

SKYTERRA COMMUNICATIONS INC
Form SC 13E3
November 19, 2009

PRELIMINARY

SUBJECT TO COMPLETION

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13E-3
RULE 13E-3 TRANSACTION STATEMENT
(Pursuant to Section 13(e) of the Securities Exchange Act of 1934)

SkyTerra Communications, Inc.
(Name of the Issuer)

SkyTerra Communications, Inc.
Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P., Sol Private Corp. Harbinger Capital Partners Special Situations GP, L.L.C., Harbinger Capital Partners LLC, Harbinger Holdings, LLC, and Philip A. Falcone
(Name of Person(s) Filing Statement)

Voting Common Stock, par value \$0.01 per share

Non-Voting Common Stock, par value \$0.01 per share
(Title of Class of Securities)

83087K107
(CUSIP Number of Class of Securities)

SkyTerra Communications, Inc.
10802 Parkridge Boulevard
Reston, Virginia 20191
(703) 390-2700
Attn: Secretary

Philip A. Falcone
Harbinger Capital Partners
450 Park Avenue
30th Floor
New York, New York 10022
(212) 339-5100

(Name, Address and Telephone Number of Persons Authorized to Receive Notices
and Communications on Behalf of Persons Filing Statement)

Copies to:

Thomas H. Kennedy, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
(212) 735-3000

Joseph J. Basile, Esq.
Weil, Gotshal & Manges LLP
100 Federal Street, 34th Floor
Boston, Massachusetts 10153
(617) 772-8834

This statement is filed in connection with (check the appropriate box):

Smaller reporting company "

EXPLANATORY NOTE

This Post-Effective Amendment No. 2 relates to the Registration Statement (the “Registration Statement”) on Form S-8 (File No. 33-26443) previously filed by Phelps Dodge Corporation, a wholly owned subsidiary of Freeport-McMoRan Copper & Gold Inc. (the “Registrant”), with the Securities and Exchange Commission (the “Commission”) on January 12, 1989, as amended, relating to the registration of (1) common shares (the “Common Shares”), par value \$6.25, of Phelps Dodge Corporation, to be purchased under the plan, and (2) participations in the plan. The Common Shares were previously deregistered on Form 15 filed with the Commission on April 13, 2007. The Registrant hereby removes from registration all remaining securities registered under this Registration Statement, including participations in the plan.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, 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 Post-Effective Amendment No. 2 to the Registration Statement on Form S-8 (Registration No. 33-26443) to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Phoenix, State of Arizona, on June 26, 2008.

Freeport-McMoRan Copper & Gold Inc.

By: /s/ Kathleen L. Quirk
 Kathleen L. Quirk
 Executive Vice President,
 Chief Financial Officer and Treasurer

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 2 to Registration Statement on Form S-8 (Registration No. 33-26443) has been signed by the following persons in the capacities indicated on June 26, 2008.

Signature	*	Title
James R. Moffett	*	Chairman of the Board
B. M. Rankin, Jr.	*	Vice Chairman of the Board
Richard C. Adkerson	*	President, Chief Executive Officer and Director (Principal Executive Officer)
Quirk /s/ Kathleen L. Quirk	/s/ Kathleen L.	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)

C. Donald Whitmire, Jr.	*	Vice President and Controller - Financial Reporting (Principal Accounting Officer)
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Robert J. Allison, Jr.	*	Director
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Robert A. Day	*	Director
Gerald J. Ford	*	Director
H. Devon Graham, Jr.	*	Director
J. Bennett Johnston	*	Director
Charles C. Krulak	*	Director
Bobby Lee Lackey	*	Director
Jon C. Madonna	*	Director
Dustan E. McCoy	*	Director
Gabrielle K. McDonald	*	Director
J. Stapleton Roy	*	Director

Stephen H. Siegele * Director

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J. Taylor Wharton

*

Director

*By: /s/ Kathleen L. Quirk
Kathleen L. Quirk
Attorney-in-Fact

The Plan. Pursuant to the requirements of the Securities Act of 1933, the Plan administrator has duly caused this Post-Effective Amendment No. 2 to the Registration Statement on Form S-8 (Registration No. 33-26443) to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Phoenix, State of Arizona, on June 26, 2008.

Phelps Dodge Corporation Employee Savings Plan
(formerly the Phelps Dodge Corporation
Savings Plan for Hourly Employees)

By: /s/ Kathleen L. Quirk
Kathleen L. Quirk
Member of the Benefits
Administration Committee

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EXHIBIT INDEX

Exhibit
Number

Description of Exhibits

24.1 Powers of Attorney pursuant to which this Registration Statement has been signed on behalf of certain of our officers and directors (incorporated by reference to Exhibit 24.1 to Post-Effective Amendment No. 2 to Registration Statement No. 33-6141 filed June 26, 2008).

;Summary Term Sheet,” “Proposal One—The Merger—Background of the Merger,” “Proposal One—The Merger—Purposes and
Effects of the Merger,” “Proposal One—The Merger—Merger Financing” and “The Merger Agreement” in the Preliminary
Proxy Statement is incorporated herein by reference.

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Item 7. Purposes, Alternatives, Reasons and Effects.

