Client Update
Environmental and Climate Change Disclosure Under the Securities Laws: A Multijurisdictional Survey

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OVERVIEW

With help from lawyers affiliated with the International Bar Association, a Debevoise team recently developed and conducted a survey of disclosure requirements with regard to environmental and climate change issues under the securities laws of participating jurisdictions. Lawyers representing 25 countries ultimately participated.

The survey focused on five issues: (i) disclosure explicitly required by securities regulators with respect to environmental issues and climate change issues, (ii) disclosure implicitly required by securities regulators with respect to environmental issues and climate change issues, (iii) the treatment of foreign issuers with regard to the above disclosure requirements, (iv) disclosures required by the accounting principles applicable to public companies and (v) trends in enforcement by securities regulators of environmental and climate change disclosure requirements.

Our findings indicate that, unsurprisingly, disclosure of environmental and climate change issues is required in all participating jurisdictions to the extent they materially affect the value of an issuer's securities. Approaches to explicit disclosure requirements on environmental issues, however, vary widely. Finally, on the topic of climate change, no participating jurisdiction imposes explicit disclosure requirements under its securities laws.

A full discussion of the survey responses, including references to responses by jurisdiction, is attached. With thanks to participants in the survey, we look forward to publication of the survey results by the International Bar Association

SUMMARY OF FINDINGS

Explicit Requirements

While there is no common approach to explicit disclosure requirements, several categories of disclosure are required in multiple jurisdictions: (a) a discussion of environmental issues or policies as they relate to an issuer's operations, (b) a Sustainability Report or environmental policy discussion by the board or management which must discuss environmental issues, (c) industry- or division-specific disclosures regarding environmental performance or compliance with applicable environmental regulations and (d) the effect of environmental issues on the company's utilization of assets disclosed as property, plant and equipment. Survey respondents from five jurisdictions indicate that there are no explicit environmental disclosure requirements. Additionally, all respondents indicate there are no explicit disclosure requirements specifically related to climate change.

Implicit Requirements

All jurisdictions surveyed require disclosure of issues material to assessing the value of an issuer's securities, which are most likely to be disclosed as part of a discussion of (a) risk factors relating to the issuer and its business, (b) trends and uncertainties that the issuer's management reasonably believes will materially affect the issuer's future performance or (c) contingent liabilities. In addition, several jurisdictions highlighted other disclosure requirements not directly related to environmental or climate change issues that may indirectly trigger disclosure of environmental and climate change risks.

Treatment of Foreign Issuers

In most jurisdictions, foreign issuers are subject to the same disclosure requirements as local issuers. Three exceptions to this rule are Canada, the United Kingdom and the United States, which offer foreign issuers flexibility based on home-country disclosure requirements.

Accounting Disclosures

Financial statement disclosure requirements across most of the surveyed jurisdictions are similar given international adoption of International Financial Reporting Standards. While only a small number of countries apply non-IFRS, local accounting standards to publicly traded companies, they represent large and growing economies.

Enforcement Actions

Respondents reported only limited recent enforcement activity by securities regulators related to environmental and climate change disclosure. In the United States, however, there have been investigations initiated by state attorneys general related to climate change disclosure.

LOOKING AHEAD

While the 2015 Paris Agreement[1] under the United Nations Framework Convention on Climate Change relies on implementation of voluntary plans by signatory countries, legislative and other actions taken in the wake of the Paris Agreement and general increased attention to climate change issues may directly or indirectly increase the focus on environmental and climate change disclosure under the securities laws. In the United States, the Securities and Exchange Commission (SEC) has seen pressure to require greater disclosure of climate change-related risks. An October 2015 letter from 35 members of the U.S. Congress expressed concern about the SEC's enforcement of its 2010 guidance on climate change disclosure. Noting that extreme weather events are expected to worsen, the signatories stated that the SEC "may need to redouble its efforts to ensure that all reporting companies are in conformance with the SEC's Climate Change Guidance."

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Please do not hesitate to contact us with any questions.

1 Paris Agreement Client Update available here.