

# Corporate and Securities News

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## SEC Releases Interpretive Guidance on Public Disclosure Relating to Climate Change

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On February 2, 2010, the Securities and Exchange Commission (the "Commission") issued interpretive guidance for public companies regarding the disclosure of business and legal developments relating to climate change. While the purpose of this guidance is to clarify the existing public disclosure obligations, it highlights the Commission's heightened focus on a topic that has been the subject of intense public debate. The guidance also suggests an expectation that public companies should adopt a more rigorous approach in their examination of the issues surrounding climate change.

Public companies have long been required to disclose material business and legal developments. The existing disclosure rules applicable to climate change cover a variety of areas, including a company's business description, legal proceedings, risk factors and management's discussion and analysis. Foreign private issuers are required to make similar disclosures.

The Commission highlights the following topical areas as examples of where climate change may trigger disclosure requirements:

### 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. For example, federal, state and local provisions relating to greenhouse gas emissions that have been enacted or are likely to be enacted could significantly impact an issuer's capital expenditures for environmental control facilities. On the other

hand, if a "cap and trade" type system is put into place, issuers may be able to profit from the sale of allowances if their emissions levels are lower than their allotment.

### International Accords

A company should consider, and disclose when material, the risks or effects on its business of international accords and treaties related to climate change. For example, treaties such as the Kyoto Protocol and regulatory systems such as the European Union Emissions Trading System may already impact the activities of an issuer with operations outside of the U.S. The impact of these treaties and regulatory systems on an issuer may require disclosure.

### Indirect Consequences of Regulation or Business Trends

Legal, technical, 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 more significant greenhouse gas 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

According to the Commission, significant physical effects of climate change, such as effects on the severity of weather, sea levels, the arability of farmland and water availability and quality, have the potential to affect an issuer's operations and results. Companies should therefore evaluate for disclosure

*continued on page 2*

purposes the actual and potential material impacts of such environmental matters on their business.

The Commission devoted a large portion of the text of the interpretive guidance to an overview of how climate change might be applicable to specific non-financial disclosure rules. In light of this new interpretive guidance, we recommend that public companies conduct a careful review of the impact of climate change on their businesses and consider making disclosures related to such review. Our attorneys monitor these climate change developments and stand ready to assist clients as they evaluate the potential impact of both legislation and regulatory action.

Please [click here](#) to be directed to the text of the interpretive guidance.

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