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Contrasting Two Models for Reporting Corporate Social Activities: Encouraging the Responsible and Discouraging the Irresponsible

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Abstract

This paper reviews the traditional incentive model of reporting corporate social responsibility (CSR), a complementary disincentive model is introduced, and the two are compared. Both models are grounded in the assumption that reporting increases the supply of information to inform providers of capital and, being informed, providers respond. The traditional model assumes an incentive response, i.e. the capital is provided and the cost of capital is beneficial to the company. By contrast, and the emerging model assumes a disincentive response, information motivates potential debt or equity investors to withhold capital.

The emerging disincentive model is seen in the coal mining industry of the U.S. through (a) derivative lawsuits by shareholders to obtain safety and environmental information about corporate actions, (b) banking policies that restrict credit for mountaintop removal coal mining (MTRM), and (c) regulatory provisions e.g. Dodd-Frank Act requiring financial statement disclosure of health and safety mining health and safety standards. Also, the disincentive model is advanced through technology (a) in collection, aggregation, and disclosure of information and (b) investment funds that exclude socially irresponsible companies. The emerging CSR disincentive reporting model (a) addresses core accountability aspects reporting compliance failures with laws and regulations and (b) incorporates beneficial accounting and auditing attributes. Implications for further research are presented.

Keywords: Accounting, Corporate Social Responsibility, Corporate Social Responsibility Reporting

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1. INTRODUCTION

From the old coal mining industry, a new corporate reporting model for corporate social responsibility (CSR) emerges. Conventional incentive CSR reporting models provide information about socially responsible activities of companies, assuming such reporting encourages stakeholders to channel capital to socially responsible entities and offer more favorable terms. In contrast, the emerging disincentive model reports corporate social irresponsibility in part to provide disincentives to discourage stakeholders from providing capital to socially irresponsible entities. Neither model is sufficient but they together are complimentary, each model contributing to the evolving CSR reporting practice.

Until recently disincentive models have been dismissed as only a theoretical possibility on the opposite end of the reporting continuum from conventional CSR reporting models. Unlike incentive models grounded in academic literature, the disincentive model emerges from non-academic sources; evidence of emergence is discernable and merits academic attention.

Because a disincentive model reports socially irresponsible activities, it emerges from one of the most socially irresponsible industries, coal mining. Social destruction from coal mining is usually associated with carbon emissions from coal-fired electric generating facilities and other coal-fired energy. As damaging as carbon emissions are, for the people living in coal mining regions like Appalachian regions of the U.S., destruction from coal mining is immediate, extensive, and personal. Communities lose clean drinking water and clean air to breathe; death, injury, and medical issues are major risks (CHHOTRAY, 2008): increasing instances of black lung for coal miners (Hall, 2007; and Huffington Post, May 23, 2011); higher cancer rates for all in communities (HITT AND HENDRYX, 2010); more birth defects (AHREN *et al*., 2011). The harm from coal mining, and mountain top removal mining (MTRM) in particular, is widely documented. See e.g. Shnayerson (2008) and, Burns (2007). Two other destructve aspects of coal mining are destruction of the environment and injury and death of miners from safety breaches. This paper is about financial responses to socially irresponsible activities of mining companies including shareholders, creditors, and financial regulators. Collectively, they suggest the emerging disincentive model of CSR reporting.

The paper has five sections: 1) introduction, 2) research question and methodology, 3) current incentive model of CSR, 4) the emerging disincentive model, 5) results,comparison of models, and 6) conclusions and implications for further development.

2. RESEARCH QUESTION AND METHODOLOGY

The central question addressed by this paper is whether a corporate social irresponsibility or disincentive model merits further development and application. In answering this question, the current incentive model of voluntary CSR reporting is presented. Then the argument for mandatory reporting of social irresponsibility will be built on evidence that reflect current activities in the financial environment. A comparison of the conventional and emerging models is presented. Given that evidence from current activities and from comparison of models indicate that reporting of corporate social irresponsibility merits further development

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and application, a secondary question arises, how might the emerging disincentive model be developed to be applied in ways that are efficient and effective?

