Climate Change Disclosure: SEC Announces Interpretive Guidance for Public Companies

On January 27, 2010, the Securities and Exchange Commission announced the adoption of interpretive guidance related to climate change disclosure for publicly traded companies. This Update answers questions based on the SEC's press release and related open meeting, and offers practical advice. Upon publication of the SEC's interpretive release, which is expected to occur soon, we will issue an additional Update with further guidance.

What Are the Key Issues the New SEC Interpretive Release Will Address?

The SEC's interpretive guidance is intended to clarify when existing disclosure requirements obligate a company to disclose the effects of business or legal developments related to climate change. In its press release, the SEC identified the following areas related to climate change that companies should consider when assessing disclosure obligations:

- **Existing and Pending Legislation and Regulation.** Whether existing laws and regulations regarding climate change have a material effect on a company and the potential impact to the company of any pending legislation and regulation related to climate change.
- **International Accords.** Any risks or effects on a company's business due to international accords and treaties relating to climate change.
- **Indirect Consequences of Regulation or Business Trends.** Whether legal, technological, political and scientific developments regarding climate change create new opportunities or risks for a company.

As an example, the SEC suggested that a company could experience decreased demand for goods that produce significant greenhouse gas emissions or, conversely, increased demand for goods that result in lower emissions than competing products. In these instances, a company should evaluate whether it needs to disclose the actual or potential indirect consequences to the company of these climate change-related regulatory or business trends.

- **Physical Impacts of Climate Change.** Whether the actual or potential effects from changes to the climate or environment are material to a company's business.

What Are the Relevant SEC Disclosure Requirements?

The SEC's interpretive guidance will cover the following disclosure requirements under federal securities laws:

- **Business Description.** Item 101 of Regulation S-K under the Securities Act requires disclosure of the material effects that compliance with environmental laws may have on capital expenditures, earnings or the competitive position of a registrant.
- **Legal Proceedings.** Item 103 of Regulation S-K requires disclosure of material legal proceedings, which includes environmental matters.
- **Management's Discussion and Analysis.** Item 303 of Regulation S-K requires disclosure of known trends, uncertainties or events that will or are reasonably likely to materially affect a company's financial condition or results of operations.
- **Risk Factors.** Item 503 of Regulation S-K requires a discussion of significant factors, including environmental factors, that make an investment in a company speculative or risky.
Practical Tip

While waiting for the SEC to release its interpretive guidance, companies should begin the process of assessing their resources and possible disclosure obligations.

- **Analyze the Impact to the Company Related to the SEC's Key Issues.** Companies should analyze the possible effects of climate change, in light of the key issues identified by the SEC, on their business and financial condition, including future capital requirements, results of operations and future prospects.

- **Use Analysis to Evaluate Climate Change Disclosure.** Companies should compare the results of this analysis to their existing disclosure to determine whether it adequately discloses any material effects of climate change.

Additional Information

This Update summarizes the SEC's announcement of new guidance on climate change-related disclosure. You can read the full text of the press release on the SEC's Web site.

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