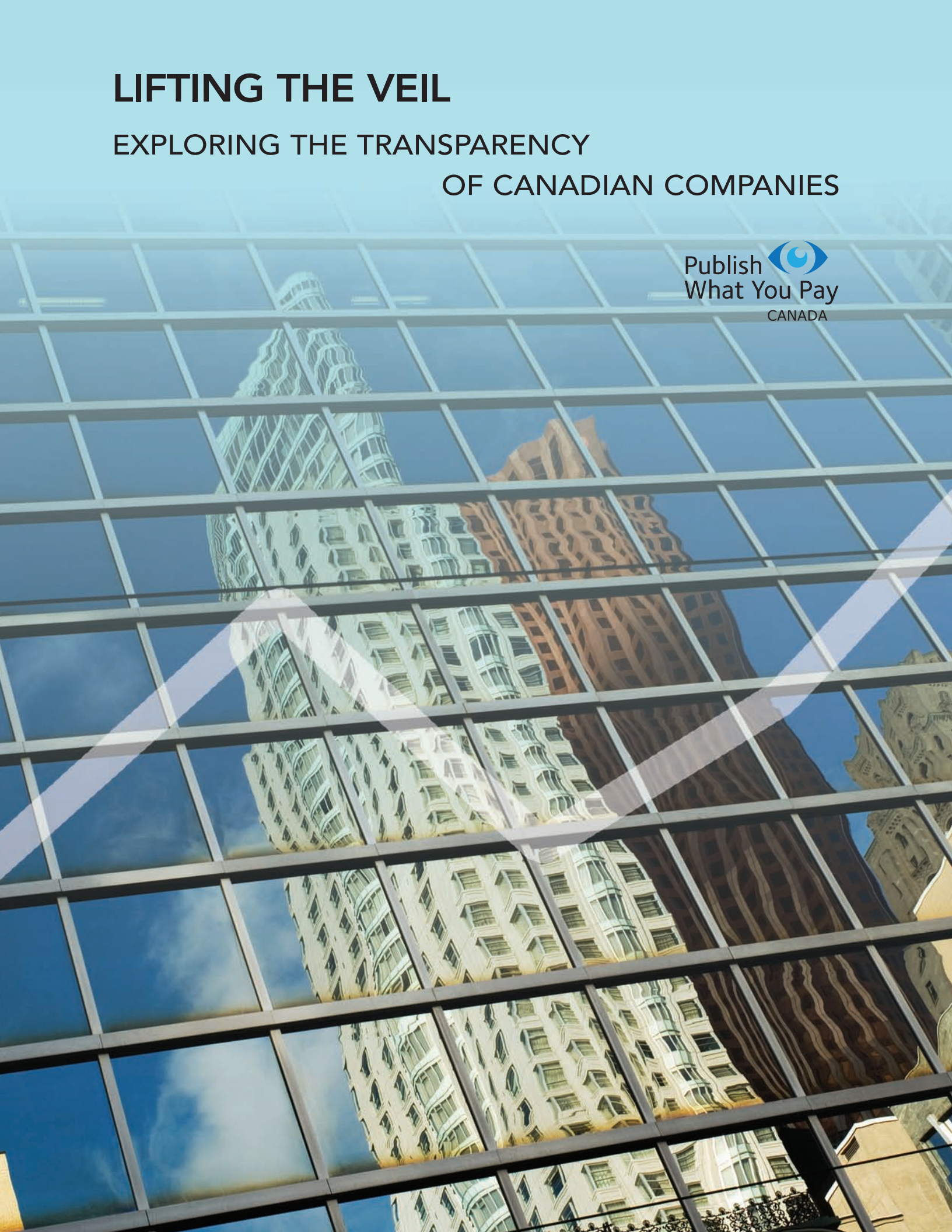


LIFTING THE VEIL

EXPLORING THE TRANSPARENCY

OF CANADIAN COMPANIES

Publish 
What You Pay
CANADA



LIFTING THE VEIL

EXPLORING THE
TRANSPARENCY OF
CANADIAN COMPANIES

Author:
Claire Woodside

Managing Editor :
Ousmane Dème

Design:
Marie-Joanne Brissette

ISBN: 1-897320-14-0

© Partnership Africa Canada,
Novembre 2009

For permission to
reproduce or translate all
parts of this publication,
please contact
Publish What You Pay -
Canada

Publish What You Pay -
Canada
c/o Partnership Africa Canada
600-331 Cooper
Ottawa
Ontario
K2P 0G5
Canada

Tel: +1-613-565-0689
Fax: +1-613-237-6530
Email: research@pwyp.ca
www.pwyp.ca

Publish What You Pay

Publish What You Pay (www.publishwhatyoupay.org) was launched in June 2002 by a coalition of mostly UK-based NGOs (including Global Witness, Transparency International, CAFOD, CARE, Save the Children UK and Open Society Institute) in order to specifically address and push for mandatory disclosure of payments made by companies in the extractive sector to host governments. The birth of this movement was largely a response to a growing global concern with the fact that many countries well endowed with natural resources often also harbored some of the worst conditions of poverty, and that such resources were even a source of conflict in such countries – what is now commonly referred to as the ‘resource curse’ or the ‘paradox of plenty’.

Today, PWYP has grown to become a global civil society network with national coalitions in over 30 countries and partner organizations in an additional 40 countries. The global coalition consists of human rights, economic development, environment and religious groups unified around a common belief that transparency is the critical first step towards a more accountable system for the management of natural resource revenues.

PWYP recognizes however that it is impossible to ensure proper management of natural resource wealth by looking exclusively at revenues. The objectives of PWYP have as a result expanded to call for transparent and accountable management and expenditure of public funds (“Publish What You Spend”) as an essential way to addressing the poverty, corruption and autocracy that too often plague resource rich countries. A further call of PWYP is for the public disclosure of extractive industry contracts (“Publish What You Don’t Pay/Should Pay”). This is central to any effort to trace revenues and expenditures in the extractive industries as contracts determine the benefits, obligations and indeed the transparency of the agreements between countries and industry.

LIFTING THE VEIL

EXPLORING THE TRANSPARENCY OF CANADIAN COMPANIES

Claire Woodside

Publish What You Pay - Canada

Acknowledgements

This report has been researched and written by Publish What You Pay Canada consultant Claire Woodside, with the aid, help, and guidance of Ousmane Dème, Coordinator, Publish What You Pay-Canada and Bernard Taylor, Executive Director, Partnership Africa Canada.

Many thanks are extended to those that have contributed to the content, direction, and final stages of this report, including Jim Cooney, a senior associate with Canadian Businesses for Social Responsibility and the Canadian Business Ethics Research Network; Bronwyn Best, Executive Director of Transparency International Canada; Susan Maples, Post-Doctoral Research Fellow Columbia Law School; Juanita Olaya former Revenue Transparency Programme Manager, Transparency International; Francis Manns, Manager for Compliance and Disclosure for Mining on the TSX; Sarah Pray, Coordinator PWYP USA; Madelaine Drohan, Vice-President, Board of Directors, Partnership Africa Canada; and Ian Smillie, Chair, Diamond Development Initiative.

A profound thank you to all those who provided information and support to the project, in particular Matthew Totten, CFO, Trout River Industries; Leon Lyszkiewicz Manager, Listed Issuer Services TSX Venture Exchange; Henry Lawrie, Fellow Chartered Accountant, Forensic Specialist; Andrew Hancharyk, Policy Manager Listed Issuer Services, TSX Venture Exchange; Nadim Kara, Policy Analyst, Natural Resources Canada; David Elliot, Chief Petroleum Advisor, Alberta Securities Commission; Mark Dickey Senior Advisor, Communications; and Tim Martin, Transparency International-Canada board member.

PWYP Canada is grateful to the following organizations for their support for this initiative: the Revenue Watch Institute, Irish Aid, the International Development Research Centre and Foreign Affairs Canada.

Table of Contents

| | |
|--|----|
| Acknowledgements | |
| List of Acronyms | 2 |
| Preface | 3 |
| Executive Summary | 5 |
| Introduction | 8 |
| Host Governments, Home Governments, and Companies | 9 |
| The Extractive Industries in Canada | 9 |
| Understanding Canada's Regulatory System | 10 |
| Transparency in Canada | 12 |
| Objectives of the Research | 12 |
| Benefits of the Research | 13 |
| Limitations of this research | 13 |
| Methodology | 13 |
| Outline of the Report | 14 |
| 1. Materiality | 14 |
| 1.1 Material Impact versus the Reasonable Investor | 15 |
| 1.2 Understanding the use of the term 'significant' | 16 |
| 1.3 Moving Beyond Financial Materiality | 17 |
| 2. Resource and Reserve Data | 17 |
| 2.1 National Instrument 51-101: Standards of Disclosure for Oil and Gas Activities | 18 |
| 2.2 NI 51-101: Reserve data | 18 |
| 2.3 NI 51-10: Pricing and Production | 18 |
| 2.4 National Instrument 43-101: Standards of Disclosure for Mineral Projects | 19 |
| 2.5 NI 43-101: Reserve Data | 19 |
| 2.6 Disclosure of Reserve Data in the Extractive Industries | 20 |
| 3. Payments to Host Governments | 20 |
| 3.1 Oil and Gas: Payments to Host Governments | 21 |
| 3.2 Mineral Projects: Payments to Governments | 21 |
| 3.3 Permitted Exceptions | 22 |
| 3.4 Using Payment, Reserve, and Pricing Data | 22 |
| 4. Contracts and Licenses | 23 |
| 4.1 2008 Changes to Contract Disclosure | 24 |
| 4.2: Disclosure of Relevant Contract Details | 24 |
| 5. ESG Factors | 25 |
| 5.1 Extractive Companies | 26 |
| 5.2 NI 51-102 Continuous Disclosure Obligations: Form 1 | 26 |
| 5.3 NI 51-102 Continuous Disclosure Obligations: Form 2 | 27 |
| 5.4 NI 51-101 Standards of Disclosure for Oil and Gas Activities | 28 |
| 5.5 NI 43-101 Standards of Disclosure for Mineral Projects | 28 |
| 5.6 The TSX's Policy Statement on Time Disclosure | 29 |
| 5.7 Overall availability of ESG data in Canada | 29 |
| Conclusions | 30 |
| Possible Avenues of Action | 31 |
| Canada's involvement in improving transparency | 33 |
| Avenues for Future Research | 33 |
| Discussion & Analysis 1: Corporate Governance | 34 |
| Sarbanes-Oxley: Corporate Governance Practices and Disclosure in the United States | 34 |
| Canada's response to the Sarbanes Oxley Act | 34 |
| National Policy 58-201 and National Instrument 58-101 | 35 |
| Proposed Amendments to NI 51-101 and NP 58-201 | 35 |
| Discussion & Analysis 2: Accounting Standards in Canada | 36 |
| Discussions and Analysis 3: Provincial Versus Federal Securities Regulation | 37 |
| Improving policy | 38 |
| Enforcement | 38 |
| Financial Crisis (2008-2010) | 39 |
| Glossary | 40 |
| Appendix A: Comparing Oil and Gas Company Disclosure | 42 |
| Appendix B: Comparing Mining Company Disclosure | 44 |
| Appendix C: Continuous Disclosure Requirements | 47 |
| Appendix D: Using SEDAR | 48 |
| Appendix E: Ontario Legislature Motion | 49 |
| Appendix F: Capital Markets and Sustainability | 50 |
| Endnotes | 51 |

List of Acronyms

| | |
|-------------|--|
| AIF | Annual Information Form |
| CSA | Canadian Securities Administration |
| CICA | Canadian Institute of Chartered Accountants |
| EDGAR | Electronic Data-gathering, Analysis and Retrieval system |
| EITI | Extractive Industries Transparency Initiative |
| EITDA | Extractive Industries Transparency Disclosure Act |
| ESG | Environmental, Social, and Governance |
| GAAP | Generally Accepted Accounting Principles |
| GRI | Global Reporting Initiative |
| IASB | International Accounting Standards Board |
| IFRS | International Financial Reporting Standards |
| IIROC | Investment Industry Regulatory Organization of Canada |
| MD&A | Manager's Discussion & Analysis |
| NI | National Instrument |
| NP | National Policy |
| OSC | Ontario Securities Commission |
| PWYP | Publish What You Pay |
| SEC | Securities and Exchanges Commission (US) |
| SEDAR | System for Electronic Document Analysis and Retrieval |
| SOX | Sarbanes-Oxley Act |
| TMX | Toronto Money Exchange |
| TSX | Toronto Stock Exchange |
| TSX Venture | Toronto Venture Stock Exchange |
| US | United States |
| WPC | Wise Person's Committee |

PREFACE

In March 2008, during the workshop marking the official launch of PWYP-Canada, it became clear that there was a need for research on Canadian regulations in the extractive sector. Participants raised the idea of undertaking research on the transparency of publicly traded extractive companies in order to help civil society organizations engaged in this area better understand its complexity. In May 2008, the Transparency International report Promoting Revenue Transparency listed the performances of 52 companies in the oil and gas sector, in which Canadian companies emerged on the top of the ranking. The statement made by TI was that the success of Canadian companies results from strong regulations in Canada requiring mandatory disclosure of information. Many Canadian NGOs did not agree with the findings and conclusions of TI's study and continued to call for mandatory disclosure in Canada.

It became clear that the newly launched PWYP-Canada coalition should focus energy and resources on this important issue. In addition, the PWYP International Secretariat and PWYP-USA encouraged PWYP-Canada to undertake work on this issue, as the requirement for companies to disclose payments to governments as a condition of listing on regulated markets was one of PWYP's original asks at the inception of the campaign in 2002.

The introduction of disclosure rules requiring listed companies to report payments when applied to major stock exchanges around the world (including Toronto), would capture most of the major international extractive companies. Those companies would then be obliged to comply with specific stock market regulations where they are listed and report payments as required.

With the introduction of a stock market listing rule that would require companies to report payments to governments on a country-by-country basis and by payment type, citizens benefit in two ways; firstly they can access the information they need to hold their governments to account for the use of national resources; and, secondly, citizens can judge whether the company payments are appropriate for the resources gained. These are the main drivers for PWYP's interest in improving the transparency of company finances.

It is important to note, however, that stock market disclosure rules would not apply to companies that are not registered on any stock market. Both private and state-owned extractive companies usually provide a significant amount of revenue to governments from resource extraction, and therefore complementary measures such as the EITI are required to ensure that such companies also publish what they pay.

Canada does not have mandatory disclosure of information in the extractive industries. However, Canada has high levels of disclosure and near mandatory disclosure in most areas for smaller companies with a large stake in projects. Additionally, the interpretation and application of materiality has an important impact on the level of disclosure.

These findings will play a role in helping to disseminate information disclosed by companies which is publicly available through SEDAR to members of the PWYP coalition and they can be used to enable PWYP-Canada to demonstrate any gaps in the legislation and advocate for mandatory and not 'material' disclosure.

We hope that this report will resonate with different stakeholders involved and interested in extractive sector issues. It marks the beginning of a series of activities that PWYP-Canada will undertake in order to explore the avenues of future research identified in this report. We anticipate that this first work will reinforce dialogue with stakeholders in Canada and elsewhere to ensure that Canadian companies are transparent at both the national and international levels. We especially hope that this report will open a constructive dialogue between PWYP and authorities of the Toronto Stock Exchange, as well as all other regulatory bodies involved in the sector.

Ousmane Dème

Publish What You Pay Canada Coordinator

EXECUTIVE SUMMARY

Improving transparency amongst companies and governments has become an important international issue. Transparency is a critical tool that can reduce corruption and improve revenue governance in countries with abundant resources. Information is not only vital for creating functioning markets, but is also an essential component of human development. In the natural resource sector, transparency is particularly important because the extractive industries generate enormous revenues for resource rich countries. These revenues have the potential to have large, positive impacts on economic and human development. When spent effectively, they can be used to fund improvements to health and education systems, lead to a stronger and more diversified economic base, and support the establishment of a stable and democratic government.

Due to the growing recognition of the importance of transparency to economic and human development, numerous international and domestic initiatives now focus on improving disclosure in resource rich countries. While many prominent initiatives have focused on improving transparency within host governments (the country where resources are extracted) and companies, raising the disclosure standards in home governments (the origin country of the extractive company) is another fruitful method of improving transparency worldwide

An overwhelming number of the world's extractive companies are registered, headquartered, and/or listed on stock exchanges in North America and Europe and are therefore obliged to file financial reports and statements in accordance with North American and/or European regulations. Canada is home to close to 60% of the world's mining companies and over 50% of the world's publicly traded oil and gas companies, making Canada one of the world's most influential home governments in the extractive sector.

The primary goal of this report is to map Canadian regulations governing disclosure in the extractive industries. Focusing on resource and reserve data; payments to host governments; contracts and licenses; and environmental, social, and governance factors. This report seeks to identify the type of information that must be made publicly available by Canadian companies, focusing on the differences in disclosure between the mineral and the oil and gas sectors and between large and small companies.

