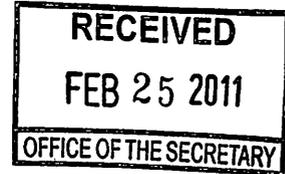




February 16, 2011



Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission (SEC)  
100 F Street, NE  
Washington, DC 20549-1090

**RE: Comments Regarding File Number S7-41-10 on Mine Safety Disclosure**

Dear Ms. Murphy,

I am writing on behalf of Trillium Asset Management Corporation.

Given competing demands surrounding implementation of the many provisions within the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and congressional funding constraints, we appreciate that the SEC and its staff have taken timely action to ensure the thoughtful drafting of a rule and initiation of a public comment period on Section 1503 of the act on mine safety. We were a strong advocate for SEC self-funding during the financial reform debate and continue to press Congress to secure adequate funding for the SEC to fulfill its many regulatory responsibilities, including new responsibilities added under Dodd-Frank.

In addition to offering direct answers to the questions SEC staff poses in its draft rule on Section 1503 of the Dodd-Frank Act on mine safety disclosures (File Number S7-41-10), we would like to underscore three broader points. First, mine safety disclosures are material to investors, and investors will use this information as the basis for investment decisions. Moreover, leadership at world-class mining firms know investors and other key stakeholders want this information and disclose not only statistics on U.S. worker health and safety, but safety statistics for workers worldwide, as well as policies and management analysis linking the importance of improving health and safety performance to underlying value. For example, Newmont Mining, a U.S. issuer, voluntarily discloses its global health and safety data, including accident, injury and fatality rates and offers investors a perspective on how this data informs management decisions.<sup>1</sup> More companies should follow this kind of example.

Second, comparable data is needed for the valuable financial analysis responsible investors perform through incorporation of mine safety risks and incidents. This rulemaking process offers a unique opportunity to make mine health and safety data consistent and easily accessible to all investors, thereby improving efficiency in U.S. markets through ability to allocate capital to issuers with the best management and, therefore, overall prospects for long-term shareholder value. In the Newmont Mining example cited above, the company has adopted a voluntary standard, the Global Reporting Initiative's guidelines, in disclosing consistent, comparable and auditable data to investors.<sup>2</sup> However, with multiple reporting standards available, clearly issuers also seek and would benefit from guidance from the SEC on reporting in this area.

<sup>1</sup> See <http://www.beyondthemine.com/2009/?l=2&pid=6&parent=23&id=220> and <http://www.beyondthemine.com/2009/?l=1&pid=6&id=21>.

<sup>2</sup> See <http://www.globalreporting.org> for more information.

Third, during the open meeting on December 15, 2010, when the Commissioners voted on opening the comment period on this draft rule, Chairman Schapiro and SEC staff noted the lack of expertise within the SEC to grapple with this and other sustainability disclosures required by Dodd-Frank. Once the SEC is adequately funded, we urge that it immediately investigate staffing an office on sustainability issues. This will allow for greater internal expertise to draw from for future rulemaking in this area, as well as enforcement on the mine safety disclosures.

Below are our direct answers to the questions posed by the SEC staff with question numbers appearing next to the answers.

#### **Who should report?**

1. We believe that the SEC should use the definition of “subsidiary” stipulated under Item 1-02(x) of Regulation S-X, which states that a “subsidiary” of a specified person is “an affiliate controlled by such person directly, or indirectly through one or more intermediaries.”
2. We would like to see issuers report on their mines worldwide. Health and safety risks related to mines in Indonesia, Chile or elsewhere around the globe are as material to investors as health and safety concerns for U.S. mines. The data required to be disclosed under the Mine Act and as part of Section 1503(a) of the Dodd-Frank Act are just as readily available for an issuer’s non-U.S. mines as it is for their non-U.S. mines. The ability to aggregate this information for an issuer’s entire operations worldwide would be useful to investors.
3. We concur with SEC staff that smaller issuers should not be exempted from this disclosure rule, as smaller issuers are as likely to have material risks associated with worker safety issues as larger reporters. Furthermore, Dodd-Frank does not provide an exemption for smaller issuers or imply one, so we believe such an exception would run counter to the intent of the legislation. Any mining operation is a tremendous undertaking, one that needs careful consideration by investors, as well as the communities where the mining is to take place. Smaller companies are quick to quote statistics about job creation and economic impact when seeking regulatory approval and should be equally prepared to address issues related to health and safety.
4. For the same reasons, we agree with SEC staff that foreign private issuers also should not be exempt from disclosing health and safety statistics outlined in this draft rule.

