



March 1° 2010

Mr. Everett Eissenstat  
Assistant USTR for the Americas  
United States Trade Representative  
Washington, D.C.

Re: Denial of Benefits Under CAFTA Chapter Ten

Dear Mr. Eissenstat,

I am writing to notify you that the Government of El Salvador will invoke at the appropriate time the provisions of Article 10.12.2 of the Dominican Republic – Central America – United States Free Trade Agreement ("CAFTA"), to deny the benefits of CAFTA Chapter Ten to Pac Rim Cayman LLC, a holding company currently registered in the state of Nevada.

CAFTA Article 10.12.2 provides that "subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party . . . own or control the enterprise."

Pac Rim Cayman is owned by Pacific Rim Mining Corp., a Canadian mining company. In addition, as this notification letter conclusively shows, Pac Rim Cayman has no substantial business activities in the United States, or any other Party.

As its name suggests, Pac Rim Cayman was originally incorporated in the Cayman Islands in 1997. It remained a Cayman Island company until December 11, 2007, when it de-registered in the Cayman Islands and was registered again as a limited liability company in Nevada. This change in nationality occurred after a legal dispute with the government of El Salvador had already arisen and international arbitration became likely. With its new United States nationality, Pac Rim Cayman became the named claimant in an international arbitration under CAFTA, *Pac Rim Cayman LLC v. The Republic of El Salvador*, ICSID Case No. ARB/09/12.

The Government of El Salvador has been forced to take the exceptional step of denying CAFTA benefits in this instance because it believes the decision of a national of a non-Party to use a shell company to bring an international arbitration claim under CAFTA constitutes an abuse of the free

trade and investment protection system that CAFTA was designed to protect and promote. The abuse of CAFTA is more serious in this particular instance by the non-Party's decision to change the nationality of the shell company from the Cayman Islands to the United States in an effort to gain CAFTA jurisdiction after the legal dispute with the Government of El Salvador had already arisen. The Government of El Salvador hopes that the United States Government will share its concern about the potential consequences for all Parties if this abuse of CAFTA is allowed to stand.

In addition to the denial of benefits, the Government of El Salvador also reserves its right to object to Pac Rim Cayman's alleged status as a foreign investor at the appropriate time in the ICSID arbitration.

#### **I. PAC RIM CAYMAN IS OWNED OR CONTROLLED BY PERSONS OF A NON-PARTY, CANADA**

Pac Rim Cayman is a mere holding company whose places of registration have been selected to serve the purposes of its Canadian parent company, Pacific Rim Mining Corp.

##### A. Pacific Rim Mining Corp. has maneuvered its subsidiary to acquire CAFTA jurisdiction.

##### *1. Pacific Rim Mining Corp. formed Pac Rim Cayman in the Cayman Islands as a holding company.*

As described in Pacific Rim Mining Corp.'s Annual Report covering 1997, "Pac Rim Cayman [was] incorporated in [1997] to hold the shares of the company's subsidiaries."<sup>1</sup> For several years after its incorporation, Pac Rim Cayman held Pacific Rim Mining Corp.'s interests in other companies registered in the Cayman Islands and Argentina.<sup>2</sup>

##### *2. Pacific Rim Mining Corp. began exploring in El Salvador with another Canadian company.*

In April 2002, Pacific Rim Mining Corp. (Canada) obtained its interest in the El Dorado project in El Salvador by merging with another Canadian company, Dayton Mining Corporation, Inc.<sup>3</sup> For the next couple of years, Pacific Rim Mining Corp. held its interests in El Salvador through its wholly-owned Canadian subsidiaries, Dayton Acquisitions, Inc. and 449200 B.C. Ltd.<sup>4</sup>

<sup>1</sup> Pacific Rim Mining Corp., 1998 Annual Report, April 30, 1998, Notes to Consolidated Financial Statements at 22, available at <http://www.pacrim-mining.com/i/pdf/pacrim/1998AR.pdf>.