The report also aims to situate Canadian disclosure laws within a broader discussion of securities regulation in Canada, stock exchange requirements, and Canadian accounting procedures. Importantly, the report provides insights into which bodies create regulations and how they are created, with the aim of identifying regulatory development processes that NGOs and other civil society organizations can engage with.

While the overarching goal of this report is to improve the general understanding of transparency in Canada, the most significant contribution made by this report is to help organizations utilize publicly available information to hold companies accountable for their actions and decisions. Citizens can better understand the commitments and actions of both the companies operating in their region/country and their governments by analyzing documents made publicly available in accordance with the laws and regulations of Canada. Informing NGOs and communities in both Canada and the global south about the information that companies listed on Canadian stock exchanges must make publicly available, while providing guidance on where to find this information is a central motivating factor in this report.

In addition, by clarifying any confusion regarding disclosure regulations and laws applying to Canadian companies, NGOs and other organizations are better equipped to identify actions that need to be taken in Canada to improve and/or maintain disclosure requirements. The information in this report relies on interviews with experts and analysts, alongside primary and secondary documents. It should be noted that while the report uses several companies as examples, the aim of the report is to discuss what should be disclosed and not to assess what companies actually disclose.

This report finds that Canada has high levels of disclosure in some of the four key categories identified: resource and reserve data; payments to host governments; contracts and licenses; and environmental, social, and governance factors. However, disclosure is neither uniform across companies, nor across sectors and categories.

Findings: What a stakeholder can (and cannot) find in company reports

Country-by-country based disclosure

- For companies operating in the oil and gas sector, country-by-country disclosure of information is not mandatory for operations outside of North America. While companies normally disclose on a country-by-country basis, they have the option to seek an exemption in order to disclose by 'foreign geographic area' for operations outside of North America.
- For companies operating in the mining sector, disclosure of all data is completed on a mine-by-mine basis.

Materiality

- All securities regulation is based upon the disclosure of material information.
- Materiality is a subjective concept that is interpreted by companies with the help of guidance documents and in consultation with oversight bodies. What is material for a smaller company is not necessarily material for a larger company.
- There is definitional ambiguity surrounding the term materiality. Materiality is defined in Canadian regulation both according to 'market impact' and the 'reasonable investor' principle.

Resource and Reserve Data

- Canada requires very high levels of disclosure of reserve, resource, pricing, costs, and production data.

Payments to Host Governments

- There is significant information available concerning royalties and tax payments made by extractive sector companies to host governments.
- Companies with mineral properties are required to provide more detailed information concerning royalties, taxes, and any other government levies applicable to a project, than is required of oil and gas companies.

Contract, Leasing, and Rights

- There are low levels of contract disclosure in the extractive sector overall.
- There are medium to high levels of disclosure of leasing, permitting, rights, and land tenure arrangements in the mineral sector.
- In both the mining and oil and gas sectors, all contracts upon which a business is substantially dependent (over 50%) must be fully disclosed, resulting in high levels of contract disclosure for companies whose assets are concentrated in one property.

ESG Factors

- There are low levels of disclosure for oil and gas companies
- There are medium to high levels of disclosure in the mineral sector
- There is greater disclosure of environmental as opposed to social and political factors in both sectors.

The report discusses each of the categories identified in the table in depth, providing information about which documents set the regulations for disclosure in each category, how these regulations have changed or could change in the future, alongside other relevant information. Although Canada is identified as having high disclosure standards, several weaknesses are identified. Firstly, Canadian disclosure laws are based on the concept of materiality, which is a subjective concept, burdened with definitional ambiguity. By basing disclosure on materiality, disclosure is neither uniform between categories, nor between companies. A second weakness is the inter-sectoral variation, whereby mining companies are required to disclose more information in the categories of contracts and licensing and environmental, social, and governance factors than oil and gas companies. A third weakness within Canadian disclosure regulations is that they are aimed at providing information to shareholders (investors) not stakeholders (ex. NGOs, communities). Reporting standards and guidelines focus on the 'savvy investor' and, as a result, publicly available documents can be very difficult for the average person to read and comprehend.

Based on the findings and conclusions of this report, several recommendations are made. The first section of recommendations focuses on increasing engagement, cooperation and collaboration between NGOs and other civil society groups and those bodies involved in creating the regulations guiding disclosure, including the Canadian stock exchanges, the provincial securities regulators and their umbrella organizations and the Canadian Institute for Chartered Accountants. The second section of recommendations focuses on other actions NGOs and civil society organizations can take to improve transparency, including encouraging Canada to join the Extractive Industries Transparency Initiative as an implementing country, promoting the Global Reporting Initiative, and rewarding companies that disclose information voluntarily. Moreover, this report encourages NGOs and civil society organizations to support parliamentary bills that, if passed, will lead to further improvements in transparency in both Canada and abroad.

INTRODUCTION

Enhancing the transparency of host governments can lead to a better investment climate and improved governance and accountability, all of which contributes to political and economic stability.

Transparency is a critical tool that can reduce corruption and improve revenue governance in countries with abundant resources. Information is not only critical for creating functioning markets, but is also an essential component of human development. Transparency is a critical aspect of good governance and in many democratic societies there is an assumption that the general public has a right to access information concerning government actions and expenditures.

In the natural resource sector, transparency is particularly important because the extractive industries generate enormous revenues for resource rich countries. These revenues have the potential to have large, positive impacts on economic and human development. When spent effectively, they can be used to fund improvements to health and education systems, lead to a stronger and more diversified economic base, and support the establishment of a stable and democratic government.

Unfortunately, revenue derived from resource extraction often fuels conflict, leads to widespread corruption, and results in a decline in economic development. The paradoxical effect of resource revenues on economic and human development is referred to as the 'resource curse.' The 'resource curse' is enhanced in countries with low levels of transparency and high levels of corruption. Corruption has been demonstrated to reduce economic growth by raising the costs and risk of foreign and domestic investment, reducing the efficiency of government institutions to perform their designated tasks, and lowering the productivity of infrastructure investments and tax revenues. Those countries that have avoided the resource curse are also those that have managed to control corruption and maintain transparent governance.¹

Evidence from research on development and the public sector suggests that transparency is a driving factor in the establishment of effective institutions, improved governance and enhanced resource wealth management. A growing recognition of the inherent connection between transparency and development has resulted in a global movement, supported by the G8, the UN and many different NGOs, aimed at improving transparency through the disclosure of payments and revenues.

While transparency creates the greatest benefits for the societies within which resources are extracted, companies also reap rewards. Improved transparency can help companies mitigate political and reputational risks and attract an increasing number of socially responsible investors.² Therefore, there has been growing support amongst extractive companies for increased transparency.

Host Governments, Home Governments, and Companies

There are three different ways in which NGOs, international organizations and government-led initiatives can improve transparency in the extractive industries: by lobbying for changes in home governments (the origin country of the extractive company), within host governments (the country where resources are extracted) and in extractive companies. Many of the most high profile initiatives have focused on improving transparency within host governments and companies, including the Extractive Industries Transparency Initiative (EITI) [See Box 1: EITI]. These initiatives focus on publicizing the revenues that the government receives from natural resource companies, as well as the payments companies make to resource rich countries governments. EITI focuses on improving transparency in host governments and companies with the aim of publishing, verifying and reconciling company payments and government revenues.

Another method of improving transparency is to target home governments. An overwhelming number of the world's extractive companies are registered, headquartered, and listed on stock exchanges in North America and Europe and are therefore obliged to file financial reports and statements in accordance with regulations in Europe and North America. Improving disclosure regulations and standards within the home countries of extractive companies can be a very fruitful way to increase the information that extractive sector companies make publicly available.

Box 1: EITI

The Extractive Industries Transparency Initiative (EITI) is a multi-stakeholder initiative comprised of governments, companies, civil society groups, investors and international organizations. EITI aims to strengthen governance by improving transparency and accountability in the extractives sector. EITI supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. Implementation itself, however, is the responsibility of individual countries.

<http://www.publishwhatyoupay.org/en/activities/advocacy/extractive-industries-transparency-initiative>

<http://www.eitransparency.org/>

The Extractive Industries in Canada

In 2008, Fifty-seven percent of the world's public mining companies³ were listed on either the TSX or the TSX Venture exchanges in Toronto and 68.1 billion mining shares were traded on both exchanges combined. Of the 9900 mining projects currently undertaken by the mining companies listed on the Toronto Stock Exchanges, 49% of those are outside of Canada (See Figure 1).

More mining equity capital is raised on Canadian stock exchanges than on any other exchange. The TSX and the TSX Venture, owned by the Toronto Money Exchange Group (TMX), are not only known to be excellent places to raise capital, but also for their ability to raise finance for projects in high risk places.⁴

Chart 1: Extractive Sector Companies Listed on the TSX/TSX Venture

| | TSX | TSX Venture | Combined |
|---------------------------------------|-----|-------------|----------|
| Number of Oil and Gas Issuers Limited | 166 | 266 | 432 |
| Number of Mining Issuers Limited | 341 | 1032 | 1373 |

While Canada has a formidable presence in mining finance, it also has a significant share of the oil and gas market, with almost 50% of all publicly traded oil and gas companies listed on the Toronto stock exchanges.

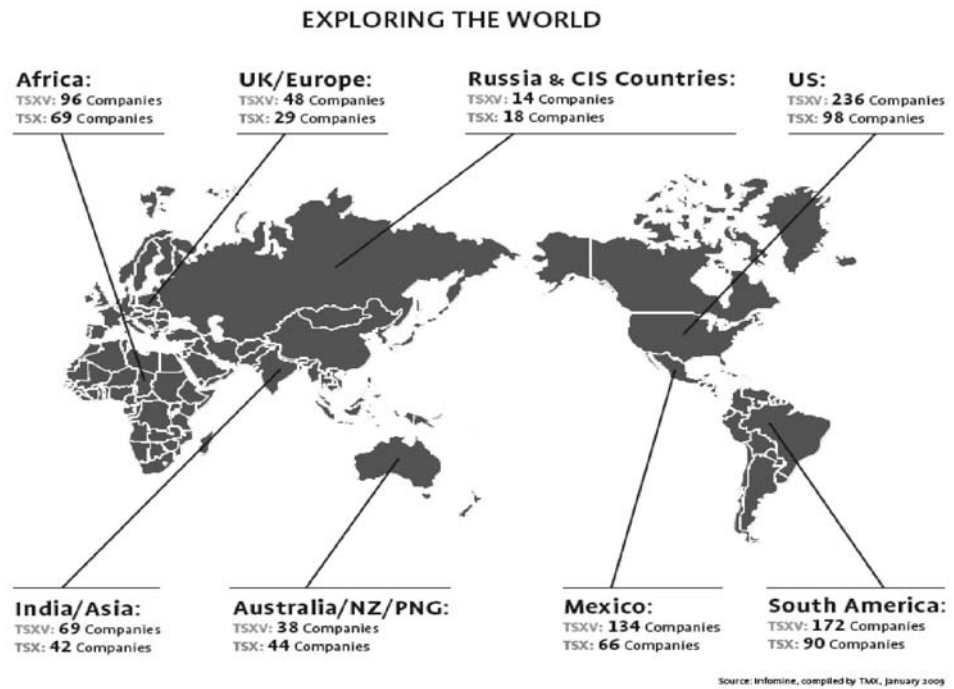


Figure 1: Mining exploration by Mining Companies Listed on the TSX/TSX Venture

Issuers on the TSX and the TSX Venture are required to comply with Canada’s provincial regulations and laws. However, in order to list shares on a Canadian stock exchange, issuers do not need to be incorporated in Canada. In recent years, the Toronto stock exchanges have been attracting a growing number of international mining and oil and gas issuers. In 2007, international mining issuers made up 8% of the total mining issuers.

Due to the high number of extractive sector companies listed on the TSX and the TSX Venture, Canadian disclosure regulations have a significant impact on the transparency of the extractive sector worldwide. Globally, Canada is one of the most important ‘home governments,’ as Canada’s regulations affect more extractive companies than those of any other country.

Understanding Canada’s Regulatory System

Before addressing the nature of Canada’s disclosure regime, it is important to discuss securities regulation in Canada.⁵ Securities refer to transferable investment certificates, including stocks, while securities regulation relates to the regulations that guide the conduct of those companies that participate in securities markets. Companies that issue securities on stock exchanges are called issuers and one or more securities regulators regulate their conduct.

In Canada, securities regulation is under provincial jurisdiction. As a result, there are thirteen different securities regulators, one for each province or territory, and thirteen different sets of securities legislation (See Discussion & Analysis 3 for a broader discussion of the challenges of Canada’s fragmented regulatory system). Provincial and territorial regulators work closely through the Canadian Securities Administration to ensure consistency of securities regulation across the country.

The CSA is a voluntary umbrella organization of Canada's provincial and territorial regulators, which aims to develop a harmonized approach to regulation. The CSA is the central organization in the creation and amendment of national instruments and policies, which are the primary documents setting regulatory standards in Canada. The CSA aims to develop regulations that reflect regional diversity, but are applied with uniformity across the country.⁶

National instruments contain mandatory provisions that must be complied with by all companies incorporated in Canada and listed on Canadian stock exchanges or incorporated elsewhere but with the majority of their shares listed on Canadian stock exchanges. They are often accompanied by companion policies that provide guidance on how the instrument should be interpreted. Securities regulators adopt national instruments as rules or regulations. The most important rules or regulations guiding disclosure in the extractive industries are embedded in national instruments and are therefore relatively uniform across Canadian provincial and territorial jurisdictions. To further harmonize regulations between jurisdictions and to simplify regulatory compliance in Canada, the CSA, have developed the Passport System (See Box 2: Passport System).⁷ In the absence of a national regulator, the Passport System allows market participants (companies) to deal with one regulator and to have decisions taken by that regulator recognized in all jurisdictions. All provinces and territories, with the exception of Ontario, are included within this system. Although Ontario is not an official participant the passport system recognizes Ontario as a principle regulator and decisions made by the Ontario Securities Commission (OSC) are recognized in other jurisdictions. Ontario, has opted not to participate in the system, while they continue to pursue their goal of having a single regulator in Canada (See Discussion and Analysis 3: The Challenges of a Fragmented Regulatory Framework).

National instruments provide mandatory disclosure guidelines for companies participating in securities markets in Canada. However, they do not represent the only source of disclosure regulations. The TMX Group⁸ also provides companies with disclosure guidelines. Companies listed on the TSX or the TSX Venture must comply with the TSX's *Policy Statement on Timely Disclosure*, as well as all applicable policies and rules of the Ontario Securities Commission and any other body having jurisdiction over an issuer listed on the exchange.⁹ The TMX provides companies with mineral properties with additional guidance on disclosure in their document: *Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production*.¹⁰

In addition to the disclosure guidelines mandated by the TMX Group and the provincial securities regulators, Canada's Generally Accepted Accounting Principles (GAAP) also contain standards of disclosure affecting the extractive industries. Moreover, the Canadian Institute of Chartered Accountants (CICA) issues documents that provide companies with guidance on how to interpret national instruments, policies and companion policies. Research suggests that the effect of the Canadian GAAP on disclosure standards in the extractive sector is minimal. However, Canada is currently transitioning from the Canadian GAAP to

Box 2: The Passport System

"A passport regulatory model refers to a multijurisdictional regulatory regime in which regulated entities or products are subject to and need only comply with the rules and decisions of a single regulatory authority – the 'primary regulator'. Compliance with the rules and decisions of the primary regulator serves as a 'passport' which permits the entry of the regulated entity or product into other participating jurisdictions. A Canadian passport model would (generally) subject capital market participants to the authority of a single provincial securities regulator, regardless of where they undertake capital markets activity in Canada."

Wise Person's Committee to review the structure of securities regulation in Canada. *It's Time*. Retrieved February 20th, 2009, from <http://www.wise-averties.ca/reports/WPC%20Final.pdf>.

the International Financial Reporting Standards (IFRS) and there is some concern as to how the adoption of IFRS will affect disclosure (See Discussion & Analysis 2 for a broader discussion on the implications of this transition). It should be noted that Canadian accounting principles and/or standards can not reduce the disclosure requirements of either the TMX Group or the securities commissions in Canada.

All of the information disclosed by Canadian or international companies listed on the TSX or TSX Venture in compliance with Canadian regulations and laws is made available to the general public. At this time, all data published by companies in accordance with securities and stock exchange regulations must be filed on Canada's System for Electronic Document Analysis and Retrieval (SEDAR).¹¹ Found at www.sedar.com, this site provides public access to securities documents and other information filed by public companies. SEDAR is intended to enhance investor awareness of the business and affairs of companies and to "promote confidence in the transparent operation of capital markets in Canada." SEDAR's website is the best place to find information about companies registered in Canada and/or listed on the Toronto stock exchanges (See Appendix 3: How to use SEDAR).