3. CURRENT INCENTIVE MODEL OF CSR

A substantial body of prior research is based on the assumption that companies have incentives to report positive aspects of CSR, including environmental activities, in order to receive various benefits. For example, several previous studies have indicated that increased disclosures are related to lower cost of capital. Sengupta (1998) examined the relationship between disclosure quality and the cost of debt and found a significant negative correlation between disclosure quality and cost of debt. Botosan (1997, 2006) and Botosan and Plumlee (2002) found that better quality annual report disclosures are associated with decreases in the cost of equity capital. Armitage and Marston (2008) interviewed British executives about their perceptions of the relationship of disclosures to the cost of capital. Their results show that executives perceive that increased disclosures, up to a point, are associated with both lower costs of debt capital and equity capital. Reduced cost of capital, however, is not the primary motivation for disclosures. Instead, the primary perceived benefit from disclosure is increase in reputation leading to commercial advantage. Armitage and Marston (2008 pp. 315-318) also give a good summary of the theory and results of past disclosure research, indicating that most earlier studies have shown a negative correlation between disclosures and cost of capital (see sources cited by them).

With respect to reputation, Toms (2002) and Hasseldine *et al*. (2005) used content analysis of reports of British companies to derive qualitative measures of environmental disclosures found results to suggest the quality of environmental disclosures, rather than mere quantity, has a stronger effect on creation of company reputation among executives and investors. Semenova and Hassel (2008) and Semenova (2011) studied U.S. companies and concluded that reputational benefits from environmental preparedness are associated with higher market values for companies' stock prices, lower cost of capital, and commercial. They suggest that environmental disclosures lead to the enhanced reputation.

With respect to stock prices and returns, Lundholm and Myers (2002) use disclosure scores based on quantity and quality of disclosures to compare current and future stock returns. They show that a higher value of the disclosure score in a certain year is significantly associated with increased future stock returns. Therefore, increased disclosures can be related to future market. (See also studies by Lang and Lundholm (1993, 1996, 2000) for similar findings.)

An additional specifically related to the mining industry is that of Magness (2006), who examined annual report disclosures of environmental information of Canadian mining companies immediately after a major mining accident. Her findings indicate that voluntary annual report disclosures are associated with higher amounts of other voluntary disclosures, e.g. press releases and the like. Also, increased voluntary disclosures are associated with high stakeholder power. She developed her study using legitimacy theory based on the assumption that organizations have no inherent right to exist; that right is conferred by society when an organization's value system is congruent with that of society. In summary, she concluded managers use disclosures to shape stakeholder impressions of the role and responsibility of a company

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4. THE EMERGING DISINCENTIVE MODEL

For CSR reporting, the coal mining industry of the U.S. provides evidence supporting disincentive models from three sources: a) derivative law suits by shareholders, b) withdrawal of loans, and c) mandatory reporting of health and safety violations in filings with the U.S. Securities and Exchange Commission (SEC). It appears that shareholders and creditor have not developed altruistic concern for socially responsible behavior. Rather, they are beginning to associate socially irresponsible behavior with financial risks. Thus, their desire for information about socially irresponsible behavior and willingness to respond reflects a desire to manage risks. If social responsibility is related to financial risks, then a market for information about social irresponsibility would evolve.

4.1a Derivative law suits.

In derivative lawsuits, the power to sue derives from the existence of a corporation. The purpose of shareholder suits is to seek remedies, often as policy or personnel changes, to benefit the corporation. Shareholders sue on behalf of corporations against a third party, often an officer or director of the company, whose actions allegedly damaged the corporation. Shareholders bringing lawsuits do not benefit directly; the corporation is the beneficiary. A "stipulation of settlement" agreement is submitted for approval and enforcement by the court. If parties to the suit reach mutual resolution, such agreement can be submitted for court approval as an alternative to a trial.