<sup>2</sup> See Pacific Rim Mining Corp., Annual and Transitional Report (foreign private issuer) (Form 20-F) at 15 (Aug. 27, 2002), available at <http://www.sec.gov/Archives/edgar/vpr/02/9999999997-02-048311>.

<sup>3</sup> David Roberts, *Pacific Rim, Dayton merger finalized*, BUSINESS NEWS AMERICAS Apr. 12, 2002, available at [http://www.bnamericas.com/news/mining/Pacific\\_Rim\\_Dayton\\_merger\\_finalized](http://www.bnamericas.com/news/mining/Pacific_Rim_Dayton_merger_finalized).

<sup>4</sup> Pacific Rim Mining Corp., Annual and Transitional Report (foreign private issuer) (Form 20-F) at 15 (Aug. 27, 2002), available at <http://www.sec.gov/Archives/edgar/vpr/02/9999999997-02-048311>.

3. *Pacific Rim Mining Corp. moved assets to Pac Rim Cayman and changed the place of incorporation of Pac Rim Cayman to the United States.*

More than two years after Pacific Rim Mining Corp. began work on the El Dorado project, and after submitting the first version of its Environmental Impact Study necessary for an environmental permit and a mining exploitation concession application, Pacific Rim Mining Corp. transferred its Salvadoran subsidiary, Pacific Rim El Salvador, to Pac Rim Cayman. In its 2005 Annual Report, Pacific Rim Mining Corp. first reported that Pac Rim Cayman held "the Company's interest in the El Salvador Property."<sup>5</sup> The claimant's Notice of Arbitration ("NOA") explains that, "[o]n November 30, 2004, Pacific Rim vested sole ownership rights in [Pacific Rim El Salvador] in its subsidiary, [Pac Rim Cayman]."<sup>6</sup> Two weeks later, on December 15, 2004, Pacific Rim El Salvador wrote to the Ministry of the Environment noting the delay in processing its environmental permit application beyond the sixty days contemplated in Salvadoran law.<sup>7</sup> El Salvador recognized Pac Rim Cayman's ownership rights on August 11, 2005.<sup>8</sup>

Thus, when Pacific Rim El Salvador applied for the mining exploitation concession in December 2004, and when Pacific Rim El Salvador took notice that its environmental permit application process had been delayed beyond the maximum time contemplated under Salvadoran law, its shares were held by a company in the Cayman Islands controlled by a Canadian parent company. This remained true during the next three years while Pacific Rim Mining Corp. continued to explore its options in El Salvador and the Salvadoran government and Pacific Rim El Salvador communicated back-and-forth about the environmental permit and exploitation concession applications.

In December 2007, Pacific Rim Mining Corp. elected to de-register Pac Rim Cayman in the Cayman Islands and re-incorporate this holding company in Nevada.<sup>9</sup>

In December 2008, after months of private and public warnings that the company could and would resort to international arbitration if the Government of El Salvador did not issue the environmental permit, a Notice of Intent was served on the Government of El Salvador, showing Pac Rim Cayman as the claimant. The Notice of Arbitration was filed with ICSID on April 30, 2009.

<sup>5</sup> Pacific Rim Mining Corp., Annual and Transitional Report (foreign private issuer) (Form 20-F) at 18 (July 28, 2005), available at <http://www.sec.gov/Archives/edgar/data/1056512/000106299305001742/form20f.htm>.

<sup>6</sup> NOA ¶ 51, available at

[http://www.minec.gob.sv/datco/media/downloads/controversias/Notificacion\\_Intencion\\_PACRIM.pdf](http://www.minec.gob.sv/datco/media/downloads/controversias/Notificacion_Intencion_PACRIM.pdf).

<sup>7</sup> Letter from F. Earnest, Pacific Rim El Salvador, to H. Barrera, Minister of the Environment and Natural Resources, Dec. 15, 2004. (Attached as **Exhibit 1**).

<sup>8</sup> NOA ¶ 51.