Transparency in Canada

Box 3: Transparency International

Transparency International (TI), the global civil society organization leading the fight against corruption, brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. TI's mission is to create change towards a world free of corruption.

<http://www.transparency.org>

Not only is Canada an important player in the international extractive sector, but according to Transparency International's report, *Promoting Revenue Transparency*, Canada also has some of the strictest disclosure regulations in the world (See Box 4: Transparency International). The report states, that "in cases where governments such as Canada and Norway make disclosure of revenues paid to host countries mandatory, revenue transparency reaches a high level and confidentiality restrictions in host countries are overcome."¹² Furthermore, the report states that while the approach individual companies take to disclosing payments is a key indicator of their disclosure performance, "government regulations, such as those in Canada, help to mainstream these efforts and to ensure that they apply across the board in all countries in which a company is operating."¹³

Transparency International's report accurately identifies Canada as a country with strong regulations guiding disclosure. However, Canadian disclosure regulations are neither as strong, nor as uniform as the report concludes. Firstly, Canadian disclosure laws are based on materiality and are therefore, cannot be considered mandatory. Secondly, there are variations in disclosure between companies. Despite Canada's relatively high disclosure standards, there are important steps that can be taken to improve Canada's disclosure regulations.

Objectives of the Research

Canadian reporting requirements are not well understood by NGOs working in the field of corporate accountability, including some that are members of the Publish What You Pay Canada network. To this end, this report intends to clarify and map Canadian disclosure requirements. The question at the centre of this analysis is: what regulations/laws govern disclosure in the extractive industries in Canada? This report looks specifically at disclosure in four areas:

- Resources and Reserves
- Payments by companies to host governments
- Contracts and Licenses
- Environmental, Social and Governance Factors

This report also discusses and clarifies the concept of materiality. All Canadian regulations are based on the principle of materiality and while significant guidance is provided to companies on what they should report, materiality is a subjective concept that must be interpreted by each company individually.

In addition to discussing the laws/regulations that guide disclosure in Canada, this report also considers several issues of importance to the Canadian context including disclosure and corporate governance, the challenge of having multiple regulators, and Canada's adoption of International Financial Reporting Standards (IFRS) (See Discussion & Analysis 1-3). While the primary aim of this report is to map Canada's disclosure laws and regulations, the report also intends to encourage dialogue and action aimed at improving Canadian laws/regulations.

Benefits of the Research

There are two important benefits of this research. Firstly, PWYP Canada and other NGOs working in the field of corporate accountability will have a better ability to identify actions that need to be taken in Canada to improve and/or maintain current disclosure requirements. Secondly, this research will inform communities and NGOs in both Canada and the global south of the information that companies listed on the TSX are required to make publicly available. Additionally, the report should provide guidance on how to find this information. Using publicly available information to hold corporations and governments accountable for their actions is of critical importance for communities affected by the extractive industries. Currently, many NGOs are advocating for improved home government and host government disclosure laws, yet publicly available information provided by companies remains under-utilized. As a result of Canada's important status as a 'home government,' strengthening Canadian disclosure laws/regulations while also using the information provided by companies to hold those same companies accountable are two steps that can have a significant global impact.

Limitations of this research

When examining reporting requirements, the disclosure practices of companies registered in Canada are equally important to the mandatory reporting requirements governing this disclosure. Voluntary reporting and/or high compliance with existing requirements are crucial to develop a high level of transparency in the extractive industries. This report has not examined the reporting practices of companies. Instead the report has focused on legislation and regulation requiring disclosure.

Methodology

The research undertaken for this report relied on primary and secondary open-source documents made available by the Toronto stock exchanges, provincial regulators, accounting and legal firms, and industry associations. Additionally, numerous interviews and email exchanges were conducted with professionals working in the field of corporate accountability, accounting, and law, alongside those work-

ing for securities regulators, universities, and stock exchanges. After concluding numerous interviews and email discussions and thoroughly surveying the literature available, the initial draft was reviewed by professionals with relevant experience.

Outline of the Report

The report begins with a discussion of materiality. This first section aims to clarify the concept itself and its implications. The second section examines disclosure of reserve, resource, pricing, cost, and production data. The third section examines the disclosure of payments to host governments. While the fourth section looks at contract, permitting and license disclosure. The last section investigates the disclosure of environmental, social, and governance (ESG) factors. Appendices A, uses the data from the Annual Information Forms of two randomly selected oil and Gas companies to demonstrate the type of information that can be gleaned relating to the four issue-areas examined in this paper. Appendix B uses the data from the Technical reports of two mining operations to make the same demonstration as is done in Appendix A. All of the reports/forms are publicly available through SEDAR. Appendix C provides greater detail on continuous disclosure guidelines and Appendix D provides a step-by-step guide on how to use SEDAR.

In addition to the main report there are three Discussion & Analysis sections looking at important issues in the Canadian context. Discussion and Analysis 1 examines the disclosure of corporate governance practices and the 2002 Sarbanes-Oxley Act in the United States. Discussion and Analysis 2 looks at the transition from Canadian Generally Accepted Accounting Principles to International Financial Reporting Standards. While Discussion and Analysis 3 discusses the securities regulation in Canada and examines the nature of securities regulation in Canada and the challenges inherent in a system where securities regulation is a provincial jurisdiction.

1. MATERIALITY

Disclosure in all publicly traded companies in the extractive sector is primarily based on the concept of materiality. Material information is that which either results or could be expected to result in a change in the market price or value of the companies stock. It is required that it is disclosed continuously. National Instrument 51-102 *Continuous Disclosure Obligations* and the *Timely Disclosure Policy* of the TSX discuss the importance of maintaining a high level of disclosure (See Appendix C for a description of the disclosure requirements in NI 51-102) The disclosure of material information is vital to ensure public confidence in the integrity of the stock exchange. Timely disclosure ensures that all investors have access to the same information about a particular issuer, thereby levelling the playing field.

The TSX is understood to employ a more stringent definition of materiality, therefore, it is recognized in *National Instrument 51-102* that companies listed on the TSX or the TSX Venture must comply with the requirements of the *Timely Disclosure Policy*. According to this document, the following are examples of facts or changes which should be considered material:

- Major corporate acquisitions or dispositions
- Significant discoveries by resource companies.
- Entering into or loss of significant contracts.
- Major labour disputes or disputes with major contractors or suppliers.
- Any other developments relating to the business and affairs of the company that would reasonably be expected to significantly affect the market price or value of any of the company's securities or that would reasonably be expected to have a significant influence on a reasonable investor's investment decisions.

The discussion of materiality included within the TSX's *Policy Statement on Timely Disclosure* use two important concepts. Firstly, for something to be considered material it must be considered to be 'major' or to have 'significant' effects, thus introducing an element of subjectivity and relativity into reporting. Secondly, the policy statement defines materiality as that which is important to a 'reasonable investor,' another subjective concept. Before discussing these two important concepts, it is important to note that National Policy NI 51-201 requires that all companies comply with not only the laws of the securities regulators but also those of the Exchange upon which they are listed.¹⁴

1.1 Material Impact versus the Reasonable Investor

While both the provincial securities regulators and the TSX define and discuss materiality, their definitions differ. The provincial securities commissions aside from Quebec, define materiality based on 'market impact,' whereby a fact or change is considered to have a significant impact on the market price or value. In contrast, the TSX's *Policy Statement on Timely Disclosure*, the Canadian Institute of Chartered Accountants (CICA) and the Quebec Securities Commission Autorites des Marches Financiers agree that materiality must also be understood based on considerations of the 'reasonable investor' (For a discussion of principles versus rules-based regulation of capital markets see Box 7). In the *Management's Discussion and Analysis: Self-Assessment Checklist for Preparers*, the CICA writes that material information is that which "could influence a reasonable investor in making a decision to invest or continue to invest in the company." In addition, to further compound the confusion *NI 51-102: Continuous Disclosure Obligations*, a core document, also refers to assessment of materiality based on the 'reasonable investor.'

The definition of materiality based on the concept of the 'reasonable investor' also guides disclosure in the United States. In an effort to further align American and Canadian reporting standards the CSA has considered amending the definitions of both a 'material fact' and a 'material change.' However, efforts by the CSA to amend the definition of materiality have been abandoned in the face of criticism from issuers who fear the 'reasonable investor' definition of materiality

Box 4: Definition of Materiality

Material information is any information relating to the business and affairs of a company that results in or would reasonably be expected to result in a significant change in the market price or value of any of the company's listed securities.

Material Fact or Change

Material information consists of both material facts and material change relating to the business and affairs of a listed company. A material fact could be an event or a foreseeable event that could significantly affect the market price or value of the reporting issuer's securities. A material change refers to a change in business, operations, or capital of the reporting issuer, which is believed to significantly affect the market price or value of the reporting issuer.

Excerpt from the TSX's *Policy Statement on Timely Disclosure*

Box 5: The 'Reasonable Investor'

CICA MD&A Guidance states: "Information is material if its omission or misstatement could influence or change the decision of a reasonable investor to invest or continue to invest in the company. Management's determination of materiality applies not only to financial statement disclosures but also to all information, qualitative as well as quantitative, prospective as well as historical, disclosed in the MD&A. Individual qualitative or quantitative items that, in themselves, may not be material, may become so when considered as elements in the larger picture. Management should resolve any doubt about materiality in favour of disclosure, but avoid obscuring material disclosures with unnecessary disclosures of immaterial information."

would introduce an unacceptable level of subjectivity and uncertainty into reporting. Those who support the change from 'market impact' to 'reasonable investor' argue that a definition based on the 'reasonable investor' criteria promotes regulatory harmonization, while having a limited impact on issuers who are often already required to use this definition.

The *Advisory Group Report* for the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries noted the need for "consistency and clarification on the definition of materiality."¹⁵ The competing definitions of materiality based on 'market impact' versus those based on the 'reasonable investor' introduce unnecessary ambiguity into reporting. Companies have also noted that Canadian securities regulation refers to two different definitions of materiality and have asked the Ontario Securities Commission to clarify the definition.¹⁶

Box 6: Principles Versus Rules Based Regulation of Capital Markets

Defining materiality as market impact reflects a rules-based approach to regulation, while basing the materiality upon the reasonable investor reflects a principles-based approach to regulation. Rules-based approaches to regulation are generally understood to be clearer and more certain, but also to be rigid. Principles-based approaches to regulation are believed to be more flexible and more sensitive to context, but also to be less certain. Advocates of principles-based securities regulation argue that proper regulatory design based on this approach can produce more effective and lower cost regulation. A system designed on the principles-based approach should combine rules and principles, but should use principles first instead of detailed rules.

Like rules-based regulation, principles can be changed to reflect societal changes. In the United States, materiality is defined according to the 'reasonable investor,' which is understood to be a savvy investor who understands market fundamentals. Recently, there have been calls to replace principle of the 'reasonable investor' with that of the 'least sophisticated investor.' While in Europe, SRI has led to discussions about what today's 'reasonable investor' is really concerned with.

Some might argue that this contradiction is less pronounced, because it can be assumed that the 'reasonable investor' bases their decisions on the market price or value of the issuer's listing. However, the OSC themselves have stated that the 'reasonable investor' and the 'market impact' definitions are analogous but not identical, suggesting that there are differences. Regardless of whether the 'market impact' and the 'reasonable investor' standards can be conflated or not, the acceptance and clarification of which standard companies should follow would aid disclosure in the Canadian context.

1.2 Understanding the use of the term 'significant'

The increasing importance that has been placed on disclosure of material information by securities commissions and stock exchanges has led to the creation of a relatively transparent environment for savvy investors. However, materiality continues to be a subjective concept that is interpreted differently by different companies. Consider the use of the term 'significant' in the definition of a material fact or change and the use of the term 'major' in the description of what should be disclosed. The use of the term 'significant' introduces variation into reporting because the materiality of information is dependent upon a company's profits and assets. For example, an event considered 'significant' for a smaller company, may be considered within the normal course of business for a larger company. There are tools that companies can use to help them determine what information is 'material,' for example, they can consult an instrument's companion policy or contact market surveillance. For companies listed on the TSX and the TSX Venture Exchanges, the Investment Industry Regulatory Organization of Canada (IIROC) conducts market surveillance.¹⁷ Even with guidance, companies are still responsible for interpreting the materiality of any event. The TSX's Policy statement on Timely Disclosure states that "The Exchange recognizes that decisions on disclosure require careful subjective judgments, and encourages listed companies to consult market surveillance when in doubt as to whether disclosure should be made." The inherent

subjectivity ingrained in relying on the term 'significant' within disclosure regulations means that no regulation can be determined to require 'mandatory' disclosure, unless the information in question is determined to be material to companies of all sizes at all times.

1.3 Moving Beyond Financial Materiality

In Canada, the fundamental criterion for reporting is based on financial materiality, which is meant to provide sufficient information to inform investors and financial analysts about a company. In recent years, other stakeholders, alongside socially responsible investors, have expressed their concern that company reports do not include information they consider material. As a result, there has been a movement for companies to include environmental, social, and governance factors, often referred to as ESG factors, within their company reports. The 2007 *Advisory Group Report* of the National Roundtables on Corporate Social Responsibility pointed out the need for companies to consider mounting investor interest in socially responsible investment by including ESG performance data in their reports. The *Advisory Group Report* also called for companies to disclose all ESG performance information that is related to business risk. Business risk are defined broadly to include anything that could potentially impact finances, reputation, brand, liability, long-term value, and importantly key stakeholder relationships. Although ESG factors are not explicitly considered material in Canada, NI 51-102 Forms 1 and 2, alongside NI 43-101, require that companies disclose certain pieces of environmental and social which can be of use to both socially responsible investors and other stakeholder groups, including community groups (See Section 5).

There is considerable momentum supporting the inclusion of ESG factors within corporate reporting through the UN Environment Program Finance Initiative. This Initiative has documented the trend towards the analysis and inclusion of ESG factors in investment decisions, while also providing institutional investors with guidance on how to consider these factors in the analyses and decisions. The United Nations has promoted the global mainstreaming of the materiality of ESG factors through their research and outreach. In Europe, ESG factors have become of critical importance for investors and there is widespread inclusion of ESG factors within company reports. In Canada companies have not yet integrated sustainability policies, programs, standards, or indicators into their normal operating procedures.¹⁸

2. RESOURCE AND RESERVE DATA

PWYP supports the disclosure of resource and reserve data on a country-by-country basis. Disclosure of resource and reserve data provides important information to investors; however, this data can also provide other stakeholders with critical information. Firstly, reserve and resource data provides information about the future revenue flows of a particular extractive project. Secondly, reserve data provides analysts with information about how long an extractive project will produce revenues. Lastly, when examined alongside production levels, pricing data, and

average costs, reserve data can be used to produce rough estimates of the revenues that a project will generate.

In Canada, there are very high standards for reserve and resource disclosure. In the oil and gas sector, reserve data is disclosed on a country-by-country basis within North America and either on a country-by-country basis or by foreign geographic area for production outside of North America. This exception is only allowed if the aggregate data is not misleading and is rarely the option chosen by oil and gas companies. In the mineral sector, resources and reserves data must be disclosed on a mine-by-mine basis. For both sectors, there are standards requiring that production data, costs, and pricing information be disclosed

2.1 National Instrument 51-101: Standards of Disclosure for Oil and Gas Activities

Box 7: NI 51-101 - An International Model

Around the world NI 51-101 has been held up as a model for reserve and production disclosure and many experts are now advocating that other countries adopt similar disclosure practices.

Additionally, NI 51-101 is recognized on the United Kingdom's Alternative Investment Market (AIM) as an appropriate disclosure standard. Moreover, last year there was a request by South Africa to use NI 51-101 for oil and gas disclosure in that country. In addition, Canadian disclosure practices have attracted a lot of attention at the UN Ad Hoc Group of Experts on Harmonization of Fossil Energy and Mineral Resources Terminology.

NI 51-101 is the primary document governing resource and reserve disclosure in Canada. The creation of National Instrument 51-101 by the Canadian Securities Association occurred in 2003 when the CSA decided to revamp the National Policy 2-A, the former legislative document setting standards for oil and gas disclosure for reporting issuers. The National Policy was outdated and was seen by many in the industry as in need of improvement.

2.2 NI 51-101: Reserve data

National Instrument 51-101 was implemented in 2003, after extensive consultations with industry, and was amended after further consultations in 2007. NI 51-101 requires that companies disclose reserve data. In part 2 of Form 1 of NI 51-101 entitled *Annual Filing Requirements*, it is stipulated that reporting issuer file statements on reserve data, a report by a qualified reserves evaluator or auditor, and a report by directors. Additionally, proven reserves must be disclosed both in the aggregate and by country.¹⁹ Reserves must also be broken down by type, including proved developed producing reserves, proved developed non-producing reserves, and proved undeveloped resources, which must also be disclosed by country for those operations within North

America. According to Form 1 of NI 51-101, under general instruction 6, a reporting issuer can satisfy the minimum requirements of the form by disclosing production information by geographic area for all countries outside of North America.

