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CLIMATE CHANGE & SUSTAINABILITY ALERT

Shook, Hardy & Bacon applies a unique multidisciplinary approach to the business challenges, risks and opportunities arising from today's international focus on climate change and sustainability.

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SEC ISSUES INTERPRETATIVE GUIDANCE ON DISCLOSURE POLICIES AND CLIMATE CHANGE

The Securities and Exchange Commission (SEC) has released interpretative guidance for public companies on existing SEC disclosure requirements as they apply to business or legal developments relating to the issue of climate change.

The February 2, 2010, guidance does not alter or create any rules, but provides the SEC's interpretation of current disclosure laws regarding company risk factors, business description, legal proceedings, management discussion and analysis, and foreign private issuers, that may require disclosure of certain specific climate-change related matters.

Depending on a particular company's facts and circumstances, climate change may trigger disclosure in a variety of ways according to the guidance. Developments in pending or enacted federal and state legislation may trigger disclosure obligations based on (i) resulting costs or profits from a "cap and trade" system, (ii) costs required to improve facilities and equipment to reduce emissions to comply with regulatory limits, (iii) or changes to profit or loss arising from increased or decreased demand for goods and services. International accords may similarly trigger disclosure obligations.

Triggering legislation could include the Waxman-Markey House bill, the Kerry-Boxer Senate bill and California's Global Warming Solutions Act of 2006; triggering regulations include EPA's rule which requires mandatory collection and reporting of emissions data for greenhouse gases and EPA's so-called "Tailoring Rule" for PSD and Title V permits under the Clean Air Act.

Legal, technological, political, and scientific climate-change developments may also create new opportunities or risks for companies and, accordingly, trigger disclosure requirements. Possible indirect consequences or opportunities may include decreased demand for goods that produce significant emissions, increased demand for goods that result in lower emissions, increased competition to develop innovative products, increased demand for energy from alternative energy sources, and decreased demand for services related to carbon-based energy sources.

These consequences may require disclosure as risk factors or in management's discussion and analysis. The physical effects of climate change, such as severe weather, may also affect a company's operations and results, and thus require disclosure as a business risk.

The SEC plans to monitor the impact of the guidance on company filings as part of its ongoing disclosure review program and will conduct a public roundtable on disclosure of climate change matters this spring.

Commission Guidance Regarding Disclosure Related to Climate Change:
http://www.sec.gov/rules/interp/2010/33-9106.pdf

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