Market Trends 2021: Disclosure Related to Climate Change

A Practical Guidance® Practice Note by
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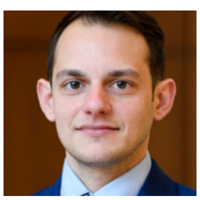

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This practice note discusses market trends in 2021 relating to disclosures of climate change risks and mitigation by public companies, which are intertwined with environmental, social, and governance (ESG) issues. It also provides illustrative disclosures by public companies regarding how climate change has affected or may affect their operations, both directly (e.g., through disruption of supply chains) and indirectly (e.g., through increased regulatory compliance, mitigation, and litigation costs) and concludes with recommendations regarding preparing and enhancing such disclosures.

Background

In the beginning of 2021, the Securities and Exchange Commission (SEC) undertook a number of new initiatives that signaled its increased interest in ESG issues, including climate-related disclosures. In February 2021, the SEC hired a Senior Policy Advisor for Climate and ESG to advise the agency on ESG matters and advance related new initiatives across its offices and divisions. Later that month, then Acting SEC Chair Allison Herren Lee directed the SEC Division of Corporation Finance to enhance its focus on climate-related disclosures in public company filings. Then, in March 2021, the SEC announced the creation of a Climate and ESG Task Force in the Division of Enforcement and solicited public input on climate change disclosures.

In June 2021, the SEC published its Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions (86 Fed. Reg. 41276), which included proposed rule amendments "to enhance registrant disclosures regarding issuers' climate-related risks and opportunities." The rules were originally expected to be issued in October 2021. SEC Chair Gary Gensler has stated that he has asked SEC staff "to develop a mandatory climate risk disclosure rule proposal for the SEC's consideration by the end of the year," but suggested that the proposal may not be ready for public notice and comment until early 2022. Recently, the SEC's Division of Corporation Finance has sent comment letters to public companies that suggest that the SEC is already taking a more proactive approach to reviewing climate disclosures than it has in prior years.

While there currently is no requirement to make specific climate change risk disclosures in SEC filings, public companies have frequently and voluntarily included in their public filings some disclosures relating to climate change, in part driven by the increased attention that investors place on greater transparency with respect to such disclosures. Several major institutional investors have expressed an intention to increasingly engage their portfolio companies on disclosing and managing climate-related business risks, particularly those in carbon-intensive sectors. For example, BlackRock, currently the largest money manager in the United States, reported in its 2021 Stewardship Expectations that it had put 191 of its 440 carbon-intensive portfolio companies "on watch" in the previous year, which meant that BlackRock would vote against the incumbent directors of those companies "unless they demonstrate significant progress on the management and reporting of climate-related risk." In June 2021, it was reported that 168 global asset managers and financial institutions managing more than $17 trillion in assets had pledged their support for the Carbon Disclosure Project, a nonprofit organization campaigning for the world's largest public companies to disclose environmental data. According to ISS Governance, during the 2021 proxy season, a total of 84 climate-related shareholder proposals were submitted (compared to 77 proposals submitted during the prior proxy season), demanding, among other things, that (1) companies take actions toward specific environmental goals, (2) increase climate change-related reporting, (3) reduce emission of greenhouse gases generally, (4) disclose lobbying efforts related to climate regulation, or (5) allow shareholders to vote on companies' plans to mitigate climate risks. Furthermore, ISS Governance reported that median support of such proposals by shareholders was 48.9% during the 2021 season, compared to 37.6% during the prior proxy season.

In June 2021, the U.S. House of Representatives narrowly passed H.R. 1187, the Corporate Governance Improvement and Investor Protection Act, a series of bills containing proposed amendments to the Securities Exchange Act of 1934, as amended (Exchange Act). If enacted into law, H.R. 1187 would, among other things, require the SEC to begin the rulemaking process to define standards for ESG disclosures, including climate risk information. In particular, the Climate Risk Disclosure Act (CRDA) contained within H.R. 1187 would require each public company to file an annual report disclosing the financial risks posed to the company by climate change and efforts by management to identify and mitigate such risks. Specific disclosures that would be mandated by the CRDA include (1) the company's direct and indirect greenhouse gas emissions, (2) the amount of fossil fuel-related assets owned or managed by the company, (3) how the company's valuation would be affected if climate change continues at its current pace, and (4) total costs attributable to the company's greenhouse gas emissions.

