Section 1503 of the Act or the Proposed Rules. Further, there is often a substantial delay between the occurrence of a fatality and MSHA's determination that the event is non-chargeable. We request additional guidance from the Commission as to the handling of such fatalities pending the final determination by MSHA and would propose that, where the issuer has a good faith belief that the fatality is non-chargeable, it be allowed to exclude the fatality from its reports.

Disclosure of Pending Legal Actions

We believe that, as an initial matter, additional guidance is needed as to the meaning of "legal matter." We understand "legal matter" to mean the initiation of a formal contest or the appeal of a citation or order with the Mine Safety Commission or any other institution of an action before the Mine Safety Commission, such as a motion to reopen a final order. It would seemingly also include any further appeals within the Mine Safety Commission or to the United States federal courts with respect to such matters. We do not expect that "legal action" would encompass conferences with MSHA inspectors, supervisors or litigation representatives about disagreements with an inspector's findings. It would be helpful to receive confirmation from the Commission on these points.

The proposed requirement to provide updates on legal actions previously disclosed in periodic reports would be particularly burdensome for issuers and would not provide materially useful information to investors. As there is no materiality threshold for the reporting of legal actions, many of the actions reported are likely to be immaterial to the issuer. Requiring an issuer and its accountants and disclosure staff to nonetheless monitor and provide updates on these immaterial legal actions would be burdensome to the issuer and potentially result in voluminous disclosure with respect to matters immaterial to investors. Further, the Act does not expressly require issuers to provide updates, and we do not believe that these updates are necessary to protect investors or to carry out the purposes of the Act. Thus, we would propose that the requirement to provide updates with respect to developments on disclosed legal matters be limited only to those matters that are material to the issuer. If an issuer would like to provide updates as to the status of other pending matters, it should be allowed to do so.

Interactive Data Format

With respect to the Commission's query as to whether the required disclosure should be provided in interactive data format, we believe this would be burdensome to issuers and provide no benefit to investors. Tagging the mine safety data would be time consuming and expensive, further increasing the impact and burden of these new safety disclosure requirements on issuers that are also adapting to the use of XBRL or still in the process of implementing XBRL for financial reporting purposes. In addition, all of the mine safety data required to be reported by the rules is readily available in searchable format on MSHA's data retrieval system.

Description of Categories

With respect to the proposal to include a brief description of each category of violations, orders and citations reported, we believe that, though these descriptions may be helpful, it should be sufficient to provide the basic descriptions once a year, perhaps with the Form 10-K.

Registration Statement Matters

Section 1503 of the Act focuses on disclosures of reporting issuer to be provided in periodic reports and on Form 8-K. It does not extend to registration statements or other reports of reporting issues, and we see no benefit to investors in extending the disclosure requirements further. For Form S-3 registration statements and qualifying Form S-1 registration statements, all filed mine safety information will be incorporated by reference into the registration statements, along with all other information contained in periodic reports of the issuer. To require further disclosure of the mine safety data required by the Proposed Rules in a registration statement would give undue weight and prominence to what should normally be information immaterial to the issuer as a whole. This is especially true in light of the absence of materiality determinations allowed under the Proposed Rules. For mine safety matters that are indeed material to an issuer or its business, disclosure would be required in other parts of the issuer's disclosure documents and in its registration statements, such as risk factors, the business description, legal proceedings or management's discussion and analysis. Thus, investors are adequately protected against any material mine safety issues affecting the issuer.

We agree that General Instruction I.A.3(b) of Form S-3 should be amended to add proposed Item 1.04 of Form 8-K to the list of items with respect to which an issuer's failure to timely file on Form 8-K will not result in the loss of Form eligibility. When compared to other items which have been specified as not affecting Form S-3 eligibility, Item 1.04 would be no more significant that the other items. This is particularly the case in light of the absence of a materiality threshold for the reporting obligation under proposed Item 1.04 and the range of issues, particularly under 107(a) of the Mine Act, that can trigger disclosure under Item 1.04.

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We appreciate the opportunity to provide these comments and would be pleased to discuss them further with the Commission or its staff. Any questions regarding our comments may be directed to Michelle Shepston at (303) 892-7344.

Respectfully yours,

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