2.3 NI 51-10: Pricing and Production

NI 51-101, Form 1 requires that companies disclose information disaggregated on a country-by-country basis while also requiring the disclosure of average sales prices, development costs, production data, and an estimate of future net revenues (See Box 2: National Instrument 51-101: Form 1).²⁰ The result of the requirements of 51-101 is that there are very high levels of reserve data in the extractive industries.

2.4 National Instrument 43-101: Standards of Disclosure for Mineral Projects

National Instrument 43-101 details the standards for the disclosure of resource and reserve data by mineral companies. It represents a strict guideline for how public companies must disclose scientific and technical information about mineral projects. Additionally, all information is required to be attributed to a Qualified Person,²¹ who provides oversight and credibility to all the information released by the company. NI 43-101 was created after the Bre-X scandal to protect investors from unsubstantiated mineral project disclosure.²² It became effective in 2001 and has since been amended on several occasions. From an investor and industry perspective the two most important elements of NI 43-101 are the parameters restricting reserve disclosure and the imperative to file a technical report. However, NI 43-101 contains pertinent information for other stakeholders, including detailed disclosure of mine-by-mine reserve and resource data.

2.5 NI 43-101: Reserve Data

NI 43-101 attempts to limit a company's ability to disclose unproven reserves. Part 2 of NI 43-101, entitled *Requirements Applicable to Disclosure*, sets out the conditions under which companies can disclose reserve estimates. Companies are required to report each category of mineral resources and reserves separately. In particular, NI 43-101 stipulates that inferred resources must not be added to any other category.²³ NI 43-101 also stipulates what a company must not disclose. For example, a company must not disclose any resource not classified under either the category inferred, indicated, or measured. The accuracy of reserve and resource data must be supported by a Qualified Person (QP). The QP affirms that they have verified the data and includes a description of their method of verification.

While NI 43-101 stipulates what companies can and cannot disclose in regards to reserve data, Form 1 of NI 43-101 provides greater detail on what a company should include in their technical reports. Under Item 19, Form 1, NI 43-101, issuers are required to include in their technical reports detailed reserve data. In addition, Item 19 section (m) requires issuers to report pricing for the metals found at the property in question. Pertinent for those interested in future revenues generated by a mine, Item 25 (a) requires that issuers disclose production forecasts, while Item 25 (h) stipulates that the technical report must include an "economic analysis with cash flow forecasts...based on metal prices, grades, capital and operating costs." Under Item 25 (g) companies must disclose capital and operating cost estimates in a tabular form. In addition to the basic data about reserves, costs, and prices, Item 19 (m) instructs issuers to include a discussion of ESG factors and how they could affect resource and reserve estimates (See Box 10: NI 43-101 Form 1).

Box 8: National Instrument 51-101: Form 1 (Excerpt)

Item 2.2

Breakdown of Reserves (Forecast Case) – Disclose, by country and in the aggregate, *reserves, gross and net*, estimated using *forecast prices and costs* for each *product type*, in the following categories:

- revenue;
- (ii) royalties;
- (iii) operating costs;
- (iv) development costs;
- (v) abandonment and reclamation costs;
- (vi) future net revenue before deducting future income tax expenses;
- (vii) future income tax expenses; and
- (viii) future net revenue after deducting future income tax expenses.

Box 9: NI 43-101 Form 1 (Excerpt)

Item 19: Mineral Resource and Mineral Reserve Estimates - A technical report disclosing mineral resources or mineral reserves must

(b) report each category of mineral resources and mineral reserves separately and if both mineral resources and mineral reserves are disclosed, state the extent, if any, to which mineral reserves are included in total mineral resources;

(g) include a general discussion on the extent to which the estimate of mineral resources and mineral reserves may be materially affected by any known environmental, permitting, legal, title, taxation, socio-economic, marketing, political or other relevant issues;

(m) when the grade for a polymetallic mineral resource or mineral reserve is reported as metal equivalent, report the individual grade of each metal, and consider and report the recoveries, refinery costs and all other relevant conversion factors in addition to metal prices and the date and sources of such prices.

Box 10: PWYP's Proposal to the IASB

Publish What You Pay's proposal is that the following data should be required to be disclosed in summary, comparative tables on a country-specific basis:

1. Benefit Streams to Government.

The significant components of the total benefit streams to government and its agencies should be disclosed. At a minimum, this would include separate disclosure of:

- royalties and taxes paid in cash, royalties and taxes paid in kind (measured in cash equivalents), dividends, bonuses, license and concession fees.

2. Reserves. Reserves volumes and valuation measures (if required by the future IFRS) should be disclosed on a country-by-country basis.

3. Production volumes. Production volumes for the current reporting period should be disclosed on a country-by-country basis. Optional disclosure of production volumes by key products and key properties is encouraged.

4. Production revenues. Revenues from production should be disclosed on a country-by-country basis, with separate disclosure of production revenue attributable to:

- sales to external customers, transfers to downstream operations

5. Costs. The following costs should be disclosed on a country-by-country basis:

- production costs, development costs

<http://www.publishwhatyoupay.org/en/story/mobilising-investors-international-accounting-standard-extractives>

2.6 Disclosure of Reserve Data in the Extractive Industries

Both NI 43-101 and NI 51-101 require near mandatory disclosure of resource and reserve data. Reserve data is most likely to affect the market price or value of a security and is therefore always considered material. Additionally, disclosure is nearly always on a mine-by-mine or country-by-country basis.

Canada has very high disclosure of resource, reserve, production, pricing, and cost data. For the most part, Canadian regulations fulfill points 2-5 of PWYP International's proposal to the International Accounting Standards Board (IASB). Publish What You Pay International has proposed that to improve reporting, the International Financial Reporting Instrument regulating disclosure in the mineral sector should include detailed information about reserve, production, and cost data on a country-by-country basis organized in comparative tables (See Box 11: PWYP's Proposal to the IASB). Additionally, there are exceptions to country-by-country disclosure as mentioned previously. PWYP International's proposal comes as the IASB has launched a review of International Financial Reporting Standard (IFRS) 6: Exploration for and Evaluation of Mineral Resources (See Discussion and Analysis Section 2: Accounting Standards in Canada).

3. PAYMENTS TO HOST GOVERNMENTS

There has been increasing pressure on companies to publish royalties, taxes and bonuses paid to the governments of the countries within which their operations are located. The disclosure of payments to host governments is instrumental in combating corruption and improving accountability. PWYP International has included the disclosure of benefits to host governments, including royalties and taxes, dividends, bonuses, license and concession fees within their proposal to the IASB. PWYP's focus on improving revenue disclosure is part of a global movement committed to improving host government transparency. Today, the World Bank's investment arm, the International Finance Corporation now requires that all companies that co-invest in extractive projects publicize the payments they make to the project country.

In Canada, NI 43-101, NI-51-101, and NI 51-102 include directives to disclose information relating to royalties and taxes. For the Oil and Gas and Mineral sector, companies are required to disclose information relating to the nature and title of their project, any royalties or changes in royalties, relevant information about permits, the level of taxation, and other payments or agreements.

3.1 Oil and Gas: Payments to Host Governments

Under NI 51-101 Form 1, Part 2, Item 2.1, companies are required to disclose any applicable royalties. This same provision stipulates that companies must disclose future net revenues both before and after the deduction of income taxes. After the initial disclosure of future net revenues, companies are required to report any changes in royalties or taxation which could affect future net revenue on a country-by-country basis. The Companion Policy to 51-101 provides an example of an appropriate method of disclosure for royalties, costs, and income taxes (See Appendix A for two examples of the disclosure of royalty and taxation data by two randomly selected Canadian companies operating in the Oil and Gas sector)

Figure 2: Total Future Net Revenue (Undiscounted) as of December 31, 2006
Constant prices and costs (Optional supplemental disclosure)

| Reserves Category | Revenue (M\$) | Royalties (M\$) | Operating Costs (M\$) | Development Costs (M\$) | Abandonment and Reclamation Costs (M\$) | Future net Revenue Before Income Taxes (M\$) | Income Taxes (M\$) | Future net Revenue After Income Taxes (M\$) |
|-------------------------------|---------------|-----------------|-----------------------|-------------------------|---|--|--------------------|---|
| Proved Reserves | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Proved Plus Probable Reserves | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

 Optional Supplemental

Reference : Item 2.2 of Form 31-101F1

3.2 Mineral Projects: Payments to Governments

Canadian securities regulation provides greater guidance on the disclosure of payments to governments for mineral projects. In Form 2 of NI 51-102 under *Item 5: Describe the Business* there is a section applying solely to mineral companies which stipulates issuers should disclose the nature of the title or interest in the project; any royalties, overrides, back-in-rights payments or other agreements and encumbrances to which the project is subject. NI 43-101, Form 1, Item 25 also requires companies to disclose "a description of the nature and rates of taxes, royalties and other government levies or interests applicable to the mineral project or to production, and to revenues or income from the mineral project." The directives included in NI 31-101 Form 1 and NI 51-102 Form 2 appear to ensure high levels of disclosure amongst Canadian mineral companies in regards to payments to governments. While Technical Reports and AIFs do include significant information about royalties, taxation, and other payments, this information is included only when it is considered material. Therefore, after a company reports the royalty regime in a technical report one year, unless that regime changes there may be no need to report the details of the royalty arrangements in the subsequent year. As a result, a researcher may need to examine company reports from more than one year.

3.3 Permitted Exceptions

The regulator or the securities regulatory authority can grant exemptions from the NI 43-101 and NI 51-101 in whole or in part. One such exemption can occur when a company is listed on two stock exchanges and applies to file in accordance with the other stock exchanges disclosure requirements. For example, a company may be allowed to file in accordance with the relevant legal requirements of the Securities and Exchange Commission in the United States, which requires that data is reported on an "after royalty" basis.

EnCana received an exemption from Canadian securities regulatory authority to permit them "to provide disclosure in accordance with the relevant legal requirements of the Securities Exchange Commission in the United States."²⁴ Given EnCana's involvement in U.S. capital markets, this exemption increased the comparability of oil and gas disclosure to that of other U.S. and international issuers (See Appendix A: Comparing Oil and Gas Company Disclosure).

3.4 Using Payment, Reserve, and Pricing Data

In Appendix A, information found in the annual information forms (AIF) of two randomly chosen Oil and Gas companies yielded a surprising amount of information. Canadian Natural Resources Limited's (Ranger Oil Limited) AIF included the amount of royalties paid per quarter/per barrel/per day alongside the average daily production rates. Using simple math, a very rough approximation of total yearly royalties paid by Canadian Natural Resources Limited to the Ivory Coast can be calculated (See Chart 2).²⁵ While this calculation is in no way exact, the rough calculations included in Chart 1 can be useful to groups seeking to hold a *host government* accountable for revenue management.

The type of royalty information contained in Canadian Natural Resources Limited's AIF was not mirrored in that of Encana, mainly because Encana was granted an exemption to file in accordance with the Securities and Exchange Commission (SEC) regulations where information is disclosed on an after-royalty basis.²⁶ Despite this difference, Encana's AIF does clearly outline all income taxes paid to the *host governments of Canada*, the United States and Ecuador (See Chart 3).

Chart 2: Royalties Paid by Canadian Natural Resources Limited to the Government of the Ivory Coast.

| Canadian Natural Resources Limited (CAD) | Ivory Coast | Royalties paid to the Ivory Coast |
|---|-------------|-----------------------------------|
| 2007 Average daily production rate (mdbl) ²⁷ | 28.5 | |
| Royalties Q1 2007 | \$3.70 | 9,617,040 |
| Royalties Q2 2007 | \$7.12 | 18,506,304 |
| Royalties Q3 2007 | \$6.81 | 16,063,056 |
| Royalties Q4 2007 | \$7.59 | 19,727,928 |
| Approximate yearly total of royalties paid to the government of the Ivory Coast | | 63,914,064 |

Chart 3: Encana's income tax payments to the countries within which they operate (USD)

| Encana | 2008 (\$ Millions) | 2007 (\$ Millions) | 2006 (\$ Millions) |
|---------------|--------------------|--------------------|--------------------|
| Canada | 1,502 | 1,114 | 1,235 |
| United States | 937 | 809 | 556 |
| Ecuador | - | - | 21 |

While Annual Information Forms contain pertinent information for community groups and NGO's working to make government and companies more accountable, there is wide variation in what companies report (see Appendices A and B). In some cases, the variation resulted because of continuous disclosure requirements associated with material change. For example, NI 51-101 Form 1 stipulates that any change in royalties or taxation affecting future net revenue must be identified and explained on a country-by-country basis. For this reason, in Appendix B, Canadian Natural Resources Limited has included information about income taxes, noting current and future changes to the level of taxation. Without a recent or impending change, information regarding taxation might have excluded because it would not have represented a material change. NI 51-102 *Continuous Disclosure Obligations* also stipulates that royalties and other payments be disclosed by all companies undertaking mineral projects.

Canada's disclosure, as it relates to royalties and taxation, is meant to serve the investors and not those organizations committed to hold *host governments* and companies accountable. However, when information relating to taxation and royalties represents a material change or fact, as is stipulated in NI 51-101, NI 43-101, and NI 51-102, it must be reported. This provides valuable information to organizations committed to improving corporate accountability. Additionally, certain companies, with the intention to further inform investors about their operations; voluntarily include more information than is mandated by the national instruments. Voluntary disclosure is a practice that should be noted and encouraged.

4. CONTRACTS AND LICENSES

NI 51-102 *Continuous Disclosure Obligations* directly addresses the disclosure of contracts, stating under Item 5: *Describe the Business* that all changes to contracts must be disclosed. It specifically states that: "(a) description of any aspect of your company's business that you reasonably expect to be affected in the current financial year by renegotiation or termination of contracts or sub-contracts, and the likely effect" must be reported. For companies to fulfill this requirement they must comply with Form 3 of 51-102, entitled *Material Change Report*. A material change report must be filed when there is any change to a company's operations that could have a market impact and/or that would impact the 'reasonable investor.' Immediately after entering into a contract that represents a material change, Form 3 requires that companies provide a brief, but accurate, description of any material changes, which then must be supplemented with a longer descrip-

tion that includes dates, parties, reasons, and financial or dollar values amongst other things.

4.1 2008 Changes to Contract Disclosure

Box 11: Material Contract

The Definition of “material contract” is “any contract that the reporting issuer or any of its subsidiaries is a party to, that is material to the issuer”

Amendment Instrument to NI 51-102 Continuous Disclosure Obligations (In effect March 17th)

In 2008, NI 51-102 was amended and the disclosure requirement for material contracts was increased.²⁸ Amongst other things, the amended instrument clarified the definition of ‘material contract,’ although it should be noted that the Canadian Securities Administration made it clear that this definition would not change previous practice. The amendments also upheld the regulation that issuers must file a material change report when they enter into a contract that occurs outside of the ordinary course of business. Under this regulation, companies are required to file a material contract when entered into outside of the course of business regardless of whether it constitutes a material fact or change.

The most important change was a new regulation which requires that contracts be filed when entered into in the ordinary course of business when:

- the director, officers, or promoters are party to the contract and the contract is not an employment contract (also known as insider contracts)
- any continuing contract to sell the majority of the reporting issuer’s products or services or to purchase the majority of the reporting issuer’s requirements for goods, services or raw materials;
- any franchise, license or other agreement to use a patent, formula, trade secret, process or trade name;
- any financing or credit agreement, with terms that have a direct correlation with anticipated cash distribution;
- any external management or external administration contract; or
- any contract upon which the reporting issuer’s business is substantially dependent.

Of the latter changes, the amendment which requires companies to file contracts upon which the issuer’s business is substantially dependent will have the greatest effect on disclosure in the extractive industries. A contract upon which an issuer’s business is substantially dependent is described in the amendments to the Companion Policy of 51-102 issued in 2008 as being a contract where “the reporting company’s business depends on the continuance of the contract.”²⁹ One example of a contract that is entered into in the normal course of business provided in the amendments to the Companion Policy is “an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the reporting issuer’s business.” In discussions with companies, the Canadian Securities Administration clarified that ‘majority’ means 50% or more of the reporting issuer’s business. Under the new regulation the entire contract must be filed including amendments and side agreements. It should be noted that the regulation does not require that companies file contracts entered into before March, 2008 nor those that are renewed without amendments.

The impact of the amendments made to NI 51-102 in 2008 will result in greater contract disclosure amongst junior mining or oil and gas companies. Conversely, senior issuers will rarely have to file contracts as they rarely enter into a contract that represents the majority of their business. Additionally, this change will further

align Canadian and American contract disclosure requirements (see box 12: Substantially Dependent).

