

Hot Topics in Environmental Disclosure

Climate Risk Disclosure Obligations and Developments

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ABSTRACT

Recent Security and Exchange Commission (“SEC”) activity, a landmark disclosure requirement issued this spring by the National Association of Insurance Commissioners, subpoenas, investor group petitions, shareholder resolutions, Congressional oversight hearings, and voluntary climate disclosure initiatives all reflect a growing focus on the adequacy of publicly-traded companies’ environmental disclosures, particularly in the area of climate change. A trend of heightened shareholder scrutiny has been seen and the expectation is that it will increase.

This paper discusses recent developments in climate change disclosures. We review in Part I the legal framework for disclosure to investors of contingent environmental liabilities, like climate risk, focusing primarily on the risks associated with the developing constraints on carbon and other greenhouse gas (“GHG”) emissions. We then highlight in Part II the drivers for more and better climate risk disclosure, what disclosure is being requested and by whom, and what some companies in high GHG emission sectors have been doing about it. And we’ll discuss how recent federal and state legislative and regulatory developments, investor group initiatives, as well as developments in international climate negotiations all will effect climate change disclosure obligations and, ultimately, enforcement trends.

PART I: THE SEC ENVIRONMENTAL DISCLOSURE OBLIGATIONS

Publicly-traded companies have an obligation to disclose known and contingent *material* liabilities in order to ensure that investors have access to basic and relevant information.¹ Certain non-financial narrative disclosures concerning material environmental liabilities are required by Regulation S-K, Items 101, 103 and 303, and financial statements must explain in footnotes relevant material environmental liabilities and reserves.² Note that “material” is the operative standard, because these disclosures are intended to provide insight into information that management deems important in evaluating risk contingencies. It is an often - repeated axiom that there is no bright-line test for determining materiality. The Supreme Court has held that a matter is material if a reasonable investor would view it as significantly altering the total mix of information made available to an investor.³ SEC Staff Accounting Bulletin No. 99 advises that “a matter is ‘material’ if there is a substantial likelihood that a reasonable person would consider it important.”⁴ Thus, “materiality” is a benchmark that reflects the goal of Regulation S-K—that is, to level the playing field between investors and management with respect to knowledge of contingencies and ability to assess risk. And with respect to climate-change risks, some argue that, for most publicly-traded companies such risk is likely material because most investors want to know about it.

As we discuss in Part II of this paper, a recently published analysis of the climate disclosures of certain carbon-intensive industries suggests that the benchmark is beginning to shift, albeit, in the report's view, slowly and incompletely.⁵ The disclosures discussed in the June 2009 Ceres/EDF Report were from 10-Ks filed in Q1 2008, subsequent to several of the high-profile events of 2007, including the New York State Attorney General's subpoenas to five major electric utilities regarding the adequacy of their climate risk disclosures, as well as the Investor Network on Climate Risk petition to the SEC seeking guidance that would require uniform and robust climate risk disclosure.⁶

First we discuss the legal framework for such disclosures.

Item 101—Costs of Compliance

Regulation S-K, Item 101 requires a description of the business and its risk factors, and mandates disclosure of any actual or contingent material effects of compliance with environmental laws and regulations on the business' earnings, competitive position, and capital expenditures. Item 101(c)(xii) specifically requires disclosure of material contingent effects—like material expenditures for pollution control equipment—for the remainder of the current reporting year and the succeeding year, as well as additional periods that the company deems material.⁷ Thus, issuers are required to make sufficient disclosure about future plans in order to make the disclosure about current plans not misleading.

In the context of climate change, large GHG emitters, such as coal-burning utilities, who may face material capital expenditures under certain pending regulatory scenarios, are required by Item 101 to assess both technical options and regulatory developments and to disclose material, contingent capital expenditure plans. And because the SEC advised years ago⁸ that contingent liabilities associated with foreign environmental requirements should be disclosed, in the climate disclosure context, multinational companies need to consider, for example, the costs involved with purchasing emission reduction credits or the material capital expenditures associated with pollution control equipment for European Union ("EU") facilities, as well as the implications of a federal or region-by-region GHG emission reduction mandate in the U.S.