<sup>9</sup> See Cayman Islands Gazette, Issue No. 01/2008, Jan. 7, 2008 at 14 (noting that Pac Rim Cayman was de-registered effective December 11, 2007). (Attached as **Exhibit 2**). See, also, Articles of Domestication, Pac Rim Cayman LLC, Office of the Secretary of State, Nevada, December 13, 2007. (Attached as **Exhibit 3**).

As of 2009, Pacific Rim Mining Corp., the Canadian parent company, had five "material subsidiary companies." Pacific Rim Mining Corp. reports that it directly owns Dayton Mining (U.S.) Inc. and Pac Rim Cayman, and that it owns the other three subsidiaries through Pac Rim Cayman: Pacific Rim Exploration Inc., Pacific Rim El Salvador, and Dorado Exploraciones S.A. de C.V.<sup>10</sup>

Pacific Rim Exploration Inc. is the U.S. subsidiary owned by Pacific Rim Mining Corp. through Pac Rim Cayman. Pacific Rim Exploration Inc. was originally incorporated as Andes Exploration Inc. in Nevada on March 19, 1997 "to purchase, acquire, hold, mortgage, sell, let, lease or otherwise dispose of or deal in real or personal property of every kind, character and description."<sup>11</sup> As with the Salvadoran assets, Pacific Rim Mining Corp. transferred this entity to be held by Pac Rim Cayman after the dispute with El Salvador had already arisen. The transfer occurred between April 2007 and April 2008, but the exact date of transfer is unclear.

Pacific Rim Exploration Inc. is still registered in Nevada with Thomas Shrake as CEO, President, Treasurer and Secretary, and Catherine McLeod-Seltzer as director.<sup>12</sup> According to a Dun & Bradstreet Report accessed in January 2010, Pacific Rim Exploration Inc. has reported four employees, including officers; had three payment experiences in twelve months totaling \$1,150; and had no public filings, such as UCC statements.<sup>13</sup> Pacific Rim Exploration Inc. is another entity, not conducting business in the United States, that Pacific Rim Mining Corp. fully controls and uses to serve its interests.

#### B. Pacific Rim Mining Corp. considers itself the owner of the El Salvador assets.

Pacific Rim Mining Corp., the Canadian parent company, regularly refers to El Dorado, the subject of the CAFTA arbitration, as its own project—"The El Dorado gold project, located in El Salvador . . . is Pacific Rim's flagship advanced-stage exploration property. Pacific Rim is the 100% owner of the El Dorado project."<sup>14</sup>

Pacific Rim Mining Corp. hardly ever made reference to its holding company Pac Rim Cayman before naming it as claimant in the CAFTA arbitration. In fact, in a 2008 filing, Pacific Rim

<sup>10</sup> Pacific Rim Mining Corp., Annual and Transitional Report (foreign private issuer) (Form 20-F) at 24 (July 29, 2009), available at <http://www.sec.gov/Archives/edgar/data/1056512/000106299309002655/form20f.htm>.

<sup>11</sup> Articles of Incorporation of Andes Exploration Inc., Office of the Secretary of State, Nevada, March 19, 1997. (Attached as **Exhibit 4**).

<sup>12</sup> See "Pacific Rim Exploration Inc. Business Entity Information," Office of the Secretary of State, Nevada, filed March 20, 1997. (Attached as **Exhibit 5**).

<sup>13</sup> Pac Rim Exploration Inc., Dun & Bradstreet Business Information Report, accessed Jan. 14, 2010. (Attached as **Exhibit 6**).

<sup>14</sup> Pacific Rim Mining Corp. Annual Report (Form 40-F) Ex. 99.3 Management's Discussion and Analysis of Financial Condition and Results of Operations at "3.1 El Dorado Gold Project, El Salvador" (July 28, 2008) <http://www.sec.gov/Archives/edgar/data/1056512/000106299308003327/exhibit99-3.htm>.

