October 25, 2011

Update on Recent 2011 U.S. Legal and Regulatory Developments Affecting Canadian Companies

The following is a summary of recent 2011 significant U.S. legal and regulatory developments that may be of interest to Canadian companies and their advisers.

* * *

1. **SEC Staff Issues Cybersecurity Disclosure Guidance.**
   October 19, 2011
   The Staff of the SEC's Division of Corporation Finance issued written guidance, which applies to both U.S. domestic companies and foreign private issuers, setting forth the views of the Staff regarding disclosure obligations in respect of cybersecurity risks and cyber incidents. The guidance is the result of heightened risks related to cybersecurity and the increase in the frequency and severity of cyber incidents and is intended to assist registrants in preparing disclosure under both the Securities Act of 1933 and the Securities Exchange Act of 1934. The SEC indicated that the risk of cyber incidents should be disclosed in commission filings if these issues are among the significant factors that make an investment in the registrant speculative or risky. As well, to the extent that the costs or other consequences of cyber incidents represent a material event, trend or uncertainty that is reasonably likely to have a material effect on the results of operations, liquidity or financial condition or would cause reported financial information not to be necessarily indicative of future operating results or financial condition, a registrant should address cybersecurity risks and cyber incidents in its MD&A. A registrant should consider the impact of any cyber attack on its ability to record, process, summarize and report information that is required to be disclosed in SEC filings, and if there is an adverse impact on such ability, whether that renders the disclosure controls and procedures ineffective. For more information, see http://www.paulweiss.com/files/upload/19-Oct-11SEC.pdf.

2. **SEC Roundtable on Conflict Minerals.**
   October 18, 2011
   The SEC held a roundtable to discuss the agency's rulemaking under Section 1502 of the Dodd Frank Act, which relates to reporting requirements in connection with resource extraction and the use of "conflict minerals" sourced from the Democratic Republic of Congo and adjoining countries. The chair of the

SEC along with three other commissioners, SEC Staff and certain issuers, industry groups and NGOs participated. The roundtable participants discussed various issues regarding the implementation of Section 1502, including the timing of implementation of the rule, the meaning of certain terms and phrases used in Section 1502 (including, for example, 'conflict minerals', 'manufacture', 'contract to manufacture' and 'reasonable country of origin inquiry'), the methods and standards for due diligence, the content of a conflict minerals report and the nature of the audit of a conflicts mineral report. In connection with the roundtable, the SEC has extended the comment period on the proposed rule. It is expected that the final rule will be published by the end of 2011. For more on the proposed disclosure rules regarding the use of conflict minerals, see http://www.paulweiss.com/files/upload/20Sep11Alert.pdf

3. **Delaware Chancery Court Holds that Controlling Shareholder Transaction Fails Entire Fairness Review; Awards $1.263 Billion in Damages.**
October 18, 2011
In the recent *In re Southern Peru Copper Corp. Derivative Litigation* decision, the Delaware Court of Chancery awarded $1.263 billion in damages after finding that the acquisition of Minera Mexico, S.A. de C.V. by Southern Peru Copper Corporation in a controlling stockholder transaction failed to satisfy the entire fairness standard of review. The decision is a reminder of the importance of ensuring that adequate procedural protections are in place in transactions involving controlling stockholders and provides guidance for companies engaging in such transactions. For more information, see http://www.paulweiss.com/files/upload/18-Oct-11DE.pdf

4. **The Promise of Emerging Markets May Pose FCPA Risks.**
September 29, 2011
Companies operating in emerging markets may become increasingly vulnerable to scrutiny under the Foreign Corrupt Practices Act ("FCPA"). The New York Times reports that, in an effort to curb bribery by American companies in other countries, the Justice Department and SEC have heightened enforcement of the FCPA, and the SEC's new whistleblower office provides a new avenue to gather information on possible violations. According to the report, as companies, and financial firms in particular, move into emerging markets, especially where gift-giving is traditionally associated with cultivating business relationships, it will become increasingly important to be vigilant not to run afoul of the law. For more information, see the New York Times at:
http://dealbook.nytimes.com/2011/09/28/a-warning-as-wall-street-moves-into-emerging-markets/

On January 30-31, 2012, Mark F. Mendelsohn, a Paul Weiss Partner, will be co-chairing an anti-corruption and bribery conference in Toronto and will be speaking on the topics of risk management and compliance programs.