Item 103—Disclosure of Legal Proceedings

Regulation S-K, Item 103 requires disclosure of material legal proceedings, including proceedings "known to be contemplated" by governmental authorities. If an administrative or judicial proceeding arising under environmental laws (1) is material to a company's business or financial condition; (2) includes a claim for damages or costs in excess of 10 percent of current consolidated assets; or (3) includes governmental authority as party to the proceeding or contemplated proceeding (unless any monetary sanctions are reasonably expected to be less than \$100,000—including aggregated potential sanctions in proceedings that present the same issues), the matter must be disclosed under Item 103. While Item 103⁹ does not specifically direct a company to predict the outcome of litigation and its effect on the company's finances, disclosures of legal proceedings typically contain some statement about whether management believes the results of the environmental proceeding will be material.

Climate-change litigation has been heating up over the past several years, with lawsuits generally involving cases where plaintiffs are (1) seeking to compel federal agencies to act;¹⁰ (2) challenging state or federal regulations;¹¹ (3) alleging public nuisance from emissions;¹² (3) suing to compel defendants

(either private companies or the government) to take climate change into account in environmental permitting decisions;¹³ and (5) alleging damages as a result of a defendant's contribution to global warming.¹⁴

While an analysis of these cases is beyond the scope of this paper, the key point is that these cases represent a very real threat of litigation to those in carbon-intensive industries. The decisions in these and like cases could have consequences for non-defendant companies, in terms of litigation exposure and disclosure obligations, particularly as potential regulatory consequences are realized or become more foreseeable.

The issue of climate-risk disclosure was elevated to boardrooms across the country in September 2007 when New York State Attorney General Andrew Cuomo subpoenaed five large energy companies for information because he questioned the adequacy of climate risk disclosures in their SEC filings.¹⁵ Two of these companies have since settled with New York, and both have committed to similar and very specific disclosures regarding climate risk. For example, Xcel Energy committed to disclose the financial risk that climate change poses to the company, including current/probable future laws and their potential material financial effect; climate-related litigation/judicial decisions that may have a material financial effect; physical impacts of climate change (sea level increases, changes in weather patterns) and the financial risks of such events to operations; as well as the company's current strategic position on emissions management and corporate governance concerning climate change and the possible related financial risks. This settlement tracks closely the elements of the disclosures that the Investor Network set out in its petition to the SEC, discussed more fully below.

Item 303—Management's Discussion and Analysis (MD&A)

Item 303, the Management's Discussion and Analysis ("MD&A"), requires discussion of known trends, events or uncertainties that may have a material effect on the company's financial condition.¹⁶ SEC views the MD&A disclosure as the place where the issuer gives investors "a look at the company through the eyes of management."¹⁷ The SEC has advised that Item 303 disclosure requires two distinct inquiries. First, management must decide if a known uncertainty is reasonably likely to occur. Unless management can conclude that the event is not reasonably likely to occur,¹⁸ it must assume that it will occur. Second, unless management can determine that such occurrence is not reasonably likely to have a material adverse effect on the company, the trend or event must be disclosed.¹⁹ Disclosure is optional if management is merely anticipating a future trend or event, or anticipating a less predictable impact of a known trend, event or uncertainty.²⁰ Thus, for example, disclosure of a remote possibility of a catastrophic event is not useful nor is it required by the SEC. Disclosure is required, however, of "known uncertainties" that could result in material consequences.

The issuer must discuss in the MD&A information that does not appear clearly in its financial statements, without going to great effort or expense to obtain it.²¹ SEC advised that, when the potential liability cannot be exactly quantified, the effects of the liability should be "quantified to the extent reasonably practicable."²² In the climate risk context, with the current federal legislative initiatives and state and regional regulatory regimes imposing constraints on carbon, companies in carbon-intensive industries, or industries particularly vulnerable to the effects of global warming, are well advised to be taking the steps needed to conduct the evaluations required by the SEC disclosure framework, because what was previously legitimately considered an "uncertainty" has arguably evolved into a known "event."

