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## Emerging Practices: Climate Change Issues May Result in Increased SEC Disclosures

Client Alert

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Potential climate change and the regulatory responses to it are creating material risks and opportunities. Some public companies are or will be required to disclose these risks and opportunities in their filings under U.S. Securities Exchange Commission (SEC) Regulation S-K. Others are voluntarily choosing to report them. Whether reporting is mandatory or optional for your company, you need to be aware of climate change and its implications for corporate disclosure.

### Mandatory Reporting Under Current SEC Requirements

The non-financial disclosure requirements of Regulation S-K that potentially are applicable to climate change-related impact on companies are:

- Item 101 (Business), which requires the disclosure of “material effects” that governmental regulations or probable regulations would have on the company’s business, including material costs of complying with environmental laws and, in the case of companies in the renewable energy or energy efficiency sectors, increased demand for products and services;
- Item 103 (Legal Proceedings), which requires disclosure of certain legal proceedings relating to environmental compliance issues; and
- Item 303 (MD&A), which requires disclosure of any “currently known trends” relating to climate change as well as the actual impact climate change may have on your company.

If climate change is reasonably likely to have a material impact on your company’s future financial performance, then you should develop a climate change disclosure policy and include a disclosure on climate change in the periodic reports that you file with the SEC.

### Voluntary Disclosure

In 2008, many public companies included disclosures in risk factors regarding climate change and related current and expected regulations in their SEC filings. Examples of these disclosures included discussion of:

- Business risk such as increased regulation of green house gas (GHG) emissions resulting in greater costs and permitting delays; public opinion regarding climate change reducing demand for company products; and increased difficulties financing facilities that emit GHG.
- Regulatory risk, including future regulation such as a mandate on reductions in GHG emissions.
- Litigation risk arising from recent civil enforcement actions asserting that GHG emissions constitute a public and private nuisance.

### Practical Guidance

Examine your company’s climate change obligations, if any, and consider what disclosures are appropriate. Involve key members of the company’s disclosure personnel, such as the company’s securities counsel and environmental, safety and health advisors as well as government relations personnel in discussions about possible climate change disclosures. Finally, be aware of the potential benefits and hazards of mandatory and voluntary reporting.

If you have any questions or would like additional information, please feel free to contact your Michael Best & Friedrich attorney or any of the following attorneys:

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