SEC to Require Companies to Disclose Global Warming Risks

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The U.S. Securities and Exchange Commission (SEC) issued interpretive guidance yesterday which requires publicly traded companies to consider the impacts of climate change – both the physical damage it could cause, as well as the economic impacts of domestic and international greenhouse gas emissions-reduction rules – and disclose those risks to investors. As we noted when discussing the potential for this announcement in October, the disclosure requirements are likely to affect companies in a wide range of industries.

In its press release announcing this decision, the SEC said that this interpretive guidance neither creates new legal requirements nor modifies existing ones; rather, SEC guidance is intended to provide consistency among issuers in their disclosure to shareholders of bottom-line risks and consequences. The guidance will cover:

- **Risk Factors**
- **Description of the Business**
- **Legal Proceedings**
- **Management's Discussion and Analysis**

The interpretive release will be published in the Federal Register and posted on the SEC's website. The press release summarizes the key points as these:

- **Impact of Legislation and Regulation:** When considering potential disclosure obligations, companies should determine whether the impact of existing laws and regulations regarding climate change is material. In some cases, companies should also evaluate the potential impact of pending legislation and regulation related to environmental issues and climate change.
- **Impact of International Accords:** Companies should consider, and disclose if material, the risks related to or effects upon their 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 both new opportunities and new risks for companies. For example, 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. Companies should consider the actual or potential indirect consequences they 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 impact of environmental matters on their business. It is not entirely clear what the SEC means by this, although one example might be agricultural risks associated with altered climate trends that appear to have reduced or increased annual rainfall in particular locales.

When the interpretive release is available, we will provide you with full information. It is likely that pressure from shareholder groups on this issue will continue, given that cap-and-trade legislation appears bogged down in Congress and that the prospects for EPA regulation under the Clean Air Act are unclear.