The increased focus of the SEC on climate disclosures, coupled with the policy drivers discussed in more detail below, suggest that publicly traded companies can no longer punt on the “uncertainty” of risk related to carbon-intensive operations - in any major part of the supply chain. Nor can companies ignore the potential physical impacts and other risks of global warming, such as water shortages, availability and cost of insurance, etc. Investors clearly want to know about management’s assessment of such climate risk.

Financial Accounting Standards Board (FASB) No. 5

While there are several accounting standards that are relevant to environmental liability risk calculation and disclosure, we mention briefly here the key accounting standard that instructs issuers on how specific items, which are required to be disclosed, are actually accounted for in the financial statements. Disclosure of contingent risk is governed by Financial Accounting Standard No. 5 (“FAS 5”).²³ FAS 5 requires that a loss contingency be accrued by a charge to income, and that the nature of the contingency be described in a footnote to the financial statement, if it is probable that a loss has been incurred and that the amount of the loss can be reasonably estimated.²⁴ If a loss contingency is only reasonably possible, or if the loss is probable but the amount cannot be reasonably estimated, then the company is not required to accrue for it, but its nature must be disclosed in a footnote.²⁵

PART II: THE PUSH FOR MORE CLIMATE-CHANGE RISK DISCLOSURE

Shareholder and Investor Interest

While SEC periodically issues regulations and guidance on the information public companies must disclose in their filings, it has not yet done so with respect to climate change. On September 18, 2007, the Investor Network on Climate Risk,²⁶ a coalition of nearly two dozen state officials (from 11 states), pension fund managers, and environmentalists (“the Investor Network”) filed a petition with the SEC for interpretive guidance on climate risk disclosure.²⁷ The petitioners asked SEC to issue guidance requiring all publicly traded companies to assess and fully disclose their financial risks from climate change. The Investor Network also filed a separate request with the SEC’s Division of Corporation Finance to immediately begin reviewing 10-K disclosures under existing regulations, specifically with respect to climate change risks and liabilities. Hearing nothing in response from the SEC during the previous administration, the Investor Network renewed its petition in a letter dated June 12, 2009, to new SEC Chairman Mary Shapiro. SEC has responded by hosting at least two meetings, in July 2009, to discuss climate disclosure issues with the various stakeholders.²⁸

Additionally, investors have been reported to have filed hundreds of shareholder resolutions with individual companies seeking better climate risk disclosure.²⁹

The climate-change risks and liabilities for which petitioners are seeking SEC guidance, discussed more fully below, include, among other things, regulatory risks, physical risks, legal risks, reputation risks, and governance risks.³⁰

Policy Drivers

On the legislative front, the U.S. Senate held oversight hearings in the fall of 2007 on the issue of climate risk disclosure and followed up with a letter from senior Democrats on the Senate Banking Committee to the SEC asking for release of definitive guidance for companies on how to disclose

material risk related to climate change.³¹ We note further that a number of the climate change bills introduced over the past several years have included provisions directing the SEC to act.³² Each would require SEC to issue climate change disclosure rules within two years that mandate disclosure of risks relating to the “financial exposure of the issuer” due to the issuer’s GHG emissions and the “potential economic impacts of global warming” on the issuer itself. Similar language urging the SEC to act was included in the Senate Appropriations Committee reports for FY 2009 and FY 2010.³³ While the recently passed House climate bill, H.R. 2454, the American Clean Energy and Security Act of 2009, does not include a similar specific mandate to the SEC, such language could yet be added to Senate legislation. But beyond the issue of a disclosure mandate, of course, the potential cost impacts of a cap and trade scheme as set out in H.R. 2454 are significant.³⁴ Increased energy costs (both direct and indirect) will be felt throughout a company’s value chain and could result in increased upstream costs or reduced downstream sales, even if the company itself is not directly subject to regulations.³⁵

