

OBSERVING THE SEC'S DIRECTION OF TRAVEL ON CLIMATE-RELATED DISCLOSURE, BASED ON SECOND-ROUND STAFF COMMENTS

Last September, the SEC's Division of Corporation Finance issued a [sample comment letter regarding climate change disclosures](#). Since then, a number of registrants have responded to comments received from the Staff largely along the lines of the sample letter and typically in respect of the most recently filed Annual Report on Form 10-K/20-F, and a number of those initial responses generated a second set of Staff comments. The comments are based on compliance with the topics addressed in the SEC's 2010 guidance ([Release 33-9106](#)).

Often second-round Staff comments take issue with the conclusory nature of registrants' initial responses. These initial responses typically were to the effect that the applicable registrant had concluded that a particular risk or other disclosure item did not warrant further disclosure on the basis that it was not deemed material. Additional details for the benefit of the Staff were requested. Generally, after providing the information requested and, where needed, additional support for their responses, registrants remained satisfied with the relevant disclosure in their current filings, while noting that they would continue to monitor the relevant item that was the subject of a comment (*e.g.*, a risk or particular development) and update future filings, on the basis of materiality, as appropriate.

I set out below a compilation of representative second-round Staff comments. Many of the following comments appeared in a number of comment letters.

Second-Round Staff Comments

Material effects of transition risk (Risk Factors)

Please explain, in detail, how you determined that transition risks related to climate change are not expected to materially affect your business, financial condition and results of operations. Please tell us about the specific transition risks you considered, including those noted in our prior comment.

Your response states that you have not identified any effects of transition risks related to climate change that are material. Please describe the transition risks you have identified and explain how you concluded their effects were not material.

Please describe the relevant transition risks in your supply chain for each of the product types you cite and explain how you analyzed the materiality of these risks. Also, please describe the events you reference in your response labeled as "risks related to climate change" and any other transition risks related to climate change for which you performed a materiality assessment.

Your response refers to general disclosure of environmental regulation and risks, and the various risks identified in your forward-looking statement. In light of your industry and business operations, please tell us about the specific transition risks related to climate change relevant to you (such as those noted in our prior comment) and explain how you considered providing disclosure. Please also explain how you determined the materiality of their effects on your business, financial condition, and results of operations.

Please tell us about the transition risks identified as part of your risk management activities and explain why you concluded disclosure was not necessary. Please provide information about specific transition risks beyond those related to an increase in the incidence of severe weather events, such as policy and regulatory changes, market trends, credit risks and technological changes.

Your analysis of transition risks appears to be conclusory without providing adequate detail. Please tell us the relevant transition risks you analyzed and explain how you assessed the materiality of these risks.

Please tell us what other risks related to energy transition are relevant in light of your industry and business operations (such as those noted in our prior comment), and explain how you considered providing disclosure. Please also tell us how you evaluated the materiality of their effects on your business, financial condition and results of operations.

Material litigation risks (Risk Factors)

Please tell us, in detail, how you determined that you do not have any material litigation risks related to climate change. Please describe how you considered providing disclosure addressing the possibility of litigation related to climate change and its potential impact.

Your response states that you actively monitor and assess your material litigation risks in advance of each filing and that your assessments to date have concluded that you are not subject to material litigation risks related to climate change. Please tell us about any litigation risks that were included in your most recent assessment and explain how you analyzed/evaluated the materiality of these risks.

Your response states that you are not aware of any material litigation risks related to climate change. Please provide us with additional support for this statement and tell us how you considered providing disclosure that specifically addresses the risks associated with the possibility of litigation related to climate change and its potential impact.

We note your response to this comment and reissue the comment. Tell us about other potential litigation risks to which you could be exposed other than operational loss or disruption due to the increasing frequency of natural disasters and other extreme weather events.

Effects of pending and existing legislation, regulations and international accords (MD&A)

Your response refers to pending and existing climate change-related legislation, regulations, or international accords. Please explain in greater detail how you determined whether these laws and regulations are reasonably likely to have a material effect on you and how you assessed your compliance with any requirements thereunder. Also, please tell us how you considered providing disclosure regarding the difficulties involved in assessing the timing and effect of pending climate-related laws or regulations.

Your response, which states that you have not identified any material indirect consequences of climate-related regulation or business trends, appears to be conclusory without providing sufficient detail. Please provide us with additional support for your conclusion, including with regard to the individual items noted in our prior comment.

