

Climate Change: SEC Issues Guidance on Disclosure

On February 2, 2010, the Securities and Exchange Commission released interpretive guidance to assist public companies on existing SEC disclosure requirements as they apply to business or legal developments related to the issue of climate change. The relevant rules cover a company's risk factors, business description, legal proceedings, and management discussion and analysis.

The SEC highlighted the following 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 regulatory or business trends related to climate change.
- **Physical Impacts of Climate Change:** Companies should also evaluate for disclosure purposes the actual and potential material impacts of environmental matters on their business.



by Jonathan S. Storper

While the SEC's latest interpretive release does not create new legal requirements nor modify existing ones, it does show the SEC is beginning to focus on the effect of climate change as a material risk issue that may need to be disclosed. The interpretive release was intended to provide clarity and enhance

consistency for public companies and investors.

We suggest that companies consider doing a climate change audit and analysis to ensure that they have taken into account the effect of climate change on their business. Private companies can expect that these issues will trickle into the contracts they enter into as suppliers in the future as well.

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