Thus, in a much broader sense, both federal and state initiatives to begin regulating GHGs have increased the necessity for all “energy users” to evaluate the financial risks associated with climate change. Consider three actions by EPA in 2009: first, its April 2009 proposed rule requiring annual reporting of GHG emissions, beginning in March 2010, applicable to facilities that either emit 25,000 tons per year or more of CO² equivalents or are in certain specified industrial categories (e.g., aluminum production, petrochemical refineries, cement production) as well as fuel suppliers and vehicle and engine manufacturers; second, its proposed endangerment finding, issued on April 17, 2009, in response to the Supreme Court’s decision in *Massachusetts v. EPA*,³⁶ wherein EPA concludes that GHG emissions threaten public health and welfare, thereby clearing its way to regulate GHGs under the federal Clean Air Act; and third, its late grant of a federal waiver so California can regulate tailpipe GHG emissions. For energy intensive businesses, financial risks associated with climate change are no longer a remote uncertainty.

In addition to federal attention to climate change as a general policy imperative, as well as to climate change disclosure obligations in particular, several state and regional efforts to restrict GHG emissions are already underway. For example, the Regional Greenhouse Gas Initiative (“RGGI”), involving the six New England states, as well as New York, New Jersey, Pennsylvania, and Delaware, is the first regional mandatory cap and trade program in the U.S. The very existence of domestic carbon markets, such as RGGI, which held its first auction of carbon credits this year, as well as the more mature carbon trading scheme in the EU, suggests that markets are developing around mandatory carbon constraints and other measures to limit GHG emissions. Clearly, the financial risks and opportunities presented in a carbon-constrained environment need to be evaluated and, if material, disclosed.

NGO and Other Disclosure Initiatives

Several GHG reporting and disclosure frameworks have been developed by non-governmental organizations (“NGOs”). In October 2006, Ceres published its “Global Framework for Climate Risk Disclosure: A Statement of Investor Expectations for Comprehensive Corporate Disclosure” (“the Ceres Framework”), which describes four main elements of disclosure: (1) total historical, current, and projected GHG emissions; (2) strategic analysis of climate risk and emissions management; (3) assessment of physical risks; and (4) analysis of risk related to the regulation of GHG emissions. Companies were urged to apply this framework to existing reporting mechanisms, such as mandatory financial reports, voluntary reports like those of the Carbon Disclosure Project and the Global Reporting Initiative, and other “forward-looking” disclosures, such as analyst briefings and sustainability reports.

The Carbon Disclosure Project (“CDP”), a non-profit formed in the UK to help assess the implications of climate change on shareholder value and commercial operations, has been collecting and publishing company-specific GHG data for several years now. The CDP issues, on behalf of institutional investors, “purchasing corporations,” and other NGOs, annual Information Requests to more than 3,700 companies around the globe.³⁷ CDP’s mission is to “collect and distribute high quality information that motivates investors, corporations and governments to take action to prevent dangerous climate change.” Together with the Global Reporting Initiative (who issues sustainability reporting guidelines), these two voluntary organizations have been leading the efforts to standardize climate-risk disclosure and reporting worldwide.

There is also the Climate Disclosure Standards Board (“CDSB”), an international partnership of seven organizations, that has issued a draft reporting standard aimed at ensuring that companies “report climate change-related information in a standardized way that facilitates easier comparative analysis by investors, managers and the public.” And in December 2008, ASTM International published a second draft of its proposed standard for disclosure of the financial impacts of climate change. Final adoption of the ASTM standard is expected this summer. These published frameworks provide a prototype for any future federal reporting requirements.

