

Environmental Alert

June 8, 2016

If you read one thing ...

- The Securities and Exchange Commission (SEC) is seeking public comments on potential revisions to its rules governing registrant disclosure requirements addressing, among other things, environmental and climate change issues.
- The SEC appears to be responding, in part, to a growing demand among nongovernmental organizations for increased environmental and climate change disclosure, which, if unchecked, could increase industry's regulatory burdens significantly.
- Interested parties have until July 21, 2016, to weigh in on the costs and benefits of providing such disclosure.



Deadline Approaching: SEC Seeks Industry Comments on Business and Financial Disclosure Requirements, Including Environmental and Climate Change Issues

On April 22, 2016, the Securities and Exchange Commission (SEC) published a [Concept Release](#) seeking public comments on potential revisions to Regulation S-K, the SEC's principal rules governing disclosure requirements for registration statements and periodic and current reports. The Concept Release appears to respond, in part, to a growing demand among nongovernmental organizations for increased disclosure requirements concerning environmental and climate change matters which, if unchecked, could increase industry's regulatory burdens significantly. Interested parties now have an opportunity to comment on the disclosure requirements, including whether the requirements appropriately balance the costs of disclosure with the benefits. The deadline for submitting comments is July 21, 2016.

Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, all publicly traded companies must provide investors with information to make informed investment and voting decisions. Regulation S-K was adopted in 1977 to foster uniform and integrated disclosure for registration statements and periodic and current reports under both acts. Since Regulation S-K's adoption, the SEC has revised the disclosure requirements on numerous occasions, often expanding the requirements to ensure that investors have sufficient, material information for their investment and voting decisions.

For example, pursuant to Item 101(c)(1)(xii) of Regulation S-K, a registrant must disclose the material effects that compliance with environmental laws may have on its capital expenditures, earnings and competitive position, as well as any material estimated capital expenditures for the remainder of the fiscal

year, the succeeding fiscal year and such future periods that the registrant deems material. In its Concept Release, the SEC solicits information about whether such environmental disclosure continues to be important to investors, whether such disclosure obligations should be increased or reduced, and whether the SEC should implement a specific format for this environmental disclosure. The Concept Release also seeks input on whether bright-line disclosure obligations, such as for environmental proceedings exceeding \$100,000, should be utilized or whether a “materiality” standard is more appropriate.

The SEC’s Concept Release acknowledges increased attention to climate change issues, contemplating potential amendments and/or expansion of the existing disclosure obligations. First, recognizing that registrants’ risk profiles are constantly evolving, the SEC is trying to determine whether the risk factor disclosure obligations (Item 503(c)) remain effective in capturing emerging risks, such as climate change and arctic drilling-related risks. Second, since interest in environmental, social or governance disclosure is growing, the SEC seeks input on the importance of sustainability and other public policy issues to investors. Among other things, the SEC requests input on whether the existing disclosure requirements are sufficient to enable investors to evaluate climate change risk or whether increased climate change and sustainability disclosure requirements are needed.

The SEC’s Concept Release offers an excellent opportunity for interested parties to help shape the climate change-related disclosure requirements with which they will need to comply.

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