Mining Corp. included Pacific Rim El Salvador and Dorado Exploraciones as its "wholly-owned active subsidiaries."<sup>15</sup> The 2009 Annual Report submitted by Pacific Rim El Salvador for the Santa Rita exploration license confirms the same. In its first appendix, it contains certificates of analysis "Submitted by: Pacific Rim Mining Corporation . . ." in 2008.<sup>16</sup> In the second appendix, a description of each drilling is submitted on sheets which read across the top in bold: "Pacific Rim El Salvador, S.A. de C.V. (a subsidiary of Pacific Rim Mining Corp.)".

Moreover, Pacific Rim Mining Corp. has explained how it financed the El Salvador exploration operations without any reference to Pac Rim Cayman. For several years, the "Company use[d] cash flow from its 49% joint venture interest in the Denton-Rawhide gold heap leach operation in Nevada to explore, define and develop its . . . El Dorado gold project in El Salvador."<sup>17</sup> The Denton-Rawhide mine was at all times held by Dayton Mining (U.S.) Inc., which is and always has been a separate subsidiary than Pac Rim Cayman. After Pacific Rim Mining Corp. sold its Denton-Rawhide interest, it had to sell common shares combined with a non-transferable share purchase warrant for funds. Pacific Rim Mining Corp. explained that the "proceeds of the financing will be used to fund the Company's El Dorado and Santa Rita work programs, which the Company intends to accelerate . . . and for general corporate purposes."<sup>18</sup>

Finally, when Pacific Rim Mining Corp. filed a Material Change Report about the CAFTA arbitration, it started its summary, "The Company announced the filing of a notice of intent," and listed Barbara Henderson, Vice President of Investor Relations (in Canada, not affiliated with Pac Rim Cayman) as the person knowledgeable about the change.<sup>19</sup> Thus, even after filing the suit with Pac Rim Cayman as the named claimant, Pacific Rim Mining Corp. continued to refer to the dispute as its own.

### C. Money transferred to El Salvador originates in Canada.

Direct investment by the subsidiaries of Pacific Rim Mining Corp. in El Salvador has not originated from Pac Rim Cayman in the United States, but rather from Pacific Rim Mining Corp. in Canada. Even since Pac Rim Cayman has been registered in the United States, its Canadian parent

<sup>15</sup> Pacific Rim Mining Corp. Annual Report (Form 40-F) Ex. 99.2 Notes to Consolidated Financial Statements at "2. Significant Accounting Policies and Changes in Accounting Policies" (July 28, 2008), <http://www.sec.gov/Archives/edgar/data/1056512/000106299308003327/exhibit99-2.htm>.

<sup>16</sup> 2009 Annual Report of Exploration Work Done by Pacific Rim El Salvador in the Santa Rita Exploration License Area (July 2009). (Examples of appendices attached as **Exhibit 7**).

<sup>17</sup> Pacific Rim Mining Corp., 2005 Annual Report, April 30, 2005, table of contents, *available at* <http://www.pacrim-mining.com/i/pdf/PacRim-05AR-FINAL.pdf>.

<sup>18</sup> Pacific Rim Mining Corp., Report of Foreign Issuer (Form 6-K) at Exhibit 99.2 (Feb. 6, 2008), *available at* <http://www.sec.gov/Archives/edgar/data/1056512/000106299308000444/exhibit99-2.htm>.

<sup>19</sup> Pacific Rim Mining Corp., Report of Foreign Issuer (Form 6-K), Exhibit 99.1 (Dec. 9, 2008), *available at* <http://www.sec.gov/Archives/edgar/data/1056512/000106299308005265/exhibit99-1.htm>.