Finally, there was the announcement on March 17, 2009 from the National Association of Insurance Commissioners (NAIC), an organization composed of the chief insurance regulatory officials of the 50 states, the District of Columbia and five U.S. territories, that they had adopted a requirement that insurance companies having in excess of \$500 million in premiums disclose to regulators and the public the financial risks they face from climate change, as well as their response actions taken to address these risks, by May 1, 2010. Those companies with premiums in excess of \$300 million are required to report a year later and those with lower premiums may voluntarily report at any time. NAIC developed a “Insurer Climate Risk Disclosure Survey” that requires insurers to answer eight questions in good faith, but without providing information that is “immaterial to an assessment of financial soundness.” The Survey requests information regarding climate change and the company’s: (1) plans for assessing, reducing or mitigating its emissions; (2) policy for risk and investment management; (3) process for identifying climate change-related risks and business impacts; (4) current and anticipated climate change risks; (5) investment strategy response to climate change impacts; (6) steps to encourage policy holders to reduce losses caused by climate change-influenced events; (7) steps to engage key constituencies on climate change, and (8) action to manage climate change risks including the use of computer modeling. The Survey instructs that insurers need not include quantitative information, commercially sensitive, proprietary, or forward looking information.

Each of these drivers – established disclosure frameworks, legislation, GHG emission trading markets, carbon measurement standards,³⁸ industry-imposed requirements like that of the NAIC, and climate change-related litigation – as well as the United States’ stated intention to re-engage in global climate-change negotiations, all support a conclusion that financial risks, as well as opportunities, associated with climate change should be evaluated and, if material, explained to investors.

How Companies are Responding

The June 2009 Ceres EDF Report used the Global Framework for Climate Risk Disclosure to evaluate the filings of companies in five major sectors (electric utilities, coal, oil and gas, transportation, and insurance). They evaluated the quality of disclosure by 100 companies in these sectors and Ceres found that only two of the 100 companies it evaluated disclosed more than half of the information

sought by the Global Framework.³⁹ Ceres noted that even in high-carbon industries, like utilities, the FY 2007 10-K reports disclosures were lacking—noting that only 35.5% of S&P 500 utilities identified at least one climate-change risk and articulated a strategy for addressing it. Ceres evaluated the companies in three main disclosure categories: (1) emissions and stated climate-change position; (2) risk assessment; and (3) actions to address climate risks and opportunities. Companies, disclosures were rated “none,” “poor,” “limited,” or “fair.” Among other key findings of the report, Ceres observed that:

- Disclosure was widespread but minimal among electric utilities, although the electric power sector ranked higher than the other sectors.
- All six coal companies surveyed included some disclosure of climate risk, but only one company achieved a “fair,” score in any of the disclosure categories analyzed.
- The majority of the 23 oil and gas companies studied provided some disclosure on climate-risk assessment, but none ranked “fair” and disclosure in actions to address climate change and on emissions or climate-change position was even more limited.
- Companies in the transportation sector provided minimal disclosure in SEC filings.
- Companies in the insurance sector provided the least disclosure across the board compared to other sectors (even though, as Ceres noted, risk assessment is the foundation of a viable insurance company).⁴⁰

In view of this “scorecard,” it is instructive to compare the Global Framework against the existing Regulation S-K, disclosure requirements. First, with respect to emissions disclosure, other than GHG intensive industries, it seems that a company’s “carbon footprint” would not be material under Regulation S-K. Second, with respect to the assessment of physical risks of climate change, other than companies in exceptionally bad locations (e.g., a gas pipeline located in an area of documented and ongoing permafrost subsidence), it is unlikely that this disclosure would be material. Finally, as for a strategic analysis of climate risk and opportunities, it seems that the *material* trends and uncertainties looked at for this analysis should be part of the existing MD&A disclosure under Item 303 of Regulation S-K.

III. CONCLUSION

It is clear that investors are hungry for more insight, analysis, and evaluation of risks related to climate change. And because there has been, to date, no clarification from the SEC as to how the existing disclosure standards should be applied to climate change, there is a wide variation in the quality of formal SEC reporting on this risk, as well as a divergence between what companies are reporting voluntarily and what is found in mandatory reports.

