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Guidance for Climate Change Financial Disclosures

The American Society for Testing and Materials, International ("ASTM"), one of the country's most influential standard setting organizations, recently edged closer to developing guidance for corporations disclosing financial effects caused by climate change. On December 1, 2008, ASTM released for voting and for comment a draft "Guide for Financial Disclosures Attributed to Climate Change," a major step towards setting a nationwide standard for such disclosures. The draft Guide is open for comment for sixty (60) days. Venable can provide a copy of the Guide upon request.

Once formally approved, the Guide will provide businesses best practices for how to identify financial impacts driven by climate change and how to disclose those impacts in corporate financial statements. Financial statements include not only shareholder reports, such as 10-Ks and 10-Qs, but also statements outside SEC filings, such as those found in the merger/acquisition context. The Guide is meant to supplement Financial Accounting Standards Board ("FASB") rules, other accounting rules required by Generally Accepted Accounting Practices ("GAAP"), and disclosure rules required by the SEC.

Clients that prepare, or anticipate preparing, financial statements should familiarize themselves with the draft Guide, and should keep abreast of ASTM's subsequent actions to ratify it. Venable is well-positioned to assist clients in assessing the draft Guide from each client's unique perspective, draft client comments on the Guide, and, once the Guide becomes final, assure that each client's financial statements meet current industry practices.

The draft Guide:

- Identifies common scenarios likely giving rise to a duty to disclose (for example, imminent climate change legislation expected to materially affect business, present litigation concerning potential climate change-related liability, or other information indicating financial effects attributable to climate change or legal efforts to forestall climate change);
- Suggests a framework for determining whether financial impacts caused by climate change are material or otherwise reportable;
- Outlines a structure for the content of climate change-driven financial disclosures; and

- Advocates an approach to disclosure for businesses that believe that financial impacts attributable to climate change are currently uncertain or speculative, but are foreseeable.

Today, every region of the country is developing regional initiatives to cut greenhouse gas emissions. In 2009, Congress is widely expected to work towards nationwide climate change legislation. And the effects of climate change itself are already being felt by businesses around the globe. With this backdrop in mind, it behooves Venable clients to join the discussion on how best to report how climate change and legal efforts to forestall climate change financially affect their businesses. The draft Guide for Financial Disclosures Attributed to Climate Change is open for voting and comment until February 1, 2009.

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