One major example that has a strong potential to set precedent, is Massey Energy, subsequently acquired by Alpha Resources, which was a large coal company operating in the Appalachian region of the U.S. It had a long record of health and safety violations (BURNS, 2007; SHNAYERSON, 2008 and WARD, various dates) over many years. A major shareholders viewed Massey Energy's actions as socially irresponsible and brought derivative lawsuits against Massey Energy's CEO in 2003, 2007 and 2010. (See Note 1 for a summary of these legal actions.)The stipulation filed in 2008 to resolve the 2007 suit included a Corporate Governance Agreement (CGA) providing for a range of actions including a control structure to design and implement internal controls to ensure compliance with environment and safety laws and regulations. The Board was given oversight responsibility through a committee of directors having responsibility for a management structure. Independent external audits of environment and safety compliance were required every two years. Additionally, Massey was required to report to shareholders annually on environment and safety issues. Subsequently, the plaintiff, the shareholders bringing the suit, asked that Massey be held in contempt of court for failure to adhere to this agreement. The 2008 CGA is noteworthy because it results from a stockholder's seeking CSA information and a court ordering that environment and of safety compliance information be made available in annual public reports. The association between socially irresponsible behavior and firms' value is a matter for further research, but, the shareholder plaintiffs argued that the socially irresponsible behavior of Massey Energy negatively affected the value of its investment.

4.1b Restricted lending.

Mountain Top Removal Mining (MTRM) (also called strip mining) is particularly destructive: it destroys the landscape, destroys ecosystems, and destroys human health. Approximately 1,800 square miles

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(3,000 sq. kilometers) have been consumed by MTRM (SUSTAINABLEBUSINESS.COM, May 18, 2010) an area almost equal the State of Delaware. The destruction includes 500 mountains that have been flattened, two thousand miles of streams (SUSTAINABLEBUSINESS.COM, April 8, 2011) that have been covered, aquatic life in those streams that has been killed, native forests that has been eliminated, and impairment of clean air and water. This destruction was recently documented by *The Last Mountain* released in 2011 by Uncommon Productions.

The Rainforest Action Network and the Sierra Club, opponents to MTRM, adopted "follow the money," as an axiom and issued report cards on the banks that financed MTRM (SUSTAINABLEBUSINESS.COM, April 8, 2011) to encourage banks to stop financing MTRM; some success has been achieved. Bank of America, Citi, Morgan Stanley, JPMorgan Chase, PNC, Wells Fargo and Credit Suisse have stopped financing MTRM (STARBUCK, 2010). While lack of financing by these banks does not stop MTRM, for some mining companies financing is more difficult to obtain and/or more costly. In addition to banks, transportation enables MTRM socially irresponsible activity. Therefore, pressure on railroads, builders of conveyor systems, and states that fail to adopt or to enforce trucking regulations occur. Refusal by major banks to finance MTRM is significant because it shows creditors are willing to consider social irresponsibility. One reason for banks' **refusal** to finance MTRM is greater financial risks from socially irresponsible activity (ZELLER JR., 2010). Also PNC, a major regional bank, cited increasing regulatory and legislative scrutiny as a reason for withdrawing. (WYMT NEWS, 2010).

4.1c Financial Statement Disclosure.

In April 2010, 29 coal miners died in a deep mine operated by Massey Energy; autopsies show that 17 of 24 (70%) miners suffered from black lung (HUFFINGTON POST, May 19, 2011). Rarely is there such a large sample of miners to autopsy and results are alarming: the incidence of black lung is 20 times the national average. Nationally, about 1,000 miners a year die of black lung (HUFFINGTON POST, May 19, 2011). In a recently released federal investigation report of this disaster, the U.S. Mine Safety and Health Administration (MSHA) concluded the deaths were preventable; Massey Energy disregarded safety standards. Further Massey Energy maintained two set of records using one to misinform mine inspectors. (TOGNERI, 2011). The explosion focused public attention on the risks of coal mining.

In 2010, the U.S. Congress passed the Dodd-Frank Act which was largely a response to the financial crisis but also has a provision requiring SEC-registered issuers to report violations of health or safety standards in SEC financial filings. These disclosures include the number of a) violations of mandatory health or safety standards, b) orders issued under relevant sections, c) citations and orders for unwarrantable failure to comply with mandatory health or safety standards, d) certain flagrant violations, e) imminent danger orders, and f) mining-related fatalities, as well as g) the total dollar value of proposed assessments. In addition, issuers must promptly report the a) receipt of an imminent danger order and b) receipt of notice of a pattern or potential pattern of health and safety standards. The SEC is empowered to issue rules and regulations to guide this reporting and has done so.

The unusual aspect is that the reporting must be made in filings of financial statements submitted to the SEC and failure to report properly is a violation of the SEC Act of 1934. It is also significant because

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a) reporting of violations of health and safety standards is directed to users of financial statements, to the providers of capital and b) the boundary for reporting is the consolidated reporting entity rather than the legal entity. Data are to be disaggregated by mine, i.e reported by mine.