Pacific Rim Mining Corp. has continued to transfer money to and control the Salvadoran interests from Canada. For example:

- In 2005 and 2006, Pacific Rim El Salvador wrote to the *Oficina Nacional de Inversiones* (National Investment Office, "ONI") of the Ministry of Economy in El Salvador, requesting to register more than \$5 million in 2005 and more than \$6 million in 2006.<sup>20</sup> The 2005 auditor's certification refers to the investing company as Pacific Rim Cayman. For both requests, the attached bank certifications show that the funds had been sent by Pacific Rim Mining Corp. and its Canadian predecessors.<sup>21</sup>
- After Pacific Rim Mining Corp. changed Pac Rim Cayman's registration to Nevada at the end of 2007, Pacific Rim El Salvador submitted a request to ONI to register \$12 million transferred to El Salvador between June 2006 and September 2007. According to the certification from Scotiabank attached to the application for registration, the \$12 million had been sent by Pacific Rim Mining Corp., from Canada.<sup>22</sup>
- On December 8, 2008, the day before Pac Rim Cayman filed the Notice of Intent, Pacific Rim El Salvador requested that ONI register more than \$7 million that entered the country between October 2007 and September 2008.<sup>23</sup> Again, the auditor's certification refers to "Pacific Rim Cayman LLC" and even refers to it as domiciled in the Cayman Islands.<sup>24</sup> According to the attached certification from Scotiabank, each deposit of the money Pacific Rim El Salvador sought to register had been sent thru "Olympia Trust Company" in Canada.<sup>25</sup> ONI requested additional information regarding the identity of the sender of the funds.<sup>26</sup> Pacific Rim El Salvador has not submitted that information up to this date, and therefore the \$7 million investment has not been registered.

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<sup>20</sup> See Letter from Pacific Rim El Salvador to ONI, July 14, 2005, including auditor's certification and certifications from Banco Hipotecario and Banco de Comercio, April 2005. (Attached as **Exhibit 8**); Letter from Pacific Rim El Salvador to ONI, Aug. 25, 2006, including certification of Scotiabank, El Salvador, July 28, 2006. (Attached as **Exhibit 9**).

<sup>21</sup> See 2005 and 2006 bank certifications. (Exhibits 8 & 9).

<sup>22</sup> Resolution 368-MR, July 30, 2008, & Certification of Scotiabank, El Salvador, Nov. 15, 2007. (Attached as **Exhibit 10**).

<sup>23</sup> Letter from William Gehlen to ONI, Dec. 8, 2008. (Attached as **Exhibit 11**).

<sup>24</sup> Auditor's certification, Oct. 28, 2008. (Attached as **Exhibit 12**).

<sup>25</sup> Certification of Scotiabank, El Salvador, Oct. 21, 2008. (Attached as **Exhibit 13**).

<sup>26</sup> See Letter from ONI to Pacific Rim El Salvador, Dec. 22, 2008. (Attached as **Exhibit 14**).

## II. PAC RIM CAYMAN HAS NO SUBSTANTIAL BUSINESS ACTIVITIES IN ANY PARTY OTHER THAN THE DENYING PARTY

Pac Rim Cayman is not only owned and controlled by the Canadian parent company, but it is also a shell company with no substantial business activities in the United States, or any other CAFTA Party. CAFTA Article 10.12, as was explained in a Congressional hearing, "does not define the term 'substantial business activities,' because the meaning of that term is necessarily fact-dependent."<sup>27</sup> An extensive review of the facts in this case shows that Pac Rim Cayman does not own assets, list its own phone or e-mail contact, pay taxes, or otherwise show any sign of having business activities in the United States.<sup>28</sup>

### A. Pac Rim Cayman does not have its own phone number, website, or e-mail.

The parent company, Pacific Rim Mining Corp., had a U.S. office before Pac Rim Cayman was registered in the United States. In April 2001, Pacific Rim Mining Corp. announced that its exploration office had moved to 3550 Barron Way, Suite 12B, Reno, Nevada.<sup>29</sup> A few years later, Pacific Rim Mining Corp. moved its U.S. office around the corner to 3545 Airway Drive, #105, Reno, Nevada 89511, the address that was used on the forms submitted to register Pac Rim Cayman with the Nevada Secretary of State in December of 2007. This is the same address that is listed for Pacific Rim Exploration Inc.

This is the only U.S. office of Pacific Rim Mining Corp. and the only address given for Pac Rim Cayman. There is no evidence that Pac Rim Cayman has any activity or staff at the office. More likely, as shown by its existence before Pac Rim Cayman's Nevada incorporation, it is an office being leased by Pacific Rim Mining Corp. that would exist with or without the subsidiary Pac Rim Cayman.

