SEC ISSUES GUIDANCE ON CORPORATE DISCLOSURE OF CLIMATE CHANGE RISKS

February 11, 2010

To Our Clients and Friends:

On February 2, 2010, the Securities and Exchange Commission (the "SEC") released interpretive guidance on the application of existing SEC disclosure requirements to climate change-related matters. The guidance does not create a new rule, regulation or legal requirement, or change the materiality standards under existing SEC rules. Rather, it is intended to provide clarity for public companies and their investors and encourage consistent application of existing rules. The guidance was approved in a three-to-two vote by the SEC Commissioners on January 27.

CLIMATE CHANGE IMPACTS COMPANIES SHOULD CONSIDER

In the interpretive release, the SEC reminds companies of existing SEC rules and regulations that may require disclosure regarding the impact of climate change. The SEC highlights the requirements under the SEC's Regulation S-K for companies to disclose costs of compliance with environmental laws, environmental litigation and government proceedings, material environmental and climate change risks impacting the company, and material trends, demands, commitments and uncertainties relating to climate change in management's discussion and analysis of financial condition and results of operations.

The SEC's guidance highlights four areas that companies should consider when assessing whether disclosure is required under the SEC's rules and regulations:

- **Impact of Legislation and Regulation.** Companies should discuss existing and pending federal, state and regional climate change initiatives and the impact of such initiatives on their business operations. Depending on the nature of a company's operations, new legislation or regulations could require that the company incur significant compliance or operational costs, including the purchase of emissions allowances or investment in new equipment to control greenhouse gas ("GHG") emissions. Conversely, such change in law could also provide new business opportunities for registrants, such as those that may be able to sell emissions allowances under proposed climate change legislation.
- **Impact of International Accords.** Although the United States has not ratified The Kyoto Protocol to the United Nations Framework Convention on Climate Change (the "Kyoto Protocol"), its standards, and the regulations of the European Union Emissions Trading System, apply to many U.S. companies with international operations. In addition to these existing international regimes, companies should consider potential material

impacts of any future climate change accord, including a potential successor agreement to the Kyoto Protocol.

- **Indirect Consequences of Regulation or Business Trends.** Legal, technological, political and scientific developments may have indirect consequences on a business, such as decreased demand for certain carbon-intensive products or increased competition to develop innovative products. Companies should consider these indirect consequences, as well as whether climate change-related issues could negatively impact a company's reputation, resulting in materially adverse consequences to its business.
- **Physical Risks.** Companies may be required to disclose actual and potential impacts of physical risks of floods, hurricanes and other natural disasters that may result from climate change. Climate-related events can affect coastal or other assets, increase the costs of key commodities and insurance coverage, impair production capabilities and disrupt a company's supply chain.

The SEC's guidance does not require disclosure of quantitative GHG emissions data or information concerning strategies for reducing GHG emissions. At the SEC's January 27 meeting to vote on the adoption of the release, Commissioner Elisse Walter emphasized that mandating such disclosure would require the adoption of an entirely new rule.

TIMING OF INTERPRETIVE GUIDANCE

The SEC's action is in part a response to calls for climate-related disclosures from institutional investors and others. Most notably, in November, a group of institutional investors managing more than $1 trillion in assets filed a supplement to a 2007 petition seeking interpretive guidance as to what climate-related material risks public companies should disclose. In addition, the New York State Attorney General has sought increased climate change disclosure, with its 2007 subpoena of executives of five major energy companies. The subpoenas, which sought information about the climate change risks faced by the companies and the adequacy of related disclosure in SEC filings, have resulted in three settlements to date.

LOOKING AHEAD

In order to address climate change risks and opportunities effectively in SEC filings, companies whose businesses are reasonably likely to be affected by climate change-related domestic and international regulation, litigation, business trends and physical effects should continue to monitor new developments in light of SEC rules. Key upcoming developments include the U.S. Senate's debate of a climate change bill, which could occur as early as this spring, and the U.S. Environmental Protection Agency's proposal to regulate certain large sources of GHG emissions by imposing permit requirements under the Clean Air Act.

The SEC plans to monitor the impact of the interpretive release on company filings as part of its ongoing disclosure review program, and will host a public roundtable on climate change

disclosure this spring. A copy of the SEC's release on climate change disclosure is available on the SEC's website at http://www.sec.gov/rules/interp/2010/33-9106.pdf.

Please feel free to contact us with any climate change disclosure questions.

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