Corporate

SEC Adopts Interpretive Guidance About Climate Change for Public Companies

On January 27, 2010, the Securities and Exchange Commission ("SEC") voted to adopt interpretive guidance addressing public company disclosure standards in connection with climate change.

Although the actual interpretive guidance has not yet been published, the SEC has stated that it is not establishing new legal requirements or modifying existing rules. Rather, the interpretive guidance is intended provide greater clarity and consistency by consolidating various existing standards under the federal securities laws which potentially are triggered by climate change. In particular, climate-related disclosure may be contained in the Business, Legal Proceedings, Risk Factors, and Management's Discussion and Analysis sections of periodic reports and registration statements filed by public companies. Ultimately, as affirmed by the SEC, disclosure regarding climate change will continue to be governed by the well-established "materiality" standard.

Among the disclosure areas the forthcoming interpretive guidance will address, according to the SEC press release, are the following:

- **Impact of Legislation and Regulation:** When assessing potential disclosure obligations, a company should consider whether the impact of certain existing laws and regulations regarding climate change is material. In certain circumstances, a company should also evaluate the potential impact of pending legislation and regulation related to this topic.
- **Impact of International Accords:** A company should consider, and disclose when material, the risks or effects on its business of international accords and treaties relating to climate change.
- **Indirect Consequences of Regulation or Business Trends:** Legal, technological, political and scientific developments regarding climate change may create new opportunities or risks for companies. For instance, a company may face decreased demand for goods that produce significant greenhouse gas emissions or increased demand for goods that result in lower emissions than competing products. As such, a company should consider, for disclosure purposes, the actual or potential indirect consequences it may face because of climate change-related regulatory or business trends.
- **Physical Impacts of Climate Change:** Companies should also evaluate for disclosure purposes the actual and potential material impacts of environmental matters on their business.

The SEC's action is consistent with its recent focus on risk management by public companies. While this interpretive guidance is not intended to impose new standards, it does serve as an important reminder for public companies, potentially as part of their disclosure controls and procedures, to assess whether climate change may have a material impact upon their business and financial condition.

It is worth noting that the SEC's interpretive guidance comes partly in response to several petitions since 2007 from institutional investor and advocacy organizations. Additionally, the New York Office of the Attorney General in recent years has entered into agreements with various utility companies requiring disclosure of their carbon emissions and strategies to reduce or offset those emissions. Given the SEC's high-profile stamp of authority on this topic, public companies should expect a greater focus by the SEC staff and third-party observers in reviewing and evaluating disclosure practices about the material impact of climate change.

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For more information on the SEC's interpretive guidance and the legal consequences of climate change, contact one of the Reed Smith's securities or environmental attorneys listed below, or your regular Reed Smith attorney.

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