Although H.R. 1187 has yet to be passed by the Senate (and may not be), the SEC may undertake rulemaking of its own accord requiring additional climate change disclosures. In response to investors' increased interest in climate-related issues, Acting SEC Chair Allison Herren Lee stated on March 15, 2021, that the SEC has directed its staff "to evaluate our disclosure rules with an eye toward facilitating the disclosure of consistent, comparable and reliable information on climate change." And, as noted above, the SEC has solicited and received over 5,800 public comments since March 2021 on its existing climate change disclosure rules and guidance.

These recent developments are part of the SEC long-term focus on climate change-related disclosures. On February 8, 2010, the SEC released interpretive guidance on how existing disclosure requirements relate to climate change. See Commission Guidance Regarding Disclosure Related to Climate Change, Release Nos. 33-9106; 34-61469; FR-82 (February 8, 2010) (2010 SEC LEXIS 360). In that release, the SEC identified a number of climate-related occurrences that may trigger disclosure. For example, legislative and regulatory developments could affect a company's financial and operating decisions or result in changed prices for its services. In addition, the physical effects of climate change may interrupt a company's supply and distribution chains, impact its physical assets, or decrease demand for its products.

The Staff of the SEC's Division of Corporation Finance (Staff) has issued a Sample Letter to Companies Regarding Climate Change Disclosures, updated in September 2021, that provides sample comments that the Staff would issue to companies regarding their climate-related disclosure, following a review of a company's filings made under the Securities Act of 1933, as amended and the Exchange Act.

Although the SEC has clearly identified climate risk disclosure as a top priority, its rulemaking efforts have been delayed. In the face of opposition from corporate lobbyists and some lawmakers, the SEC has devoted considerable time and effort to gathering data to substantiate that these disclosures are material to investment decisions. SEC Chairman Gary Gensler recently reaffirmed his intention to implement new regulations, noting that investors look for "consistent, comparable, and decision-useful disclosures" when evaluating companies' climate risks.

While H.R. 1187 does not identify specific sections of public filings where climate-related disclosures would be required, there are three main areas where companies would likely need to make climate change-related disclosures in accordance with Regulation S-K: (1) risk factors; (2) business; and (3) management's discussion and analysis of financial condition and results of operations (MD&A), each of which is further discussed below.

For further information on public company disclosure in general, see Public Company Periodic Reporting and Disclosure Obligations and Periodic and Current Reporting Resource Kit.

Disclosure on Climate Change in Risk Factors

Item 105 (17 C.F.R. § 229.105) of Regulation S-K requires a description of material factors that make an investment in the company or the securities being offered speculative or risky, with a concise explanation as to how each risk affects the company or the securities.

Public companies have typically included in the risk factors sections of their recent periodic reports a discussion of how the increase in incidents of extreme weather may interrupt supply chains and overall productivity, and many companies address the potential impacts of new or anticipated climate regulations. Some companies report an increased risk of litigation seeking legal and equitable relief for damages resulting from climate change alleged to be attributable to their operations. Finally, a number of companies discuss the risk of reputational harm that may arise as a result of certain climate change impacts, such as decreased productivity and failure to adequately address consumers' concerns about climate change. Below are some examples of climate change disclosures included in the risk factors section of recent periodic reports.

For further information on risk factor disclosure, see Market Trends 2020/21: Risk Factors, Top 10 Practice Tips: Risk Factors, and Risk Factor Drafting for a Registration Statement. The disclosures should be in plain English and should not be generic. For further information on plain English, see Top 10 Practice Tips: Drafting a Registration Statement.

