

ACTUATE CORP
Form S-8
March 28, 2003

As filed with the Securities and Exchange Commission on March 28, 2003

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT

Under
The Securities Act of 1933

ACTUATE CORPORATION

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction

of incorporation or organization)

94-3193197
(IRS Employer

Identification No.)

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701 Gateway Boulevard

South San Francisco, California 94080

(650) 837-2000

(Address of principal executive offices) (Zip Code)

ACTUATE CORPORATION 1998 EQUITY INCENTIVE PLAN

ACTUATE CORPORATION 1998 EMPLOYEE STOCK PURCHASE PLAN

(Full title of the Plans)

PETER I. CITTADINI

CHIEF EXECUTIVE OFFICER

AND PRESIDENT

ACTUATE CORPORATION

701 Gateway Boulevard

South San Francisco, California 94080

(Name and address of agent for service)

(650) 837-2000

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
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1998 Equity Incentive Plan

Options	2,800,000		N/A		N/A		N/A
Common Stock (par value \$.001)	2,800,000 shares	\$	1.265	\$	3,542,000	\$	286.55

1998 Employee Stock Purchase Plan

Common Stock (par value \$.001)	600,000 shares	\$	1.265	\$	759,000	\$	61.40
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- (1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the 1998 Equity Incentive Plan and 1998 Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock of Actuate Corporation.

- (2) Calculated solely for purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended, on the basis of the average of the high and low prices per share of Common Stock of Actuate Corporation as reported on the Nasdaq National Market on March 26, 2003.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

Actuate Corporation (the Registrant) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the SEC):

- (a) The Registrant's Form 10-K filed with the SEC for the fiscal year ended December 31, 2002; and
- (b) The Registrant's Registration Statement No. 0-24607 on Form 8-A filed with the SEC on July 10, 1998 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the 34 Act) in which there is described the terms, rights and provisions applicable to the Registrant's outstanding Common Stock.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

Not Applicable.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933 (1933 Act). The Registrant's Bylaws provide for mandatory

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indemnification of its directors and officers and permissible indemnification of employees and other agents to the maximum extent permitted by the Delaware General Corporation Law. The Registrant's Certificate of Incorporation provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of their fiduciary duty as directors to the Registrant and its stockholders. This provision in the Certificate of Incorporation does not eliminate the fiduciary duty of the directors, and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. The Registrant has entered into Indemnification Agreements with its officers and directors. The Indemnification Agreements provide the Registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law.

Item 7. Exemption from Registration Claimed

Not Applicable.

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Item 8. Exhibits

<u>Exhibit Number</u>	<u>Exhibit</u>
4	Instrument Defining Rights of Stockholders. Reference is made to Registrant's Registration Statement No. 0-24607 on Form 8-A, which is incorporated herein by reference pursuant to Item 3(b) of this Registration Statement.
5	Opinion and consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP is contained in Exhibit 5.
24	Power of Attorney. Reference is made to page II-3 of this Registration Statement.

Item 9. Undertakings

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act, (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference in this Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the Registrant's 1998 Equity Incentive Plan and 1998 Employee Stock Purchase Plan.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the 1933 Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California on this 25th day of March, 2003.

ACTUATE CORPORATION

By:

/s/ DANIEL A. GAUDREAU

Daniel A. Gaudreau, Senior Vice
President, Finance and

Administration and Chief Financial
Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned officers and directors of Actuate Corporation, a Delaware corporation, do hereby constitute and appoint Peter I. Cittadini and Daniel A. Gaudreau, and either of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and either one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature

Title

Date

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/s/ NICOLAS C. NIERENBERG

Nicolas C. Nierenberg

Chairman of the Board and Chief Architect

March 25, 2003

/s/ PETER I. CITTADINI

Peter I. Cittadini

President, Chief Executive Officer and Director (Principal Executive Officer)

March 25, 2003

/s/ DANIEL A. GAUDREAU

Daniel A. Gaudreau

Senior Vice President, Finance and Administration and Chief Financial Officer (Principal Financial and Accounting Officer)

March 25, 2003

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> <p>/s/ GEORGE B. BEITZEL</p> <hr/> <p>George B. Beitzel</p>	Director	March 25, 2003
<hr/> <p>/s/ KENNETH E. MARSHALL</p> <hr/> <p>Kenneth E. Marshall</p>	Director	March 25, 2003
<hr/> <p>/s/ ARTHUR C. PATTERSON</p> <hr/> <p>Arthur C. Patterson</p>	Director	March 25, 2003
<hr/> <p>/s/ STEVEN D. WHITEMAN</p> <hr/> <p>Steven D. Whiteman</p>	Director	March 25, 2003

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EXHIBIT INDEX

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23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP is contained in Exhibit 5.
24	Power of Attorney. Reference is made to page II-3 of this Registration Statement.

