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# Nuggets for Miners: Insights on Hot Topics

July 2021

SHEARMAN & STERLING

**Shearman & Sterling's Global Mining & Metals Group offers perspectives on the mining industry's most important topics. From the growth of ESG-linked financing options to key issues relating to current challenges affecting the critical minerals supply chain, the mining industry continues to evolve with the latest global trends and demands.**

**Please contact the Lead Industry Coordinators of the Global Mining & Metals Group, Jason Lehner and Cynthia Urda Kassis for further details about any of the below.**

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# ESG/Innovative Sources of Mine Finance

Green financing is usually not top-of-mind for mining companies considering their financing options, but it should be. Two trends, the “greening” efforts of the mining industry and the growing availability of green and environmental, social and governance (ESG)-linked debt products and sources, have resulted in green and ESG-linked financing becoming an increasingly relevant source of funding for the mining sector. A growing array of innovative debt products is available to finance a wide variety of ESG projects, which can help mining companies meet their sustainability targets and comply with industry initiatives and regulatory requirements. Further, they can provide mining companies access to capital sources not otherwise available (*i.e.* dedicated green and ESG capital pools), lower funding costs, add more certainty to the path through investor credit approval processes, and bring positive attention to green and socially-responsible business practices.

Partner **Cynthia Urda Kassis**, counsels **Jason Pratt** and **Mehran Massih**, and associate **Augusto Ruiloba** authored an article published by *Mining Journal*, titled “ESG loans a new source of mining finance,” which is addressed to the mining sector specifically. In another article discussing the potential of ESG-linked financing in the industry titled, “ESG could mean billions for mining sector,” partners **Alexandro M. Padrés** and Cynthia Urda Kassis provide commentary on the use of this type of financing for mining projects. Most recently, Cynthia moderated a panel titled, “Green Finance, ESG, and Sustainability: Important Hurdles to Qualify for Investor Support,” during SME Thrive’s 2020 virtual conference. The panel discussed the significant growth in importance of ESG to the industry, and whether at mine/construction sites or in the

centers of finance, required time and thought to craft effective communications with stakeholders to gain and maintain finance, investor and community support for mining projects in this era.

Partner **Cynthia Urda Kassis**, and counsels **Jason Pratt** and **Mehran Massih** also authored another piece published by *Project Finance International*, titled “Green and ESG loans – Emerging trends,” which is a more in-depth article that addresses green/ESG-linked financing generally. Additional information about green loans and other insights on general corporate governance trends can be found in Shearman’s *18th Annual Corporate Governance and Executive Compensation Survey*, a survey of the 100 largest U.S. public companies.

Overall, financing in the mining sector continues to evolve, with a recent focus on trends such as the increasing role of commodity traders, cost overrun facilities, and PE-fund sponsored projects, among others. Partner **Cynthia Urda Kassis** discussed these topics, including green/ESG-linked facilities, during SME’s 2020 Annual Meeting in a presentation titled, “Hot Topics in Mine Finance.” Combining traditional project financing and secured streams is another such “hot topic” in mine finance. A case in point would be the Nevada Copper financing plan. Partner **Cynthia Urda Kassis** discussed this innovative financing in detail, during AEMA’s Annual Meeting during a presentation titled, “Nevada Copper Inc. Financing Plan: Pumpkin Hollow Underground Project.” The financing was a significant milestone for both Nevada Copper and the industry.

# ESG/Innovative Sources of Mine Finance (cont.)

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# Navigating the Mining Industry’s “New Normal”

Over the past eighteen months, the world has faced an unprecedented global pandemic. Consequently, mining companies had to quickly shift their focus to address the issues arising from these uncertain times. As the world begins to emerge from the chaos and proceed into a “new normal,” we sought to contemplate various topics centered on what the mining industry had been talking about but stopped during the onset of the pandemic. Partner **Anthony Lepere**, joined by panelists, partners **Paula Howell Anderson**, **Marwa Elborai**, and **Cynthia Urda Kassis**, explored these topics in a webinar titled, “[What has the mining industry stopped talking about?](#)” They discussed what the push for greater focus on ESG matters means for capital raising in the mining industry; what the prevalence of alternative sources of financing means for companies and investors in the sector; and how mining companies should think about their anti-bribery and anti-corruption obligations.

