



McGuireWoods News

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Climate Change Disclosure: Out with the Old; In with the New?

McGuireWoods LLP Releases Baseline Survey Results on 2008 Disclosures; Discusses Influences Affecting 2009 Disclosures

Climate change disclosure practices of U.S. public companies have become the subject of considerable discussion over the past several years. However, the Securities and Exchange Commission has not yet called for any specific disclosures regarding climate change-related risks and opportunities, or the topic of greenhouse gas ("GHG") emissions and their regulation, nor has it provided interpretative guidance regarding the application of existing disclosure requirements to these topics. Instead, these disclosures are governed by more general requirements to discuss material aspects of the reporting company's business or known trends, future events or uncertainties that will, or are reasonably likely to, materially affect that business.

Knowing the intense interest in the topic, and wishing to assist our clients and others in understanding the environment in which their climate change disclosure decisions are being made, McGuireWoods LLP conducted a broad-based review of climate change disclosures made in annual reports on Form 10-K during 2008.

We reviewed the 2008 10-K filings of approximately 350 companies included in the S&P 500, S&P MidCap 400 and S&P SmallCap 600 indices across all ten industry sectors represented in these indices: consumer discretionary, consumer staples, energy, financial, health care, industrials, information technology, materials, telecommunication services and utilities.

We looked at whether each company made disclosure in its 2008 10-K addressing one or more of the following issues:

- Amount of its GHG emissions;
- Impacts/risks related to current or proposed GHG regulations;
- Impacts/risks related to the physical effects of climate change;
- Legal proceedings regarding GHG emissions or climate change; and
- Efforts related to reducing GHG emissions or climate change.

If a company made one or more disclosures of these types in its 10-K, we also noted where in the 10-K the disclosure was made, for example, in the business description, risk factors or management's discussion and analysis of financial condition and results of operations.

Finally, we looked at whether each company's website contained significant and prominent, company-specific information regarding climate change or GHG emissions.

The clear picture that emerges from our review is that through 2008 very few companies outside the energy and utility industries made any type of climate change or GHG emissions-related disclosures in their SEC reports. We believe that the increased pressure for voluntary, and sometimes not-so-voluntary, disclosures is likely to change this state of affairs in 2009. We also note that while disclosures in SEC reports to date have been rather infrequent, there are many public companies making voluntary disclosures in other forums about the climate change-related risks they face or their GHG emissions. This apparent inconsistency suggests that a review of these voluntary disclosures should be conducted as part of a company's disclosure controls and procedures for preparation of future periodic reports filed with the SEC.

The results of our climate change and GHG disclosure review are presented in an [online article](#).

McGuireWoods LLP regularly assists both large and small public companies in connection with disclosure and compliance matters under the federal securities laws, and is actively engaged in monitoring developments in these areas. Our Climate Change Practice Group is made up of seasoned practitioners and consultants from our environmental, energy, corporate and securities, capital markets, litigation and government relations departments. We are available to assist with climate change and GHG disclosure matters for our public clients.

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