4.1d Summary.

The actions discussed above are significant for the trend they show of financial stakeholders**' concern over** financial risks due to socially irresponsible behavior. Financial stakeholders want information about corporate social irresponsibility, creditors respond finically to information about corporate social irresponsibility, and Congress requires the disclosure of information about corporate social irresponsibility in financial filings. Each of these speaks to the value and feasibility of models for reporting corporate social irresponsibility.

5. COMPARISON OF TWO MODELS

Comparing the models has two objectives to: a) distinguish the models and b) explore whether the emerging model merits further development and application. Comparison is approached from the perspectives of accounting, auditing and accountability.

In accounting, it is fundamental that reporting requires accountability standards that prescribe ways to account for events. Such standards should create uniformity so similar events will be accounted for in the same way. Also, such standards create an expectation about how an event should be reported. Auditing requires two sets of standards: accountability standards and the auditing standards to conduct the audit.

One strength of the emerging model is that accountability standards are well defined because they require compliance with laws and regulations. These standards are socially defined in that laws and regulations are adopted by an elected representative government with due process that legitimately defines social irresponsibility. The public notion of social irresponsibility is noncompliance with laws and regulations and social irresponsibility may be observed by noncompliance with those laws and regulations. Thus, a disincentive model would be guided by the notion of corporate social irresponsibility as noncompliance with laws and regulations, most especially noncompliance with laws and regulations pertaining to environment, health and safety.

Standards of the emerging model are the minimum for socially irresponsible behavior; setting such minimum standards as aspirational standards, though is not appropriate. Rather, systematic violations of laws and regulations are standards for socially irresponsible behavior, and such violations merit disclosure.

Auditing adds creditability. To audit, it is essential to have accountability standards, high quality evidence, and auditing standards. Compliance with laws and regulations is a well-defined standard of accountability. Judgments given by third parties reflect due process and consideration of evidence. Compliance auditing also has established procedures. The emerging model reverses the traditional incentive notion of CSR because it does not focus on encouraging exemplary CSR but rather on avoiding socially irresponsibility, and especially avoiding liabilities.

The emerging model, driven by financial concerns for risks, is potentially acceptable by financial stakeholders and benefits other stakeholders as well. The first objective of CSR is to comply with the laws and

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regulations of societies. This objective can be universal across companies and global borders. When corporations fail systematically to comply, risks increase both for financial stakeholders and society. A disincentive model to benefit financial stakeholders turns on looking from new perspectives of the social responsibility, the needs of new users, and the desired disclosures. The primary user group is financial stakeholders who are motivated by two purposes. Traditional vision suggests that socially-concerned financial stakeholders prefer financial returns that are achieved by corporations that are at least minimally legally compliant. The emerging view is that financial stakeholders now recognize that persistent, systematic noncompliance indicates risks that can result in future liabilities and thus reduce the economic value of firms.

Other users also benefit from having noncompliance information available For example public activists, legislative policy makers, and executive branches of governments responsible for enforcement need access to noncompliance reports. Other potential users suggest aggregation of information in distinct ways to meet their distinct needs. Legislative policy makers could want information aggregated by industry, executive branches could want information aggregated by entity, and financial stakeholders could want information aggregated by reporting entity or group. The strengths of the emerging model indicate it merits consideration and development.

6. CONCLUSION, FURTHER DEVELOPMENT

Because current activities and comparison of models indicate that corporate social irresponsibility reporting merits further development and application, a secondary question is: how can a disincentive model be developed to be applied efficiently and effectively?

6.1a Future Academic Research.

Longitudinal academic research could determine if socially irresponsible corporations are more risky for financial stakeholders than socially responsible corporations. The social value of noncompliance information is not dependent on financial stakeholders**' interests, b**ut if a relationship between financial risk and socially irresponsible behavior exists, then the power of the market for information contributes disincentive models applications. Also for MTRM, indirect beneficiaries, like banks can be investigated. Many academic questions abound financial risk and risk management behavior remain to be discovered.

6.1b Non-academic Developments.

Two aspects of non-academic developments also merit consideration: aggregation of data and use of data.

Aggregation of Data.