Financial Risk

- "Certain financial institutions, institutional investors and other sources of capital have begun to limit or eliminate their investment in oil and gas activities due to concerns about climate change, which could make it more difficult to finance our business. Increasing attention to climate change, ESG and sustainability has resulted in governmental investigations, and public and private litigation, which could increase our costs or otherwise adversely affect our business or results of operations. In addition, organizations that provide information to investors on corporate governance and related matters have developed ratings processes for evaluating companies on their approach to ESG matters. Such ratings are used by some investors to inform their investment and voting decisions. Unfavorable ESG ratings may lead to increased negative investor sentiment toward us and our industry and to the diversion of investment to other industries, which could have a negative impact on our stock price and our access to and costs of capital . . . . In addition, impacts of climate change could increase the frequency and severity of extreme weather conditions. Any such extreme weather-related events could have a material adverse effect on our business, financial condition and results of operations." *Weatherford International PLC, Form 10-K filed February 19, 2021 (SIC Code 3533—Oil and Gas Field Machinery and Equipment).*

Operational Risk

- "It is not possible at this time to predict the timing and effect of climate change or whether additional [greenhouse gas (GHG)] legislation, regulations or other measures will be adopted at the federal, state or local levels. However, more aggressive efforts by governments and non-governmental organizations to reduce GHG emissions appear likely based on the findings set forth in the 2018 and 2021 [Intergovernmental Panel on Climate Change (IPCC)] Reports and any such future laws and regulations could result in increased compliance costs, additional operating restrictions or affect the demand for our customers' products and, accordingly, our services. For example, a coalition of over 20 governors of U.S. states formed the United States Climate Alliance to advance the objectives of the Paris Agreement, and several U.S. cities have committed to advance the objectives of the Paris Agreement at the state or local level as well. To this end, the California governor issued an executive order on September 23, 2020 ordering actions to pursue GHG emissions reductions, including a direction to the California State Air Resources Board to develop and propose regulations to require increasing volumes of new zero-emission passenger vehicles and trucks sold in California over time, with a targeted ban of the sale of new gasoline vehicles by 2035. If we are unable to recover or pass through a significant level of our costs related to complying with climate change regulatory requirements imposed on us, it could have a material adverse impact on our business, financial condition and results of operations. Further, to the extent financial markets view climate change and GHG emissions as a financial risk, this could negatively impact our cost of or access to capital. Climate change and GHG regulation could also negatively impact the drilling programs of our customers and, consequently, delay, limit or reduce the services we provide. An increased focus by the public on the reduction of GHG emissions as well as the results of the physical impacts of climate change could affect the demand for our customers' products and have a negative effect on our business." *Helmerich & Payne, Inc., Form 10-K filed November 18, 2021 (SIC Code 1381—Drilling Oil & Gas Wells).*

- "Physical impacts of climate change could have a material adverse effect on our costs and operations . . . . There has been public discussion that climate change may be associated with rising sea levels as well as extreme weather conditions such as more intense hurricanes, thunderstorms, tornadoes, drought and snow or ice storms. Extreme weather conditions may increase our costs or cause damage to our facilities, and any damage resulting from extreme weather may not be fully insured. Many of our facilities are located near coastal areas or waterways where rising sea levels or flooding could disrupt our operations or adversely impact our facilities. Furthermore, periods of extended inclement weather or associated flooding may inhibit construction activity utilizing our products, delay or hinder shipments of our products to customers or reduce scrap metal inflows to our recycling facilities. Any such events could have a material adverse effect on our costs or results of operations." *Commercial Metals Co., Form 10-K filed October 14, 2021 (SIC Code 3312—Steel Works, Blast Furnaces & Rolling Mills (Coke Ovens)).*
- "Climate change, or legal, regulatory or market measures to address climate change, may negatively affect our business and operations.

  There is growing concern that carbon dioxide and other greenhouse gases in the atmosphere may have an adverse impact on global temperatures, weather patterns, and the frequency and severity of extreme weather and natural disasters. In the event that such climate change has a negative effect on agricultural productivity, we may be subject to decreased availability or less favorable pricing for certain commodities that are necessary for our products, such as wheat, tomatoes, potatoes, cashews and almonds. Adverse weather conditions and natural disasters can reduce crop size and crop quality, which in turn could reduce our supplies of raw materials, lower recoveries of usable raw materials, increase the prices of our raw materials, increase our cost of storing and transporting our raw materials, or disrupt production schedules.