4.2: Disclosure of Relevant Contract Details

Preceding this amendment, there existed regulations and standards that regulate the disclosure of crucial contract details. The TSX's *Policy Statement on Timely Disclosure* discusses the need to disclose any significant contract which is either entered into or lost. Additionally, companies must disclose permitting processes and provide details of the company's proportionate ownerships, including a description of production royalties, cash or share payments and work commitments.³⁰ The Policy Statement also requires that mineral companies discuss any title or rights disputes, alongside any steps the company has taken to resolve such disputes. The Guide specifically states that "(p)roperties located in foreign jurisdictions will require more complete disclosure of tenure and permitting issues." The focus of the Toronto Stock Exchanges on contract and permitting disclosure in the mineral sector reflects Item 25 of NI 43-101, which requires each mineral property to include a discussion of the terms of contracts or arrangements, alongside rates and charges and Item 6 of NI 43-101, which requires that each technical report include a discussion of the type of mineral tenure and any known permits that will be needed.

In Canada, there are higher levels of contract disclosure for smaller extractive companies whose operations are heavily focused on one property. Additionally, there are higher levels of contract and permitting disclosure for Mineral, as opposed to Oil and Gas companies. As a result, Canadian regulation requires some forms of contract disclosure, but disclosure is neither uniform across sectors, nor between companies. Annual Information Forms and Technical Reports are good sources of information relating to mineral tenure, permitting, and contracts. Conversely, full contracts are filed as material contracts on SEDAR.³¹

5. ESG FACTORS

The value placed on the reporting of environmental, social, and governance factors reflects their growing relevance in companies value creation strategies, alongside the growing interest by investors in understanding a company's ability to handle the full risks and opportunities that are present in the current marketplace.³² The growing number of large companies that are voluntarily reporting ESG factors has led many companies to consider how to report such factors in a manner that satisfies a wide number of stakeholders, while not inundating investors with information that is challenging to interpret. One initiative encouraging

Box 12: Substantially Dependent

What does "substantially dependent" mean under the U.S. securities rules?

The new Canadian requirements very closely follow the approach of the U.S. rules contained in s. 601(b)(10) of Regulation S-K. While, the SEC has not issued any official statement; the following constitutes the SEC's unofficial position and accepted practices.

- The analysis depends on circumstances and facts. For example:
- a patent licensing agreement on which the issuer's activities are dependent to a material extent;
- a distribution contract which represents over 25% of the revenue of a senior issuer.
- Senior issuers very rarely file contracts under this category.

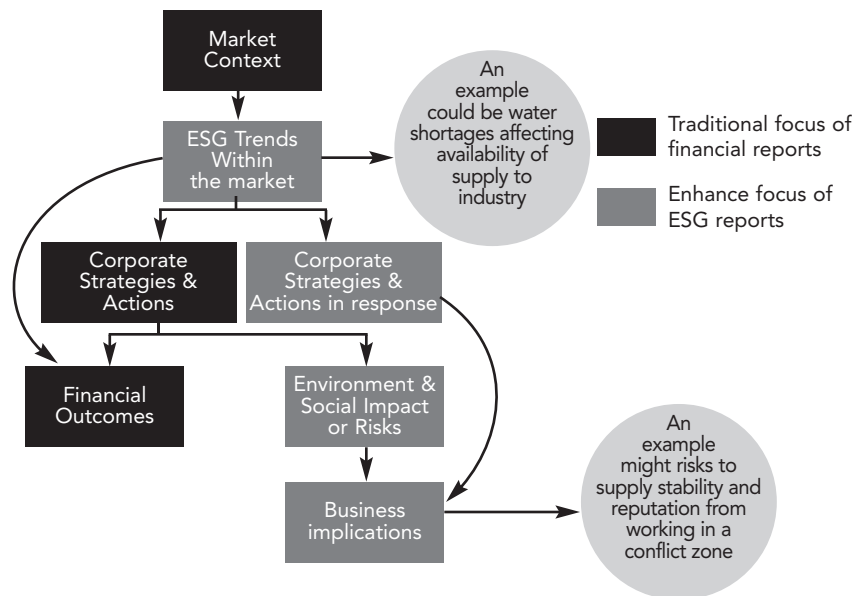
Excerpt from "New requirements to file material contracts entered into "in the ordinary course of business" http://www.mccarthy.ca/pubs/Amendments_to_National_Instrument_51-102.pdf

Box 13: The Global Reporting Initiative (GRI)

GRI is a multistakeholder, non-profit organization that develops and publishes guidelines for reporting on economic, environmental, and social performance ('sustainability performance'). Over 1000 organizations have used GRI's Sustainability Reporting Guidelines during the preparation of their public reports. First published in 2000 and then revised in 2002, the Guidelines have now entered their third generation, referred to as the GRI G3 Guidelines which were released in October 2006.

and guiding ESG reporting is the Global Reporting Initiative (GRI)[See Box 13: GRI].³³ The GRI is a voluntary initiative which has seen the support of many large extractive companies including Barrick Gold, EnCana Corp, FreePort McMoRan Copper and Gold, and Tack Cominco amongst others.³⁴ The difference between a traditional financial report and an ESG report is explained clearly in the diagram below:

Figure 3: ESG versus Traditional Financial Reporting



The global shift from traditional financial reporting to reporting that includes ESG factors has primarily been a voluntary movement, however, today there is growing support for mandatory disclosure of ESG factors. In July 2009, 50 major investment firms and many professionals joined the Social Investment Forum³⁵ in calling for changes to Securities and Exchange Commission regulations, which would require the mandatory disclosure of ESG data (See Box: 14.³⁶ Similarly, many Canadian companies are now considering how to include ESG data within their reporting.

5.1 Extractive Companies

In Canada, companies are required to disclose some ESG data of use to a variety of stakeholders. Regulations require that mining companies disclose more ESG data than oil and gas companies. Additionally, generally, regulations demand for greater disclosure of environmental data than that related to social, political, and economic issues.

5.2 NI 51-102 Continuous Disclosure Obligations: Form 1

NI 51-102 addresses the disclosure of ESG factors in both Form 1 the *Management's Discussion and Analysis* and Form 2 the *Annual Information Form*. The goal

of the Manager's Discussion and Analysis (MD&A) is to provide a narrative explanation of how the company performed during the period covered by the financial statements. NI 51-102 Form 1 under Part 1 entitled *General Instructions and Interpretations* section (g) instructs managers to include a discussion of the "commitments, events, risks or uncertainties that you reasonably believe will materially affect your company's future performance"³⁷ The focus on including a discussion of known trends and uncertainties continues in Part 2 entitled *Content of MD&A* where sections 1.2 and 1.4 both refer to the disclosure of known uncertainties. While requirements to disclose uncertainties in NI 51-102 Form 1 do not explicitly refer to the consideration of social, political and environmental as potential uncertainties, the Canadian Institute of Chartered Accountants states that the provisions in Form 1 can apply to environmental and climate change issues amongst other things.³⁸

In addition to the disclosure of uncertainties, Part 2, section 1.4 (d) states that "for issuers that have significant projects that have not yet generated operating revenue, describe each project, including your company's plan for the project and the status of the project relative to that plan, and expenditures made and how these relate to anticipated timing and costs to take the project to the next stage of the project plan." The additional instructions for Part 2, Section 1.4 stipulate that a discussion of such projects should explicitly consider "any factors that have affected the value of the project(s) such as change in commodity prices, land use or political or environmental issues." The result of these provisions is that managers should disclose in their MD&A known environmental and political issues which have affected properties that are not yet in the production phase of development.

5.3 NI 51-102 Continuous Disclosure Obligations: Form 2

NI 51-102, Form 2 entitled the *Annual Information Form (AIF)* also includes provisions that require the disclosure of ESG data. Item 5 of Form 2 entitled *Describe the Business* requires that companies report social and environmental policies fundamental to their operations. Item 5, Section 1 (4) states:

"Social or Environmental Policies – If your company has implemented social or environmental policies that are fundamental to your operations, such as policies regarding your company's relationship with the environment or with the communities in which it does business, or human rights policies, describe them and the steps your company has taken to implement them."

Alongside the disclosure of social and environmental policies, companies must also disclose any risk factors, including those that go beyond the traditional financial risks. Item 5, section 2 entitled *Risk Factors* states that companies must disclose environmental and health risks alongside any economic and political risk factors. Form 2 states:

"Disclose risk factors relating to your company and its business, such as cash flow and liquidity problems, if any, experience of management, the general risks inherent in the business carried on by your company, environmental and health risks, reliance on

Box 14: ESG Reporting and the Financial Crisis

"We believe that robust sustainability reporting could have mitigated some of the impacts of the financial crisis... We are confident that mandatory sustainability reporting will contribute significantly to rebuilding public trust in corporations as well as the agencies regulating them in the wake of the present crisis."

Excerpt from a letter from the investors to Securities and Exchange Commission chairperson Mary Schapiro

key personnel, regulatory constraints, economic or political conditions and financial history and any other matter that would be most likely to influence an investor's decision to purchase securities of your company."

Pertaining specifically to the environment, Form 2, Item 5, Section 1(k) states that companies must disclose any financial or operational effects due to environmental protection for the current financial year alongside expected effects in future years. In addition to the ESG data required of all companies, NI 51-102 has specific requirements for mineral properties. Form F2, *Item 5.4: Companies with Mineral projects*, requires that companies disclose all environmental liabilities to which the project is subject. In addition, potential tailings storage areas, potential waste disposal areas, heap leach pads, and potential processing plants sites, alongside the proximity of the property to a population centre and the topography, elevation and vegetation must be disclosed.

5.4 NI 51-101 Standards of Disclosure for Oil and Gas Activities

It should be noted that the Companion Policy to NI 51-101 and all three accompanying forms do not include references to social, environmental, or political factors. The sole reference is the inclusion of a discussion of risks on disclosure concerning prospects (anticipated results from a property) in Part 5, Section 5.9 of the Instrument.

5.5 NI 43-101 Standards of Disclosure for Mineral Projects

In Contrast to NI 51-101, NI 43-101 includes various provisions for the inclusion of ESG data. Item 5 of Form 1, NI 43-101 entitled *Reliance on Other Experts* recognizes the need to include ESG data and suggests that when discussing environmental, legal, political or other issues the 'qualified person' may rely upon another expert as long as a disclaimer of responsibility is included identifying the external report or expert relied upon.

Items 6 and 7 of NI 43-101, Form 1 entitled *Technical Report* reiterate many of the provisions seen in NI-102 Form 2, Item 5.4 targeting mineral projects. Item 6 (h) discusses the need to disclose any known environmental liabilities, while Item 7 specifies that the company must disclose the "availability and sources of power, water, mining personnel, potential tailings storage areas, potential waste disposal areas, heap leach pad areas and potential processing plant sites." Item 19 (g) entitled *Mineral Resource and Mineral Reserve Estimates* goes further than NI 51-102 stipulating that companies must include a general discussion on the extent to which the estimate of mineral resources and mineral reserves may be materially affected by any known environmental, permitting, legal, title, taxation, socio-economic, marketing, political or other relevant issues. On environmental disclosure, Item 25, which sets out additional requirements for the *Technical Reports of Development Properties* requires that companies include a discussion of environmental consideration including reclamation and remediation.

Box 15: The Sarbanes-Oxley Act (SOX)

The Sarbanes-Oxley Act of 2003 was enacted July 30 2002, and is also known as the Public Company Accounting Reform and Investor Protect Act of 2002. SOX is a complicated piece of legislation that is intended to combat corporate and criminal fraud. Canada responded to SOX by developing NI 58-101 *Disclosure of Corporate Governance Practices and National Policy 58-201 Corporate Governance Practices*. SOX is commonly believed to have affected the disclosure of ESG Factors, however, neither SOX, NI 58-101, nor NP 58-201 have improved the disclosure of ESG factors. See Discussion and Analysis 1: Corporate Governance for a broader discussion of both SOX and corporate governance disclosure standards in Canada.

5.6 The TSX's Policy Statement on Time Disclosure

In addition, to the securities legislation discussed previously, the TSX's *Policy Statement on Timely Disclosure* also discusses the disclosure of ESG data. Importantly, the TSX states that they do not expect companies to interpret the impact of external social, political, or economic developments on their company's affairs. However, the Policy also states that companies must disclose social, political, or economic developments that have or are having an effect on their business or affairs. This effect should be both material and uncharacteristic of the effect generally experienced by other companies as a result of such developments. The latter clause weakens this disclosure provision, as there are many instances where the effects of an economic, political, or social development would be similar for all companies operating in that particular country. A labour dispute is given as an example of a social event which should be reported. Another example of an event that should be reported is a coup d'état, where the new leader vows to renegotiate all contracts of large extractive sector companies operating in that country.

5.7 Overall availability of ESG data in Canada

There are several documents that set out disclosure requirements for ESG factors in Canada, NI 51-102, NI 43-101, NI 51-101, and the TSX's Statement on Timely Disclosure. To find ESG data provided in accordance with securities regulation, it is best to refer to documents entitled Annual Information Forms, Technical Reports and Managements Discussion & Analysis filed on SEDAR. The ESG data in these documents might include:

- Risks and uncertainties believed to materially affect a companies operation
- Environmental and political issues that could affect properties under development
- All social and environmental policies fundamental to a companies operations and how these policies are implemented.
- Environmental data, including environmental protection regimes, environmental liabilities, and a discussion of how waste disposal and tailings will be managed.

For mining companies only

- Information derived from external experts relating to political, economic, and environmental issues
- A discussion of political, legal and environmental issues that could affect resource and reserve estimates.

CONCLUSIONS

This report has detailed the regulations and laws guiding disclosure in the extractive industries in Canada (See Chart 4: Findings). One conclusion that can safely be made is that Canada has strict disclosure regulations in the extractive industries and as a result publicly traded companies listed on the TSX and the TSX Venture Exchanges should be quite transparent (See appendices A and B for examples). A secondary but related conclusion is that the wide array of publicly available information is under-used by stakeholders other than shareholders.

Chart 4: Findings

| | Level of Disclosure | |
|---|--|---|
| | Oil & Gas | Mining |
| Resource, Reserve, Pricing, Cost, Production Data | Very high, nearly always material | Very High, nearly always material |
| Payments to Host Governments | Medium: disclosed through a companies calculations of future net revenue. | High: several different regulations require that companies disclose income tax payments, tax rates, royalties, levies, or other interests and agreements |
| Contracts, permitting, land tenure | Low. Few references to the disclosure of contracts, permits, land tenure, rights, and licenses. | Medium. Contract disclosure is greatest with small companies with significant investments in one company. Multiple references to the disclosure of land tenure, permitting, leasing, and rights arrangements, alongside reference to the disclosure of contracts. |
| ESG Data | Low. Few references to the disclosure of social and political factors. Some references to the need to disclose environmental issues. | Medium. Repeated references to the disclosure of social, environmental, and political issues. However, these factors are often not considered material. |

Despite having strict disclosure regulations/laws, Canada's disclosure regulations have several weaknesses. Firstly, they are based on the concept of 'materiality' and therefore cannot be termed 'mandatory.' By basing disclosure on materiality certain pieces of Information are always disclosed, including for example reserve and resource data, while other issues such as ESG data are less likely to be disclosed. Additionally, smaller companies are required to disclose more information than larger companies. For example, in a company with fewer assets a greater number of developments are likely to be considered material, than in a larger company with more assets. Moreover, disclosure is subject to a company's interpretations of developments. The inherent sub-

jectivity of materiality can result in varying degrees of transparency between two different companies.

A second weakness is the variation in disclosure between sectors. The regulations affecting disclosure in the mining sector place greater emphasis on the disclosure of payments to host governments, contracts, permitting, and ESG factors, whereas the regulations targeting oil & gas companies mention contracts and licensing arrangements less often and rarely refer to ESG factors.

The third weakness in Canada's disclosure laws/regulations is their target audience. Reporting standards and guidelines are aimed at the 'savvy investor' and as a result many of the documents companies file on SEDAR are very difficult for the average person to read and comprehend. Transparency is a product, but more importantly it is a process whereby stakeholders can access information that can be used to question decision-making bodies. When the target audience of reports filed on SEDAR was limited to corporate lawyers, accountants, investors, and fund managers, the disclosure in the Canadian regulatory system functioned effectively. However, as the stakeholders concerned with the actions of extractive sector companies has expanded, there is a need for companies to produce clearer, summary documents with information that can be understood by someone who is not an investor and who has no experience in securities regulation.

Possible Avenues of Action

Despite some of the weaknesses inherent in Canada's disclosure regulations, companies are required to disclose information of use to a wide variety of stakeholders, including communities and NGOs. PWYP Canada and other NGOs committed to transparency and corporate accountability face many opportunities to become more active participants in the securities regulation. This report has identified several steps that NGOs can take to improve Canadian disclosure regulations.