4

4

Other non-inventoriable costs

(15
)

(12
)

(3
)

(15
)

Gross profit

\$
322

\$
269

\$
53

\$
322

Reconciliation to Amounts Reported

Revenues

Production and Delivery

Depreciation, Depletion and Amortization

Totals presented above

\$
773

\$
314

\$
94

Royalty on metals
(14
)

N/A

N/A

Net noncash and other costs

N/A

18

N/A

Revenue adjustments, primarily for pricing on prior period open sales
4

N/A

N/A

Other non-inventoriable costs
N/A

15

N/A

Africa mining
763

347

94

North America copper mines
3,116

1,557

220

South America mining

3,383

1,227

186

Indonesia mining

4,260

1,430

192

Molybdenum

893

574

38

Rod & Refining

3,383

3,360

6

Atlantic Copper Smelting & Refining

1,844

1,823

28

Corporate, other & eliminations

(4,263

)

(4,084

)

24

As reported in FCX's consolidated financial statements

\$

13,379

\$

6,234

\$

788

a. Includes adjustments for point-of-sale transportation costs as negotiated in customer contracts.

b. Net of cobalt downstream processing and freight costs.

64

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Henderson Molybdenum Mine Product Revenues and Production Costs

(In millions)	Three Months Ended		
	September 30,		
	2011	2010	
Revenues, excluding adjustments	\$163	\$162	
Site production and delivery, before net noncash and other costs shown below	55	51	
Treatment charges and other	11	12	
Net cash costs	66	63	
Depreciation, depletion and amortization	10	9	
Noncash and other costs, net	—	—	
Total costs	76	72	
Gross profit ^a	\$87	\$90	
Reconciliation to Amounts Reported	Revenues	Production and Delivery	Depreciation, Depletion and Amortization
Three Months Ended September 30, 2011			
Totals presented above	\$163	\$55	\$10
Treatment charges and other	(11	) N/A	N/A
Net noncash and other costs	N/A	—	N/A
Henderson mine	152	55	10
Other molybdenum operations and eliminations ^b	180	205	4
Molybdenum	332	260	14
North America copper mines	1,419	664	67
South America mining	1,053	478	64
Indonesia mining	1,362	503	62
Africa mining	276	142	32
Rod & Refining	1,396	1,390	2
Atlantic Copper Smelting & Refining	837	826	11
Corporate, other & eliminations	(1,480	) (1,693	) 5
As reported in FCX's consolidated financial statements	\$5,195	\$2,570	\$257
Three Months Ended September 30, 2010			
Totals presented above	\$162	\$51	\$9
Treatment charges and other	(12	) N/A	N/A
Net noncash and other costs	N/A	—	N/A
Henderson mine	150	51	9
Other molybdenum operations and eliminations ^b	143	148	4
Molybdenum	293	199	13
North America copper mines	998	536	67
South America mining	1,465	462	66
Indonesia mining	1,874	528	72
Africa mining	307	141	34
Rod & Refining	1,181	1,172	2
Atlantic Copper Smelting & Refining	595	590	9

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Corporate, other & eliminations	(1,561)	(1,362)	5
As reported in FCX's consolidated financial statements	\$5,152		\$2,266		\$268

Gross profit reflects sales of Henderson production based on volumes produced at market-based pricing. On a consolidated basis, the Molybdenum division includes profits on sales as they are made to third parties and

a. realizations based on actual contract terms. As a result, the actual gross profit realized will differ from the amounts reported in this table.

b. Primarily includes amounts associated with the molybdenum sales company, which includes sales of molybdenum produced by our North and South America copper mines.