  We may also be subjected to decreased availability or less favorable pricing for water as a result of such change, which could impact our manufacturing and distribution operations. In addition, natural disasters and extreme weather conditions may disrupt the productivity of our facilities or the operation of our supply chain. The increasing concern over climate change may also result in more regional, federal, and/or global legal and regulatory requirements relating to climate change, including, regulating greenhouse gas emissions, alternative energy policies and sustainability initiatives, including single use plastics. In the event such regulation is enacted and is more aggressive than the sustainability measures that we are currently undertaking to monitor our emissions and improve our energy efficiency and other sustainability goals, we may experience significant increases in our costs of operation and delivery. In particular, increasing regulation of utility providers, fuel emissions, or fuel suppliers could substantially increase the distribution and supply chain costs associated with our products. Additionally, consumers and customers may put an increased priority on purchasing products that are sustainably grown and made, requiring us to incur increased costs for additional transparency, due diligence and reporting. As a result, climate change could negatively affect our business and results of operations." *Campbell Soup Co., Form 10-K filed September 23, 2021 (SIC Code 2000—Food and Kindred Products).*
- "The adoption of climate change legislation or regulations restricting emissions of 'greenhouse gases' could increase our costs to operate. Our landfill operations emit methane, identified as a GHG. There are a number of legislative and regulatory efforts at the state, regional and federal levels to curtail the emission of GHGs to ameliorate the effect of climate change. Should comprehensive federal climate change legislation be enacted, we expect it could impose costs on our operations that might not be offset by the revenue increases associated with our lower-carbon service options, the materiality of which we cannot predict. In 2010, the EPA published a Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, which expanded the EPA's federal air permitting authority to include the six GHGs. The rule sets new thresholds for GHG emissions that define when Clean Air Act permits are required. The current requirements of these rules have not significantly affected our operations or cash flows, due to the tailored thresholds

and exclusions of certain emissions from regulation. However, if certain changes to these regulations were enacted, such as lowering the thresholds or the inclusion of biogenic emissions, then the amendments could have an adverse effect on our operating costs." *Creative Waste Solutions, Inc., Form 10-K filed July 12, 2021 (SIC Code 1000—Metal Mining).*

Litigation Risk

- "Beginning in 2017, cities, counties, governments and other entities in several states in the U.S. have filed lawsuits against oil and gas companies, including ConocoPhillips, seeking compensatory damages and equitable relief to abate alleged climate change impacts. Additional lawsuits with similar allegations are expected to be filed. The amounts claimed by plaintiffs are unspecified and the legal and factual issues involved in these cases are unprecedented. ConocoPhillips believes these lawsuits are factually and legally meritless and are an inappropriate vehicle to address the challenges associated with climate change and will vigorously defend against such lawsuits." *ConocoPhillips, Form 10-K filed February 16, 2021 (SIC Code 2911—Petroleum Refining).*

Reputational Risk

- "Climate change or measures to address climate change can negatively affect our business or damage our reputation. Climate change may have a negative effect on agricultural productivity which may result in decreased availability or less favorable pricing for certain commodities that are necessary for our products, such as potatoes, sugar cane, corn, wheat, rice, oats, oranges and other fruits (and fruit-derived oils). In addition, climate change may also increase the frequency or severity of natural disasters and other extreme weather conditions, which could impair our production capabilities, disrupt our supply chain or impact demand for our products. Also, concern over climate change may result in new or increased legal and regulatory requirements to reduce or mitigate the effects of climate change, which could result in significant increased costs and require additional investments in facilities and equipment. As a result, the effects of climate change can negatively affect our business and operations. In addition, any failure to achieve our goals with respect to reducing our impact on the environment or perception of a failure to act responsibly with respect to the environment or to effectively respond to regulatory requirements concerning climate change can lead to adverse publicity, resulting in an adverse effect on our business or damage to our reputation." *PepsiCo, Inc., Form 10-K filed February 11, 2021 (SIC Code 2080—Beverages).*

Climate Change Disclosures in the Business Section

Item 101(a) (17 C.F.R. § 229.101) of Regulation S-K requires a company to describe, and disclose material information necessary to understand, the general development of its business.

Similar to the risk factors section, disclosures in the business section discuss the risk that unpredictable weather patterns, rising sea levels, and changing temperatures will interrupt supply chains and have other adverse consequences, which may affect productivity and financial performance. Companies also address the impact new laws or regulations may have on their businesses, such as increased overhead costs and changes to the level of demand for their products. Below are some examples of climate change disclosures included in the Business section of recent periodic reports.