#### **Are the disclosures useful? Too burdensome?**

5. We realize that there are costs associated with tracking mine health and safety data, but we feel that the benefits far outweigh the effort. What is not measured often does not count in corporate decision making, so we feel worker health and safety should be of paramount importance to operators of mines and the corporate issuers that own them. As aptly stated by one corporate issuer: “By demonstrating our commitment to protecting the welfare of others, we can attract and retain experienced employees, encourage host communities to conduct

business with us, and secure financial investments to explore and develop new regions."<sup>3</sup>

**Where should issuers disclose information? In what format?**

6. We see no reason for exemptions for asset-backed issuers.
7. As investors, we want information as soon as possible. While we recognize the discrepancies in filing requirements for domestic and foreign issuers, we still believe domestic issuers should file information as required under the Act in Form 8-K.
8. The information should appear in a table tagged using XBRL.
9. We would prefer that in recognition of the materiality of the data that the rule requires the disclosure be filed rather than furnished in the annual report on Form 10-K, Form 20-F, or Form 40-F of relevant issuers.
10. See answer to question 9.
11. We prefer an interactive format, such as XBRL, to facilitate analysis of the data.
12. We concur that the disclosures should require Form 10-K to include both disclosure about orders, citations, violations, assessments and legal actions received or initiated during the fourth quarter and the aggregate data for the whole year.
13. We believe 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 before the filing of the periodic report, should be included in the report. Issuers are welcome to offer additional information to place these disclosures in context.
14. Every violation under section 104 of the Mine Act should be disclosed. Financial analysts with training are the best judges of whether they factor in valuation.
15. It is indeed appropriate for the new rule to 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.
16. Issuers should be required to include in the total dollar amount any proposed assessments of penalties that are being contested until those issues are resolved.
17. As stated earlier, we believe reporting on fatalities as outlined by the Mine Act should be reported for all of the corporate issuers' mines worldwide. They are, indeed, material to investors and the company.

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<sup>3</sup> Newmont Mining. (2010). *Beyond the Mine: The Journey Towards Sustainability*. Retrieved January 27, 2011, from <http://www.beyondthemine.com/2009/?l=1&pid=6&id=21>.

18. All fatalities should be disclosed, and the issuer should be permitted to explain “nonchargeable” incidents.
19. The MSHA framework should be applied to non-U.S. jurisdictions for reporting fatalities at non-U.S. mines.
20. It is appropriate for information about pending legal actions to 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.
21. The disclosures as outlined by the act are sufficient.
22. The proposed disclosure providing a brief description of each category of violations, orders and citations reported is useful to investors beyond the statistics provided in the proposed exhibit to the periodic report, as they offer context for investors to weigh the incidents.
23. The events that would trigger filing under the act are significant and already measured by the issuer, so we see no extra burden in reporting them twice.
24. The 8-K disclosures are useful to investors, as outlined in our statement above.
25. The filing period for a Form 8-K under proposed Item 1.04 should be four business days, as proposed.
26. The SEC should 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.
27. The SEC, as proposed, should 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 and we should approach Form F-3 eligibility in the same manner.
28. While we have concerns and will monitor, we concur with not including 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.

Thank you, again, for the opportunity to comment on this important rulemaking process.

Sincerely,



Jonas Kron, Esq.  
Vice President, Deputy Director  
ESG Research & Shareholder Advocacy  
Trillium Asset Management Corporation