<u>SEC adds Climate Change to Required Disclosures</u>

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The Securities and Exchange Commission on January 27, 2010 voted to issue guidance on SEC disclosure requirements for companies on the impact that "climate change may have on its business."

As an Interpretive Guidance of existing SEC disclosure requirements, this edict is effective immediately upon publishing in the Federal Register (February 2, 2010), including for public companies currently preparing annual 10-K reports for the year ending December 31, 2009.

Federal securities laws and SEC regulations require certain disclosures by public companies for the benefit of investors. From time to time, to assist those who provide such disclosures, the Commission provides guidance on how to interpret the disclosure rules on topics of interest to the business and investment communities.

The interpretive release approved last week provides guidance, for the first time, on certain existing "disclosure rules that may require a company to disclose the impact that business or legal developments related to climate change may have on its business." The relevant rules cover a company's risk factors, business description, legal proceedings, and management discussion and analysis.

Speaking in advance of the divided 3 to 2 vote, SEC Chairman Mary Schapiro said, *"The Commission is not making any kind of statement regarding the facts as they relate to the topic of 'climate change' or 'global warming'. And we are not opining on whether the world's climate is changing, .."*

With that bit of politics dealt with, the SEC's interpretative guidance specifically highlights the following areas as examples of where climate change may trigger disclosure requirements:

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 due to 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.

Among the existing disclosure rules that may now advisedly trigger climate change disclosures, the SEC casts a broader, more subjective interpretation of its requirements for 'management discussion and analysis' disclosures, which practically require the company to disclose "currently known trends, events, and uncertainties that are reasonably expected to have material effects."

What is clear from the SEC examples above is that these required disclosures are not limited to automobile manufactures and electricity generating utilities , but rather apply to a broad breadth of industries, including by way of example, real estate (i.e., if only as an indirect consequence of buildings accounting for 72% of the electricity consumption in the U.S.).

Additionally, disclosure of business opportunities (from investment in green buildings, purchasing green energy and the like) may also be required and may be advantageous to many companies from an investor relations and public image standpoint.

Moreover, the SEC examples of where climate change may trigger disclosure, will make it necessary that companies already making climate change disclosures consider again the scope and nature of those disclosures.

This firm would be pleased to provide clients and friends with copies of the Commission guidance when it becomes available as it is published in the Federal Register.

We have assisted public companies in matters of climate change and sustainable business practices, including voluntary environmental reports, as well as SEC disclosures and financial statement compliance. If we can assist your company, including working with your in house counsel and outside consultants, please contact Stuart Kaplow.

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