For more information on the business section requirements, see Form 10-K Drafting and Review — Overview of Major Disclosure Items.

General Disclosure

- "Various state governments and regional organizations are considering enacting new legislation and promulgating new regulations governing or restricting the emission of greenhouse gases from stationary sources such as our equipment and operations. Legislative and regulatory proposals for restricting greenhouse gas emissions or otherwise addressing climate change could require us to incur additional operating costs and could adversely affect demand for the natural gas and oil that we sell. The potential increase in our operating costs could include new or increased costs to obtain permits, operate and maintain our equipment and facilities, install new emission controls on our equipment and facilities, acquire allowances to authorize our greenhouse gas emissions, pay taxes related to our greenhouse gas emissions and administer and manage a greenhouse gas emissions program." *Camber Energy, Inc. Form 10-K/A filed November 22, 2021 (SIC Code 1311—Crude Petroleum & Natural Gas).*

- "The potential impact of climate change on our operations is uncertain. Climate change may result in, among other things, changes in rainfall and storm patterns and intensity and increased temperature and sea levels. . . . [O]ur operating results are significantly influenced by weather, and significant changes in historical weather patterns could significantly impact our future operating results. For example, if climate change results in drier weather and more accommodating temperatures over a greater period of time, we may be able to increase our productivity, which could positively impact our revenues and gross margins. Conversely, if climate change results in a greater amount of rainfall, snow, ice or other less accommodating weather conditions, we could experience reduced productivity, which could negatively impact our revenues and gross margins. Further, while an increase in severe weather events, such as hurricanes, tropical storms, blizzards and ice storms, can create a greater amount of emergency restoration service work, it often also can result in delays or other negative consequences for our manufacturing operations, which could negatively impact our financial results. Climate change may also affect the conditions in which we operate, and in some cases, expose us to potentially increased liabilities associated with those environmental conditions. Concerns about climate change could also result in potential new regulations, regulatory actions or requirements to fund energy efficiency activities, any of which could result in increased costs associated with our operations." *EnerSys, Form 10-K filed May 26, 2021 (SIC Code 3690—Miscellaneous Electrical Machinery, Equipment & Supplies).*
- "The Company may be, directly and indirectly, subject to the effects of climate change and may, directly or indirectly, be affected by government laws and regulations related to climate change. We cannot predict with any degree of certainty what effect, if any, climate change and government laws and regulations related to climate change will have on the Company and our business, whether directly or indirectly. While we believe that it is difficult to assess the timing and effect of climate change and pending legislation and regulation related to climate change on our business, we believe that those laws and regulations may affect, directly or indirectly, (i) the costs associated with drilling and production operations in which we participate, (ii) the demand for oil and natural gas, (iii) insurance premiums, deductibles and the availability of coverage and (iv) the cost of utilities paid by the Company. In addition, climate change may increase the likelihood of property damage and the disruption of operation of wells in which we participate. As a result, our financial condition could be negatively impacted, but we are unable to determine at this time whether that impact would be material." *Reserve Petroleum Co., Form 10-K filed March 31, 2021 (SIC Code 1311—Crude Petroleum and Natural Gas).*

Climate Change Disclosures in MD&A

Item 303(a) (17 C.F.R. § 229.303) of Regulation S-K, management's discussion and analysis of financial condition and results of operations (MD&A), requires a discussion of a company's financial condition and results of operations and any material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations. MD&A should not include merely generic or boilerplate disclosures but should reflect how particular facts and circumstances affect the company and its business.

Companies generally discuss in their MD&As the direct and indirect impacts and risks of climate change on management and business operations, including increased costs of raw materials due to droughts or flooding, as well as expenses incurred in compliance with climate change regulations, such as carbon taxes, cap-and-trade policies and bans on drilling. In addition, many companies outline management's role in developing and implementing strategies for addressing actual and potential impacts of climate change. Below are some examples of climate change disclosures included in the MD&A sections of recent periodic reports.

For more information about MD&A generally, see Management's Discussion and Analysis of Financial Condition and Results of Operations and Management's Discussion and Analysis Section Drafting Checklist.