Regulation M-A Item 1013

- (a) The information set forth under the captions “Summary Term Sheet—Purposes and Effects of the Merger,” “Proposal One—The Merger—Background of the Merger,” “Proposal One—The Merger—Position of SkyTerra as to the Fairness of Merger; Recommendation by SkyTerra’s Special Committee and Board of Directors,” “Proposal One—The Merger—Position of the Harbinger Parties as to the Fairness of the Merger,” “Proposal One—The Merger—Purposes and Effects of the Merger,” and “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger” in the Preliminary Proxy Statement is incorporated herein by reference.
- (b) The information set forth under the captions “Summary Term Sheet—Purposes and Effects of the Merger,” “Proposal One—The Merger—Background of the Merger,” “Proposal One—The Merger—Position of the Harbinger Parties as to the Fairness of the Merger,” “Proposal One—The Merger—Purposes and Effects of the Merger,” and “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger” in the Preliminary Proxy Statement is incorporated herein by reference.
- (c) The information set forth under the captions “Summary Term Sheet—Purposes and Effects of the Merger,” “Proposal One—The Merger—Background of the Merger,” “Proposal One—The Merger—Position of the Harbinger Parties as to the Fairness of the Merger,” “Proposal One—The Merger—Purposes and Effect of the Merger” and “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger” in the Preliminary Proxy Statement is incorporated herein by reference.
- (d) The information set forth under the captions “Summary Term Sheet—Purposes and Effects of the Merger,” “Summary Term Sheet—Material U.S. Federal Income Tax Consequences,” “Proposal One—The Merger—Background of the Merger,” “Proposal One—The Merger—Position of the Harbinger Parties as to the Fairness of the Merger,” “Proposal One—The Merger—Purposes and Effects of the Merger,” “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger,” “Proposal One—The Merger—Material U.S. Federal Income Tax Consequences,” and “Book Value Per Share” in the Preliminary Proxy Statement is incorporated herein by reference.

Item 8. Fairness of the Transaction.

Regulation M-A Item 1014

- (a) The information set forth under the captions “Summary Term Sheet—Position of SkyTerra as to the Fairness of the Merger; Recommendations by SkyTerra’s Special Committee and Board of Directors,” “Summary Term Sheet—Opinion of the Special Committee’s Financial Advisor,” “Proposal One—The Merger— Position of SkyTerra as to the Fairness of the Merger; Recommendations by SkyTerra’s Special Committee and Board of Directors,” “Proposal One—The Merger—Opinion of the Special Committee’s Financial Advisor,” “Proposal One—The Merger—Position of the Harbinger Parties as to the Fairness of the Merger,” “Proposal One—The Merger—Purposes and Effects of the Merger,” and “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger” and in the Preliminary Proxy Statement is incorporated herein by reference.
- (f) The information set forth under the caption “Proposal One—The Merger—Background of the Merger” in the Preliminary Proxy Statement is incorporated herein by reference.

Item 9. Reports, Opinions, Appraisals and Certain Negotiations.

Regulation M-A Item 1015

- (a) The information set forth under the captions “Summary Term Sheet—Opinion of the Special Committee’s Financial - Advisor,” “Proposal One—The Merger—Background of the Merger,” “Proposal One—The
- (c)

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Merger—Opinion of the Special Committee’s Financial Advisor,” “Proposal One—The Merger—Purposes and Effects of the Merger,” “Proposal One—The Merger—Estimated Fees and Expenses” and “Where You Can Find More Information” in the Preliminary Proxy Statement is incorporated herein by reference. The written opinion of Morgan Stanley, dated September 22, 2009, is attached to the Preliminary Proxy Statement as Appendix C and is incorporated herein by reference.

Item 10. Source and Amounts of Funds or Other Consideration.

Regulation M-A Item 1007

- (a) The information set forth under the caption “Proposal One—The Merger—Merger Financing” in the Preliminary Proxy Statement is incorporated herein by reference.
- (b)
- (c) The information set forth under the captions “Proposal One—The Merger—Estimated Fees and Expenses” and “The Merger Agreement—Expenses” in the Preliminary Proxy Statement is incorporated herein by reference.
- (d) The information set forth under the captions “Proposal One—The Merger—Opinion of the Special Committee’s Financial Advisor,” “Proposal One—The Merger—Merger Financing” and “Proposal One—The Merger—Anticipated Accounting Treatment of the Merger” in the Preliminary Proxy Statement is hereby incorporated by reference.

Item 11. Interest in Securities of the Subject Company.

Regulation M-A Item 1008

- (a)-(b) The information set forth under the captions “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger,” “Security Ownership of Management and Certain Beneficial Owners” and “Certain Purchases and Sales of SkyTerra Capital Stock” in the Preliminary Proxy Statement is incorporated herein by reference.

Item 12. The Solicitation or Recommendation.

