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## Environmental Disclosure in SEC Filings – 2011 Update

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## Executive Summary

We witnessed a great deal of interest throughout 2009 and early 2010 in the rules and regulations governing environmental and climate change disclosure in U.S. Securities and Exchange Commission (“SEC”) filings. During that time, the SEC, Financial Accounting Standards Board (“FASB”) and New York Attorney General’s (“NY AG”) office took major steps to enhance environmental and climate change disclosure in public filings, which activity is discussed in our January 2009 and February 2010 memoranda on the subject.<sup>1</sup> This activity culminated in the SEC’s adoption of its landmark climate change interpretive guidance on February 8, 2010 (the “Release”).<sup>2</sup>

Following the Release, however, the SEC has moved its focus away from climate change disclosure. There are many likely reasons for this shift, including, perhaps:

- Less perceived pressure to act on climate change disclosure issues after having issued the Release;
- The SEC’s need to address complicated and pressing financial reform issues;
- Strong criticism from the U.S. Congress and certain registrants of the Release; and
- Congress’ diminished interest in adopting federal greenhouse gas reduction legislation.

Nonetheless, there have been many important developments in 2010, particularly at FASB. These developments include:

- The SEC’s current focus on risk factor disclosure and potential updates to existing standards;
- Indications from the newly elected NY AG that he may continue to press for improved climate change disclosure;
- Stalled efforts by the National Association of Insurance Commissioners and the American Society for Testing and Materials to provide frameworks for climate change disclosure;
- New environmental and climate change shareholder proposals in the 2010 proxy season; and
- FASB’s further proposed expansions of its loss contingency disclosure standards.

These developments are summarized below, along with a list of practical tips for regulated companies to consider.

## Observed Trends in Climate Change Disclosure

The Release has not had as significant an impact on companies’ disclosure as some observers initially expected. Early opponents of the Release, including SEC Commissioner Troy A. Paredes, feared that it

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<sup>1</sup> This memorandum should be read in conjunction with our January 2009 and February 2010 memoranda for a full summary of the relevant topics. Click [here](#) for a copy of our 2009 memorandum and [here](#) for the February 2010 memorandum, which are also available at [davispolk.com](http://davispolk.com).

<sup>2</sup> Commission Guidance Regarding Disclosure Related to Climate Change, Securities Act Release No. 9106, Exchange Act Release No. 61,469, 75 Fed. Reg. 6290 (Feb. 8, 2010), available [here](#). Please see the Davis Polk Memorandum *Environmental Disclosure in SEC Filings – 2010 Update*, available [here](#), for a detailed summary of the Release.

might encourage unnecessary disclosure that could distract investors from focusing on more important information. Based on our review of SEC filings made in 2010, we saw:

- An increase in generic weather risk factors;
- New disclosure on potential changes in demand for products and services and on increases in fuel prices;
- Relatively little disclosure of actual or potential reputational harm due to climate change; and
- A minimal increase in climate change disclosure in the Management Discussion and Analysis (“MD&A”) section of these SEC filings.

That said, registrants in greenhouse gas intensive industries, notably energy companies, have enhanced their disclosure – including by adding more lengthy factual updates of legislative, regulatory and litigation developments. It is unclear, however, whether this trend in energy company disclosure is due primarily to the Release, or is more a function of the electric utility settlements with the NY AG described in our previous memoranda and/or the complicated evolution of climate change regulation over the past two years.

## Climate Change Regulatory Update

The Release explains that one of the “ways climate change may trigger disclosure” requirements is through the impact of climate change legislation, regulation and international accords. With respect to such regulatory matters, 2010 was a tumultuous year. The U.S. Environmental Protection Agency (“EPA”) issued on April 1, 2010 a suite of standards that regulate greenhouse gas emissions from vehicles and has now begun regulating greenhouse gas emissions from newly constructed and modified large industrial and commercial facilities.<sup>3</sup> More recently, the EPA has announced plans to develop greenhouse gas emission standards for certain power plants and refineries. Members of Congress and various industry groups are opposing the EPA’s efforts, including by seeking to invalidate its “endangerment finding” and certain other measures on which EPA’s greenhouse gas regulations are premised.

While efforts to enact U.S. federal greenhouse gas cap-and-trade legislation stalled in 2010, there continues to be congressional interest in passing more targeted energy legislation, which legislation could require greenhouse gas emissions reductions.