Moreover, Pac Rim Cayman does not have its own internet website or phone number. A June 2009 letter from Pac Rim Cayman to ICSID lists its website as "www.pacrim-mining.com" and its

<sup>27</sup> Implementation of the Dominican Republic-Central America Free Trade Agreement: Hearing Before the H. Comm. on Ways and Means, 109th Cong. 193 (April 21, 2005) (statement of Ambassador Peter F. Allgeier) available at <http://ftp.resource.org/gpo.gov/hearings/109h/23918.pdf>.

<sup>28</sup> There is no evidence of any connection between Pac Rim Cayman and any other CAFTA Party besides the Party to the dispute and the denying Party, and thus no "substantial business activities" in any other Central American country or the Dominican Republic. Therefore the discussion of business activity will focus on the United States.

<sup>29</sup> See Pacific Rim Mining Corp., website, [http://www.pacrim-mining.com/s/Presentations\\_Interviews](http://www.pacrim-mining.com/s/Presentations_Interviews) (listing a presentation for April 3, 2001 giving new contact information for the Reno office). (Attached as **Exhibit 15**). See, also, Pacific Rim Mining Corp.'s 1998 Annual Report available at <http://www.pacrim-mining.com/i/pdf/pacrim/1998AR.pdf> (listing an address in Reno, Nevada almost a decade before choosing to domesticate its holding company in the United States).

e-mail as "general@pacrim-mining.com."<sup>30</sup> This is the home page of the parent company and an e-mail provided for its Canadian office. Additionally, a Google search for "Pac Rim Cayman" shows that Pac Rim Cayman did not maintain a web site accessible from U.S.-based Internet protocol addresses as of December 2009.

"Pac Rim Cayman" is not listed in either the 2008 or 2009 Reno, Nevada Yellow Pages.<sup>31</sup> There is, however, a telephone listing for "Pacific Rim Mining Corp." Likewise, a search at whitepages.com for a business called "Pac Rim Cayman" in Reno, Nevada yields no results, but "Pacific Rim Mining Corp." is listed at 775-852-5888.<sup>32</sup> Dun & Bradstreet lists this same number for Pacific Rim Exploration. As of November 2009, Dun & Bradstreet listed no phone number for Pac Rim Cayman, but on a new report updated after a request was made for a report by counsel for El Salvador, the number listed for Pacific Rim Mining Corp. and Pacific Rim Exploration now appears as the number for Pac Rim Cayman.<sup>33</sup>

B. Pac Rim Cayman does not appear to have its own employees in the United States.

As of November 2009, no information was publicly available regarding the number of Pac Rim Cayman employees. Based on Dun & Bradstreet's follow-up contact with the company's representatives after the first-ever Dun & Bradstreet Report on Pac Rim Cayman was completed in November 2009, the Dun & Bradstreet Report accessed in January 2010 now reports four employees, including partners.<sup>34</sup> Dun & Bradstreet communicated that the reported four employees include Thomas Shrake, who is not only the only officer at the Reno, Nevada location, but also the President, CEO, and a director of the Canadian parent company and the President, Secretary, and Treasurer of the co-located subsidiary Pacific Rim Exploration Inc.

As for the parent company, in its 2009 Securities and Exchange Commission 20-F filing, Pacific Rim Mining Corp. states that as of "April 30, 2009, the Company (including its subsidiaries) had two employees in Canada, three employees in the US and 32 employees in El Salvador."<sup>35</sup>

<sup>30</sup> Letter from Pac Rim Cayman to Ms. Eloïse Obadia, ICSID, June 4, 2009. (Attached as **Exhibit 16**).

<sup>31</sup> "Nevada Reno, Sparks, Carson City and Surrounding Communities Including White Pages," November 2008 at 376-377, 891-892 & November 2009 at 346-347, 745-746. (Attached as **Exhibit 17**).