In another development surely to make an impact on the mining industry moving forward, more companies have begun marketing ethically sourced or “conflict-free” diamonds, gold and other minerals in response to growing consumer appetite for information on responsible sourcing. Companies are also increasingly subject to regulatory obligations aimed at improving due diligence and transparency with respect to the minerals in their supply chains. But how can the source of these minerals be verified, and companies be better able to comply with these regulatory requirements? Associate **Naffie Lamin** and former counsel Jonathan Handyside explored this topic in a *Mining.com* article, titled “[How blockchain can track conflict minerals.](#)” It examines how blockchain could help verify the sourcing of these minerals and could assist

companies that use these materials in their supply chains to comply with their regulatory reporting obligations pursuant to the U.S. Securities and Exchange Commission (SEC) “Conflict Minerals Rule” and its EU equivalent.

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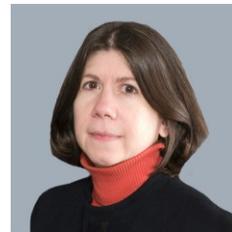


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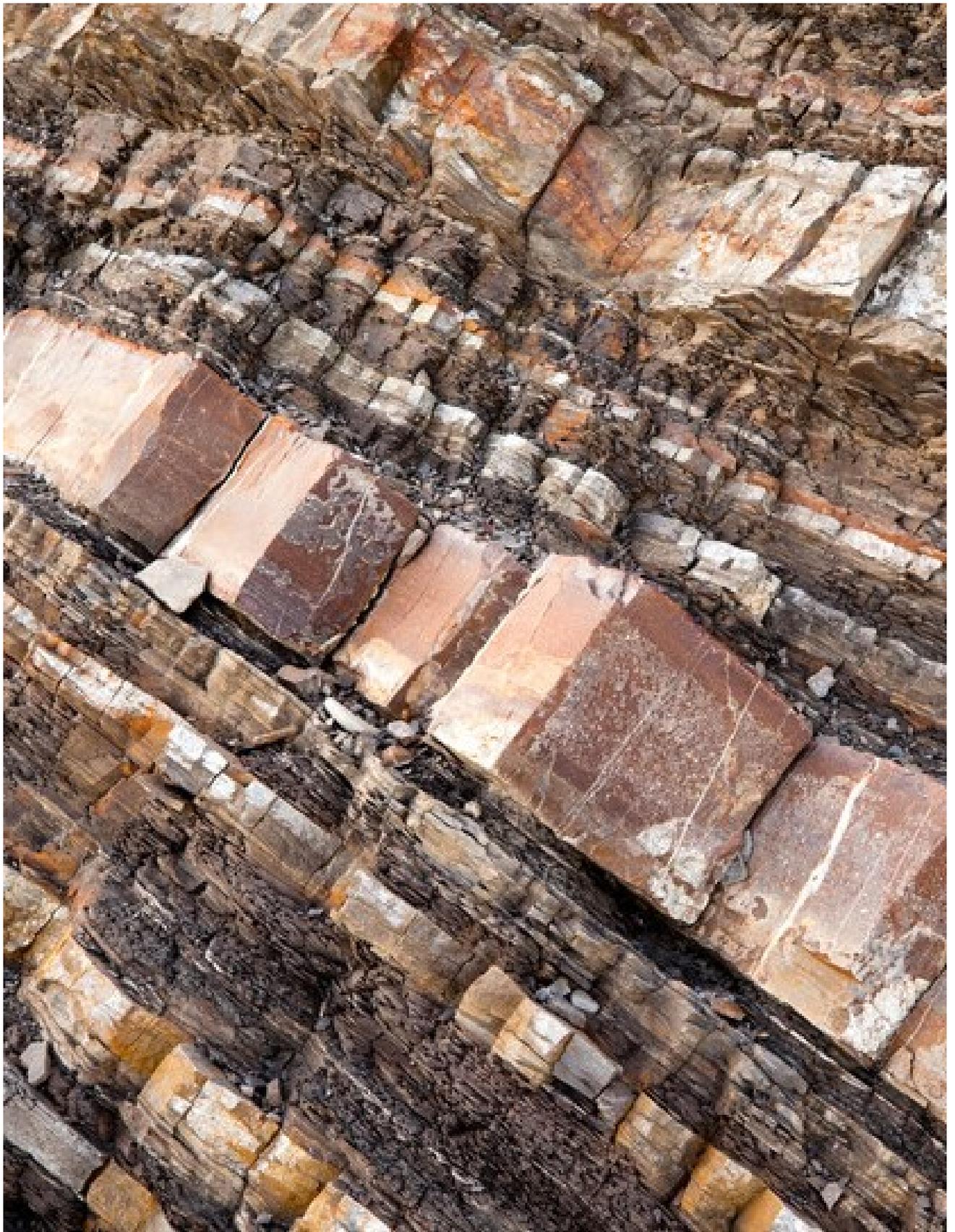
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# Regulatory Trends and Developments: Whistleblowing, Transparency and More

