

SEC issues guidance on disclosure obligations associated with climate change

LANETTE WILKINSON (lwilkinson@stikeman.com)

Securities and Exchange Commission (SEC) rules require companies to disclose impacts or risks that are material to their business. In September 2007 and again in November 2009, a coalition of leading institutional investors petitioned the SEC to issue guidance on existing SEC disclosure obligations as they relate to climate change. Following this pressure, on January 27, 2010, the SEC approved an interpretive release that addresses when legislative or business developments relating to climate change trigger disclosure obligations. Although the interpretive release has not yet been issued, the SEC has indicated that disclosure obligations may be triggered when a company evaluates, and determines to be material to its business, (1) the impact of existing (or in certain circumstances, proposed) legislation and regulation relating to climate change; (2) the risks or effects of international accords and treaties relating to climate change; (3) the potential or actual indirect consequences of regulatory or business trends associated with climate change; or (4) the effects of actual or potential physical impacts of climate change.

Further detail is available at www.sec.gov/news/press/2010/2010-15.

In our December 2009 issue of the Emissions Trading and Climate Change Update we reviewed comparable efforts of the Ontario Securities Commission to establish guidance for climate change disclosure in Ontario. We will continue to follow the progress of the SEC and the OSC in establishing detailed guidance for climate change disclosure. Look for further analysis and observation in future bulletins.

For further information, please contact your Stikeman Elliott representative, the author listed above or any member of our Emissions Trading and Climate Change Group listed at www.stikeman.com

This newsletter was prepared by members of the Emissions Trading and Climate Change Group at Stikeman Elliott.