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Henderson Molybdenum Mine Product Revenues and Production Costs (continued)

(In millions)	Nine Months Ended		
	September 30,		
	2011	2010	
Revenues, excluding adjustments	\$499	\$478	
Site production and delivery, before net noncash and other costs shown below	158	141	
Treatment charges and other	28	33	
Net cash costs	186	174	
Depreciation, depletion and amortization	27	25	
Noncash and other costs, net	1	1	
Total costs	214	200	
Gross profit ^a	\$285	\$278	
Reconciliation to Amounts Reported	Revenues	Production and Delivery	Depreciation, Depletion and Amortization
Nine Months Ended September 30, 2011			
Totals presented above	\$499	\$158	\$27
Treatment charges and other	(28	) N/A	N/A
Net noncash and other costs	N/A	1	N/A
Henderson mine	471	159	27
Other molybdenum operations and eliminations ^b	648	627	17
Molybdenum	1,119	786	44
North America copper mines	4,339	1,923	196
South America mining	3,903	1,330	187
Indonesia mining	4,656	1,547	179
Africa mining	963	422	98
Rod & Refining	4,310	4,292	6
Atlantic Copper Smelting & Refining	2,252	2,274	30
Corporate, other & eliminations	(4,824	) (5,070	) 16
As reported in FCX's consolidated financial statements	\$16,718	\$7,504	\$756
Nine Months Ended September 30, 2010			
Totals presented above	\$478	\$141	\$25
Treatment charges and other	(33	) N/A	N/A
Net noncash and other costs	N/A	1	N/A
Henderson mine	445	142	25
Other molybdenum operations and eliminations ^b	448	432	13
Molybdenum	893	574	38
North America copper mines	3,116	1,557	220
South America mining	3,383	1,227	186
Indonesia mining	4,260	1,430	192
Africa mining	763	347	94
Rod & Refining	3,383	3,360	6
Atlantic Copper Smelting & Refining	1,844	1,823	28

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Corporate, other & eliminations	(4,263)	(4,084)	24
As reported in FCX's consolidated financial statements	\$13,379		\$6,234		\$788

Gross profit reflects sales of Henderson production based on volumes produced at market-based pricing. On a consolidated basis, the Molybdenum division includes profits on sales as they are made to third parties and a. realizations based on actual contract terms. As a result, the actual gross profit realized will differ from the amounts reported in this table.

b. Primarily includes amounts associated with the molybdenum sales company, which includes sales of molybdenum produced by our North and South America copper mines.

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CAUTIONARY STATEMENT

Our discussion and analysis contains forward-looking statements in which we discuss factors we believe may affect our future performance. Forward-looking statements are all statements other than statements of historical facts, such as those statements regarding projected ore grades and milling rates, projected production and sales volumes, projected unit net cash costs, projected operating cash flows, projected capital expenditures, exploration efforts and results, mine production and development plans, the impact of deferred intercompany profits on earnings, liquidity, other financial commitments and tax rates, the impact of copper, gold, molybdenum and cobalt price changes, potential prepayments of debt, future dividend payments and potential share purchases. The words “anticipates,” “may,” “can,” “plans,” “believes,” “estimates,” “expects,” “projects,” “intends,” “likely,” “will,” “should,” “to be,” and any similar expressions are intended to identify those assertions as forward-looking statements. The declaration of dividends is at the discretion of our Board and will depend on our financial results, cash requirements, future prospects, and other factors deemed relevant by the Board.

We caution readers that forward-looking statements are not guarantees of future performance and our actual results may differ materially from those anticipated, projected or assumed in the forward-looking statements. Important factors that can cause our actual results to differ materially from those anticipated in the forward-looking statements include commodity prices, mine sequencing, production rates, industry risks, regulatory changes, political risks, the potential effects of violence in Indonesia, the resolution of administrative disputes in the Democratic Republic of Congo, weather- and climate-related risks, labor relations, including the resolution of labor negotiations and strikes in Indonesia and Peru, environmental risks, litigation results, currency translation risks and other factors described in more detail under the heading “Risk Factors” in our annual report on Form 10-K for the year ended December 31, 2010, filed with the SEC as updated by our subsequent filings with the SEC.