With whistleblowers in the news, it is a good reminder that the type of conduct exposed by whistleblowers happens within private companies, as well as in the public sector. In fact, most organizations encounter actual or alleged wrongdoing by employees, officers, or directors at some point. In the extractive industries, issues may also arise regarding compliance with environmental or resource protection laws.

In a presentation during the RMMLF 66<sup>th</sup> Virtual Annual Institute, titled “[Whistleblowing, Retaliation, and Internal Investigations – Ethical Considerations](#),” partners **Paula Howell Anderson** and **Philip Urofsky** gave an overview of the laws protecting whistleblowers and examined the Model Rules of Professional Conduct regarding the legal and ethical duties of in-house and outside lawyers in handling such allegations and conducting internal investigations. They also discussed the roles of special committees and corporate governance, mandatory and voluntary disclosure, the identity of the client in an internal investigation, and how to address bullying, harassment, and retaliation.

In the January 2020 edition of Shearman & Sterling’s [Governance & Securities Law Focus](#), former counsel Jonathan Handyside discussed the latest attempt by the U.S. Securities and Exchange Commission (SEC) to propose rules implementing a mandate originally set in 2010 by the Dodd-Frank Act to require SEC-registered mining and oil and gas companies to report the payments they make to governments. In the excerpt titled, “SEC Tries Once Again to Implement Government Payments Disclosure Rule,” Jonathan examined the SEC’s third rulemaking attempt in this area, after its prior government payments rules were struck down by the

federal courts and by Congress. Given this rocky history, doubts remain whether the third time really will prove the charm. In the meantime, many mining companies have already become subject to similar government payments transparency rules adopted by Canada and the EU.

In December 2020, the SEC announced that it is adopting a [final rule](#) requiring U.S. and foreign resource extraction issuers to disclose any payments made to the U.S. federal government or foreign governments for the commercial development of oil, natural gas or minerals. The rule adopts Rule 13q-1 and amends Form SD to implement Section 13(q) of the Securities Exchange Act of 1934 “the Exchange Act” and will come into effect 60 days following its publication in the Federal Register. It also implements the resource payment disclosure requirement of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and follows the SEC’s effort in 2018 to modernize its disclosure requirements for mining company issuers, which have come into effect for many issuers as of January 1, 2021 ([see our discussion of such new mining disclosure requirements](#)). To read more about how this rule will affect reporting obligations for U.S. and foreign resource extraction issuers, please read our client alert titled, “[SEC Adopts Payment Disclosure Rules for Resource Extraction Companies](#).”

# Regulatory Trends and Developments: Whistleblowing, Transparency and More (cont.)

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# Spotlight on Mining in Latin America

Peru is a global mining leader. Located in a highly prolific polymetallic belt, it contains some of the world's largest silver, molybdenum, copper, zinc and gold reserves in the world. Due to this abundance of natural resources, combined with an attractive legal and tax regime designed to support the industry, Peru has attracted billions of dollars of foreign inbound investment into its mining sector. In a Shearman-hosted event titled, "[Mining in Peru: An Outlook for Investment](#)" partner **Alexandro M. Padrés** moderated a discussion featuring Roque Benavides, chairman of the Board of Directors of Compañía de Minas Buenaventura, about [the state of Peru's mining industry and the outlook for investment in the country](#). Additional [resources regarding development and investment in Peru's mining sector can be found on its government website](#).

