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# SEC Issues Guidance on Climate Change Risk Disclosures

The February 8, 2010, Federal Register published the U.S. Securities and Exchange Commission's interpretive guidance to assist public companies regarding current SEC requirements as they relate to climate change (the "Guidance"). With this publication, the SEC aims to clarify the scope of, and promote consistency in, disclosures by public companies of material risks related to climate change. The Guidance is effective as of February 8, 2010. A copy of the Guidance as published in the Federal Register is available here. In its press release announcing the Guidance, the SEC noted that it neither creates new nor modifies existing legal requirements. In comments before the January 27, 2010, Open Commission Meeting on Disclosure Related to Business or Legislative Events on the Issue of Climate Change, SEC Chairman Mary Schapiro said the SEC is "not considering amending well-defined rules concerning public company reporting obligations, nor redefining long-standing interpretations of materiality." She emphasized that the SEC is not "opining on whether the world's climate is changing; at what pace it might be changing; or due to what causes." Rather, Schapiro stated the purpose of the Guidance is to assist "public companies in determining what does and does not need to be disclosed." A copy of the SEC's press release is available here and a copy of Chairman Schapiro's remarks are available here. Existing SEC reporting requirements require that a company report "material" information regarding environmental liabilities when describing its business, identifying pending legal proceedings, disclosing significant risk factors, and discussing management's financial condition and results of operation. The Guidance highlights four areas where climate change may trigger disclosure obligations consistent with existing SEC requirements as follows:

- **Impact of Legislation and Regulation:** A company should consider whether existing laws on climate change have material impacts. For pending legislation, it should consider whether the legislation may have a material effect on the company, unless the pending legislation is not reasonably likely to be enacted. Examples from the Guidance of what could be material include regulations that significantly affect costs or profits from allowances or credits in "cap and trade" systems or the costs to improve facilities to reduce emissions.?
- **Impact of International Accords:** Material risks or effects of climate change treaties and international accords should be considered. The Kyoto Protocol and the EU Emission Trading System are examples provided in the Guidance.
- **Indirect Consequences of Regulation or Business Trends:** New risks and opportunities may arise from legal, technical, political, and scientific developments related to climate change. Examples in the Guidance include demand shifts from goods producing significant greenhouse gas emissions to those with competitively low emissions and increased demand for renewable energy.
- **Physical Impacts of Climate Change:** Risks from physical impacts of climate change may be associated with severe weather, sea levels, arability of farmland, and water availability and quality. Damage or destruction of physical facilities, disruptions in manufacturing and distribution, and increases in insurance premiums and deductibles are examples provided in the Guidance.

Reflecting the highly visible national, as well as international, debate on climate change, the SEC's release of the Guidance is but one of a series of recent legislative, regulatory, and judicial developments in the United States. A copy of Day Pitney's most recent summary of developments is available here. While a number of public companies have been voluntarily reporting climate change-related risks for some time, in response to the Guidance, all public companies will likely reexamine the disclosures they have been providing regarding climate change.