Of the two high-profile federal cases alleging that companies’ greenhouse gas emissions are creating a “public nuisance”, the Supreme Court has agreed to hear an appeal from the U.S. Court of Appeals for the Second Circuit on whether that case should be permitted to proceed. The other case remains dismissed following a complicated appellate process before the U.S. Court of Appeals for the Fifth Circuit.<sup>4</sup>

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<sup>3</sup> For a more detailed summary of these standards, see *New Federal Greenhouse Gas Emission Laws Begin to Take Effect January 2011*, CLIMATE CHANGE AND ENVIRONMENTAL UPDATE (Davis Polk, New York, NY), Apr. 2010, available [here](#).

<sup>4</sup> For a more detailed summary of the Fifth Circuit case, see *Significant Developments in Climate Change Nuisance Lawsuits*, CLIMATE CHANGE AND ENVIRONMENTAL UPDATE (Davis Polk, New York, NY), Jun. 2010, available [here](#). The Supreme Court recently declined to review the case, which means the lower court’s dismissal will stand.

In addition, beginning with calendar year 2010, certain companies with significant greenhouse gas emissions are required to report their annual emissions to the EPA, and the EPA has expanded the reporting obligations to include additional sources for subsequent years.<sup>5</sup>

Affected registrants continue to face significant uncertainty as a result of these developments and other climate change initiatives at the international and U.S. regional and state levels.

## SEC Developments

### After the Climate Risk Disclosure Release

The Release notes the SEC's commitment to take the following steps to help it determine "whether further guidance or rulemaking related to climate change disclosure is necessary or appropriate in the public interest or for the protection of the environment:"

- Hold a public climate change disclosure roundtable in Spring 2010;
- Monitor disclosure through the advice and recommendations of its then-existing Investor Advisory Committee ("IAC"), formed in June 2009, which committee, at that time, was considering climate change disclosure issues as part of its overall mandate; and
- Monitor disclosure as part of its disclosure review program.

The SEC has largely not acted on these plans. For example, the SEC did not convene the climate change disclosure roundtable and has disbanded the IAC. In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act authorized the creation of a new investor advisory committee, but the SEC has not yet created a new IAC "due to budget uncertainty".<sup>6</sup> Even if a new IAC were established, it is unclear whether it would act on its predecessor's mandate to review environmental and climate change disclosures.

The SEC has monitored and reviewed disclosure – including environmental and climate change disclosure – but, since the Release, we have identified only six climate change disclosure comments issued. The recipients represented a variety of industries ranging from manufacturing and energy, to less environmentally intensive industries, including insurance and even a beauty salon operation. With the exception of an instruction to a natural gas distribution company to elaborate on the expected impact of federal climate legislation on its business, the comments were generally cursory. The comments are summarized below.<sup>7</sup>

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<sup>5</sup> For a discussion of the EPA reporting obligations, see *EPA Requires Measurement and Reporting of Greenhouse Gas Emissions*, CLIMATE CHANGE AND ENVIRONMENTAL UPDATE (Davis Polk, New York, NY), Oct. 2009, available [here](#).

<sup>6</sup> See U.S. Securities and Exch. Comm., *Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act — Dates to be Determined*, (as last modified on December 2, 2010), available [here](#).

<sup>7</sup> The letters are available with the author.

Company	Industry	Comment
Atlantic Power Corporation	Energy	Requested that the climate change risk disclosure included in a general environmental risk factor be presented in a stand-alone climate risk factor.
Chart Industries, Inc.	Manufacturing	Questioned what considerations were given to the Release in preparing the climate change disclosure.
Green Endeavors, Ltd.	Beauty Salon Operations	Questioned the need for disclosure on the United Nations Framework Convention on Climate Change and the Kyoto Protocol in light of a statement that climate change regulation would not have “any specific effect” on operations.
RGC Resources, Inc.	Natural Gas Distribution	Requested disclosure regarding the expected effect of two federal climate change bills which were discussed elsewhere in the filing disclosure.
Sherwin-Williams Company	Manufacturing	Questioned what considerations were given to the Release in preparing the climate change disclosure.
State Auto Financial Corporation	Insurance	Requested disclosure of material risks related to increased temperatures and potential climate change regulation.