Investors are cautioned that many of the assumptions on which our forward-looking statements are based are likely to change after our forward-looking statements are made, including for example commodity prices, which we cannot control, and production volumes and costs, some aspects of which we may or may not be able to control. Further, we may make changes to our business plans that could or will affect our results. We caution investors that we do not intend to update our forward-looking statements notwithstanding any changes in our assumptions, changes in our business plans, our actual experience, or other changes, and we undertake no obligation to update any forward-looking statements more frequently than quarterly.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

There have been no material changes in our market risks during the three months ended September 30, 2011. For additional information on market risks, refer to “Disclosures About Market Risks” included in Part II, Item 7A of our annual report on Form 10-K for the year ended December 31, 2010. For projected sensitivities of our operating cash flow to changes in commodity prices, refer to “Outlook” in Part I, Item 2 of this quarterly report on Form 10-Q; for projected sensitivities of our provisionally priced copper sales to changes in commodity prices refer to “Consolidated Results – Revenues” in Part I, Item 2 of this quarterly report on Form 10-Q.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures. Our chief executive officer and chief financial officer, with the participation of management, have evaluated the effectiveness of our “disclosure controls and procedures” (as (a) defined in Rules 13a-15(e) and 15(d)-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this quarterly report on Form 10-Q. Based on their evaluation, they have concluded that our disclosure controls and procedures are effective as of the end of the period covered by this report.

Changes in internal control. During second-quarter 2011, we began a phased implementation of a new enterprise resource planning (ERP) information technology system to upgrade our information technology infrastructure and enhance operating efficiency and effectiveness. Implementation at our North America mining operations is ongoing. We expect implementation of the ERP system to be completed at all of our operations over an approximate two-year period. During each phase of the implementation, an appropriate level of training of employees, testing of the system and monitoring of the financial results recorded in the system is conducted. Management has updated our system of internal control over financial reporting for the impacted operating business units.

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With the exception of the ERP implementation described above, there has been no change in our internal control over financial reporting that occurred in the quarterly period covered by this report that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings.

We are involved in various legal proceedings that arise in the ordinary course of our business or are associated with environmental issues arising from legacy operations conducted over the years by Phelps Dodge Corporation and its affiliates. We are also involved from time to time in other reviews, investigations and proceedings by government agencies, some of which may result in adverse judgments, settlements, fines, penalties, injunctions or other relief. There have been no new material legal proceedings since the information included in Part I, Item 3. "Legal Proceedings," of our annual report on Form 10-K for the year ended December 31, 2010.

Management does not believe, based on currently available information, that the outcome of any proceeding reported in "Legal Proceedings" in our annual report on Form 10-K for the year ended December 31, 2010, as updated by our quarterly report on Form 10-Q for the period ended June 30, 2011 and this quarterly report, will have a material adverse effect on our financial condition, although individual outcomes could be material to our operating results for a particular period, depending on the nature and magnitude of the outcome and the operating results for the period.

The following presents material changes to the litigation and environmental proceedings included in Part I, Item 3. "Legal Proceedings" of our annual report on Form 10-K for the year ended December 31, 2010:

Litigation

Blackwell, Oklahoma Litigation. Information regarding these legal proceedings is incorporated by reference to Part I, Item 3. "Legal Proceedings" of our annual report on Form 10-K for the year ended December 31, 2010, as updated by Part II, Item 1. "Legal Proceedings" of our quarterly report on Form 10-Q for the quarter ended June 30, 2011. At a mediation session in September 2011, we reached agreements in principle with the plaintiffs' counsel to settle each of the following matters: Coffey, et al., v. Freeport-McMoRan Copper & Gold, Inc., et al., United States District Court for the Western District of Oklahoma, Case No. CIV-10-295-HE, and Brown et al. v. Freeport-McMoRan Copper & Gold Inc., et al., Kay County Oklahoma District Court, Case No. ICJ-2009-213. The agreements in principle did not have, and the settlements (if effected in accordance with the agreements in principle) will not have a material effect on our financial condition, results of operations or cash flow. Both agreements in principle are subject to negotiation and execution of definitive settlement agreements, and the agreement to settle the Coffey case is subject to a hearing at which the court must determine whether the settlement is "fair, adequate and reasonable." We do not expect the hearing to occur before the first quarter of 2012.

