



CLIMATE CHANGE UPDATE

Climate Change Practice

Sidley has advised clients on environmental and sustainable development matters for decades. This work includes due diligence for multinational transactions, advising companies on environmental requirements associated with doing business, and assisting clients with designing and implementing environmental management systems. Sidley advises clients on climate change issues such as carbon trading, international trade consequences of various regulatory regimes, and alternative energy projects, and represents clients in related litigation. The group's experience extends to global supply chain management and product stewardship issues, including restrictions on product content, packaging and labeling (e.g., the EU's REACH, ROHS/WEEE and ELV requirements).

For further information on our Practice, please contact:

David T. Buente
+1.202.736.8111
dbuente@sidley.com

Robert M. Olian
+1.312.853.7208
rolian@sidley.com

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New Voluntary Guidance for Climate Change Financial Disclosures

On April 1, 2010, ASTM International, an organization that develops voluntary standards, released its Standard Guide for Financial Disclosures Attributed to Climate Change (E2718-10) ("Guide"). The Guide is designed to assist companies identify material financial impacts arising from climate change that may be disclosed in financial statements and draft appropriate disclosure.

The Guide is intended for voluntary use by reporting entities, and makes clear that it seeks to supplement regulatory disclosure requirements. The Guide does not purport to advise reporting entities about their legal obligations or to link its disclosure concepts to Generally Accepted Accounting Principles or requirements of the Securities and Exchange Commission ("SEC"). While the SEC's Interpretive Release on Climate Change Disclosure (Feb. 2010) ("SEC Release") provides guidance for companies to meet disclosure obligations under Regulation S-K, there has been no specific regulatory pronouncement on financial statement implications of climate change. Due to the lack of a direct connection between the Guide and regulatory requirements, it is unclear how U.S. reporting entities will use the Guide, other than to assist them with voluntary climate change activities.

"Financial Impacts Attributed to Climate Change" and "Financial Statements"

The Guide focuses on when and how users may disclose material "financial impacts attributed to climate change" in "financial statements." It describes "financial impacts attributed to climate change" as encompassing material financial impacts on a reporting entity arising from climate change, including actual or anticipated regulatory burdens, changes in market conditions and physical harm to assets. The types of climate change-related impacts identified in the Guide include the same types of climate change-related impacts the SEC Release urges registrants to consider when making disclosure in SEC filings.

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The categories of “financial statements” in which the Guide contemplates disclosure are broader than those found in SEC filings. The Guide defines them to include statements outside of SEC filings, statements associated with transactions such as financings and acquisitions, and reports to shareholders.

Is Disclosure Advisable?

To assist users in determining when disclosure of “financial impacts attributed to climate change” may be appropriate, the Guide lists several examples of major climate change–related circumstances that may result in financial impacts. The examples include:

- costs for complying with greenhouse gas emission laws;
- anticipated changes in the availability or price of resources needed by a reporting entity;
- anticipated changes in corporate assets resulting from physical changes attributable to climate change, such as increases in the severity of storms;
- contracts in which a company accepts responsibility for climate change risk, such as insurance policies; and
- claims against a company for alleged climate change liability.

When a company identifies a financial impact attributable to climate change, the Guide advises it to determine whether: (1) the likelihood of the impact occurring is more than remote; (2) the impact could have a major effect on the reporting entity’s normal operations or finances; and (3) the impact is anticipated to occur within twelve months. If these conditions are met, the Guide directs the reporting entity to estimate the probability,

effect and timing of the anticipated impact on the company’s financial position. According to the Guide, the reporting entity should assess whether climate change impacts are material, on an aggregate basis, and if they are, they should be disclosed.

What is Disclosed?

The Guide counsels that disclosure of the material financial impacts of climate change should include a variety of different types of information such as:

- a description of management’s assessment of positive and negative financial impacts on the reporting entity arising from climate change;
- applicable climate change regulatory requirements and their financial impact; and
- the methodology used to quantify the financial impacts and the uncertainties and assumptions associated with the measurement of data.

The Guide also advises that if a reporting entity thinks it will incur financial impacts because of climate change but cannot quantify them, it should disclose why they cannot be quantified.

Practical Implications

Companies considering whether and how to disclose the impacts of climate change in their financial statements may choose to consult the Guide for assistance. Reporting entities, though, should be mindful that the Guide is intended for use on a voluntary basis and is not designed to assist them fulfill their legal obligations.

If you have questions about any of these items, please contact one of the lawyers listed above or your regular Sidley Austin LLP contact.

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