McDermott Will & Emery

On the Subject

Energy & Commodities Advisory

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The SEC's guidance is intended to ensure that existing disclosure rules are consistently applied by public companies in a manner that provides enhanced clarity to investors.

SEC Issues Interpretive Guidance on Climate Change Disclosure

On January 27, 2010, the U.S. Securities and Exchange Commission (SEC) voted to release interpretive guidance on existing SEC disclosure requirements relating to climate change. In her remarks, SEC Chairman Mary Schapiro clarified that the SEC's guidance is intended to ensure that existing disclosure rules are consistently applied by public companies in a manner that provides enhanced clarity to investors, and that the interpretive guidance is not an attempt by the SEC to weigh in on the existence or potential causes of global warming, or to amend well-defined SEC rules concerning public company reporting obligations or determinations of materiality.

The SEC's interpretative guidance will highlight the following areas as examples of where climate change may trigger disclosure requirements in a company's risk factors, business description, legal proceedings, and management discussion and analysis:

- Impact of Legislation and Regulation – The SEC will provide interpretive guidance for companies in evaluating the extent to which existing or pending laws and regulations regarding climate change have, or, in the case of pending laws and regulations, are likely to have, a material impact on companies' business operations and/or financial performance.
- Impact of International Accords – The SEC will provide interpretive guidance for companies to 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 – The SEC will provide interpretive guidance for companies to consider legal, technological, political and scientific developments regarding climate change that 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 as a result of climate change related regulatory or business trends.
- Physical Impacts of Climate Change – The SEC will provide interpretive guidance for companies to evaluate for disclosure purposes the actual and potential material impacts of environmental matters on their business.

The SEC's interpretive release has not yet been posted on the SEC's website. When the SEC's interpretive release is public, we will provide a more detailed analysis of the SEC's interpretive guidance and the practical impact of such guidance on public companies.

For more information, please contact your regular McDermott lawyer, or:

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