While financial officers and their securities lawyers assess their reporting strategies, it is prudent to keep in mind that risk disclosure demands rigorous evaluation. Companies should not rush to prematurely release information labeled as data that compels disclosure and that is little more than informed speculation. There remains a lack of consensus about which assessment frameworks and measurement criteria to use. That being said, given all of the drivers discussed in this paper, companies can no longer assume that climate change risk is too speculative. An assessment of that risk is now essential.

In order to provide information that is both reliable and useful to investors and meets the legal requirements of Regulation S-K, companies should ensure that their governance systems are such that

climate change risks are evaluated through systematic communication and controlled decision-making, rather than ad hoc analysis. A structured approach, involving consistent and reliable measurement and assessment will support an understanding of the strategic, operational, financial, and regulatory implications of, and enhance the decision making process regarding, disclosures.

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1. The Securities Act of 1933, 15 U.S.C. § 77a *et seq.* and the Securities Exchange Act of 1934, 15 U.S.C. §78a *et seq.*
2. 17 C.F.R. Part 229 (2008). *See also* Securities Act Release No. 5569, Exchange Act Release No. 11236, 40 Fed. Reg. 7013 (Feb. 18, 1975); *see also* SEC Staff Accounting Bulletin Release No. 92, 58 Fed. Reg. 32,843 (June 14, 1993).
3. *TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 448 (1976).
4. SEC Staff Accounting Bulletin Release No. 99 (August 12, 1999).
5. Climate Risk Disclosure in SEC Filings: An Analysis of 10-K Reporting by Oil and Gas, Insurance, Coal, Transportation and Electric Power Companies, Ceres and Environmental Defense Fund (June 2009) ("the June 2009 Ceres/EDF Report").
6. SEC File No. 4.457, Request for Interpretive Guidance on Climate Risk Disclosure (Sept. 18, 2007), <http://sec.gov/rules/petitions.html>.
7. 17 C.F.R. §229.101 (2008).
8. 1973 WL 11973 (S.E.C. No-Action Letter) (interpreting precursor to Item 101(c)(xii)).
9. 17 C.F.R. § 229.103 (Instruction No. 5).
10. *See, e.g., Center for Biological Diversity v. Locke* (N.D. Cal., filed May 28, 2009) (Complaint against the Secretary of Commerce and the National Marine Fisheries Service alleging violations of the Endangered Species Act and the Administrative Procedure Act based on allegations that habitat of the leatherhead and loggerhead sea turtles is being destroyed by climate change).
11. *See, e.g., Center for Biological Diversity v. National Highway Transp. Safety Admin.* (9th Cir., filed Apr. 2, 2009) (suit to strike down the corporate average fuel economy (CAFÉ standards for cars, trucks, and SUVs for model year 2011 because not set at the "maximum feasible level").
12. *See, e.g., California v. General Motors Corp* (9th Cir. June 19, 2009) (California Attorney General filed suit in 2006 alleging that the company cars were a substantial source of greenhouse gas emissions, which caused climate change, resulting in millions of dollars in damages to the State. Ultimately, after being dismissed by the district court, which held that the case involved "political questions" reserved for the President and Congress to address, the State voluntarily dropped its appeal to the 9th Circuit, citing progress with the new administration on related issues).
13. *See e.g., Northwest Env'tl. Defense Ctr. v. Owens Corning*, 434 F. Supp. 957 (D. Or. 2006) (standing granted to environmental group alleging harm to its members from global warming as a result of defendant's failure to obtain a PSD permit under the Clean Air Act for modifications to its facility).
14. *See, e.g. Comer v. Murphy Oil USA, Inc*, No. 1:05-CV-436 (S.D. Miss. 2006, dismissed August 2007, appeal pending) (allegations by private citizens who suffered damage to homes from Hurricane Katrina that the oil companies contributed to global warming and thus by extension, to the intensity of Hurricane Katrina).
15. *See* Press Release (Sept. 17, 2007) www.oag.state.ny.us (Xcel Energy, AES Corp., Dominion Resources, Inc., Dynegy Inc. and Peabody Energy).
16. Exch. Act Release No. 6211, 52 Fed. Reg. 13,715, 13,717 (Apr. 26, 1987).
17. Richard Y. Roberts, Address to the Colorado Bar Ass'n (Sept. 28, 1991).
18. Sec. Act Release No. 6835, 54 Fed. Reg. 22,427, 22,430 (May 4, 1989).
19. *Id.*
20. *Id.*
21. 17 C.F.R. § 229.303 (2008) (Instruction 2).
22. Sec. Act Release No. 6835, 54 Fed. Reg. 22,427, 22,430 (May 24, 1989).
23. Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 5, Accounting for Loss Contingencies (March 1975).
24. *Id.* § 8.
25. *Id.* § 10.