<sup>32</sup> See search results from www.whitepages.com (last searched Jan. 12, 2010). (Attached as **Exhibit 18**). Similarly, under the category "mining," Pacific Rim Mining Corp. appears, but not Pac Rim Cayman.

<sup>33</sup> See Pac Rim Cayman LLC, Dun & Bradstreet Business Information Report, accessed November 13, 2009 (Attached as **Exhibit 19**) and Pac Rim Cayman LLC, Dun & Bradstreet Business Information Report, accessed January 15, 2010. (Attached as **Exhibit 20**). Dun & Bradstreet did not even have a report on Pac Rim Cayman before the November 2009 report, which was prepared at the request of counsel for El Salvador.

<sup>34</sup> Pac Rim Cayman LLC, Dun & Bradstreet Business Information Report, accessed January 15, 2010. (Exhibit 20).

<sup>35</sup> Pacific Rim Mining Corp., Annual and Transitional Report (foreign private issuer) (Form 20-F) at 61 (July 29, 2009), available at <http://www.sec.gov/Archives/edgar/data/1056512/000106299309002655/form20f.htm>.



A search of Westlaw's *FEIN* database, which contains certain U.S. federal employer identification numbers ("EIN") issued to entities with employers who are subject to federal income tax withholding in the United States, found no entries for Pac Rim Cayman. Likewise, there are no entries for Pac Rim Cayman in searches of EIN Finder and FEINSearch.com, on-line databases of employer tax identification numbers.<sup>36</sup> The lack of evidence of an EIN suggests that Pac Rim Cayman does not pay employees in the United States.

C. Other indicators show no business activity for Pac Rim Cayman.

1. *Incorporation*

Pac Rim Cayman's Articles of Organization state no purpose and are not accompanied by bylaws.<sup>37</sup> The company's filings with the Nevada Secretary of State are minimal—only the required Articles and lists of managers. Three of the four managers listed, all but Pacific Rim Mining Corp. President Thomas Shrake, have Canadian addresses.<sup>38</sup>

2. *Use of U.S. Capital Markets*

Pac Rim Cayman does not directly access U.S. capital markets; its shares are held by Pacific Rim Mining Corp., a Canada-registered company. Pac Rim Cayman is not listed on any U.S. stock exchange so American investors do not invest directly in it. In fact, the Canadian parent corporation, Pacific Rim Mining Corp., is "the sole Member" of Pac Rim Cayman.<sup>39</sup>

Pacific Rim Mining Corp. shares are traded on the Toronto and NYSE Amex exchanges.<sup>40</sup> For the purposes of United States Securities Law, Pacific Rim Mining Corp., the Canadian parent, is currently designated a 'foreign private issuer'<sup>41</sup> which allows it to follow modified disclosure requirements in the United States that are different from those for domestic U.S. issuers.

<sup>36</sup> See attached copies of EIN database search results. (Attached as **Exhibit 21**).

<sup>37</sup> Articles of Organization, Pac Rim Cayman LLC, Doc. 20070846285-12, filed Dec. 13, 2007. (Attached as **Exhibit 22**).

<sup>38</sup> See Initial List of Managers or Managing Members and Resident Agent of Pac Rim Cayman LLC, filed Jan. 17, 2008 (listing Thomas Shrake in Nevada, Catherine McLeod-Seltzer in Canada, and April Hashimoto in Canada); Annual List of Managers or Managing Members and Registered Agent of Pac Rim Cayman LLC, filed Dec. 22, 2008 (replacing Ms. Hashimoto with Ronda Fullerton in Canada). (Attached as **Exhibit 23**).

<sup>39</sup> Letter from Pac Rim Cayman to Ms. Eloise Obadia, ICSID. (Exhibit 16).