With Fruta del Norte, Ecuador's first and only large-scale gold mining operation, casting a bright spotlight on the future potential of mining in Ecuador, partner **Alexandro M. Padrés** moderated a panel titled "[Ecuador: Capitalising on Current Interest While Avoiding Growing Pains](#)," during the Mining & Investment Latin America Summit in Lima, Peru. Featuring panelists, Ben Mace, president of the Ecuadorian Mining Chamber, Jason Ward of SolGold and Ron Hochstein of Lundin Gold, the panel discussed recent developments in Ecuador's mining industry, including how the government is supporting the mining sector, how it is attracting capital from the international investment community and how to develop and finance projects in the country. This past January, Alexandro also spoke on a panel during RDN's Ecuador Mining Summit titled, "[Financing and Investment of Mining Projects](#)," where he, along with lawyers from Ecuadorian law firm, Pérez Bustamante &

Ponce, Jaime Zaldumbide (Partner, Environmental, Education, Energy and Natural Resources, Infrastructure and Projects, Transport) and María Isabel Aillón-Vásconez (Director, Transport, Dispute Resolution, Energy and Natural Resources, Infrastructure and Projects, Technology and Innovation) provided background information regarding financing mining projects in Ecuador, as well as international considerations when financing these projects.

Even throughout the pandemic, Latin America-based mining companies have kept abreast of the latest mining finance trends, namely ESG. During this year's annual Colombia Gold Symposium, Partner **Cynthia Urda Kassis** spoke on the ESG Finance Panel. She addressed such topics as the: (a) the role of ESG in investment decisions in the sector, in particular what is new as a result of the recent evolution of the focus on ESG broadly in the investment community (given that environmental, health and safety and social license matters have long been a focus of investors in the mining sector), (b) the current challenge of understanding investor expectations on ESG as a common agreement on the scope of "E", "S" and "G" does not yet exist, nor does there exist agreed metrics for measurement, and (c) the opportunities which nonetheless arise from this new focus, such as the new sources of capital and investment instruments available and the benefits they can provide to mining companies and investors alike.

# Spotlight on Mining in Latin America

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# Successful Equipment and Construction Finance Consortia

How do the successful deals and projects attract and manage the challenges of optimizing finance structures in fast changing and disruptive markets? During SME THRIVE's 2020 virtual annual conference, partner **Anthony Lepere** spoke on a panel exploring this topic. Featuring industry experts Ken Murray (Founder & CEO, Captrics Consulting Inc.), Jennifer B. Leinart (President, InfoMine USA, Inc.), Jon Treen (Senior Vice President, Regional Business Leader, Mining (Global), Stantec Inc.), and Angelina Mehta (Director, Mining, Investment Banking; Laurentian Bank Securities), the panel's discussion centered on how to find the key to managing the partnership with equipment suppliers and operations contractors for the long term, with the goal of learning how to assemble successful collaborations.

