

MINERA ANDES INC /WA
Form 40-F
April 01, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 40-F

(Check one)

REGISTRATION STATEMENT PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

OR

ANNUAL REPORT PURSUANT TO SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2009

Commission file number 000-22731

MINERA ANDES INC.

(Exact name of Registrant as specified in its charter)

Alberta, Canada
(Jurisdiction of incorporation or organization)

1040
(Primary Standard Industrial Classification Code Number (if applicable))

Not applicable
(I.R.S. Employer Identification Number (if applicable))

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99 George Street, 3rd Floor, Toronto, Ontario M5A 2N4 Canada

647.258.0395

(Address and telephone number of Registrant's principal executive offices)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class
None

Name of each exchange on which registered:
N/A

Securities registered or to be registered pursuant to Section 12(g) of the Act:

Common shares without par value

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:

None

For annual reports, indicate by check mark the information filed with this Form:

Annual Information Form

Audited Annual Financial Statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period by the annual report:

264,741,621 Common Shares

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes

No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes

No

EXPLANATORY NOTE

Minera Andes Inc. (the *Corporation* or the *Registrant*) is a Canadian issuer eligible to file its annual report pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the *Exchange Act*) on Form 40-F pursuant to the multi-jurisdictional disclosure system of the Exchange Act. The Corporation is a foreign private issuer as defined in Rule 3b-4 under the Exchange Act. Equity securities of the Corporation are accordingly exempt from Sections 14(a), 14(b), 14(c), 14(f) and 16 of the Exchange Act pursuant to Rule 3a12-3.

PRELIMINARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

The information presented or incorporated by reference in this Annual Report on Form 40-F contains both historical and prospective statements concerning Minera Andes Inc. and its operations. Historical statements are based on events that have already happened; examples include the reported financial and operating results, descriptions of pending and completed transactions, and management and compensation matters. Prospective statements, on the other hand, are based on events that are reasonably expected to happen in the future; examples include the timing of projected operations, the likely effect or resolution of known contingencies or other foreseeable events, and projected operating results. In this Annual Report, Minera Andes Inc. is referred to as Minera Andes , we , our , and the Corporation .

Prospective statements (which are known as forward-looking statements under the Private Securities Litigation Reform Act of 1995) may or may not prove true with the passage of time because of future risks and uncertainties. Significant financial, operational, governmental and regulation, and market risks are described in our Annual Information Form and Management s Discussion and Analysis.

NOTE TO UNITED STATES READERS -

DIFFERENCES IN UNITED STATES AND CANADIAN REPORTING PRACTICES

The Corporation is permitted, under a multi-jurisdictional disclosure system adopted by the United States Securities and Exchange Commission (the SEC), to prepare this Annual Report on Form 40-F in accordance with Canadian disclosure requirements, which are different from those of the United States (U.S.). The Corporation prepares its consolidated financial statements, which are filed with this report on Form 40-F, in accordance with Canadian generally accepted accounting practices (GAAP), and they may be subject to Canadian auditing and auditor independence standards. They may not be comparable to consolidated financial statements of the United States companies. Significant differences between Canadian GAAP and United States GAAP are described in Note 13 of the comparative audited consolidated financial statements of the Corporation.

DISCLOSURE CONTROLS AND PROCEDURES

After evaluating the effectiveness of the Corporation s disclosure controls and procedures as required by Exchange Act Rule 13a-15(b) and Rule 15d-15(b), the Chief Executive Officer and Chief Financial Officer of the Corporation have concluded that, as of the end of the Corporation s fiscal year covered by this Form 40-F Annual Report, the Corporation s disclosure controls and procedures were adequately designed and effective to ensure that material information required to be disclosed by the Corporation in the reports that it files or submits to the SEC under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the applicable rules and

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forms, and accumulated and communicated to the Corporation's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow time for accurate and timely decisions regarding required disclosure.

**MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL
OVER FINANCIAL REPORTING**

The Corporation's management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. The Corporation's system of internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP in Canada and in the United States.

Management recognizes that effective internal control over financial reporting may nonetheless not prevent or detect all possible misstatements or frauds. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management has evaluated the effectiveness of the Corporation's internal control over financial reporting as of December 31, 2009 based on the criteria set forth in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that, as of December 31, 2009, the Corporation's internal control over financial reporting was effective and no material weaknesses were discovered.

RESOURCE AND RESERVE ESTIMATES

The Corporation's Annual Information Form (AIF) filed as Exhibit 99.1 to this annual Report on Form 40-F has been prepared in accordance with the requirements of the securities laws in effect in Canada, which differ from the requirements of United States securities laws. National Instrument 43-101- *Standards of Disclosure for Mineral Projects* (NI 43-101) is a rule of the Canadian Securities Administrators which establishes standards for all public disclosure an issuer makes of scientific and technical information concerning mineral projects. These standards differ significantly from the requirements of the SEC, and reserve and resource information incorporated by reference herein may not be comparable to similar information disclosed by U.S. companies. One consequence of these differences is that reserves calculated in accordance with Canadian standards may not be reserves under the SEC standards.