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26. The Investor Network on Climate Risk is a project of Ceres, which itself is a coalition of investors, environmental groups and other organizations working with companies on sustainability and climate change issues. www.ceres.org
 27. SEC File No. 4.457, Request for Interpretive Guidance on Climate Risk Disclosure (Sept. 18, 2007), <http://sec.gov/rules/petitions.html>.
 28. SEC Turnaround Sparks Sudden Look at Climate Disclosure, NEWYORKTIMES (July 13, 2009).
 29. Climate Risk Disclosure in SEC Filings: An Analysis of 10-K Reporting by Oil and Gas, Insurance, Coal, Transportation and Electric Power Companies, Ceres and Environmental Defense Fund (June 2009) (“the June 2009 Ceres/EDF Report”).
 30. See *Id.* and also Global Framework for Climate Risk Disclosure (October 2006), www.ceres.org/pub/docs/Framework.pdf.
 31. Letter to SEC Chairman Christopher Cox from U.S. Senators Christopher Dodd and Jack Reed (Dec. 6, 2007).
 32. See, e.g., the S. 2191, the Lieberman–Warner Climate Security Act of 2008.
 33. Senate Report 110-417, Financial Services and General Government Appropriations Bill, FY 2009; Senate Report 111-043 – Financial Services and General Government Appropriations Bill, FY 2010.
 34. There have been an number of economic analysis of either specific climate change legislative initiatives, or more generic policy options like a cap and trade bill. These include a January 2008 US EPA economic study as well as several policy options analyzed using peer-reviewed economic models developed by U.S. DOE’s Energy Information Agency; the Research Triangle Institute; Harvard, MIT, and the Pacific Northwest National Laboratories. These latter five studies were reviewed and presented in a paper by the Environmental Defense Fund, titled: What Will it Cost to Protect Ourselves from Global Warming: the Impacts on the U.S. Economy of a Cap and Trade Policy for Greenhouse Gas Emissions (March 2008). EPA also issued a preliminary economic impact analysis of the Waxman-Markey draft bill dated Apr. 20, 2009.
 35. The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2008, World Resources Institute/World Business Council for Sustainable Development, Chap. 2, pg. 11.
 36. 549 U.S. 497 (2007).
 37. www.cdproject.net
 38. See, e.g., the United Kingdom’s carbon footprint specification, developed by the Carbon Trust and the UK Department for Environment, Food and Rural Affairs (“DEFRA”) known as Publicly Available Specification (“PAS”) 2050, which specifies the requirements for the assessment of the GHG emissions associated with the life cycle of all goods and services.
 39. Climate Risk Disclosure in SEC Filings: An Analysis of 10-K Reporting by Oil and Gas, Insurance, Coal, Transportation and Electric Power Companies, Ceres and Environmental Defense Fund (June 2009) (“the June 2009 Ceres/EDF Report”).
 40. A comparison of FY 2010 disclosures from insurance companies, assuming compliance with the NAIC disclosure requirements, with the Q1 2008 results reviewed by Ceres, would be interesting.

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