Whereas incentive models focus on reporting good practices, a disincentive model provides noncompliance information using data that are readily available, easy to access, and easy to aggregate in different ways for different users. Means to collect data and report information can evolve over time.

In designing systems to disclose noncompliance information, four issues arise: First, data sources are dispersed across multiple levels of government and offices. Without a central mechanism to collect and aggregate data, there is no single source. Secondly, data are disaggregated by legal corporate entity. If reporting

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is also by legal entities, merely by increasing the number of legal entities in a group, the controlling company can reduce the meaningfulness of reports by overwhelming reports with data. Financial reporting in almost all countries is by consolidated groups so reporting of noncompliance by legal entity is inconsistent and confusing. For financial stakeholders, noncompliance disclosures need to be aggregated by reporting entity.

Third, what party is responsible for the aggregation of data? One option is to create a central enforcement office. For individuals, crimes are classified by individuals; employers can access criminal records of potential employees. In addition, convictions for some crimes attach to neighborhoods; home buyers can access data about neighborhoods. The present infrastructure, however, does not aggregate noncompliance data by legal corporate entities nor consolidated groups. A second aggregation option comes from the Dodd-Frank Act which requires reporting entities to report noncompliance information subject to financial audit.

Fourth are data sources. Financial accounting data are generated internally within reporting entities. Noncompliance data are generated externally by government offices. For audits, external generation of noncompliance data has an advantage that in general external evidence is strong. A disadvantage is that concern for the evidence quality shifts from the reporting entity to many governmental offices.

Use of information.

Socially responsible investing primarily identifies companies that have good CSR records. One difficulty is lack of common views of what constitutes good CSR. A bank may excel in its own environmental and safety practices, but also pursue egregious lending practices, e.g. for MTRM . With advances in technology, compliance information can be aggregated to show both aspects. The key is to empower financial stakeholders with information and with means to use it. Creditors and credit rating agencies can incorporate systematic noncompliance information into credit risk models. Index funds can be customized for investors by removing egregiously noncompliant coompanies either by deliberate choice of shareholders or by statistical modeling.

C5.1c Summary

A disincentive model is a significant development in evolution of reporting CSR for financial and other stakeholders. Increasingly, noncompliance information is fundamental to societies in seeking to reduce public costs of corporate social irresponsibility. Both private and public investments can structure information systems that are efficient and effective in supporting disincentive models to meet the needs of various users. Some entities, especially those with managements that want to avoid scrutiny, will assert the challenges are too complex and the costs are too great. But, given the public costs of corporate social irresponsibility and the significant amount of public subsidies that go to such corporate entities, what will be the costs of not making the investment?

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Exhibit 1
Comparison of Conventional Incentive Model and Emerging Disincentive Model

Attribute	Conventional Incentive Model	Emerging Disincentive Model
Purpose	Encouraging socially responsible behavior, especially behavior that is exemplary.	Discouraging socially irresponsible behavior, especially behavior that is egregious.
Standards for judgment of responsible behavior	Various standards.	Compliance with relevant laws and regulations.
Source of standards for judgment	Many sources from individual entities to private bodies.	Legally constituted representative governments adopting relevant laws and regulations.
Nature of standards	Often ambiguous, often guided by aspirational notions of measuring life cycle benefits and cost and/or social benefits and costs.	Reasonably specific from grounding in laws and regulations, but minimum acceptable standards.
Comparability of entities	Difficult due to various standards.	Moderate to strong if within same industry subject to same laws and regulations.
Source of evidence with respect to standards	Often internal evidence based on assertions of reporting entity.	Mainly external evidence from third-parties responsible for enforcing laws and regulations.
Internal Enforcement	Reliance is on internal control systems designed to achieve desired objectives.	Reliance is on internal control systems designed to provide for compliance with laws and regulations.
External enforcement	Weak, enforcement ranges from none to compliance with standards of private bodies.	Moderate, enforcement is by governments responsible for enforcing laws and regulations.
Ease of audit	Difficult, often standards are not fixed and evidence may be internally generated.	Moderate, standards are somewhat fixed and evidence is primarily external.
Infrastructure of available data.	Weak in terms of availability, classification and aggregation.	Strong in terms of availability, moderately strong in terms of classification, but weak in terms of aggregation.

