

WSGR ALERT

FEBRUARY 2010

SEC VOTES TO ISSUE GUIDANCE ON DISCLOSURE RELATED TO CLIMATE CHANGE

On January 27, 2010, in a 3-2 vote, the Securities and Exchange Commission (SEC) voted to provide public companies with interpretive guidance on existing SEC disclosure requirements as they apply to business or legal developments relating to the issue of climate change.

The SEC's press release announcing the decision (available at <http://www.sec.gov/news/press/2010/2010-15.htm>) notes that the interpretive guidance does not create new legal requirements through rule adoption, nor does it set forth new standards of materiality. Instead, the guidance highlights the following areas as examples of climate-related issues that may trigger disclosure requirements in a company's risk factors, business description, legal proceedings, or management discussion and analysis included in its filings with the SEC:

- **Impact of Legislation and Regulation:** Where the impact of existing laws or regulations, or pending legislation in certain circumstances, would be material to the company
 - **Impact of International Accords:** Where the risks or effects of international accords and treaties relating to climate change are material to a company
 - **Indirect Consequences of Regulation or Business Trends:** Where legal, technological, political, and scientific developments regarding climate change may create new opportunities or risks for companies and the actual or potential indirect consequences a company may face due to climate-change-related regulatory or business trends
- **Physical Impacts of Climate Change:** Where environmental matters have actual or potential material impacts on a company's business
- This interpretive guidance is responsive to a petition filed by investors with the SEC in 2007 (with modifications in 2008 and 2009) seeking SEC guidance for how public companies should disclose material effects from climate-linked developments in their registration statements and periodic reports filed with the SEC. Further, the issuance of the interpretive guidance comes on the heels of a number of recent regulatory developments in the area of climate change, including:
- the U.S. Environmental Protection Agency's recently enacted Endangerment Finding and reporting requirements with respect to greenhouse gas emissions;
 - the SEC's recent shift of interpretive guidance with respect to assessing excludability of risk-related shareholder proposals that implicate climate change from a company's proxy statement (please see http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert_CEO_succession.htm for a previous WSGR Alert that provides additional information on this point); and
 - the New York State Attorney General's 2007 issuance of subpoenas to five energy companies regarding the disclosure of climate risk under state securities laws, and the subsequent settlement and agreement to disclose such risks by Xcel Energy.

The text of the interpretive release containing the new disclosure guidance has not yet been made public by the SEC. We will provide additional information once the release is issued.

If you would like further information on carbon risk disclosure or greenhouse gas regulatory issues, please contact Robert G. O'Connor, Barry Kaplan, Gavin McCraley, Sheridan Pauker, or any member of your Wilson Sonsini Goodrich & Rosati team.



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