The terms mineral reserve, proven mineral reserve and probable mineral reserve are Canadian mining terms defined in accordance with the Canadian Institute of Mining, Metallurgy and Petroleum (the CIM) in the *CIM Standards on Mineral Resources and Mineral Reserves*, adopted by the CIM Council, as the same may be amended from time to time by the CIM. These definitions differ from the definitions in the SEC Industry Guide 7.

Under U.S. standards mineralization may not be classified as a reserve unless a determination has been made that the mineralization could be economically and legally produced or extracted at the time the reserve determination is made.

Under SEC Industry Guide 7 standards, a Final or Bankable feasibility study is required to report reserves, the three-year historical average precious metals prices are used in any reserve or cash flow analysis to designate reserves and the primary environmental analysis or report must be filed with the appropriate governmental authority.

In addition, the terms mineral resource , measured mineral resource , indicated mineral resource and inferred mineral resource are defined in and required to be disclosed by NI 43-101; however, these terms are not defined terms under SEC Industry Guide 7 and normally are not permitted to be used in reports and registration statements filed with the SEC. Investors are cautioned not to assume that any part or all of the mineral deposits in these categories will ever be converted into reserves. Inferred mineral resources have a great amount of uncertainty as to their existence, and great uncertainty as to their economic and legal

feasibility. It cannot be assumed that all or any part of an inferred mineral resource will ever be upgraded to a higher category.

Under Canadian rules, estimates of inferred mineral resources may not form the basis of feasibility or pre-feasibility studies, except in rare cases. Investors are cautioned not to assume that all or any part of an inferred mineral resource exists or is economically or legally mineable. Disclosure of contained ounces in a resource is permitted disclosure under Canadian regulations; however, the SEC normally only permits issuers to report mineralization that does not constitute reserves by SEC standards as in place tonnage and grade without reference to unit measures.

Accordingly, information contained in this report and the documents incorporated by reference herein containing descriptions of our mineral deposits may not be comparable to similar information made public by U.S. companies subject to the reporting and disclosure requirements under U.S. federal securities laws and the rules and regulations thereunder.

ANNUAL INFORMATION FORM

For our Annual Information Form for the fiscal year ended December 31, 2009, see Exhibit 99.1 to this Annual Report on Form 40-F, which is incorporated by reference herein.

AUDITED ANNUAL FINANCIAL STATEMENTS AND MANAGEMENT'S DISCUSSION AND ANALYSIS

For our Audited Consolidated Financial Statements, including the Report of Independent Registered Chartered Accountants with respect thereto, and the Corporation's Management's Discussion and Analysis for the fiscal year ended December 31, 2009, see Exhibits 99.2, 99.3 and 99.4 to this Annual Report on Form 40-F, which are incorporated by reference herein. The Corporation's financial statements have been prepared in accordance with Canadian GAAP and have been reconciled to United States GAAP in Note 13 to the financial statements.

ATTESTATION REPORT OF THE REGISTERED CHARTERED ACCOUNTING FIRM

As an accelerated filer, the Corporation is required to provide an auditor's attestation on internal controls over financial reporting.

KPMG LLP, the independent registered chartered accountants that audited the Corporation's consolidated financial statements as of December 31, 2009, has expressed its opinion on the effectiveness of the Corporation's internal control over financial reporting as of such date. For a copy of KPMG LLP's attestation report for the fiscal year ended December 31, 2009 is filed as Exhibit 99.3 and incorporated in this Annual Report on Form 40-F.

NOTICES PURSUANT TO REGULATION BTR

Not applicable.

AUDIT COMMITTEE

The Board has a separately designated standing Audit Committee established in accordance with Rule 10A-3 under the Exchange Act and the rules of the NYSE Amex. (The Corporation is not listed on the NYSE Amex or required to comply with their requirements). The members of the Corporation's Audit Committee are identified on page 86 of the Annual Information Form, attached herewith as Exhibit 99.1 and incorporated by reference. In the opinion of the Board, all members of the Audit Committee are

independent (as determined under Rule 10A-3 of the Exchange Act and the rules of the NYSE Amex) and are financially literate.

Audit Committee Financial Expert

Allan Marter serves as a member of the audit committee of the Corporation's Board of Directors. The Board of Directors has reviewed the definition of "audit committee financial expert" under item 8(a) of General Instruction B to Form 40-F and determined that Mr. Marter satisfies the criteria for an audit committee financial expert under the Exchange Act. The SEC has indicated that the designation of Mr. Marter as an audit committee financial expert does not make him an "expert" for any purpose, impose any duties, obligations or liability on Mr. Marter that are greater than those imposed on members of the audit committee and board of directors who do not carry this designation or affect the duties, obligations or liability of any other member of the audit committee. Mr. Marter is "independent" as defined in Section 803 of the listing standards of NYSE Amex Company Guide (the Company is not listed on the NYSE Amex or required to comply with their requirements).