### Utilities’ Opposition to the Release

The Edison Electric Institute (“EEI”), whose members generate approximately 60% of the total electricity supplied in the United States, met with the SEC on May 18, 2010 to discuss the group’s concerns with the Release. EEI sent a follow-up letter to SEC Chairman Mary L. Schapiro on July 13, 2010 requesting that the SEC “formally address” certain of EEI’s concerns,<sup>8</sup> including that the Release:

- Requires too much speculation by registrants, including about weather patterns, the likelihood of laws passing and possible reputational damage relating to climate change; such speculation could lead to misleading, or even incorrect, disclosure;
- Could discourage voluntary disclosures by registrants fearful of liability under securities laws for the contents of such disclosures, which would reduce the total amount of general climate change information provided to investors; and
- Might be read to require that management conduct a comprehensive review of climate change matters, which review could be unduly burdensome and potentially unnecessary.

<sup>8</sup> Letter from Richard McMahon, Executive Dir., Edison Electric Inst., to Mary L. Schapiro, U.S. Securities and Exch. Comm. (July 13, 2010), available [here](#).

EEl's concerns are shared by many in the regulated community, and its concerns regarding the need for speculation about reputational damage and the physical effects of climate change echo those that Commissioner Paredes expressed in his January 27, 2010 speech opposing adoption of the Release.

The SEC has not responded publicly to EEl, nor do we expect that it will in the near future because of the passage of time since the letter, the various other pressing issues facing the SEC currently and the fact the SEC has responded to other opponents of the Release that the Release does not impose any new requirements on registrants.

### Congressional Opposition to the Release

Members in both houses of Congress introduced identical bills in the early part of 2010 attempting to block the enforcement of the Release.<sup>9</sup> Neither bill, however, has come out of its respective committee.

In addition, various members of Congress have voiced public disapproval of the Release, including the following:

- In January 2010, Representative Rodney Frelinghuysen (R-NJ) criticized the Release on his website and weekly newsletter, asserting that it would require predictions about unforeseeable events;
- In February 2010, Representative Spencer T. Bachus III (R-AL) sent a letter to SEC Chairman Schapiro criticizing the Release for advancing a political agenda and imposing significant compliance costs on issuers;<sup>10</sup> and
- In March 2010, twenty-one Republicans in the House of Representatives sent a letter to the SEC opposing the Release's "onerous new mandate" and calling for its repeal.<sup>11</sup>

The SEC has not responded publicly to any of these criticisms.

### SEC Focus on Risk Factor Disclosure

The SEC is currently focusing on risk factor disclosure. Meredith Cross, director of the SEC's Division of Corporation Finance, has expressed her wish on various occasions to overhaul risk disclosure. Cross believes material risks facing companies may be better described by disclosing those risks in a comprehensive discussion in companies' MD&A sections. At a conference for certified public accountants in December 2009, Director Cross described risk disclosure as an area that "needs fixing", explaining that companies need to pull away from "mind-numbing risk factors discourse to a more-targeted discussion of the principal risk [sic] facing the company."<sup>12</sup>

In July 2010, SEC Chairman Schapiro stated at the National Conference of the Society of Corporate Secretaries and Governance Professionals that the SEC is reevaluating all of its disclosure requirements to see if the information being sought is still relevant or whether another type of information "would be

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<sup>9</sup> Maintaining Agency Direction on Financial Fraud Act, S. 3032, 111th Cong. (2010) and Maintaining Agency Direction on Financial Fraud Act, H.R. 4934, 111th Cong. (2010).

<sup>10</sup> Letter from Spencer Bachus, Ranking Member, U.S. House of Representatives Comm. on Fin. Servs., to Mary L. Schapiro, Chairman, U.S. Securities and Exch. Comm. (Feb. 2, 2010).

<sup>11</sup> Letter from Bill Posey et al., U.S. Representatives, to Mary L. Schapiro, Chairman, U.S. Securities and Exch. Comm. (Mar. 15, 2010), available [here](#).

<sup>12</sup> See Sarah Johnson, SEC Pushes Companies for More Risk Information, CFO.COM, Aug. 2, 2010, available [here](#).

more meaningful to investors and to the markets.”<sup>13</sup> She continued that the SEC is, with the help of various advisory committees, academics and other experts:

- Reviewing existing disclosure requirements that have not been updated recently; and
- Working on a recommendation for amending its risk disclosure requirements.