Environmental Proceedings

Arizona Department of Environmental Quality - Morenci. Information regarding this legal proceeding is incorporated by reference to Part I, Item 3. "Legal Proceedings" of our annual report on Form 10-K for the year ended December 31, 2010, as updated by Part II, Item 1. "Legal Proceedings" of our quarterly report on Form 10-Q for the quarter ended June 30, 2011. On August 1, 2011, the Maricopa County Superior Court approved the consent judgment with the State of Arizona formalizing the agreed-upon settlement.

Tax Proceeding

Cerro Verde Tax Proceeding. Information regarding this proceeding contained in Note 13 of our annual report on Form 10-K for the year ended December 31, 2010, as updated by the information regarding this proceeding contained in Part I, Item 2. "Management's Discussion and Analysis of Financial Condition and Results of Operations" of our quarterly reports on Form 10-Q for the quarters ended March 31, 2011 and June 30, 2011, under the heading "Operations - South America Mining," is incorporated herein by reference.

Sociedad Minera Cerro Verde S.A.A. (Cerro Verde) received assessments from SUNAT, the Peruvian national tax authority, in connection with claims for mining royalties related to the minerals processed by its concentrator, which was added to Cerro Verde's processing facilities in late 2006. These assessments relate to the period from October

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2006 through December 2007, and to the years 2008 and 2009. SUNAT issued rulings denying Cerro Verde's protests of the assessments. On May 12, 2010, Cerro Verde filed a claim with the Peruvian Tax Tribunal appealing SUNAT's decision for the period from October 2006 through December 2007. On March 10, 2011, Cerro Verde filed a claim with the Peruvian Tax Tribunal appealing SUNAT's decision for the year 2008. Cerro Verde is challenging these assessments because its stability agreement with the Peruvian government exempts from royalties all minerals extracted from its mining concession, irrespective of the method used for processing those minerals. If Cerro Verde is ultimately found responsible for these royalties, it will also be liable for interest, which accrues at rates that range from approximately 7 to 18 percent based on the year accrued and the currency in which the amounts would be payable. At September 30, 2011, the aggregate amount of the assessments, including interest and penalties, approximated \$184 million. This amount will continue to increase at varying interest rates until this matter is resolved. SUNAT may continue to assess mining royalties annually until this matter is resolved by the Tax Tribunal.

Item 1A. Risk Factors.

The following risk factors included in Part I, Item 1A. "Risk Factors" in our annual report on Form 10-K for the year ended December 31, 2010, and Part II, Item 1A. "Risk Factors" in our quarterly report on Form 10-Q for the period ended June 30, 2011, respectively, have been updated:

Operational Risks

Labor unrest and activism could disrupt our operations and may adversely affect our business, financial condition, results of operations and prospects.

As further described in Part 1. Items 1 and 2. "Business and Properties" in our annual report on Form 10-K for the year ended December 31, 2010, we are party to labor agreements with various unions that represent employees at our operations. Labor agreements are generally negotiated on a periodic basis, and the risk exists that labor agreements may not be renewed on reasonably satisfactory terms to us or at all. We cannot predict what issues may be raised by the collective bargaining units representing our employees and, if raised, whether negotiations concerning those issues will be successfully concluded. Our production and sales volumes could be significantly reduced and our business, financial condition and results of operations adversely affected by significant reductions in productivity or protracted work stoppages at one or more of our operations. Additionally, if we enter into a new labor agreement with any union that significantly increases our labor costs relative to our competitors, our ability to compete may be materially adversely affected.

During July 2011, PT Freeport Indonesia union workers commenced an eight-day labor strike, which led to a temporary suspension of mining, milling and concentrate shipments. On September 15, 2011, PT Freeport Indonesia union workers commenced another labor strike that is ongoing. The union has notified PT Freeport Indonesia that it intends to extend the strike to December 15, 2011. PT Freeport Indonesia continues to seek an end to the strike, which has no legal basis, and to conclude negotiations, on a fair and reasonable basis, of the bi-annual renewal of its collective labor agreement. PT Freeport Indonesia's compensation practices are highly competitive in Indonesia, and PT Freeport Indonesia has agreed to accept the recommendations of the government-appointed mediator for a generous increase in wages and other benefits. However, the union has declined to accept these recommendations, and on October 10, 2011, PT Freeport Indonesia filed its case with the Industrial Court. We cannot predict when the strike will end or what the outcome of our labor negotiations will be.