Recommendations: Engaging with the Securities Regulation and Accounting Industry

1. Increase the involvement of the NGO community in processes that contribute to the development and amendment of national instruments and policies. Policies and instruments are developed and amended through open, democratic processes that engage a diverse array of stakeholders. For the most part, the NGO community has yet to strengthen their involvement in these processes. By providing comments on amendments to national instruments, NGOs can impact regulatory legislation in Canada.
2. Engage with the TMX to discuss the possibility of requiring greater disclosure for those companies listed on the TSX and the TSX Venture.
3. As the International Accounting Standards Board (IASB) and the Canadian Institute of Chartered Accountants (CICA) move forward with the adoption of International Financial Reporting Standards in Canada, NGOs have the opportunity to engage

Box 16: Proposed American legislation

Extractive Industries Transparency Disclosure Act (EITDA)

In 2008, a bill was introduced in the United States Congress that would require companies to publish the payments they make to foreign governments for oil, gas and minerals. The information would be included in financial statements that are already required by the SEC. This would apply to both American and international companies listed with the SEC, covering the vast majority of the largest oil, gas and mining companies in the world.

Energy Security Through Transparency Act of 2009

On September 23rd, 2009, the "Energy Security through Transparency Act of 2009" was introduced by a bipartisan coalition of Senators Richard Lugar (R-IN), Ben Cardin (D-MD), Charles Schumer (D-NY), Roger Wicker (R-MS) and Russ Feingold (D-WI). The bill would require energy and mining companies to reveal how much they pay to foreign countries and the U.S. government for oil, gas, and other minerals.

PWYP members, particularly those in North America and in Europe, have been working to support regulatory measures that would strengthen and advance the agenda of resource revenue transparency in the United States Congress, including the EITDA and the *Energy Security Through Transparency Act of 2009*. If passed, the Acts would apply to the vast majority of major extractive companies, including 9 out of ten of the biggest international oil companies and 8 out of ten of the top mining firms.

with the CICA to ensure that any changes lead to increases in disclosure in the mineral sector.

4. The CICA has been active in providing guidance to companies disclosing ESG data, therefore engaging with the CICA to improve and provide guidance to companies on disclosure in all the areas discussed in this report would be a beneficial next step.
5. Use the findings of the National Roundtables on the Environment and the Economy to encourage the CSA to adopt regulations mandating the disclosure of financially material ESG factors (See Appendix F: Capital Markets and Sustainability).³⁹
6. Work with the Canadian Securities Administration to encourage SEDAR to adopt a full text Boolean search function. The ability to search full text documents would greatly reduce the research time required of stakeholders who are not investors to obtain information about a particular company.

Box 17: Bill C-300

In February 2009, Canadian MP John McKay introduced Bill C-300 in the House of Commons. This Bill reflects numerous studies that have highlighted the significant environmental and human rights impacts of oil, gas and mining operations overseas.

The purpose of this bill is to promote environmental best practices and to ensure the protection and promotion of international human rights standards in respect of the mining, oil or gas activities of Canadian corporations in developing countries. It also gives the Minister of Foreign Affairs and Minister of International Trade the responsibility to issue guidelines that articulate corporate accountability standards for mining, oil or gas activities and it requires the Ministers to submit an annual report to both Houses of Parliament on the provisions and operation of this Act.

Bill C-300 reserves eligibility for government support to those extractive companies that comply with environmental, social and human rights standards, and covers services provided by Export Development Canada and the Department of Foreign Affairs and International Trade. The Bill also covers investments made by the Canada Pension Plan in extractive companies.

In the Fall of 2009, Bill C-300 was in the committee stage and continued to receive growing support from civil society organizations and academics.

Recommendations: Other Possible Actions

1. Encourage and reward companies that provide voluntary information above and beyond that required by law.
2. Encourage companies to join the Global Reporting Initiative and commend those that have already done so (See Box 13: Global Reporting Initiative).
3. Form partnerships with Socially Responsible Investment (SRI) funds so that NGOs and SRI funds can work together to develop and amend accounting standards, securities regulations, laws, and stock exchange policies in a manner that improves disclosure. SRI funds have a vested interest in improving disclosure in some issue-areas of less importance to the typical investor.
4. Encourage Canada to become an implementing country in the EITI process. Canada is currently a supporting country of EITI, providing political and financial support for the initiative. Becoming an implementing country would require that Canada implement a standardized and internationally recognized procedure for transparency in natural resource management.
5. Support the Extractive Industries Transparency Disclosure Act, which was introduced in the U.S. Senate Committee on Banking, Housing, and Urban Affairs in 2008 and the Energy Security Through Transparency Act of 2009 introduced September 23, 2009 (See Box 16: Proposed American Legislation). Canadian regulatory legislation is often amended to mirror that which exists in the United States (See Discussion & Analysis 1). For example, contract disclosure regulations have been amended in Canada to better reflect those in the United States. Additionally, harmonizing Canadian and American legislation has been an important issue within the Canadian Securities Administration. Strengthening American disclosure regulation will provide Canadian NGOs with greater leverage when lobbying the Canadian government and/or Canadian regulators to strengthen domestic regulations.

Canada's involvement in improving transparency

NGO engagement is not limited to working with industry associations, investment groups, and securities regulators as the Canadian government can also become a global leader in transparency. Since 2007 Canada has been providing the Extractive Industries Transparency Initiative with funding and in 2009, Canada became a board member of the Extractive Industries Transparency Initiative. Canada has also been a firm supporter of the OECD multinational guidelines and the current government has reaffirmed their support. In addition to these guidelines, the Corporate Social Responsibility Strategy announced in 2009 noted three other guidelines that Canada would support and promote, namely the International Finance Corporation Performance Standards on Social and Environmental Sustainability for extractive projects, the Global Reporting Initiative (GRI) and the Voluntary Principles on Security and Human Rights. The first two initiatives are specifically aimed at improving disclosure in the extractive industries and are instrumental initiatives in the mainstreaming of the disclosure of ESG factors and payment to governments. While the latter initiative provides guidance to extractives within an operating framework that ensures respect for human rights and fundamental freedoms. Encouraging the Canadian government to continue supporting initiatives such as the GRI and EITI will help Canada to become a leader in transparency.

One of the most important recent developments to occur in Canada has been the tabling of Bill C-300. If passed, this bill will require the Minister of the Department of Foreign Affairs and International Trade (DFAIT) to develop guidelines that articulate corporate accountability standards. The bill stipulates that these guidelines should incorporate the IFC Performance Standards and the Voluntary Principles on Human Rights, alongside other international human rights standards. Export Development Canada, the Canadian Pension Plan Investment Board, and DFAIT should consider these guidelines when completing transactions, making investment decisions and determining program eligibility, respectively. The NGO community has provided and continues to provide significant support to Bill C-300.

A second important development in Canada is the motion passed by the Ontario Legislature calling on the Ontario Securities Commission (OSC) to review current corporate reporting standards and to produce recommendations for enhanced disclosure.

Avenues for Future Research

The research undertaken in this report has provided important knowledge to a wide array of stakeholders about Canada's disclosure regulations. The regulations which are mapped and dissected in this report demonstrate that Canadian securities regulators, stock exchanges, and accountants require that companies maintain high levels of disclosure. Unfortunately, understanding and mapping the disclosure regulations and laws does not demonstrate that Canada is a transparent country. To determine the level of transparency in Canada, a study should be undertaken to examine company disclosure practices. Comparing regulations with company practices is an excellent subject for future research, and is one which PWYP Canada hopes to undertake.

Other areas requiring research, which have emerged through the process of researching and writing this report, include comparing Canadian, American, and UK disclosure regulations, as well as examining the transparency of Impact Benefit Agreements signed between companies and indigenous communities in Canada.

Box 18: Comment on Ontario Motion

"This is a brilliant, strategic resolution. When the OSC requires annual reporting on sustainability risks, corporations must track their sustainability performance. What gets tracked gets managed, and what gets managed gets improved. This resolution reinforces that corporate sustainability is material to all stakeholders."

--Bob Willard, www.sustainabilityadvantage.com

DISCUSSION & ANALYSIS 1: CORPORATE GOVERNANCE

Sarbanes-Oxley: Corporate Governance Practices and Disclosure in the United States

The Sarbanes-Oxley Act was enacted July 30 2002, and is also known as the Public Company Accounting Reform and Investor Protect Act of 2002.⁴⁰ It is also commonly referred to as Sarbox or SOX. SOX is a United States federal law enacted to respond to a number of major corporate accountability scandals, including Enron, Tyco International and WorldCom. These scandals shook public confidence in the nation's securities markets and cost investors billions of dollars. When then President George W. Bush signed it into law, he stated that SOX represented "the most far-reaching reforms of American business practices since the time of Franklin D. Roosevelt."

SOX covers issues such as auditor independence, corporate governance, internal control assessment and enhanced financial disclosure. Of relevance to PWYP is that it requires that securities commissions review disclosures made by issuers on a regular and systematic basis (Section 408: Enhanced Review and Periodic Disclosure by Issuers). Additionally, SOX requires that issuers report whether or not a company has a code of ethics for senior financial officers, and, if not, why (Section 406: Code of Ethics for Senior Financial Officers). SOX also contains significant provisions to combat corporate and criminal fraud and enhance white-collar crime penalties (Title VIII: Corporate and Criminal Fraud Accountability; Title IV: While Collar Crime Enhancement Penalties).

More generally, SOX attempts to correct the most critical manifestations of lax corporate governance practices, including:

- Management dealing in an environment full of pervasive conflicts of interest;
- Lack of strict transparency, reliability, and accuracy standards in financial reporting;
- Lack of independence between the key players in corporate governance (the board of directors, management, and auditors);
- Lack of adequate enforcement tools at the disposal of regulators; and
- Widespread conflicts of interest influencing securities market transactions.⁴¹

While SOX has many perceived benefits and has played a useful role in re-establishing confidence in the nation's capital markets, opponents claim that it has made the American regulatory environment overly complex, thus reducing its international competitiveness.

Canada's response to the Sarbanes Oxley Act

In Canada, in order to retain investor confidence, the CSA introduced new rules following the example of SOX. Many of the new regulations are contained within National Policy 58-201 and NI 58-101, particularly those relating to section five.⁴²

The main difference between the CSA rules outlined in Box 18 and those contained in Sarbanes-Oxley is that the CSA rules have non-prescriptive qualities. While SOX sets out specific mandates and requirements that companies must

comply with, Canada's non-prescriptive regulations follow the 'comply or explain model,' whereby companies demonstrate their compliance with a regulations or explain why they have not comply. Due to the small size of Canadian markets and the large number of small cap Canadian companies (there are far more companies listed on the TSX Venture than the TSX), Canadian regulators tend to favour flexible regulations that can accommodate a wide variety of companies. In contrast, SOX is commonly viewed as taking a one-size-fits-all approach to regulation.

National Policy 58-201 and National Instrument 58-101

National Policy 58-201 *Corporate Governance Guidelines* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* came into force in 2005, in every jurisdiction in Canada. The Policy is intended to provide guidance on corporate governance practices. While the guidelines are not prescriptive, they encourage issuers to consider the guidelines in developing their own corporate governance practices. Of importance to the mandate of PWYP is the inclusion of the following guideline:

adopting a written code of business conduct and ethics

While the policy established guidelines, the instrument specifies disclosure requirements, one of which is that issuers must file any written code they have adopted on SEDAR. According to the instrument, any issuer who has a written code must file a copy of that code on SEDAR no later than the date of the issuer's next financial statements. Recognizing the potential challenges to small issuers who are less likely to have a written code, NP 58-101 has a separate form applicable to Venture issuers. The forms associated with this instrument are NP 58-101F1 and NP 58-101F2.

In section five of NI 58-101 it stipulates that the company must disclose whether the board has written a code of business ethics. If the board has a code then the company must disclose how to obtain a copy of that code, discuss how the board will monitor compliance with the code, and reference any material change reports since the beginning of the most recent financial year that discusses any conduct which represents a departure from the code. Additionally, all steps regarding the promotion of a culture of ethical business conduct must be disclosed.

Proposed Amendments to NI 51-101 and NP 58-201

Between December 2008 and April 2009, the CSA sought comments on the proposed amendments to National Policy 58-201 and National Instrument 58-101.⁴³ If accepted, these changes will include taking a more principles-based approach to policy that is broader in scope. Instead of listing specific governance practices, the policy will outline nine broad corporate governance principles. Additionally, the disclosure principles would be more general in nature and apply equally to ven-

Box 19: CSA rules developed to respond to the Sarbanes-Oxley Act in the United States

- (1) *oversight of external auditors*
- (2) *chief executive officer (CEO) and chief financial officer (CFO) certification with respect to the accuracy of public disclosure and filings*
- (3) *composition, authority and responsibilities of audit committees, including*
 - establishing procedures for dealing with complaints with respect to accounting or auditing matters and for whistle-blowing;
- (4) *continuous disclosure obligations,*
- (5) *disclosure of corporate governance practices, including disclosure of whether (and if not, why not) public companies have adopted the non-prescriptive corporate governance best practices recommended by the CSA, including:*
 - having a majority of *independent* directors;
 - appointing a chair who is an *independent* director or, where this is not possible, a "lead" director who is an *independent* director;
 - adopting a charter setting out the responsibilities and operating procedures of the board of directors;
 - adopting a written code of business conduct and ethics; and
 - establishing nominating and compensation committees composed entirely of *independent* directors.

Corporate Bulletin (2004, May)
McMillan Binch

ture and non-venture issuers, rather than being based, as they are now, on a model of “comply-or-explain.”⁴⁴

Under the proposed changes, the recommendation for the adoption of a written code of business ethics would be replaced by “Principle 5 - Promote integrity: *An issuer should actively promote ethical and responsible behavior and decision-making.*” The proposed changes to the national instrument are of interest to PWYP, as companies would no longer be required to file a copy of their code of business ethics on SEDAR. The amendments state, “We no longer require an issuer to file a copy of its code of business conduct and ethics or an amendment to the code through SEDAR. However, an issuer must provide a summary of any standards of ethical and responsible behavior and decision making or code adopted by the issuer and describe how to obtain a copy of its code, if any.”⁴⁵

Additional changes include a dramatic revision of form NI 58-101 F1, which under the proposed changes would require that issuers disclose the practices it uses to achieve the objectives of each principle outlined in the modified version of the National Policy 58-201.

Unfortunately, the proposed changes do not incorporate social and environmental expectations as part of good corporate governance practices, as was suggested by one commentator.⁴⁶ According to the commentator, “this demonstrated a lack of understanding of how social and environmental issues are coming to impact the fundamentals of corporate performance and stock returns.”⁴⁷

DISCUSSION & ANALYSIS 2: ACCOUNTING STANDARDS IN CANADA

In very simple terms, the Canadian Generally Accepted Accounting Principles (GAAP) covers dollars while the National Instruments cover quantities. While Canadian GAAP provides guidance to companies on how to define and interpret concepts such as materiality and how to prepare reports based on provincial and national regulations, in 2008 Canadian GAAP did not require any substantial disclosure above and beyond that which is required by securities regulation. However, Canada is currently in the process of transitioning from Canadian GAAP to International Financial Reporting Standards (IFRS).⁴⁸ IFRSs are set by the International Accounting Standards Committee Foundation, whose mission it is to develop a single set of understandable and high quality understandable financial reporting standards. The impact of Canada’s adoption of IFRS on disclosure in the oil, gas, and mineral sectors is currently unknown.⁴⁹

Canadian publicly accountable entities will be required to adopt IFRS for a company’s annual reporting at the calendar year end of 2011. While the impact on disclosure in the extractive sectors remains unknown, professionals working on the transition have suggested that there is reason to believe that reporting in the extractive industries will be affected. According to the Accounting Standards Board of Canada, the extractive industries will face significant changes from present day requirements.

The accounting standard that will have the greatest impact on the extractive industries is IFRS 6: *Exploration for and Evaluation of Mineral Resources*. As it stands, IFRS 6 will not affect the disclosure obligations of extractive companies registered in Canada, however, the International Accounting Standards Board (IASB) is currently reviewing IFRS 6. A review of IFRS 6 is included within a larger project, which is attempting to develop an acceptable approach to resolving accounting issues particular to the extractive sector. PWYP has been working with the IASB's task force on extractives, and IASB has included the proposals put forward by PWYP for country-specific disclosure of extractive company payments in its deliberations. The IASB will be presenting its recommendations for a new financial reporting standard for extractive activities in 2010. A revision to IFRS 6 supporting PWYP's proposal would strengthen reporting and bring the international community closer to achieving a global standard for disclosure of natural resource revenues.⁵¹

DISCUSSIONS AND ANALYSIS 3: PROVINCIAL VERSUS FEDERAL SECURITIES REGULATION

With 13 different regulators and 13 different sets of securities legislation, Canada's current regulatory environment lacks coordination and cohesion. As a result of the systemic fragmentation, policy development, implementation and legislative enforcement are weakened. While over recent years there have been significant steps taken to harmonize and improve a fragmented regulatory regime, Canada's regulatory regime remains inconsistent and inefficient. The 2006 final report issued by the Crawford Pane⁵² stated,

"Canada's fragmented regulatory regime results in inconsistent and inefficient enforcement of securities laws across the country. While the provincial and territorial regulators seek to conduct joint investigations and proceedings where possible, the jurisdiction of and penalties that may be imposed by each regulator are prescribed in different local statutes. Furthermore, some jurisdictions lack the enforcement budgets necessary to thoroughly investigate all potential breaches of securities laws."⁵³

Furthermore the final report of the Wise Person's Committee (WPC)⁵⁴ to review the structure of securities regulation in Canada concluded that,

"Canada suffers from weak and inconsistent enforcement and investor protection. Wrongdoers too frequently go unpunished, and adjudication is unduly delayed. Policy development is slow and inflexible. The need for consensus often results in a lack of uniformity, overregulation or policy paralysis. The system is too costly, duplicative and inefficient. The regulatory burden impedes capital formation. Canada's international competitiveness is undermined by regulatory complexity."⁵⁵

The existence of multiple regulators makes Canadian securities legislation far more complex than it would be under a single regulator. This can affect disclosure requirements in Canada in two ways: by making changes or improvements to policy difficult to coordinate and by weakening enforcement.