She concluded that “[a]fter this review, I expect the staff will present individual recommendations that we can act on quickly, such as revising the risk disclosure requirements.”<sup>14</sup> It is unclear, however, whether, when and in what form (*e.g.*, interpretive guidance or rulemaking) the risk disclosure requirements will be revised, but the SEC is not likely to issue any guidance or promulgate any rulemaking before the 2010 10-K and 20-F season ends. While these initiatives are not targeted at environmental or climate change risk disclosures, whatever actions the SEC takes in the area will generally have an impact on those disclosures.

## New York Attorney General Subpoena Update

On October 20, 2010, the campaign of the newly elected NY AG Eric Schneiderman announced his plans “to continue to build on the successful program launched by former NY AG Andrew Cuomo to require carbon-intensive companies to disclose financial risks related to global warming.”<sup>15</sup>

As a result, it is possible that these plans will result in new subpoenas or in further activity on the two outstanding subpoenas issued to Dominion Resources, Inc. and Peabody Energy Corporation in 2007 under former NY AG Cuomo’s tenure.<sup>16</sup> Certain commentators, however, have speculated that this announcement was merely a political statement made just two weeks before the election to appeal to supporters of the outgoing NY AG Andrew Cuomo’s efforts on climate change disclosure.

## NAIC Climate Change Disclosure Survey Update

In March 2010, the National Association of Insurance Commissioners (“NAIC”) issued a final model rule that, if adopted by the various state insurance commissioners, would have insurers complete and submit to such commissioners an annual climate risk disclosure survey.<sup>17</sup> A draft version of the rule, on which

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<sup>13</sup> Mary L. Schapiro, Chairman, U.S. Securities and Exch. Comm., Speech by SEC Chairman: Remarks at the National Conference of the Society of Corporate Secretaries and Governance Professionals (July 9, 2010), available [here](#).

<sup>14</sup> *Id.*

<sup>15</sup> Eric Schneiderman for Attorney General, *Press Release: Schneiderman Details Plan to Require More Companies to Disclose Financial Risks from Global Warming*, October 20, 2010.

<sup>16</sup> See our Davis Polk Memorandum *Environmental Disclosure in SEC Filings* on page 49 available [here](#) for a discussion of the subpoenas.

<sup>17</sup> Insurers collecting annual premiums of over \$300 million for the 2010 reporting year would be required to complete the survey. The survey would require responders to disclose information nearly identical to certain questions of the Carbon Disclosure Project, *e.g.*, (i) what climate change risks the company faces; (ii) what its risk management policies are; (iii) how the company identifies and addresses these risks; and (iv) how the company has changed its business or investment strategy as a result. The survey is available [here](#).

NAIC had collaborated with Ceres, an environmental group, was first announced in March 2009. The final model rule retreated from the March 2009 draft in two significant respects:

- The survey is not mandatory; and
- The disclosures are not required to be made available to the public.

Ceres and other advocates of climate change disclosure were disappointed by the watered-down final rule. NAIC's reversal, however, was due largely to the lack of political support from numerous Republican-led states for the mandatory and public aspects of the 2009 draft. As a result, this disclosure rule has lost momentum in nearly all states other than California, New York, Pennsylvania and Washington, which states have thus far agreed to make the 2010 survey mandatory to their domestics and to make the results publicly available.

## ASTM Climate Change Disclosure Standard

On April 1, 2010, the American Society for Testing and Materials ("ASTM") released ASTM E2718-10, Standard Guide for Financial Disclosures Attributed to Climate Change,<sup>18</sup> which sets forth a voluntary framework to guide climate change disclosure. The guidance suggests disclosure similar to what the Release requires, but it is more detailed and advocates more robust disclosure with respect to corporate governance matters, such as companies' strategic analysis and managements' positions on the financial impact of climate change. ASTM's publication of a voluntary guidance document just weeks after the effective date of the Release was curious and, as expected, the standard has not gained any meaningful traction.

