



Climate Change Disclosure for Public Companies

Brian M. Wong
Partner, Corporate & Securities Group

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Disclosure Framework for Climate Change

- Sources of Disclosure Obligations
 - SEC disclosure rules under the Securities and Exchange Acts (Regulation S-K)
 - SEC Guidance re Climate Change Disclosure (Feb. 2010)
 - Accounting standards
 - Legal settlements (e.g., NY AG)
- SEC Reporting Framework for Public Companies
 - Annual Reports (Form 10-K)
 - Quarterly Reports (Form 10-Q)
 - Current Reports (Form 8-K)
 - Companies must institute and evaluate **effectiveness of disclosure controls and procedures** on a quarterly basis



Materiality

- Touchstone for all SEC disclosures is concept of materiality
- Information is **material** if there is a **substantial likelihood** that a **reasonable investor** would consider it important in making an **investment decision**.
 - Predictions of impact of information on the market are often difficult.
 - Courts often apply 20/20 hindsight.



Potential Disclosures on Climate Change in SEC Reports

- Description of business
 - Effects of environmental laws on cap ex, earnings or competitiveness
- Legal proceedings
 - Government proceedings under environmental laws, unless company believes it will not result in sanctions over \$100,000
- Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)
 - Known trends or uncertainties that the company reasonably expects will have a material (favorable or unfavorable) effect
 - Time horizon of trend may be relevant to assessment of materiality
- Risk factors
 - Significant factors that make investment in company stock risky



2010 SEC Guidance on Climate Change Disclosure

- **Impact of Legislation and Regulation**
 - Estimated expenditures to comply with new laws
 - Capital expenditures
 - Allowances or credits under a cap and trade system
 - Pending legislation: two step analysis
 1. Is the legislation or regulation reasonably likely to be enacted?
 2. Is the legislation or regulation, if enacted, reasonably likely to have a material effect on the company, its financial condition or results?
 - Increases in costs of doing business / production costs
- **International Accords**



2010 SEC Guidance on Climate Change Disclosure

- **Indirect Consequences of Regulation or Business Trends**
 - Decreased demand for carbon-intensive products or services
 - Increased demand for less carbon-intensive competing or new products
 - Reputational issues
- **Physical Impacts of Climate Change**
 - Severe weather
 - Supply chain disruptions
 - Insurance claims or costs



Survey of Selected Fortune 500 Companies

| Industry* | Mentions climate change at least once | Business | | Risk Factors | | MD&A and Notes to Financial Statements | |
|---|---------------------------------------|-----------|------------|--------------|------------|--|-----------|
| | | Mentions | Discusses | Mentions | Discusses | Mentions | Discusses |
| Resource Extraction, Construction, and Manufacturing (n=30) | 50% | 13% | 13% | 3% | 40% | 13% | 3% |
| Transportation, Communication, Power (n=19) | 79% | 0 | 37% | 16% | 58% | 16% | 42% |
| Wholesale and Retail Trade (n=30) | 30% | 3% | 7% | 13% | 7% | 3% | 0 |
| Finance, Real Estate, and Services (n=21) | 38% | 0 | 10% | 19% | 14% | 14% | 0 |
| Total (n=100) | 47% | 5% | 15% | 12% | 28% | 11% | 9% |

Source: Annual Reports on Form 10-K filed after February 2010



Follow On Issues

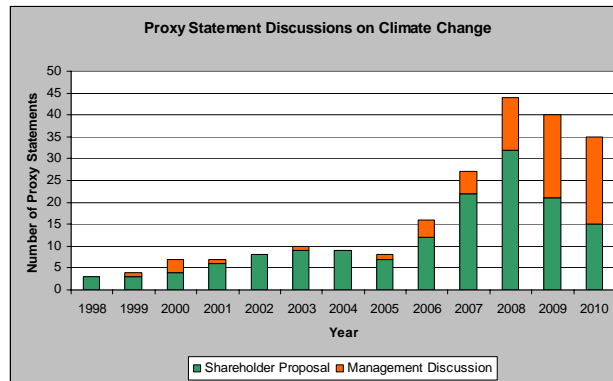
- SEC staff review process
 - Documented disclosure controls and procedures
 - Subject matter experts should be included
 - Legislation monitoring
- Voluntary corporate disclosures / standards
 - The Climate Registry / Carbon Disclosure Project / Global Reporting Initiative
 - Corporate Responsibility / Sustainability Reports
 - ASTM



Follow On Issues

- Shareholder proposals

- Staff Legal Bulletin 14E
 - Increasing shareholder activism and company voluntary disclosure



Partial 2010 data through April 7



Brian M. Wong

Partner, Pillsbury Winthrop Shaw Pittman LLP
 San Francisco, California
 (415) 983-6372 | brian.wong@pillsburylaw.com



Brian Wong heads the San Francisco office's Corporate and Securities practice group.

Mr. Wong helps public and private companies access capital, structure and negotiate complex transactions and communicate with investors by providing counsel on corporate governance, SEC disclosure and reporting, general corporate and capital market transactions and securities law. Drawing on his experience as deputy general counsel and corporate secretary for Organic, Inc., a Nasdaq-traded digital advertising agency, and as a State of California Executive Fellow at the California Commission on State Finance, Mr. Wong advises companies on emerging public disclosure issues in a regulatory environment, including climate change, risk management and executive compensation. He also has extensive experience helping boards of directors and management of public companies understand the challenges and responsibilities related to corporate governance.