Results of Operations

- "There is an increased focus by local, national and international regulatory bodies on greenhouse gas (GHG) emissions and climate change. A number of nations and U.S. states have adopted or are considering some form of climate change legislation and regulations, including carbon taxes, cap-and-trade policies and bans on drilling in certain areas or in certain ways. The climate accord reached at the Conference of the Parties

(COP21) in Paris set many new goals, and while many related policies are still emerging, XTO Energy has informed the Trustee that it continues to anticipate that such policies will increase the cost of carbon dioxide emissions over time. As these regulations are under development, XTO Energy is unable to predict the total impact of the potential regulations upon the operators of the underlying properties, and it is possible that the operators of the underlying properties could face increases in operating costs or a ban or certain types of activities in order to comply with climate change or GHG emissions legislation, which costs could reduce or eliminate net proceeds payable to the Trust and Trust distributions." *Cross Timbers Royalty Trust, Form 10-K filed April 13, 2021 (SIC Code 6792—Energy & Natural Resources).*

- "For the past several years, management has identified multiple risks and opportunities related to climate change, including potential environmental regulation, technological innovation, and availability of fuel and water for operations, as among the most significant risks facing the Company. Accordingly, these risks are overseen by the Board in order to facilitate more integrated risk and strategy oversight and planning. Board oversight includes understanding the various challenges and opportunities presented by these risks, including the financial consequences that might result from enacted and potential federal and/or state regulation of GHG; plans to mitigate these risks; and the impacts these risks may have on the Company's strategy. In addition, the Board approves certain procurements of environmental equipment, grid modernization technologies, and replacement generation resources.

  Management is also responsible for assessing significant risks, developing and executing appropriate responses, and reporting to the Board on the status of risk activities. For example, management periodically updates the Board on the implementation of corporate environmental policy, and the Company's environmental management systems, including the promotion of energy efficiency programs, and the use of renewable resources. The Board is also informed of the Company's practices and procedures to assess the impacts of operations on the environment. The Board considers issues associated with climate change, the Company's GHG exposures, and the financial consequences that might result from enacted and potential federal and/or state regulation of GHG. Management has published, with Board oversight, a Climate Change Report available at http://www.pnmresources.com/about-us/sustainability-portal.aspx, that details the Company's efforts to transition to an emissions-free generating portfolio by 2040." *PNM Resources, Inc., Form 10-K filed March 1, 2021 (SIC Code 4911—Energy & Natural Resources).*

- "As a global corporate citizen, we are concerned about the consequences of climate change and will take prudent and cost effective actions that reduce Green House Gas (GHG) emissions to the atmosphere . . . . Even as we take action to control the release of GHGs, additional warming is anticipated. Long-term, higher average global temperatures could result in induced changes in natural resources, growing seasons, precipitation patterns, weather patterns, species distributions, water availability, sea levels, and biodiversity. These impacts could cause changes in supplies of raw materials used to maintain FMC's production capacity and could lead to possible increased sourcing costs. Depending on how pervasive the climate impacts are in the different geographic locations experiencing changes in natural resources, FMC's customers could be impacted. Demand for FMC's products could increase if our products meet our customers' needs to adapt to climate change impacts or decrease if our products do not meet their needs." *FMC Corporation, Form 10-K filed February 25, 2021 (SIC Code 2800—Industrial & Manufacturing).*

- "Our operations, and the activities of our customers, could be disrupted by climate change. The physical changes caused by climate change may prompt changes in regulations or consumer preferences which in turn could have negative consequences for our and our customers' businesses. Climate change may negatively impact our customers' operations, particularly those in the livestock industry, through climate-related impacts such as increased air and water temperatures, rising water levels and increased incidence of disease in livestock. Potential physical risks from climate change may include altered distribution and intensity of rainfall, prolonged droughts or flooding, increased frequency of wildfires and other natural disasters, rising sea levels, and a rising heat index, any of which could cause negative impacts to our and our customers' businesses. If such events affect our customers' businesses, they may purchase fewer of our products, and our revenues may be negatively impacted. Climate driven changes could have a material adverse effect on our financial condition and results of operations.