## 2010 Proxy Season – Shareholder Proposals

Surprisingly, SEC's Staff Legal Bulletin 14E, which the SEC adopted in October 2009 and the terms of which made it more difficult for companies to exclude shareholder proposals related to risk, did not appear to have a major impact on the number of environmental or climate change related shareholder proposals submitted in the 2010 proxy season as compared to 2009.<sup>19</sup> Shareholders submitted 41 and 37 climate change related proposals in 2010 and 2009, respectively.<sup>20</sup> As was the case in 2009, shareholders approved only one climate change related proposal.<sup>21</sup> That vote and one other noteworthy vote from the 2010 proxy season are detailed below:

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<sup>18</sup> American Society for Testing and Materials (ASTM), *ASTM E2718-10: Standard Guide for Financial Disclosures Attributed to Climate Change*, April 1, 2010.

<sup>19</sup> See our Davis Polk Memorandum *Environmental Disclosure in SEC Filings – 2010 Update* available [here](#) which describes this Staff Legal Bulletin.

<sup>20</sup> CAROLYN MATHIASSEN & ERIK MELL, INSTITUTIONAL SHAREHOLDER SERVICES, A FINAL REVIEW OF 2010 ESG SHAREHOLDER PROPOSALS 2 (2010).

<sup>21</sup> In 2009, 51.2% of the shareholders of IDACORP, Inc. an electricity utility holding company, voted for a resolution asking the Board of Directors to establish greenhouse gas reduction goals. See Press Release, Ceres, *Investors Achieve Major Company Commitments on Climate Change* (Aug. 24, 2009), available [here](#).

Company	Industry	Shareholder Proposal
Layne Christensen	Energy	60.3% of the shareholders of the company voted for a resolution requiring the company's board of directors to issue "a sustainability report describing the company's [environmental, social and governance] performance and goals, along with sustainable water management and greenhouse gas emissions and management plans for their reduction." <sup>22</sup>
Massey Energy Company	Coal	Shareholders of the company nearly approved a proposal which would have required the company to set greenhouse gas reduction goals. 53.1% of the voting shareholders voted in favor of the proposal, but the company counted millions of abstentions as disapprovals, as a result of which the proposal was deemed to have the support of only 36.8% of the shareholders.

## Environmental Accounting Update

### Disclosure of Loss Contingencies Rules

In our 2009 and 2010 memoranda, we described FASB's ongoing efforts to expand its disclosure requirements to help investors better understand the nature and potential magnitude and timing of loss contingencies. As described in our earlier memoranda, FASB's 2008 draft Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies—an amendment of FASB Statements No. 5 and 141(R)* (the "2008 Draft") had been heavily criticized. During 2010, FASB continued to evaluate the 2008 Draft, both internally and through roundtable meetings with the public, and, on July 20, 2010, released a revised proposed Accounting Standards Update, *Contingencies (Topic 450), Disclosure of Certain Loss Contingencies* (the "2010 Proposed Update").<sup>23</sup> Despite the regulated community's harsh criticism of the 2008 Draft, the 2010 Proposed Update is not a great departure from its predecessor and, like the 2008 Draft, has received hundreds of public comments in opposition.

### Key Aspects of the 2010 Proposed Update

The 2010 Proposed Update calls for significantly more detailed disclosure of environmental loss contingencies, including:

<sup>22</sup> See proxy statement [here](#).

<sup>23</sup> CONTINGENCIES (TOPIC 450), DISCLOSURE OF CERTAIN LOSS CONTINGENCIES, Exposure Draft, Proposed Accounting Standards Update (Financial Accounting Standards Bd. 2010), available [here](#).

- Disclosure of all remote loss contingencies that may have a potentially severe impact, regardless of when they are expected to be resolved.
- Additional qualitative disclosures, including:
  - the contentions of the parties to a litigation;
  - relevant non-privileged information;
  - the anticipated timing of or next steps in the matter;
  - information about how users can obtain publicly available information, such as court records, on the matter; and
  - the expectation of more disclosure as the matter develops, including possible unfavorable outcomes.
- Additional quantitative disclosures, including:
  - the amount of damages asserted or indicated by expert witness testimony;
  - the possible loss or range of loss;
  - the amount accrued; and
  - possible recovery from insurance and other sources if such information:
    - was provided to the plaintiff; or
    - is “discoverable” (even though potential insurance and other indemnification coverage cannot be used to offset accruals for loss contingencies or factored in when evaluating potential materiality to determine whether to disclose the related loss).
- Tabular Reconciliation of loss contingency accruals showing:
  - period-over-period reassessments of quantitative disclosures; and
  - tabular reconciliations of accruals by class of accrued loss contingencies, including:
    - beginning and ending balances;
    - amounts accrued;
    - changes in estimates; and
    - decreases from payments or settlements.<sup>24</sup>

