CHAPTER 11:
Lillian Brown, Meredith B. Cross, Jonathan Wolfman and Amy O’Connell, Wilmer Hale LLP, SEC Staff Comment Letters Continue to Seek Enhanced Climate-Related Disclosures (January 11, 2024)

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SEC Staff Comment Letters Continue to Seek Enhanced Climate-Related Disclosures

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While the Securities and Exchange Commission's (SEC) new climate-related disclosure rules remain pending, recent comment letters show that the SEC staff is not waiting for the rules to be finalized in order to seek more detailed disclosures from public companies around environmental issues.

In August and September 2023, staff in the SEC's Division of Corporation Finance sent comment letters to over 12 companies relating to their fiscal year 2022 Form 10-K (the 2023 Letters). The comments issued in the 2023 Letters show the staff continuing to push companies to disclose more information in their SEC reports regarding the impact of climate change on their business and operations. In several of the comment letter exchanges, the SEC staff sent follow-up questions asking for additional climate-related information and disclosures. In these follow-up questions, the staff frequently requested information on the processes each company uses to determine the materiality of climate-related issues. For climate-related issues that may carry a cost, the staff asks companies to quantify such costs and damages.

The 2023 Letters are similar to previous comment letters released in 2021 and 2022, with the 2023 Letters narrowing the focus of the topics addressed to four comment types, all of which are in line with topics addressed in the previously issued SEC Sample Letter to Companies Regarding Climate Change Disclosures:

- **Comment Type 1** focuses on comparing each company's filed disclosures to previously published information pertaining to climate change. In this comment, the staff ask why the company has chosen to provide less detailed information in their Form 10-K than is published on their website, in ESG Reports or in other relevant publications.
- **Comment Type 2** asks companies to consider the impact and indirect consequences of climate-related regulation or business trends, such as an increased demand for goods resulting in lower greenhouse gas emissions or anticipated reputational risks.
- **Comment Type 3** asks companies to quantify and disclose any physical effects from climate-related activity. Specifically, the staff asks companies to describe any damages related to major weather incidents, effects on third parties or consumers that in turn affect

the company, and changes to insurance premiums.

- **Comment Type 4** asks companies to quantify and disclose any purchases or sales of carbon credits or offsets, and any material effects on their business.

The 2023 Letters focused primarily on the indirect consequences and risks of climate change on businesses and the physical effects of climate change, frequently asking companies to quantify any potential or actual effects, even when those effects were deemed immaterial by the company.

In instances where materiality or a lack thereof was discussed, the staff pushed companies to describe in detail to the staff their analysis and how the company concluded that certain climate-related risks or information was not material. Company explanations of materiality assessments included the intake and assessment of data reflecting customer preferences, the use of risk management software, and descriptions of risk management programs implemented by the companies, including factors considered by risk management committees. Although the SEC staff asked about these assessments in detail, company explanations that certain risks were not deemed material through the various assessment processes were generally ultimately accepted.

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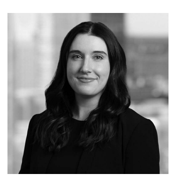

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