We reissue our comment in part. Please tell us whether you have identified any pending climate change-related legislation, regulations, and international accords that could have a material effect on your business, financial condition and results of operations. Please also tell us your process for identifying such developments and how you assessed potential materiality. In addition, explain how you considered providing disclosure addressing the difficulties involved in assessing the timing and effect of pending climate-related laws, regulations or guidance.

Please explain in greater detail which regulatory developments you considered and how you determined whether these developments are reasonably likely to have a material effect on you.

Please tell us how you considered providing disclosure regarding the difficulties involved in assessing the timing and effect of pending climate-related laws, regulations or guidance.

Your response states that indirect consequences of climate-related regulation have not been material to your financial condition, results of operations or cash flows. Your response appears to be conclusory and does not adequately address the specific items from our prior comment. Tell us about the indirect consequences of climate-related regulation or business trends considered in your response, your process for identifying such matters, and how you assessed potential materiality. For example, provide us with additional information supporting your statement that you do not believe that you experienced material climate-related reputational harm resulting from your operations or those of your clients or from products that you sell.

Material investments in climate-related projects/capital expenditures (MD&A).

Please explain, in detail, how you determined that your investments in climate-related projects have not and are not expected to materially affect your business, financial condition or results of operations. Please include information about your specific investments and quantify the associated costs.

Your response states that your climate-related projects have not required material capital expenditures, individually or in the aggregate, or otherwise been material. In order to better understand your response, please tell us about your capital expenditures related to climate-related projects (including quantification of amounts incurred) and explain how you assessed the materiality of these expenditures.

Please tell us more about how you considered providing disclosure quantifying the estimated costs of reaching net zero GHG emissions, which you discuss, and explain how you analyzed the materiality of these costs.

Please tell us about your capital expenditures and compliance costs (including quantification of amounts incurred) and explain how you assessed the materiality of these expenditures and costs. In addition, please tell us more about how you considered providing disclosure quantifying the estimated costs of achieving your carbon neutral goal and explain how you analyzed the materiality of these costs.

We note from your response that you have not incurred or committed to incur material capital expenditures primarily for climate-related projects. Please provide us with support for this statement, including quantitative information.

We note from your response that you have not had any past or planned future capital expenditures for climate-related projects that you consider to be material. Please tell us more about these type of capital expenditures and provide us with quantitative information supporting your statement regarding materiality.

Material indirect costs/consequences of climate-related regulation or business trends (MD&A)

Please explain, in detail, how you determined that the indirect consequences of climate-related regulation or business trends have not and are not expected to materially affect your business, financial condition or results of operations. Please describe how you expect climate change to affect demand for your products and services or your ability to provide your products and services. Please address any anticipated reputational risks resulting from operations or products that produce GHG emissions.

Your response states that you have not experienced material indirect consequences of climate-related regulation or business trends. It appears that your response is conclusory in nature and does not adequately address the individual items in our prior comment. Please describe the indirect consequences you considered in your analysis and explain how you concluded they were not material.

Among the disclosures you cited is a description of risks related to price fluctuations and supply shortages as well as changing requirements, but the description does not appear to specifically relate these types of issues to climate change. Please tell us what consideration you gave to identifying and analyzing these changes as indirect consequences of climate-related regulation or business trends.

Significant physical effects of climate change, if material (MD&A)

Your response appears to be conclusory without addressing the individual items from our prior comment. Please explain, in detail, how you determined that significant physical effects of climate change on your operations and results have not and are not expected to materially affect your business, financial condition, or results of operations. Please specifically address each of the items from our prior comment.

Your response states that you have not experienced material impacts from the matters listed in our comment. Please explain whether you have experienced physical effects of climate change on your operations or results and, if so, how you assessed the materiality of such effects.

Please quantify weather-related damages to your property or operations. Please discuss how weather-related impacts have affected or may affect your customers and suppliers and discuss any weather-related impacts on the cost or availability of insurance.

Please provide additional information in support of your conclusions (that there have been no significant physical effects of climate change on operations and results, notwithstanding a

risk factor that identifies severe weather events due to climate change as a potential material risk) and address each of the elements of our prior comment. To the extent you quantified amounts, such as weather-related damages and/or the cost and availability of insurance, please provide these and explain how you analyzed materiality.