During third-quarter 2011, Cerro Verde's union workforce commenced a series of labor strikes, the most recent of which commenced on September 29, 2011. Efforts are ongoing to reach a mutually satisfactory renewal of Cerro Verde's collective bargaining agreement.

If we do not successfully negotiate new collective bargaining agreements with our union workers, including those employed by PT Freeport Indonesia and Cerro Verde, we may incur prolonged strikes and other work stoppages at our mining operations.

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The following risk factor contained in Part I, Item 1A. of our annual report on Form 10-K for the year ended December 31, 2010, has been updated:

International risks

Because our Grasberg minerals district in Papua, Indonesia remains our most significant operating asset, our business may continue to be adversely affected by Indonesian political, economic and social uncertainties.

The information regarding incidents occurring at our Indonesian mining operations during 2011 contained in Part I, Item 2. "Management's Discussion and Analysis of Financial Condition and Results of Operations" of this quarterly report on Form 10-Q for the quarter ended September 30, 2011, under the heading "Operations - Indonesia Mining" is incorporated herein by reference.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

(c) The following table sets forth information with respect to shares of Freeport-McMoRan Copper & Gold Inc. (FCX) common stock purchased by us during the three months ended September 30, 2011:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid Per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ^a	(d) Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs ^a
July 1-31, 2011	—	—	—	23,685,500
August 1-31, 2011	—	—	—	23,685,500
September 1-30, 2011	—	—	—	23,685,500
Total	—	—	—	23,685,500

On July 21, 2008, our Board of Directors approved an increase in our open-market share purchase program for up to a.30 million shares, of which 23.7 million shares remain available for purchase. There have been no purchases under this program since 2008. This program does not have an expiration date.

Item 4. Mine Safety Disclosure.

The safety and health of all employees is our highest priority. Management believes that safety and health considerations are integral to, and compatible with, all other functions in the organization and that proper safety and health management will enhance production and reduce costs. Our approach towards the health and safety of our workforce is to continuously improve performance through implementing robust management systems and providing adequate training, safety incentive and occupational health programs. Refer to Exhibit 99.1 for mine safety disclosures required in accordance with Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Item 6. Exhibits.

The exhibits to this report are listed in the Exhibit Index beginning on Page E-1 hereof.

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FREEMPORT-McMoRan COPPER & GOLD INC.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FREEMPORT-McMoRan COPPER & GOLD INC.

By: /s/ C. Donald Whitmire, Jr.
C. Donald Whitmire, Jr.
Vice President and
Controller – Financial Reporting
(authorized signatory and
Principal Accounting Officer)

Date: November 4, 2011

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EXHIBIT INDEX

Exhibit Number	Exhibit Title	Filed with this Form 10-Q	Incorporated by Reference		
			Form	File No.	Date Filed
3.1	Composite Certificate of Incorporation of FCX.		10-Q	001-11307-01	8/6/2010
3.2	Amended and Restated By-Laws of FCX, as amended through February 2, 2010.		8-K	001-11307-01	2/5/2010
<u>15.1</u>	Letter from Ernst & Young LLP regarding unaudited interim financial statements.	X			
<u>31.1</u>	Certification of Principal Executive Officer pursuant to Rule 13a-14(a)/15d – 14(a).	X			
<u>31.2</u>	Certification of Principal Financial Officer pursuant to Rule 13a-14(a)/15d – 14(a).	X			
<u>32.1</u>	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350.	X			
<u>32.2</u>	Certification of Principal Financial Officer pursuant to 18 U.S.C Section 1350.	X			
<u>99.1</u>	Mine Safety and Health Administration Safety Data.	X			
101.INS	XBRL Instance Document.	X			
101.SCH	XBRL Taxonomy Extension Schema.	X			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase.	X			
101.DEF	XBRL Taxonomy Extension Definition Linkbase.	X			
101.LAB	XBRL Taxonomy Extension Label Linkbase.	X			
101.PRE	XBRL Taxonomy Extension Presentation Linkbase.	X			

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