Improving policy

Due to the fragmented nature of the Canadian regulatory environment, changing a regulation or introducing a piece of legislation is a lengthy and challenging process. It is currently estimated that it takes 18 months to implement a Canadian Standards Association (CSA) multilateral rule initiative. National policies and rules can only be developed after the 13 regulators agree on the policy direction and requirements. Furthermore, each jurisdiction must then conduct its own approval process. This requires that each province ensure sufficient time for a comment period, and in some jurisdictions ministerial approval is needed. After lengthy periods of negotiation and accommodation there have been cases where one province has opted not to implement a piece of legislation despite all the changes made to accommodate that province's interests.⁵⁶

Despite potential benefits, Manitoba, Alberta, and Quebec have publicly expressed their opposition to the creation of a single regulator. They argue that a single regulator would undermine invaluable local expertise in securities regulation which plays a key role in provincial economic development. Furthermore, the three provinces argue that a single regulator will not be able to accommodate important regional interests. One of the most convincing arguments put forth by the three opposing provinces is that there is no need for a securities regulator because of the recently introduced passport system (See Box 2: The Passport System). The province of Quebec has vowed to challenge Ottawa's push for a national securities regulator in court. The Quebec government argues that it is important that provinces maintain jurisdiction over securities regulation.

Enforcement

One area of concern relevant to securities disclosure that is not remedied by the passport system is that of enforcement. According to the WPC report, Canadian enforcement is very poor. The report identifies three important problems relating to enforcement that result from having provincial securities regulators. Firstly, insufficient resources are allocated to enforcement. The United States Securities and Exchange Commission allocates 39% of its total budget to enforcement, whereas in Canada regulators in British Columbia, Alberta, Ontario, and Quebec allocate between 13 and 19% of their budgets.⁵⁷ Secondly, each regulator is responsible for enforcing its own laws, yet many enforcement issues cross provincial borders and, due to problems of coordination, compliance can be slow. Lastly, enforcement priorities differ by provincial regulator as do statutory enforcement provisions, leading to widely varying levels of enforcement by province.

Strong legislation only matters if it is complemented by strong enforcement. Improving enforcement requires that provinces and territories find means to better coordinate, , dedicate more funds to enforcement, and work together to ensure uniform enforcement is all jurisdictions.

Financial Crisis (2008-2010)

Given the financial crisis which began in 2008, there has been increased momentum within the federal government for the creation of a single regulator. In February of 2008, Finance Minister Jim Flaherty appointed an Expert Panel on Securities Regulation, and, in the speech from the throne in November of that same year, Prime Minister Stephen Harper announced his intentions to create a single national regulator. Recently in Australia, the federal government challenged a Privy Council decision which stated that the provinces had jurisdiction over regulation. After taking the case to the Supreme Court, the Court ruled in favour of a federal regulator. As more countries, including primarily Australia and the UK, centralize their regulatory systems, Canada is under increasing pressure to follow suit.

In January of 2009, the Expert Panel on Securities Regulation released its final report of which its central recommendation was the creation of a common securities regulator in Canada. Given the current political and economic climate, the current government may decide to seize the opportunity to create a single regulator.

GLOSSARY

Equity:

Ownership interest in a firm in the form of a stock.

Issuer:

A company offering (or having already offered) securities for sale to investors. Examples include corporations, investment trusts, and government entities.

Material fact:

a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities.

Material change:

a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable. As a result of this distinction, not all material facts are significant enough to constitute a change in the business, operations or capital of the issuer, and therefore be a material change requiring immediate disclosure.

Private Company:

A private company does not seek to sell shares on financial markets or the public generally. This type of company raises money from private sources which might include founder, family, wealthy individuals and sophisticated investors such as mutual funds and pension funds. An example of a private company is DeBeers Canada.

Public Company:

A public company sells shares via stock exchanges and similar public financial markets. People can buy parts of the company, these parts are called shares, the people that buy shares are called shareholders. Shareholders are said to hold equity in a company. Most mining companies are public companies.

Securities:

Transferable certificates of ownership of investment products including bonds, notes, stocks, future contracts and options.

Securities Regulation:

The regulation of the conduct of securities market participants.

The System for Electronic Document Analysis and Retrieval (SEDAR):

Is the Canadian Securities Administration's national electronic filing system for disclosure by public companies and mutual funds. www.sedar.com

Socially Responsible Investment (SRI):

Investors or investment funds that include, apart from financial criteria, social, environmental, and/or ethical criteria in the processes of analysis, selection, and choice of investment.

Toronto Money Exchange Group (TMX):

The TMX Group owns and operates Canada's two national stock exchanges: the Toronto Stock Exchange (TSX) which serves the senior equity market, and the TSX Venture Exchange serving the public venture equity market.

Toronto Stock Exchange (TSX):

The Toronto Stock Exchange is a subsidiary of the TMX Group. It is the largest Stock Exchange in Canada and the third largest Exchange in North America. The TSX serves the senior equity market.

Toronto Venture Stock Exchange (TSX Venture):

The TSX Venture Exchange is a subsidiary of the TMX Group. Created in 1999, resulting from a merger of the Vancouver Stock Exchange and the Alberta Stock Exchange, and purchased and renamed in 2001 by the Toronto Stock Exchange, the TSX Venture is the stock exchange that lists companies whose assets, business and capitalization are too small to be listed on the Toronto Stock Exchange. After its original creation, the Winnipeg Stock Exchange and the small-cap portion of the Bourse de Montreal were also integrated into TSX Venture.

Qualified Person (QP):

To create accountability, when any company discloses in writing scientific or technical information about a mineral project they must include the name of Qualified Person. This person should be (a) an engineer or geoscientist with at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these; (b) have experience relevant to the subject matter of the mineral project and the technical report; and (c) be in good standing with a professional association

APPENDIX A: COMPARING OIL AND GAS COMPANY DISCLOSURE

The two companies chosen are both registered in Canada and both have or had operations in the global South. The companies were chosen at random and the annual information forms were used to complete this analysis.

| Company | EnCana (information presented on an after royalty basis) | Canadian Natural Resources Limited |
|------------------|---|---|
| Mineral rights | The mineral rights on approximately 41 percent of the total net acreage are owned in fee title by EnCana, which means that production is subject to a mineral tax that is generally less than the Crown royalty imposed on production from land where the government owns the mineral rights. | <p>The Company owns interests in two exploration licenses offshore Côte d'Ivoire comprising 55,408 net acres. During 2001, the Company increased its interest in Block CI-26, which contains the Espoir Field, to a 58.7% operating interest.</p> <p>In the first quarter of 2001, the Company drilled and tested the Baobab exploration prospect, identified on Block CI-40, eight kilometers south of the Espoir facilities, in which the Company has a 58% interest.</p> |
| Royalties | None | Development of the Espoir Field on CI-26 and the Baobab Field on CI-40, in Côte d'Ivoire, are subject to production sharing arrangements that provide that tax or royalty payments to the Government are deemed to be met from the Government's share of profit oil. |
| Royalty payments | None | Includes royalty payments per barrel per day, alongside production expenses, and the sales price of oil. |
| Income tax rates | None | In August 2006, the Government of Côte d'Ivoire announced a reduction in the rate of Corporate Income Tax from 35% to 27%, effective January 1, 2006. Effective January 1, 2008, the Government of Côte d'Ivoire announced a further corporate income tax rate reduction to 25%. |

| | | |
|-------------------|--|---|
| Taxes paid | EnCana provides the amount of income taxes paid to the government of Canada, the United States and the UK. | None |
| ESG Data | <p>In 2003, EnCana developed a Corporate Responsibility Policy (the "Policy") that translates its constitutional values and shared principles into policy commitments. The Policy applies to any activity undertaken by or on behalf of EnCana, anywhere in the world, associated with the finding, production, transmission and storage of the Corporation's products including decommissioning of facilities, marketing and 47 other business and administrative functions. The Policy has specific requirements in areas related to:</p> <ul style="list-style-type: none"> (i) leadership commitment; (ii) sustainable value creation; (iii) governance and business practices; (iv) human rights; (v) labour practices; (vi) EH&S; (vii) stakeholder engagement; and (viii) socio-economic and community development. | <p>The Company continues to implement flaring, venting and fuel and solution gas conservation programs. In 2007 the Company completed approximately 115 gas conservation projects, resulting in a reduction of 1.28 million tonnes/year of CO₂e. Over the past five years the Company has spent over \$116 million to conserve the equivalent of over 6.4 million tonnes of CO₂e.</p> <p>The costs incurred by the Company for compliance with environmental matters and site restoration is approximately 3% of the total exploration and development expenditures incurred by the Company in each of the years ended December 31, 2007, 2006 and 2005</p> |

APPENDIX B: COMPARING MINING COMPANY DISCLOSURE

| Company | Anvil Mining Limited | Snowden Mining Industry Consultants Limited |
|----------------|--|---|
| Project | Kinsevere copper Deposit: Katanga Province, Democratic Republic of Congo | Mauritania Copper Mines: Guelb Moghrein resource estimation |
| Mineral Rights | The rights are held by <i>La Générale des Carrierés et des Mines</i> (Gécamines), the DRC state-owned copper mining company. However, Anvil, via its subsidiary AMCK Mining (A joint venture between Anvil – 95%- and the Mining Company of Katanga) has a Lease Agreement with Gécamines to mine and process ore from the two exploitation permits for a period of 25 years. | The current property owner is MCM, which is 80% owned by FQML. It is reported that the remaining 15% of MCM is held by Wadi Al Rawda Industrial Investments (WARII) and Guelb Moghrein Mines d’Akjoujt SA (GEMAK), with the remaining 5% held by other parties. |
| Royalties | <p>The Lease Agreement is conditional upon the provision that AMCK joint venture make royalty payments to Gécamines on each tonne of commercially viable copper metal extracted from future mining operations on the Kinsevere-Nambulwa deposits.</p> <p>The royalty payments to Gécamines are on each tonne of commercially viable copper metal extracted from future mining operations on the Kinsevere-Nambulwa deposits. The royalty payment is calculated on both copper and cobalt mined and processed as copper equivalent tonnes (Cueq) and varies from a floor price of \$35 per tonne of Cueq at a London Metal Exchange (LME) copper price of \$2,000 per tonne to a ceiling price of US\$70 per tonne of Cueq at an LME copper price</p> | <p>Snowden understands that for FQML to earn an 80% interest in the mineral property it must pay GEMAK the sum of US\$ 10 million in three installments as follows:</p> <p>(1 Mauritanian Ouguiya, 1 US\$ = 255.6 MRO)</p> <ol style="list-style-type: none"> 1. US\$ 2 million, 7 days after the Completion Date for the proposed operation 2. US\$ 3 million, 12 months after the Completion Date 3. US\$ 5 million, 24 months after the Completion Date or on commencement of full commercial production, whichever is earlier. |

| | | |
|------------------------------------|---|---|
| <p>Royalties</p> | <p>of \$4,000 per tonne. This is calculated on the basis of copper recovered from Stage I and Stage II processing. A royalty payment to the DRC government is also payable at 2% of total copper sales revenue.</p> | |
| <p>Exploration Licenses</p> | | <p>MCM's current commitments with respect to the exploration licenses to be assumed by Snowden:</p> <ul style="list-style-type: none"> • to make a detailed exploration plan and send the curriculum vitae of the project leader to the MMI • to pay renewal taxes of 250 MRO1 (0.97 US\$) per km² for the first renewal, 500 MRO (1.95 US\$) per km² for the second renewal and 1000 MRO (3.91 US\$) per km² for the final renewal • to spend at least 30 million MRO (117,400 US\$) per annum on each exploration lease |
| <p>Local Labour</p> | <p>Local labour will be bussed between the site and their homes in local villages. Surplus accommodation required to house the temporary workforce will consist of temporary tents and demountable cabins. Additional permanent accommodation will be built using local labour and materials.</p> | <p>MCM is currently required to recruit a Mauritanian geologist and other local labour for each exploration project.</p> |

| | | |
|--------------------------------------|--|--|
| The Environment | Raw water will be sourced from the Kifumashi River to the north of the project area and from dewatering bores surrounding the open pits. A flora survey at Kinsevere identified the presence of various plants of conservation importance, including the particularly rare <i>Gladiolus robilartianus</i> . To mitigate the project impact it is recommended that a floral reserve is established to protect the local population. | There are no special environmental liabilities on exploration permits; however; each exploration company is required to rehabilitate its site as per the new mining code. Under the Convention d'Etablissement, the IRM has given the project unlimited rights to draw water from the Bennichab Aquifer to meet the project needs. In return, MCM has undertaken to search for, and utilise, local water sources where possible to reduce dependence on the Bennichab aquifer. |
| Infrastructure | A new site access road of ~25km length has been constructed alongside the new power supply line to access the mine from the main national road. | |
| History | | A complete history of the mine, including details about previous exploration companies and extraction activities. |
| Mineral reserve and resources | Detailed information about probable and proven reserves and indicated and measured resources. Additional details are included about current and future production. | Detailed information about probable and proven reserves and indicated and measured resources. . Additional details are included about current and future production |
| Community Issues | A Social Impact Assessment was also undertaken to identify the existing social and economic conditions existing in the project area. A survey of the local villages indicated that the community generally considered that the project would be beneficial for the area, although most respondents also thought that there were potential associated risks. | |

APPENDIX C: CONTINUOUS DISCLOSURE REQUIREMENTS

Reporting issuers are required to file the following periodic disclosure documents:

1. Annual financial statements to be filed within a defined period after the reporting issuer's financial year-end, plus,
2. Interim financial statements to be filed in each of the other three quarters.
3. Management's Discussion and Analysis (MD&A) to be filed for each annual and interim (quarterly) period at the same time as the financial statements.
4. Certifications, annual and interim (quarterly), to be filed at the same time as the financial statements.
5. Annual Information Form (AIF) - only non-venture issuers (TSX listed or listed outside of Canada), are required to file as part of their continuous disclosure documents, but an issuer who wishes to be qualified to file a short form prospectus must also have filed an AIF.
6. Annual Oil and Gas Disclosure (NI 51-101 Forms F1, F2, F3) if engaged in oil and gas activities.

Other continuous disclosure filing requirements, as and when required:

- a. Information Circular - provided to shareholders in connection with a shareholder meeting, e.g. an annual general meeting.
- b. Material Change Report, to be filed by a reporting issuer within 10 days of a significant event that requires reporting (see the discussion of materiality below).
- c. News releases announcing other events.
- d. Documents that affect the rights of security holders, e.g. articles of incorporation, by-laws, and contracts that are 'material' to the reporting issuer, other than contracts entered into in the ordinary course of business.
- e. Business Acquisition Report (BAR), filed when a reporting issuer has acquired a business that is significant compared to itself.
- f. Notices - announcing changes in year end, changes in auditors.⁵⁸

APPENDIX D: USING SEDAR

Approach One: Under this approach your search will return only the document types selected.

Step 1: www.sedar.com

Step 2: Choose a Language

Step 3: Select Search Database

Step 4: Select *Public Company Documents*

Step 5: Select an industry type

Step 6: Enter a company name

Step 7: Select a document type.

- Technical Reports - Mining companies (most information)
- Annual Information Forms or Annual Reports – Mining or Oil and Gas companies (Most information)
- You may also want to examine the MD&A reports for the company of interest.
- If you choose not to select a document type than all documents filed on SEDAR by that company will be shown.

Approach Two: Under this approach all documents filed on SEDAR by one company will be returned.

Step 1: www.sedar.com

Step 2: Choose a Language

Step 3: Select *Company Profiles*

Step 4: Select the first letter of the company's name

Step 5: Choose the company of interest

Step 6: View all documents filed by that company on SEDAR

- Look for material contracts, technical reports, annual information forms, MD & A reports, and material change reports.