Please revise to provide more expansive disclosure regarding the significant physical effects of climate change, such as effects of the severity of weather.

Please address in greater detail the significant physical effects of climate change as it relates to the potential for indirect weather-related impacts that have affected or may affect your major customers or suppliers.

Please tell us how you considered providing a discussion of the significant physical effects of climate change on your operations and results, such as effects of the severity of weather. Please address the potential for indirect weather-related impacts that have affected or may affect your third-party vendors or third-party service providers.

Describe the weather-related damages you have experienced and the impact on your business, financial condition and results of operations. Explain how you analyzed materiality and, to the extent you quantified amounts such as weather-related damages and/or changes in the cost or availability of insurance, please provide us with your quantification analysis.

Your response recognizes that climate change influences weather patterns and indicates that you have experienced a number of significant weather events. Please tell us how you considered providing disclosure discussing the significant physical effects of climate change as it relates to its influence on weather patterns. Please also describe the weather events you have experienced and the impact on your business, financial condition and results of operations. To the extent you quantified amounts for weather-related damages and/or the cost of insurance, please provide these and explain how you analyzed materiality.

Your response states that you did not experience any significant weather-related impacts with respect to the cost or availability of insurance for the reported periods. Please provide us with additional detail to support this statement and your expectations for weather-related impacts on the cost or availability of insurance, including quantitative information.

Purchases/sales of carbon credits and offsets (MD&A)

You state that the purchase or sale of carbon credits or offsets are not material to your business, financial condition and results of operations. Please tell us about your purchases and sales of carbon credits or offsets and provide us with additional detail supporting your statement regarding materiality, including quantitative information.

We note from your response to our prior comment that purchases of carbon credits have not been material and have not had a material effect on your business, financial condition or results of operations. Provide us with additional detail to support this statement.

Material increased compliance costs (MD&A)

Please explain, in detail, how you determined that compliance costs related to climate change have not and are not expected to materially affect your business, capital expenditures,

competitive position, financial condition, or results of operations. Please describe the nature of the compliance costs you incurred and quantify the related amounts. material increased compliance costs.

Your response states that you have not experienced any material compliance costs related to new laws and regulations in response to climate change. Please tell us about compliance costs related to new laws and regulations in response to climate change that you have incurred and explain how you analyzed the materiality of these costs.

Other MD&A comments

Your response states that you have not experienced a measurable impact on the demand for your products due to climate-related changes in consumer preferences or regulation. Provide us with additional support for this statement and tell us how you determined that climate-related trends in consumer preferences were not reasonably likely to have a material impact on your liquidity, capital resources or results of operations. Please specifically address each of the items noted in our prior comment.

Please describe how you analyzed prices and determined whether price premiums for your products produced by technology that generates lower GHG emissions were significant. Please also describe what consideration you gave to providing disclosure regarding opportunities resulting from increased demand for goods that generate lower GHG emissions than competing products.

Other Risk Factor comments

Your response that you included various Risk Factors that implicate potential climate change-related impacts, although climate change may not be specifically mentioned. Tell us how you considered providing disclosure that specifically mentions climate change.

General - consistency

We reissue our comment in part. Please describe what consideration you gave to providing the type of climate-related disclosure in your SEC filings that you provided in your Corporate Responsibility Report/Sustainability Report.

Concluding Thoughts

One would have been hard pressed to find climate-related disclosure comments in prior Staff comment letters, notwithstanding the existence of the climate-related disclosure guidance dating back to 2010. Now, outside the Exchange Act filings comment process, the Staff is also issuing climate-related disclosure comments. Registrants are revising disclosure, particularly risk factors, in registration statements. There are also examples of undertakings in the context of the Exchange Act filings review process, to revise disclosure, particularly risk factors, in future filings.

The Staff has gone to great lengths in the Exchange Act filings review process, to frame comments in the context of the existing 2010 guidance. The Staff review of existing disclosure, together with the [comments received](#) as part of the [request for public input](#), likely is feeding into the ongoing climate-related rulemaking process. As I have previously noted,

the standards that have evolved as part of the disclosure-related efforts of the European Union and the prototypes announced at the time of the formation of the International Sustainability Standards Board will likely strongly inform what the SEC will propose. This will likely be a sea change in public disclosure, and whatever undertakings are being made now to revise climate-related disclosure will pale by comparison to what is likely coming our way shortly.

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[Scope 3 complexities](#)

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