

SEC Speaks on Climate Change Disclosure Obligations

The federal Securities and Exchange Commission (“SEC”) approved today an interpretive release focusing on disclosure of climate change issues in public filings. Although the release itself has not yet been published, the SEC has made it clear that all companies need to review and analyze their public disclosure now to ensure full compliance with existing SEC rules and regulations in light of climate change risks.

What has Changed? The release does not change or add to any existing SEC disclosure obligations, which already mandate disclosure of any risks that are material to a company. Of particular importance, the SEC confirmed that the need for climate change disclosure will continue to be governed by the existing and well-established “materiality” standard – a substantial likelihood that a reasonable investor would view the information as important when making an investment decision. The release is, according to SEC Chairman Mary Schapiro, “merely intended to provide clarity and enhance consistency.”

Content of Release. The SEC went to great lengths to point out that it is not taking a stance on the existence, cause or severity of climate change itself. Instead, the release will highlight and provide examples of climate change developments that might result in the need for disclosure. Specifically, the release will discuss the need to analyze and potentially disclose, if material:

- The impact of existing and pending legislation, regulation, litigation, international accords and treaties dealing with climate change.
- The actual and potential indirect consequences and opportunities of climate change on a company’s business and operations, such as a change in demand for particular products or an increase in competition.
- The actual and potential physical impacts of climate change on a company’s business, such as damage to property.

There were several comments made by SEC commissioners (some speaking in favor of the release and some opposed in the 3-2 vote) that are worth noting:

- *If in Doubt...* Although the well-established standards of materiality are not changed, companies should, consistent with language in relevant Supreme Court decisions discussing materiality, resolve doubts in favor of disclosure.
- *Enough Information?...* Although one commissioner specifically noted that the release does not require the disclosure of a company’s carbon footprint, another commissioner noted that management needs to consider whether it has an effective system for collecting information, including whether it has sufficient information about the company’s greenhouse gas emissions, to permit it to evaluate the impact of climate change legislation or regulation on its business.
- *MD&A?...* Although disclosure is potentially required under several SEC rules, particular attention should be paid to the requirement to disclose known trends, events and uncertainties

under Management's Discussion and Analysis.

- *Reputational Risks?*... The indirect risk to a company's business operations or financial condition resulting from reputational damage arising out of the public's perception of its greenhouse gas emissions should be carefully analyzed and potentially specifically discussed, although one commissioner noted that this risk could be speculative.
- *Voluntary Disclosures?*... If a company voluntarily discloses information about its carbon emissions or climate risks elsewhere, has it reviewed those disclosures carefully in light of its SEC obligations?
- *More to Come?*... Disclosure will be monitored and additional steps may be taken by the SEC in the future.

We will provide additional information and analysis as soon as the release is issued to the public.

For a summary of the existing rules on disclosure of environmental matters in SEC filings, please see our in-depth memo on the topic, [Environmental Disclosure in SEC Filings](#).

The SEC's press release is available [here](#).

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