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APPENDICES

Note 1, Chronological Order of Key Matters
March 31, 2003, Phillip R. Arlia, a shareholder, brought a derivative lawsuit (Arlia Suit) against the Don Blankenship the CEO of Massey and others alleging insider trading. On September 14, 2005, this lawsuit was resolved by a Stipulation of Settlement agreement (Arlia Stipulation) that provided for certain modest and tentative corporate governance reforms at Massey. See: Phillip R. Arlia, On Behalf of Massey Energy Company, Plaintiff vs. Don L. Blankenship, et al., Defendants and Massey Energy Company, a Delaware corporation, Nominal Defendant, Case No. 02-C-139, Boone County, West Virginia.
July 2, 2007, Manville, a shareholder, brought a derivative lawsuit (Manville Environmental and Safety Suit) against the Board of Massey alleging conscious failure to comply with applicable environmental and worker-safety laws and regulations. On May 20, 2008, the court approved a Stipulation of Settlement agreement (Manville Environmental and Safety Stipulation) that included a Corporate Governance Agreement (CGA). This CGA references the EPA Consent Decree (next item) that was proposed on January 17, 2008. Subsequently on April 16, 2010, Manville filed a Motion for an Order for a Rule to Show Cause as to Why the Board of Directors of Massey Energy Company Should Not Be Held in Civil Contempt. This motion alleges that the Board of Massey has failed to comply with the Stipulation of Settlement agreement. At present, proceedings on this motion are in process. See: Manville Personal Injury Trust, derivatively on behalf of Massey Energy Company, Plaintiffs vs. Don L. Blankenship, et al., Defendants and Massey Energy Company, a Delaware Corporation, Nominal Defendant, Case No. 07-C- 1333, Kanawha County, West Virginia.
January 17, 2008, a Consent Decree was proposed on behalf of the Environmental Protection Agency (EPA) in a federal lawsuit. On April 10, 2008, Judge John T. Copenhaver approved the Consent Decree know as the EPA Consent Decree. See: United States of America, Plaintiffs v. Massey Energy Company, et al., Defendants, Case No. 2:07-0299, Unites States District Court for the Southern District of West Virginia.
April 15, 2010, Manville, a shareholder, brought a derivative suit (Massey Safety Suit) against the Board of Massey alleging the personal accountability of the Board for the Upper Big Branch Mine disaster in which twenty-nine miners died on April 5, 2010 and for mine safety violations. Subsequently, Manville has been joined in this action by two other institutional shareholders: the California State Teachers' Retirement System (CalSTRS) and the Amalgamated Bank (Picardo-Allison, 2010). See: Manville Personal Injury Settlement Trust, derivatively on behalf of Massey Energy Company, Plaintiffs vs. Don L. Blankenship, et al., Defendants and Massey Energy Company, a Delaware Corporation, Nominal Defendant, Case No. 10-C-715, Kanawha County, West Virginia.
May 18, 2010, possibly in response to a campaign by the pensions funds of eight states to have shareholders withhold votes for the reelection of three directors, Massey agreed within three to six months to propose two corporate governance reforms: (a) to de-stagger or declassify terms to enable all directors be elected at same time for terms of one year and (b) to require majority voting for directors, meaning that any director, running unopposed, who receives less than a majority of vote must tender a resignation which the Board then can accept or reject (Coster, 2010).

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Note 2, Dodd-Frank Act of 2010, Section 1503 SEC. 1503. Reporting Requirements Regarding Coal or Other Mine Safety
(a) REPORTING MINE SAFETY INFORMATION.—**Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:** (1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator— (A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration; (B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b)); (C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d)); (D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2)); (E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a)); (F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and (G) the total number of mining-related fatalities. (2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of— (A) 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 such Act (30 U.S.C. 814(e)); or (B) the potential to have such a pattern. (3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

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(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.— **Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8–K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:**

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) 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 such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(c) RULE OF CONSTRUCTION.—**Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.**

(d) COMMISSION AUTHORITY.—

(1) ENFORCEMENT.—**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 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.**

(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

(e) DEFINITIONS.—In this section—

(1) the terms ''issuer'' and ''securities laws'' have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term ''coal or other mine'' means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and (3) the term ''operator'' has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(f) EFFECTIVE DATE.—**This section shall take effect on the day that is 30 days after the date of enactment of this Act.**