Regulation M-A Item 1012

- (d) The information set forth under the captions “Summary Term Sheet—Position of SkyTerra as to the Fairness of the Merger; Recommendation by SkyTerra’s Special Committee and Board of Directors,” “Proposal One—The
- (e) Merger—Background of the Merger,” “Proposal One—The Merger—Position of SkyTerra as to the Fairness of the Merger Recommendation of SkyTerra’s Special Committee and Board of Directors,” “Proposal One—The Merger—Position of the Harbinger Parties as to the Fairness of the Merger,” “Proposal One—The Merger—Interests of SkyTerra Directors and Officers in the Merger,” and “The Annual Meeting—Quorum; Vote Required” in the Preliminary Proxy Statement is incorporated herein by reference.

Item 13. Financial Information.

Regulation M-A Item 1010

(a) The information set forth under the captions “Selected Historical Financial Information” in the Preliminary Proxy Statement is incorporated herein by reference. SkyTerra’s Annual Report on Form 10-K for the year ended December 31, 2008, as amended, its Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, its Quarterly Report on Form 10-Q for the quarter ended June 30, 2009, its Quarterly Report on Form 10-Q for the quarter ended September 30, 2009, and its current reports on Form 8-K, as filed with the SEC on August 11, 2009, September 4, 2009 and September 23, 2009 are incorporated herein by reference.

(b) Not applicable.

Item 14. Persons/Assets, Retained, Employed, Compensated or Used.

Regulation M-A Item 1009

- (a) The information set forth under the captions “Questions and Answers About the Merger and The Annual Meeting—Who Can Help Answer My Questions,” “Proposal One—The Merger—Background of the Merger,” “Proposal (b) One—The Merger—Estimated Fees and Expenses,” and “The Annual Meeting—Solicitation of Proxies” in the Preliminary Proxy Statement is incorporated herein by reference.

Item 15. Additional Information.

Regulation M-A Item 1011

- (b) The information contained in the Preliminary Proxy Statement/Prospectus, including all appendices thereto, is incorporated in its entirety herein by this reference.

Item 16. Exhibits.

Regulation M-A Item 1016

Exhibit

- | No. | Description |
|--------|---|
| (a)(1) | Preliminary Proxy Statement of SkyTerra Communications, Inc. (incorporated by reference to SkyTerra’s Preliminary Proxy Statement filed with the Securities and Exchange Commission on November 19, 2009). |
| (a)(2) | Form of Proxy Card (included as Appendix H of the Preliminary Proxy Statement filed herewith as Exhibit (a)(1)). |
| (a)(3) | Press release, dated September 23, 2009 (incorporated by reference to Exhibit 99.1 to SkyTerra’s Form 8-K, dated September 23, 2009 and filed September 23, 2009). |
| (c)(1) | Opinion of Morgan Stanley & Co. Incorporated to the special committee of the board of directors of SkyTerra, dated September 22, 2009 (included as Appendix C of the Preliminary Proxy Statement filed herewith as Exhibit (a)(1)). |
| (c)(2) | Presentation of Morgan Stanley & Co. Incorporated to the special committee of the board of directors of SkyTerra, dated September 22, 2009. |
| (d)(1) | Agreement and Plan of Merger, dated as of September 23, 2009, by and among Master Fund, Special Fund, Acquisition Corp. and SkyTerra (included as Appendix A of the Preliminary Proxy Statement filed herewith as Exhibit (a)(1)). |
| (d)(2) | First Amendment to Agreement and Plan of Merger, dated as of November 18, 2009, by and among Master Fund, Special Fund, Acquisition Corp. and SkyTerra (included as Appendix B of the Preliminary Proxy |

Statement filed herewith as Exhibit (a)(1)).

- (f) Section 262 of the Delaware General Corporation Law (included as Appendix D of the Preliminary Proxy Statement filed herewith as Exhibit (a)(1)).
- (g) None.

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SIGNATURES

After due inquiry and to the best knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated as of November 19, 2009

SKYTERRA COMMUNICATIONS, INC.

By: /s/ Scott Macleod
Name: Scott Macleod
Title: Executive Vice President, Chief Financial Officer, Treasurer

HARBINGER CAPITAL PARTNERS MASTER FUND I, LTD.

By: Harbinger Capital Partners LLC, its Investment Manager

By: /s/ Philip A. Falcone
Name: Philip A. Falcone
Title: Senior Managing Director

HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS FUND, L.P.

By: Harbinger Capital Partners Special Situations GP, L.L.C., its General Partner

By: /s/ Philip A. Falcone
Name: Philip A. Falcone
Title: Senior Managing Director

SOL PRIVATE CORP.

By: /s/ Philip A. Falcone
Name: Philip A. Falcone
Title: President

HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS GP,
L.L.C.

By: /s/ Philip A. Falcone

Name: Philip A. Falcone

Title: Senior Managing Director

HARBINGER CAPITAL PARTNERS LLC

By: /s/ Philip A. Falcone

Name: Philip A. Falcone

Title: Senior Managing Director

HARBINGER HOLDINGS, LLC

By: /s/ Philip A. Falcone

Name: Philip A. Falcone

Title: Managing Member

/s/ Philip A. Falcone

Philip A. Falcone

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(f)	Section 262 of the Delaware General Corporation Law (included as Appendix D of the Preliminary Proxy Statement filed herewith as Exhibit (a)(1)).
(g)	None.