<sup>40</sup> On November 12, 2009, Pacific Rim Mining Corp. reported that it had received notice from the New York Stock Exchange Amex ("NYSE Amex") that the company is not in compliance with certain NYSE Amex requirements and that the company needed to follow certain extraordinary reporting procedures because of its non-compliance. After a review period, the NYSE Amex may consider initiating delisting procedures. See Pacific Rim Mining Corp., Report of Foreign Issuer (Form 6-K) at Exhibit 99.1 (Nov. 12, 2009), available at <http://www.sec.gov/Archives/edgar/data/1056512/000106299309003905/exhibit99-1.htm>.

<sup>41</sup> As defined in Rule 3B-4 under the U.S. Securities and Exchange Act of 1934.

### 3. *Uniform Commercial Code Filings*

There is no evidence of Pac Rim Cayman having made any Uniform Commercial Code ("UCC") filings with the Nevada Secretary of State, or any other U.S. state as of September 2009.<sup>42</sup> A UCC filing is a specific procedure used to secure rights in commercial activity and in many business credit transactions, whereby a business will take a security interest, or lien, in a creditor's property as collateral.<sup>43</sup> Although a legal entity in the United States is not required to create a security interest as part of the establishment of bona fide commercial activity, any security interest created must be documented as part of the public record. In this sense, UCC filings may be an indicator of commercial activity in the United States, and are standard reporting items on Dun & Bradstreet credit reports.

### 4. *North American News*

According to a Westlaw search for business reporting about Pac Rim Cayman, the only business or other reporting on Pac Rim Cayman for an unrestricted date range through September 10, 2009 concerns the filings in the current CAFTA arbitration and Pacific Rim Mining Corp.'s recent financial reports.<sup>44</sup> A company does not have to issue news releases as part of its business activities, but even the smallest companies typically do so as part of normal operations.

### 5. *Financial Data*

Dun & Bradstreet accesses approximately 400 million payment records each year, and is often able to provide an assessment of creditworthiness of a company on the basis of those records.<sup>45</sup> However, Dun & Bradstreet was unable to assess the creditworthiness of Pac Rim Cayman due to the lack of any payment records involving Pac Rim Cayman LLC. Even with a requested follow-up with the company's listed management, Dun & Bradstreet was unable to obtain any financial information.<sup>46</sup>

## CONCLUSION

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<sup>42</sup> The UCC section of each secretary of state in the U.S. is the central filing function for certain documentation considered part of a public record and provided for under the Uniform Commercial Code that relates to financing statements, notices of liens, judicial fact findings, etc. See search results from Office of the Secretary of State, Nevada, for "PAC RIM CAYMAN" and "PACIFIC RIM EXPLORATION." (Last searched April 29, 2009). (Attached as **Exhibit 24**).

<sup>43</sup> BUSINESS LAW 709 (13th ed., Mallor, Barnes, Bowers, Langvardt, eds., 2007).

<sup>44</sup> See Westlaw's ALLNEWSPLUS search results. (Attached as **Exhibit 25**). The search was conducted without restriction as to date through September 10, 2009. ALLNEWSPLUS is Westlaw's largest news database, containing over 11,000 newspapers, worldwide magazines and newswires from Thomson Dialog and Thomson Financial.

<sup>45</sup> See Pac Rim Cayman LLC, Dun & Bradstreet Business Information Reports. (Exhibits 19 & 20).

<sup>46</sup> Pac Rim Cayman LLC, Dun & Bradstreet Business Information Reports. (Exhibits 19 & 20).

El Salvador has amply justified the denial of CAFTA Chapter Ten benefits to Pac Rim Cayman with the facts described in this notification letter. Moreover, if Pacific Rim Mining Corp., a Canadian company, is allowed to use CAFTA arbitration through a shell company whose nationality it changed from the Cayman Islands to the United States after the dispute with El Salvador arose, there will be nothing to prevent other investors from using shell companies to invoke CAFTA arbitration as they see fit. Pac Rim Cayman does not conduct substantial business activities in the United States and is only noteworthy as a vehicle for the CAFTA arbitration. CAFTA 10.12.2 is intended to prevent exactly these types of abusive tactics.

Sincerely,

  
**MARIO ROGER HERNANDEZ**  
**VICEMINISTER**



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