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Disclosing the Business Impacts of Climate Change

ACCO Climate Change Leadership Series
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Overview

- Increasing perception that environmental is relevant to investment decisions
- Recent drivers increase financial reporting risk independent of actual environmental risk:
  - Accounting standards
  - Applicability of Sarbanes-Oxley
  - Enforcement activity
    - Restatements
    - SEC comment letters
    - SEC criminal, civil and administrative enforcement actions
    - Material weakness assignments
  - Increased scrutiny resulting from "Green Movement"
    - Shareholder resolutions
    - Investor inquiries

SEC Climate Change Disclosure Guidance

- On February 2, 2010 the Securities and Exchange Commission issued an interpretive release which provides guidance on certain existing disclosure rules that may require a company to disclose the impact that business or legal developments related to climate change may have on its business
- The Commission's interpretive release does not create new legal requirements nor modify existing ones, but are intended to provide clarity and enhance consistency for public companies and their investors.
- The relevant rules address a company's disclosure of its risk factors, business description, legal proceedings, and management discussion and analysis including**:**
  - **Impact of existing and pending legislation and regulation**
  - **Influence of international treaties on greenhouse gas emissions**
  - **Indirect consequences of legislation and business trends**
  - **Actual and potential impacts from physical climate effects**

Key Questions

- Does the Company have adequate Governance structures?
  - Accountability supported by appropriate competencies
  - Policies, procedures and controls
  - Data collection systems
- Has the risk been appropriately assessed? How reliable is the supporting data and information?
  - Uncertainty regarding legislation and regulation
  - Materiality and likelihood threshold and analysis
  - Application of relevant frameworks (e.g. regulatory, ISO, ASTM, etc)
- Are the Company's disclosures consistent across communication channels?

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Overview of SEC Guidance on Disclosure

- **Item 101 of Regulation S-K, Description of Business -** Item 101 requires a registrant to describe its business and that of its subsidiaries. Also, among other things, ***Item 101 expressly requires disclosure regarding certain costs of complying with environmental laws.***
- **Item 103 of Regulation S-K, Legal Proceedings -** Item 103 requires a registrant to briefly describe any material pending legal proceeding to which it or any of its subsidiaries is a party. ***Instruction 5 to Item 103 provides some specific requirements that apply to disclosure of certain environmental litigation.***
- **Item 303 of Regulation S-K, Management's Discussion and Analysis of Financial Condition and Results of Operations -** Item 303 includes a broad range of disclosure items that address the registrant's liquidity, capital resources and results of operations. ***For example, registrants must identify and disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance.***
- **Item 503 of Regulation S-K, Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges -** Item 503(c) requires a registrant to provide where appropriate, under the heading "Risk Factors," ***a discussion of the most significant factors that make an investment in the registrant speculative or risky.***
- In addition to the above, the Securities Act Rule 408 and Exchange Act Rule 12b-20 require a registrant ***to disclose "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."***
- Sarbanes Oxley – *CEO's and CFO's must make* **periodic certifications that appropriate controls and procedures are in place.**

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Impact of existing and pending legislation and regulation

Questions of relevance to this disclosure area may include:

- What are the assumptions regarding climate legislation?
- Are assumptions reasonable and the uncertainties disclosed?
- Are these assumptions consistently applied to all aspects of the disclosure?
- What process was followed to identify aspects that would be impacted by legislation and how is the process documented?

Evaluation of indirect consequences of climate change

Relevant questions in this area may include:

•Have internal studies been conducted addressing these indirect impacts and are disclosures consistent with these data sources?

•Are any discrepancies the result of reasonable and documented differences in assumptions?

- Has the company been part of a larger effort to address the indirect effects?
- Are assumptions regarding competitive position and product lines consistent with market conditions?

Physical impacts of climate change

Questions to consider include:

•What assumptions were made regarding the types of events considered?

- Were any external sources relied upon in formulating these assumptions and, if not, what was the basis for the assumptions?
- What assets or operations were considered in evaluating the impact of these events and what procedures were followed in identifying them?
- Are assumptions and procedures documented?

Consistency of disclosures

Specific questions to consider include:

•What other climate change disclosures have been made by the company?

- How do the various disclosures differ?
- Are reasons for differences reasonably apparent and are they explained and documented internally in the event of inquiries?
- What controls and procedures are in place regarding public disclosures on climate change?

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