In addition, the 2010 Proposed Update permits aggregate disclosures of similar contingencies by segment, product line, class or type, other than those instances in which there are a large number of claims (such as class actions), in which case companies are required to disclose the total number of claims, average amount claimed and average settlements. Unlike the 2008 Draft, the 2010 Proposed Update does not allow companies to withhold disclosure of prejudicial contingencies because of this permitted aggregation.

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<sup>24</sup> *Id.* ¶ 450-20-50-1F(g).

## Next Steps

At this time, the 2010 Proposed Update, which was scheduled to take effect on December 15, 2010, is on hold.<sup>25</sup> In the meantime, FASB has directed its staff to consult with the SEC and the Public Company Accounting Oversight Board ("PCAOB") to understand the progress those agencies are making to address weak loss contingency disclosure through enhancing company compliance with existing rules.<sup>26</sup> In addition, FASB's staff will review 2010 calendar year-end filings to determine if the SEC and PCAOB's efforts have resulted in improved loss contingency disclosures.

It is possible that FASB's work with the SEC and PCAOB and its planned review of 2010 year-end filings will result in FASB withdrawing the 2010 Proposed Update. For example, FASB pondered at its November 2010 meeting whether historic investor requests for better loss contingency disclosure resulted from unsatisfactory compliance with existing standards, rather than inadequate standards.<sup>27</sup> Also, future FASB board members may not be as supportive of updating loss contingency disclosure standards as former members have been. FASB voted three to two in favor of releasing the 2010 Proposed Update. One of the board members who voted in favor of the release, Chairman Robert Herz, however, retired on October 1, 2010. In addition, FASB is expected to expand in early 2011 from five board members to seven. As a result, it is unclear whether the 2010 Proposed Update will garner sufficient support from this enlarged board.

As noted on the FASB website, interested companies should watch to see if FASB reconsiders the 2010 Proposed Update at a future meeting in the second half of 2011.

## Practical Considerations

Registrants should continue to abide by the practical considerations set forth in our 2009 and 2010 memoranda. In addition, registrants should also consider the following in light of the recent initiatives at the SEC, PCAOB and FASB:

- Risk Factor Disclosure
  - Companies should review their existing risk factor disclosure to ensure compliance with current disclosure requirements, particularly with respect to climate change regulatory developments. In the course of their review, companies may also consider opportunities to streamline risk factor disclosure copied from previous 10-Ks and 20-Fs or to make that risk factor disclosure flow more comprehensively with any corresponding disclosure in their MD&As.
- Loss Contingency Disclosure
  - Companies should ensure that their disclosures comply with existing disclosure standards, in particular with FASB Accounting Standards Codification Topic 450 (former FAS 5).
  - Companies should endeavor to make their disclosures robust, timely and consistent, regardless of whether this loss contingency disclosure is provided:

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<sup>25</sup> FASB, Board Meeting Minutes, Oct. 27, 2010, available [here](#).

<sup>26</sup> FASB, Board Meeting Minutes, Nov. 10, 2010, available [here](#).

<sup>27</sup> Audio File: FASB, Meeting Archive, Wednesday, November 10, 2010, Disclosure of Certain Loss Contingencies, available [here](#).

- in the legal proceedings, risk factors or MD&A section;
  - in financial statement footnote disclosure within their SEC filings;
  - in press releases; or
  - on earnings calls.
- If companies state that they cannot disclose a loss or range of loss because such figures cannot be estimated with precision and confidence, companies should be prepared to defend these conclusions with the SEC.

## Conclusion

We expect that environmental and climate change disclosure will continue to be of interest to the SEC in 2011. This interest, however, will likely reflect less vigor than in 2009 and 2010 for the reasons described above. We will watch with great interest the SEC's progress on updating risk factor disclosure standards and whether the NY AG takes any action to enhance climate change disclosure. We also expect some resolution at FASB in late 2011 with respect to its controversial 2010 Proposed Update.



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