Audit Committee Charter

The Corporation's Audit Committee charter is available in print to any shareholder who provides the Corporation with a written request to Chief Financial Officer, 99 George Street, 3rd Floor, Toronto, Ontario M5A 2N4. A copy of the Audit Committee charter is also attached as Schedule A to the Company's Annual Information Form which is filed as Exhibit 99.1 and incorporated by reference into this annual report on Form 40-F.

CODE OF ETHICS

On March 31, 2009 our Board of Directors adopted a Code of Business Conduct and Ethics ("Code") that applies to the Corporation's employees, officers and directors. The Code was subsequently amended on March 29, 2010. A copy of the Code has been filed as Exhibit 99.5 to this Annual Report on Form 40-F.

The Code contains written standards that are intended to deter wrongdoing and to promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely, and understandable disclosure in reports and documents that the Corporation files with, or submits to, the SEC and in other public communications made by the Corporation; compliance with applicable governmental laws, rules and regulations; the prompt internal reporting of violations of the Code; and accountability for adherence to the Code.

OFF-BALANCE SHEET ARRANGEMENTS

We have no off-balance sheet arrangements that have, or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

PRINCIPAL ACCOUNTING FEES AND SERVICES INDEPENDENT AUDITORS

BDO Dunwoody LLP (BDO) of Vancouver, British Columbia resigned as auditors of the Corporation effective September 29, 2009. KPMG LLP (KPMG), of Toronto, Ontario were appointed as the independent auditors of the Corporation by the board effective that same date, and acted as auditor for the fiscal year ended December 31, 2009. See page 87 of the Registrant's Annual Information Form, which is attached hereto as [Exhibit 99.1](#), for the total amount billed to the Corporation by, or the estimated total fees of, KPMG LLP for services performed in respect of the last two fiscal years by category of service (for audit fees, audit-related fees, tax fees and all other fees).

**PRE-APPROVAL OF AUDIT AND NON-AUDIT SERVICES PROVIDED BY
INDEPENDENT AUDITORS**

See page 96 of the Corporation's Annual Information Form incorporated by reference to this Annual Report as Exhibit 99.1.

CONTRACTUAL OBLIGATIONS

See page 10 of the Corporation's Management's Discussion and Analysis, incorporated by reference to this Annual Report on Form 40-F as Exhibit 99.4.

UNDERTAKING

The Corporation undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the SEC staff, and to furnish promptly, when requested to do so by the SEC staff, information relating to the securities registered pursuant to Form 40-F, the securities in relation to which the obligation to file an annual report on Form 40-F arises, and transactions in such securities.

CONSENT TO SERVICE OF PROCESS

The Registrant filed an Appointment of Agent for Service of Process and Undertaking on Form F-X with respect to the class of securities in relation to which the obligation to file the Form 40-F arises.

Any change to the name or address of the agent for service of process of the Registrant shall be communicated promptly to the Commission by an amendment to the Form F-X referencing the file number of the Registrant.

SIGNATURES

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40-F and has duly caused this annual report to be signed on its behalf by the undersigned, thereto duly authorized.

MINERA ANDES INC.

Registrant

By: /s/ Robert R. McEwen
President and Chief Executive Officer

March 29, 2010

By: /s/ Henry A. John
Principal Accounting and Financial Officer

March 29, 2010

EXHIBIT INDEX

| Exhibit | Description |
|----------------|--|
| 99.1 | Annual Information Form |
| 99.2 | Audited Consolidated Financial Statements |
| 99.3 | Report of Independent Licensed Public Accountants KPMG LLP |
| 99.4 | Report of Independent Licensed Public Accountants BDO Canada LLP |
| 99.5 | Management's Discussion and Analysis |
| 99.6 | Code of Business Conduct and Ethics |
| 99.7 | Consent of BDO Canada LLP |
| 99.8 | Consent of KPMG LLP |
| 99.9 | Chief Executive Officer's Section 302 Certification |
| 99.10 | Chief Financial Officer's Section 302 Certification |
| 99.11 | Chief Executive Officer's Section 906 Certification |
| 99.12 | Chief Financial Officer's Section 906 Certification |
| 99.13 | Consent of Fred H. Brown, San José Report Author |
| 99.14 | Consent of Alfred Hayden, San José Report Author |
| 99.15 | Consent of Kirstine Mallach, San José Report Author |
| 99.16 | Consent of Antoine Yassa, San José Report Author |
| 99.17 | Consent of Eugene Puritch, San José Report Author |
| 99.18 | Consent of James Pearson, San José Report Author |
| 99.19 | Consent of Randolph P. Schneider, Los Azules Report Author |
| 99.20 | Consent of Robert Sim, Los Azules Report Author |
| 99.21 | Consent of Bruce C. Davis, Los Azules Report Author |
| 99.22 | Consent of William L. Rose, Los Azules Report Author |
| 99.23 | Consent of Scott C. Elfen, Los Azules Report Author |