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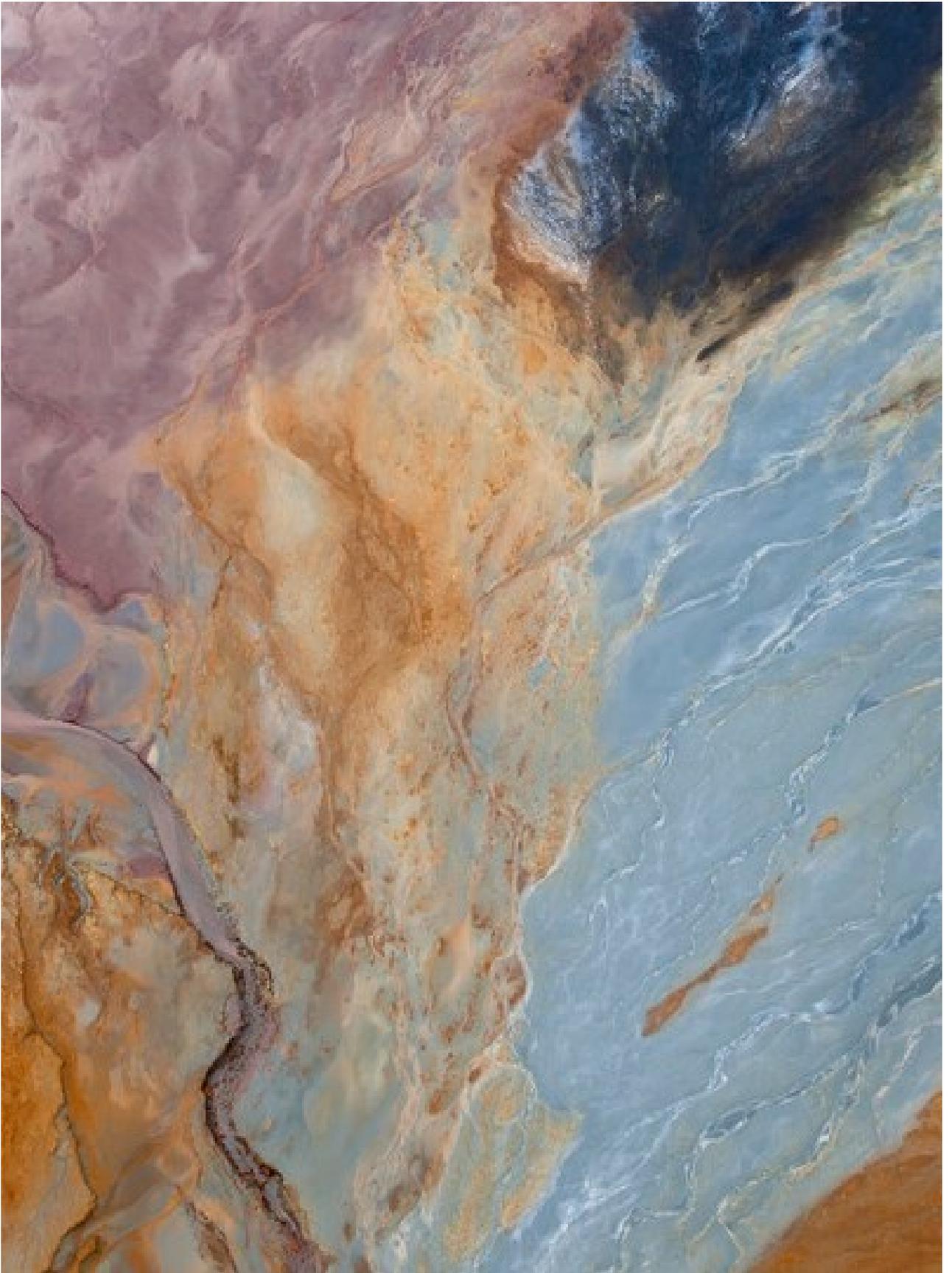
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# Financing Critical Minerals

The world is increasingly relying on critical minerals to develop new and crucial technologies. Key issues relating to the challenge in developing this supply chain, as highlighted the pandemic's impact on said development, have been brought to the forefront as of late to anticipate meeting this demand. During SME NY's "[Strengthening Critical Minerals Supply Chains in North America: The Key Role of Quebec](#)" symposium, partner **Cynthia Urda Kassis** chaired a session titled "[Financing Critical Minerals](#)," featuring industry experts Maryse Bélanger (CEO and Director, Bullfrog Gold Corporation), Jon Lamb (Portfolio Manager, Orion Resources Partners) and Lénaïg Trénaux (Managing Director and Regional Head of Mining, Metals and Industries Finance Americas, Société Générale). They discussed the financing of the critical minerals supply chain, including the role of traditional funding sources, as well as governments, end-users and ESG-linked investment instruments, among other topics.

Co-sponsored with the New York Section of SME and the Government of Quebec, other panels in the symposium centered on topics such as the role of consumer and industrial demand on the critical minerals supply chain, the role of mining chains on responsible nickel development, initiatives to foster relationships with indigenous communities for the development of these projects, including [remarks delivered by Quebec's Minister of Energy and Natural Resources, Jonathan Julien](#).

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