APPENDIX E: ONTARIO LEGISLATURE MOTION

PRIVATE MEMBER'S RESOLUTION

LAUREL BROTEN, MPP

ETOBICOKE-LAKESHORE

BE IT RESOLVED:

That in the opinion of this House, the province of Ontario should undertake a review of Ontario's current corporate disclosure reporting requirements, standards and compliance therewith, with a particular emphasis on additional financial and non-financial information to ensure that Ontario investors have access to all information material to them in making investment decisions.

That, in undertaking such a review, the Ontario Securities Commission ("OSC") should undertake a broad consultation with its own advisory bodies including the Continuous Disclosure Committee, concerned stakeholders, appropriate interest groups and individuals and other securities regulators, to establish best practice corporate social responsibility ("CSR") and environmental, social and governance ("ESG") reporting standards.

That, the OSC seek to develop and adopt an enhanced standardized reporting framework for both quantitative and qualitative social and environmental information, to ensure corporate disclosures are understandable, comparable, and outcome focused.

That the OSC shall report back to the Minister of Finance no later than January 1, 2010 with regard to its findings, together with recommendations for next steps to enhance disclosure.

Laurel Broten, MPP
Etobicoke-Lakeshore

APPENDIX F: CAPITAL MARKETS AND SUSTAINABILITY

Recommendations

Materiality is a central concept linking capital markets with corporate responsibility. The interpretation of what is material—what is considered important in making investment decisions—is expanding rapidly through the progressive disclosure practices of some companies, and through guidance provided by professional bodies such as the Canadian Institute of Chartered Accountants (CICA). Companies should consider this broader definition of materiality in their disclosure practices, and regulators should enforce the disclosure of material risks.

Capital Markets

- Learn from and adapt the recommendations of international bodies and initiatives, including the UNEP FI Asset Management Working Group process.
- Broaden the use of international guidance such as the Equator Principles, through financial industry associations and corporate leadership.
- Build CR awareness and tools for investment professionals.

Disclosure by Companies

- Provide full disclosure of material risks.
- Develop statement of business value in CR.
- Standardize formats and metrics to meet the needs of investment analysts.
- Ensure transparency of performance related to environmental, broader economic, social, and ethical risks.
- Consider application of the Global Reporting Initiative as an emerging international standard.

Public Policy

- Stimulate demand for CR information through measures such as:
 - a survey of capital market analysts on their current level of understanding and application of non-financial risk analysis;
 - improved communication between environmental and financial regulators; and
 - a review of legal or guidance constraints such as prevailing interpretations of fiduciary duties.
- Facilitate CR disclosure through measures such as:
 - stricter enforcement of existing environmental disclosure requirements by securities regulators; and
 - promotion of the development and adoption of standardized or commonly accepted financially relevant CR metrics.
- Mandate disclosure by encouraging capital market bodies to provide clear CR disclosure practice standards.
- Mandate CR disclosure by regulation.

To download a copy of this paper visit <http://www.nrtee-trnee.com/eng/publications/capital-markets/NRTEE-capital-markets.pdf>

Endnotes

- 1 The countries that are most commonly cited to have avoided the resource curse are Botswana, Canada, and Norway.
- 2 Socially responsible investors, apart from financial criteria, consider social, environmental, and/or ethical criteria in the processes of analysis, selection, and choice of investment.
- 3 A public company is one which sells shares via stock exchanges and other similar public financial markets, whereas a private company is one which raises money from private sources. Most mining companies are public companies.
- 4 TMX (2008). "Leadership in International Mining." Retrieved July 2009 from http://www.tmx.com/en/pdf/Mining_Sector_Sheet.pdf
- 5 Securities regulation is the regulation of the conduct of securities market participants including issuers that raise capital through security offerings, and their directors and officers and securities firms. For an in depth discussion on securities regulation in Canada see: Kuyek, Joan. (2007). "Mining Investors: understanding the legal structure of a mining company and identifying its management, shareholders, and relationships with financial markets." *Mining Watch Canada*. Retrieved July 2009, from http://www.miningwatch.ca/sites/miningwatch.ca/files/Mining_Investors.pdf
- 6 *Securities Division*. "National Instruments and Policies." Government of Saskatchewan. <http://www.sfsc.gov.sk.ca/ssc/files/publish/Securities%20Regulation%20in%20Saskatchewan%20-%20June%202009.pdf> To access any National Instruments and Companion Policies the Saskatchewan Financial Services Securities Division has the simplest website and provides access to all instruments, policies, companion policies and any recent amendments. See <http://www.sfsc.gov.sk.ca/ssc/rules.shtml>
- 7 National Policy 11-204 *Process for Registration in Multiple Jurisdiction* and Multilateral Instrument 11-102 *Passport System* are the two regulations guiding the Passport System in Canada.
- 8 The Toronto Money Exchange Group (TMX) owns and operates Canada's two national stock exchanges: the Toronto Stock Exchange (TSX) which serves the senior equity market, and the TSX Venture Exchange serving the public venture equity market.
- 9 TMX. "Policy Statement on Timely Disclosure." Retrieved July 2009 from <http://www.tmx.com/en/pdf/PolicyStatementOnTimelyDisclosure.pdf>
- 10 TMX. (2009). "Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production." Retrieved July, 2009 from http://www.tmx.com/en/pdf/Mining_Disclosure_Stds.pdf
- 11 See Appendix D for a step-by-step guide to using SEDAR.
- 12 *Transparency International*. (2008). "Promoting Revenue Transparency: 2008 Report on Revenue Transparency of Oil and Gas Companies." Retrieved February 2008 from http://www.transparency.org/policy_research/surveys_indices/promoting_revenue_transparency p. 8
- 13 *Ibid.* p.17.
- 14 The Policy Statement on Timely Disclosure states that, "(t)he timely disclosure policy of the Exchange is the primary timely disclosure standard for all TSX listed issuers. National Policy No. 51-201 of the Canadian securities commissions, "Disclosure Standards", assists issuers in meeting their legislative disclosure requirements. While the legislative and Exchange timely disclosure requirements differ somewhat, the Canadian securities commissions clearly state in National Policy No. 51-201 that they expect listed issuers to comply with the requirements of the Exchange." TMX. "Policy Statement on Timely Disclosure." Retrieved July 2009 from <http://www.tmx.com/en/pdf/PolicyStatementOnTimelyDisclosure.pdf>

- 15 *Advisory Group Report.* (2007). "National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industries in Developing Countries." Retrieved January 2009 from http://geo.international.gc.ca/cip-pic/current_discussions/csr-roundtables-en.aspx
- 16 *Talisman Energy.* (2006). "Proposed OSC Policy 51-604. Email correspondence with the OSC." Retrieved September, 2009 from www.osc.gov.on.ca
- 17 To ensure effective and independent marketplace integrity, the TSX and the TSX Venture Exchange outsource market surveillance and participant discipline to an independent third party: Investment Industry Regulatory Organization of Canada (IIROC), which monitors all trading on both exchanges.
- 18 *National Roundtable on the Environment and the Economy.* (2007) "State of the Debate: Capital Markets and Sustainability: Investing in a sustainable future." Retrieved April 2009, from <http://www.nrtee-trnee.com/eng/publications/capital-markets/NRTEE-capital-markets.pdf>
- 19 NI 51-101 intends to limit the type of reserves that a company can disclose. For this reason, companies cannot disclose probable reserves, which have a lower level of confidence than a proven reserve. A proven reserve is the economically viable part of a measured Reserve, of which the quantity, grade, quality, density, shape, and physical characteristics are so well established that they can be estimated with confidence.
- 20 The exemption to file based on Foreign Geographic Area applies equally to Forms 1 and 2 of NI 51-101.
- 21 To create accountability, when any company discloses scientific or technical information about a mineral project they must include the name of 'Qualified Person (QP)'. A QP is an individual who A) is an engineer or geoscientist with at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these; B) has experience relevant to the subject matter of the mineral project and the technical report; and C) is in good standing with a professional association
- 22 The gold reserves at Bre-X's Busang were alleged to be 200 million ounces (6,200 t), or up to 8% of the entire world's gold. However, it was a massive fraud and there was no gold. The core samples had been faked by salting them with outside gold. An independent lab later claimed that the faking had been poorly done, including the use of shavings from gold jewellery. In 1997, Bre-X collapsed and its shares became worthless in one of the biggest stock scandals in Canadian history.
- 23 An Inferred reserve is a mineral resource in which the quantity and grade or quality can be estimated but not verified.
- 24 *Encana.* (2009, February) "Annual Information Form." Retrieved from SEDAR on February 2009. www.sedar.com
- 25 In this chart the average daily production rate of 28.5 mbbl was multiplied into real terms – ie. 28500 barrels per day. Subsequently, the year was divided into days, where each quarter is composed of 91.2 days. The formula used was thus barrels per day times royalties paid per barrel times the number of days. These amounts can then be totalled to find a yearly figure. The result is a general approximation of royalties paid to the government of the Ivory Coast by Canadian Natural Resources Limited.
- 26 The SEC is the national securities regulator in the United States.
- 27 Mbbl means one thousand barrels
- 28 *Securities Division.* "Amendment Instrument to National Instrument 51-102 Continuous Disclosure Obligations." Government of Saskatchewan. Retrieved July, 2009 from <http://www.spsc.gov.sk.ca/SSC/files/nat-inst/51-102ni-amendments-march17-08.pdf>
- 29 *Ibid.*

- 30 TMX. (2009). "Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production." Retrieved July, 2009 from http://www.tmx.com/en/pdf/Mining_Disclosure_Stds.pdf
- 31 For a broader discussion concerning contract disclosure and for a broader discussion on how to read contracts see: Rosenblum, Peter & Susan Maples (2009.). "Contract Confidential: Ending Secret Deal in the Extractive Industries." Revenue Watch Institute. Retrieved September 2009 from <http://www.revenuewatch.org/news/publications/contracts-confidential.php>
- 32 For a broader discussion of ESG reporting in the Canadian context see: *National Roundtable on the Environment and the Economy*. (2007) "State of the Debate: Capital Markets and Sustainability: Investing in a sustainable future." Retrieved April 2009, from <http://www.nrtee-trnee.com/eng/publications/capital-markets/NRTEE-capital-markets>.
- 33 For more information on the Global Reporting Initiative see <http://www.globalreporting.org/>
- 34 For a full list of companies with GRI reports see GRI Reports List: <http://www.globalreporting.org/GRIReports/GRIReportsList/>
- 35 The Social Investment Forum is a US national, non-profit members association committed to advancing the practice and growth of socially responsible investing. <http://www.socialinvest.org/about/>
- 36 *Hedgeweek* (July, 2009) "Investors Group Urge SEC to Require ESG Disclosure." Retrieved August 2009, from http://hedgeweek.com/articles/detail.jsp?content_id=343872
- 37 *Securities Division*. "National Instrument 51-102 Continuous Disclosure Obligations. Form 1 Management's Discussion and Analysis." Government of Saskatchewan <http://www.spsc.gov.sk.ca/SSC/files/nat-inst/51-102f1-amend-dec29-06.pdf>
- 38 *Canadian Performance Reporting Board* (2005, October) "Discussion Brief: MD&A Disclosure about the financial Impact of Climate Change and other Environmental Issues." Canadian Institute of Chartered Accountants. Retrieved July 2009, from http://www.cica.ca/multimedia/Download_Library/Research_Guidance/MDandA_Business_Reporting/English/E_CPRB_Discussion_Brief_2005.pdf
- 39 *National Roundtable on the Environment and the Economy*. (2007).
- 40 *Centre for Audit Quality*. (2003). "Summary of the Provisions of the Sarbanes Oxley Act of 2002." Retrieved July 2009 from <http://thecaq.aicpa.org/Resources/Sarbanes+Oxley/Summary+of+the+Provisions+of+the+Sarbanes-Oxley+Act+of+2002.htm#Section408>
- 41 Guerra, Jorge E. (2004). "Perspectives: The Sarbanes-Oxley Act and Perspectives on Corporate Governance." *The CPA Journal*. Retrieved January 2009 from <http://www.nysscpa.org/cpajournal/2004/304/perspectives/nv5.htm>
- 42 TMX. (2005). "Notice: National Policy 58-201, Corporate Governance Guidelines and National instrument 58-101, Disclosure of Corporate Governance Practices. (2005). Retrieved January 2009, from http://www.tsx.com/en/pdf/Notice-NP58-201_CGGuidelines_NI58-101_CGPractices_Apr15-05.pdf.
- 43 *McMillan Binch LLP* (2004, May) "Corporate Bulletin: Corporate Governance in Canada." Retrieved January 2009 from http://www.mcmillan.ca/Upload/Publication/Corp_Governance_in_Canada0504.pdf
- 44 The "comply or explain" model means that a company must either demonstrate compliance or explain why they have not complied.
- 45 *Canadian Securities Administration*. (2009). "Request for comment: proposed repeal and replacement of National Policy 58-201, National Instrument 58-101, National Instrument 52-110 and Companion Policy 52-110." Retrieved March 2009 from http://www.msc.gov.mb.ca/legal_docs/legislation/notices/1_58_201notice_rfc.pdf

- 46 TMX. " (2005). Notice: National Policy 58-201: Corporate Governance Guidelines and National instrument 58-101, Disclosure of Corporate Governance Practices." Retrieved January 2009, from http://www.tsx.com/en/pdf/Notice-NP58-201_CGGuidelines_NI58-101_CGPractices_Apr15-05.pdf. p. 18.
- 47 *Ontario Securities Commission*. (2009). "Comments Received 58- 201 Effective Corporate Governance. " Retrieved July 2009, from http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part5/Comments/58-201/com_20090420_58-201_walkerb.pdf
- 48 *Accounting Standards Board of Canada* (2008, July). "Summary Comparison of Canadian GAAP and IFRSs." Retrieved January 2009 from http://www.acsbcanada.org/download.cfm?ci_id=49159&la_id=1&re_id=0
- 49 For a review of known impacts see: KPMG (2008, September). "Impact of IFRS in the Mining Industry. " Retrieved January 2009, from http://www.kpmg.ca/en/industries/enr/mining/documents/Mining_IFRS_Sep08_Final.pdf; KMPG. (2008, October). "The application of IFRS: Oil and Gas Companies." Retrieved January 2009, from <http://www.kpmg.com/Global/IssuesAndInsights/ArticlesAndPublications/Pages/The-application-of-IFRS-oil-gas-Oct-08.aspx>
- 50 The International Accounting Standards Board is the independent standard setting body of the International Accounting Standards Commission Foundation. *International Accounting Standards Board* (2009). "Projects: Extractive Sector." Retrieved June 2009, from <http://www.iasb.org/Current+Projects/IASB+Projects/Extractive+Activities/Summary.htm>
- 51 *Publish What You Pay* (2009). "Our Activities: Accounting Standards Regulations." Retrieved June 2009, from <http://www.publishwhatyoupay.org/en/about/advocacy/accounting-standards-regulations>
- 52 *Crawford Panel on a Single Securities Canadian Securities Regulator*. (2006, June 7). "Blueprint for a Canadian Securities Commission." Retrieved January 2009 from <http://www.crawfordpanel.ca/>
- 53 *Ibid.* p. 13.
- 54 The Wise Persons' Committee was established by the Minister of Finance of Canada to provide an independent assessment of what securities regulatory structure will best serve Canada's interests.
- 55 *Wise Person's Committee to review the structure of securities regulation in Canada*. "It's Time." Retrieved February 2009, from <http://www.wise-averties.ca/reports/WPC%20Final.pdf>. p. 25.
- 56 For example, Canada enacted three national instruments to respond to the Sarbanes-Oxley Act in 2002 in the U.S. The instruments included, the Multilateral Instrument 52-108 *Auditor Oversight*, Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* and Multilateral Instrument 52-110 *Audit Committees*. While these instruments represented significant progress, they failed to achieve consensus, when the British Columbia Securities Commission (BSCS) opted not to implement them. *Ibid.* P. 31.
- 57 *Ibid.* p. 27.
- 58 Elliott, David. (2007). "Oil and Gas Securities Regulation and Reporting: National Instrument 51-101." *Petroleum Society*. p.4-5.

Author

Over the last year, Claire Woodside has worked closely with PWYP Canada applying her knowledge of transparency in the extractive industries to her work on this project. Claire is a doctoral student at the Norman Paterson School of International Affairs, Carleton University. Her work consists primarily of research on corporate social responsibility (CSR) in the extractive industries, with a focus on building and maintaining a social license to operate. Claire is currently a research associate with the Centre for Trade Policy and Law. There, she is engaged in developing a research and capacity building program targeting corporate social responsibility in mining operations. Additionally, she is a member of the Transatlantic Doctoral Academy of Corporate Responsibility, which is an interdisciplinary forum that provides 18 German and Canadian PhD students with the opportunity to engage in learning, peer discussion and collaboration through biannual meetings and frequent workshops. Claire has enjoyed volunteering and studying on many continents and looks forward to upcoming field research opportunities. She received a B.A. from the University of Guelph in International Development and Political Science and a M.A in Political Science from Dalhousie University.