  There has been a broad range of proposed and promulgated state, national and international regulations aimed at reducing the effects of climate change. Such regulations could result in additional costs to maintain compliance and additional income or other taxes. Climate change regulations continue to evolve, and it is not possible to accurately estimate potential future compliance costs." *Phibro Animal Health Corp., Form 10-K filed August 25, 2021 (SIC Code 2834—Healthcare & Pharmaceuticals).*

- "As our business is focused on reducing carbon emissions and increasing resiliency to climate change, we are impacted by the effects of climate change and various related regulatory responses. In managing our business, we consider the potential impacts to our operations that may result in certain climate-related scenarios." *Hannon Sustainable Infrastructure, Inc., Form 10-K filed February 22, 2021 (SIC Code 6798—Construction & Real Estate).*

Climate Change Disclosure Enhancements

Investors' interest in understanding the impact of climate change on public companies is at an all-time high. This is consistent with the efforts by the present federal administration, the SEC, and Congress in pushing for mandatory ESG disclosures, including those related to climate change. A public company's board of directors and management should consider providing a comprehensive and reliable set of climate change-related disclosures, including quantifying to the extent possible the actual or anticipated financial effects of climate change on its business, to minimize its legal risks and maximize the potential benefits of having a business strategy to address ESG issues. These disclosures will also provide a company's investors with insight into whether the company will be able to withstand environmental, regulatory, and potential operational changes that may result from climate change. The following steps may be helpful in preparing or enhancing disclosures related to climate change in SEC-filed documents:

- **Ascertain and disclose if the company currently experiences, or is likely to experience, the direct and indirect impacts of climate change.** A public company should ascertain its actual and potential exposures to short-, medium-, and long-term effects of climate change. It should disclose both direct impacts (e.g., disruptions to operations and supply chains and decreased customer demand due to extreme weather events) and indirect impacts (e.g., costs associated with regulatory compliance, including carbon taxes, cap-and-trade policies, emissions standards, and bans on drilling).
- **Disclose the business risks and impacts associated with climate change.** A company should consider identifying which parts of its business or operations are expected to be affected by climate change. It should also provide a reasonable estimate on how climate change affects or will affect that business segment and for how long. It should not only focus on the negative effects on financial condition, operating results, and cash flows, but also should underscore any favorable effects climate change may have on the company's business and operations (accompanied, of course, by appropriate cautionary language). To the extent possible, a public company should reasonably attempt to quantify the impacts of climate change, taking into consideration that if and when H.R. 1187 is enacted, it will be required to "incorporate a price on greenhouse gas emissions in financial analyses that reflects, at a minimum, the social cost of carbon that is attributable to issuers."
- **Describe how the company decides to initiate and enhance the processes for identifying and mitigating risks related to climate change.** A company should consider disclosing any policies, procedures, and controls in place to identify, assess, and manage actual and potential impacts of climate change or other related -ESG issues, as well as any strategy or specific actions that the company is taking to mitigate any of these impacts or their corresponding risks. If a strategy is already in place, a company should disclose how it was developed, the business and other factors considered when developing it, its salient points, and how often it is updated based on the priorities set by its board of directors and management. It should also discuss how these climate change-related risks are incorporated into the company's overall risk management strategy and how the ESG goals, practices, and philosophies are aligned with the company's business, operational strategy, corporate culture, and investor expectations. Furthermore, a company should also consider including a scenario analysis that describes how effective its ESG strategy will be in the face of differing climate scenarios. This type of disclosure has consistently been a part of many major institutional investors' stewardship expectations, as well as H.R. 1187.
- **Describe any reputational risks the company may receive as a result of its climate-related policies.** Companies in carbon-intensive or heavily pollutive industries may face lawsuits by activist shareholders and environmental activists seeking damages to abate alleged climate change impacts, as well as negative media coverage that may diminish their goodwill. A

company should consider disclosing the impact of its climate policies on its reputation, as well as any plan in place to address these impacts.

- **Disclose and enhance climate change-related internal controls and procedures to mitigate litigation risk and regulatory scrutiny.** Section 10(b) (15 U.S.C. § 78j) of the Exchange Act and Rule 10b-5 (17 C.F.R. § 240.10b-5) adopted thereunder prohibit material misstatements or omissions of fact by public companies in their filings with the SEC and in other public statements. Accordingly, a company's disclosure regarding its climate change and other-ESG policies, procedures, and internal controls should be accurate and complete in all material respects, and the company should be prepared to confirm the accuracy and reliability of all data and metrics it includes in its public filings and other public statements.

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She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

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