

# Changing Standards for Environmental Disclosures

A Legal & Market Perspective

# Agenda

- Disclosure objectives: What are you trying to accomplish?
- Legal and liability considerations: Has the legal calculus changed?
- Investors and the market: Is disclosure relevant to valuation?

# Disclosure Objectives

- Compliance with Regulation S-K
- Compliance with GAAP
- Compliance with anti-fraud provisions of securities laws: avoidance of future shareholder class action claims
- Increasing corporate value by —
  - Reducing inaccurate market perceptions of risk?
  - Increasing market perception of competency in governance and risk management?
- Other?

# Legal and Liability Considerations

- Has the law changed?
- Have accounting standards changed?
- What does the law minimally require?
- Is SEC enforcement reasonably foreseeable?
- What are the benefits and risks of disclosing more than the law mandates?

# Disclosure Risks

- Getting too far ahead of possible changes in climate change legislation and physical climate change
- If the risk is perceived to be reasonably likely and material: disclosure of confidential/strategic business information
- If the risk is not perceived to be reasonably likely and material: high cost of investigation to estimate potential financial impact and potential inappropriate use of corporate resources to do so

# Disclosure Risks (cont.)

- Just don't know: attracting undue negative attention by stepping out from the pack without good reason to do so
- Prospective information: risks of disclosing positive forecasts
- 20/20 hindsight bias: whatever you say can and will be used against you

# Market Considerations

- Beginning with the end in mind: Imagining a loss scenario
  - Differentiated impact of climate change / environmental risk on a particular company versus an entire industry
  - High-risk scenarios –
    - Changing your current position (e.g., large new cap-ex in coal-fired power plants) without due regard for possible changes in climate regulations or market forces.
    - Operating in the zone of insolvency due to undisclosed environmental liability (e.g., Tronox).

# Market Considerations (cont.)

- Market efficiency: self-disclosure vs. independent research?
- Disclosure laws not designed to ensure sound risk management: market is free to infer poor risk management from lack of disclosure but is there evidence that the market is doing so?