5. **SEC Delays Dodd Frank Rulemaking Again.**
August 4, 2011
The SEC has again delayed some of the rulemakings mandated by the Dodd Frank Act. In August 2011, the SEC indicated that the rules relating to pay-for-performance, pay parity, hedging and executive compensation clawbacks are now scheduled to be proposed by December and adopted between January and June 2012. Previously, in April 2011, the SEC indicated that it would delay the adoption of new disclosure rules related to government payments in connection with resource extraction and the use of "conflict minerals" sourced from the Democratic Republic of Congo and adjoining countries. For more information, see, http://sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml#08-12-11

6. **SEC Adopts New S-3 and F-3 Criteria to Remove Credit Rating Requirement and Announces Rescission of Form F-9.**
July 28, 2011
In light of the Dodd Frank Act and the SEC's effort to reduce reliance on credit ratings, the SEC has adopted new rules removing the requirement for an investment grade rating as eligibility criteria for companies seeking to use "short form" registration when registering non-convertible securities for public sale. At the same time as the SEC adopted these new rules, the SEC also adopted rules to rescind Form F-9 effective December 31, 2012. The rescission of Form F-9 involves special considerations for SEC registrants in the oil and gas industry who will move from Form F-9 to Form F-10, as they will become subject to Accounting Standards Codification ("ASC") 932 oil and gas disclosure rules. The new SEC rules include a three-year grandfather provision to ease the transition, except that the SEC has not also adopted a grandfather provision with respect to ASC 932. For more information, see http://www.sec.gov/news/press/2011/2011-155.htm, and the Paul Weiss client memorandum at: http://www.paulweiss.com/files/upload/23Aug11_F9.pdf

7. **SEC Adopts Large Trader Reporting Regime.**
July 26, 2011
The SEC adopted a new rule establishing large trader reporting requirements to enhance the SEC's ability to identify large market participants, collect information on their trading, and analyze their trading activity. The new rule has two primary components: (1) it requires large traders to register with the SEC through a new form, Form 13H, and (2) it imposes recordkeeping, reporting, and limited monitoring requirements on certain registered broker-dealers through whom large traders

execute their transactions. A large trader is defined as a person whose transactions in exchange-listed securities equal or exceed two million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month. For more information, see http://sec.gov/news/press/2011/2011-154.htm

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Christopher J. Cummings
416-504-0522
ccummings@paulweiss.com

Andrew J. Foley
212-373-3078
afoley@paulweiss.com

Adam M. Givertz
416-504-0525
agivertz@paulweiss.com

Edwin S. Maynard
212-373-3024
emaynard@paulweiss.com

Alexis A. Fink contributed to this client alert.

NEW YORK
1285 Avenue of the Americas
New York, NY 10019-6064
+1-212-373-3000

BEIJING
Unit 3601, Fortune Plaza Office
Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District, Beijing 100020
People's Republic of China
+86-10-5828-6300

HONG KONG
12th Fl., Hong Kong Club Building
3A Chater Road
Central Hong Kong
+852-2846-0300

LONDON
Alder Castle, 10 Noble Street
London EC2V 7JU
United Kingdom
+44-20-7367-1600

TOKYO
Fukoku Seimei Building, 2nd Floor
2-2, Uchisaiwaicho 2-chome
Chiyoda-ku, Tokyo 100-0011
Japan
+81-3-3597-8101

TORONTO
Toronto-Dominion Centre
77 King Street West, Suite 3100
P.O. Box 226
Toronto, ON M5K 1J3
Canada
+416-504-0520

WASHINGTON, D.C.
2001 K Street NW
Washington, DC 20006-1047
+1-202-223-7300

WILMINGTON
500 Delaware Avenue, Suite 200
Post Office Box 32
Wilmington, DE 19899-0032
+1-302-655-4410