OBAMA-BIDEN TRANSITION PROJECT

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June 12, 2008

Nancy M. Morris
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: *File No. 4-547: Request for Interpretive Guidance on Climate Risk Disclosure*

Dear Ms. Morris:

On September 18, 2007, we petitioned the Commission to request interpretive guidance on public companies' disclosure obligations concerning climate risk under existing law. On that same date, we sent a letter to John White, Director of the Division of Corporation Finance, requesting that the Division, in reviewing public companies' filings, devote particular attention to reviewing the adequacy of registrants' disclosures related to climate risk.

This supplemental filing is intended to inform the Commission about relevant developments that have occurred since we filed our petition, and to reiterate our request that the Commission proceed expeditiously to develop the interpretive guidance we have requested.

This letter examines developments including (A) legislative, regulatory, and litigation developments concerning climate change, greenhouse gas regulation, energy policy and financial disclosures relating to climate change, and (B) important reports and studies which indicate the need for improved disclosure.

A. Legislative, Regulatory, and Litigation Developments

(1) Recently Enacted Federal Legislation

(i) Energy Independence and Security Act of 2007

On December 19, 2007, President Bush signed into law the Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492. The Act provides for the first statutory increase in fuel economy standards since 1975; establishes a Renewable Fuel Standard calling for 36 billion gallons of biofuel in 2022, Pub. L. 110-140, Title II; requires the establishment of new energy efficiency standards for appliances and lighting, id. Title III; includes various provisions to enhance energy efficiency in buildings, id. Title IV; and imposes a variety of efficiency requirements for federal buildings and procurement, id., Title V.

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(ii) Consolidated Appropriations Act of 2008

On December 26, 2007, President Bush signed into law the Consolidated Appropriations Act of 2008, which provides funds for the U.S. Environmental Protection Agency (EPA) to develop a rule, to be published in draft form within nine months and in final form within eighteen months, "to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States." Consolidated Appropriations Act of 2008 (H.R.2764), Division F, Title II. Senator Diane Feinstein, a sponsor of the provision, explained that "[s]olid data is essential to the establishment of an effective cap-and-trade system."[1] Senator Barbara Boxer, who co-sponsored the provision, explained that "[g]athering additional information on greenhouse gas emissions is an important part of establishing a comprehensive program to combat global warming. I am very pleased to support efforts to press EPA to move forward in addressing what really is the challenge of our generation."[2]

The Consolidated Appropriations Act also sets forth a series of legislative findings concerning climate change and the need for mandatory limits on greenhouse gas emissions:

> (1) greenhouse gases accumulating in the atmosphere are causing average temperatures to rise at a rate outside the range of natural variability and are posing a substantial risk of rising sea-levels, altered patterns of atmospheric and oceanic circulation, and increased frequency and severity of floods, droughts, and wildfires;
>
> (2) there is a growing scientific consensus that human activity is a substantial cause of greenhouse gas accumulation in the atmosphere; and
>
> (3) mandatory steps will be required to slow or stop the growth of greenhouse gas emissions into the atmosphere.

Division F, Title IV, General Provisions, Section 430(a).

In addition, the Act specifically calls for the enactment of mandatory greenhouse gas regulation:

> It is the sense of the Congress that there should be enacted a comprehensive and effective national program of mandatory, market-based limits and incentives on emissions of greenhouse gases that slow, stop, and reverse the growth of such emissions at a rate and in a manner that: (1) will not significantly harm the

[1] Press Release, Senator Diane Feinstein, FY 2008 Omnibus Appropriations Bill Includes Feinstein-Boxer Measure to Provide $3.5 Million for the EPA to Develop New Economy-Wide Greenhouse Gas Emissions Registry (Dec. 21, 2007).
[2] *Id.*

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> United States economy; and (2) will encourage comparable action by other nations that are major trading partners and key contributors to global emissions.

Section 430(b).

(2) Proposed Legislation

Lieberman-Warner Climate Security Act of 2007

As indicated in Appendix E of our petition, many bills which would impose mandatory limits on greenhouse gas emissions are pending before Congress. Since we filed our petition, one of those bills, America's Climate Security Act of 2007 (S. 2191), sponsored by Senators Lieberman and Warner, has made substantial advances in the Senate. On December 5, 2007, the Senate Environment and Public Works Committee approved this comprehensive climate change bill, which would place a binding cap on U.S. greenhouse gas emissions.[3] The sponsors estimate that the policy would result in an economy-wide reduction of greenhouse gas emissions up to 25 percent from 2005 levels by 2020, and 66 percent by 2050.[4] The centerpiece of the bill is a mandatory cap on emissions from electric power, transportation, manufacturing, and natural gas sources that account for 87 percent of U.S. greenhouse gas emissions.[5] Covered facilities would have to bring their emissions down to 19 percent below 2005 levels by 2020, and 71 percent by 2050.[6] The bill makes extensive use of market-based policies for achieving the emissions reductions from covered facilities. The bill also includes comprehensive energy efficiency requirements to strengthen residential efficiency standards and building codes.[7]

(3) Senate Subcommittee Hearing on Climate Risk Disclosure

On October 31, 2007, the Subcommittee on Securities, Insurance, and Investment of the Senate Committee on Banking, Housing, and Urban Affairs held a hearing focused on disclosure of climate risks in SEC filings, entitled "Climate Change: Measuring Financial Risks and Opportunities." Russell Read, Chief Investment Officer of petitioner CalPERS, testified on the importance of climate risk disclosure in SEC filings:

> We want portfolio companies that are well positioned to avoid the financial risks associated with climate change and that can capitalize on new

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[3] In announcing the Committee's approval of the bill, Senator Lieberman stated: "We still have a challenging effort ahead of us on the Senate floor, but the momentum is clearly in favor of taking action on climate change before the end of the 110th Congress." Press Release, Senator Joseph Lieberman, Lieberman Hails Committee Passage of Climate Change Legislation (Dec. 5, 2007), *available at* http://lieberman.senate.gov/newsroom/release.cfm?id=288400.

[4] Office of Senator Joseph Lieberman, The Lieberman-Warner Climate Security Act (S. 2191), *available at* http://lieberman.senate.gov/documents/lwcsaonepage.pdf.

[5] *Id.*

[6] *Id.*

[7] *Id.*

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> opportunities emerging from the regulation of greenhouse gases, including alternative energy technologies.
>
> * * * *
>
> While sustainability reports provide a solid foundation on which the companies can base the disclosures required under the Commission's existing reporting requirements, they do not provide the information investors require. Reporting must be consistent and must support comparisons among companies. The 10-K report is and will remain the gold standard for reporting information to investors, and investors need to know that material information relating to companies' performance and operations will be in those required reports. Given the significance of climate risks for many corporations' financial position and competitive prospects in a new, carbon-constrained environment, reporting on climate issues is no longer a mere virtue, but a legal obligation and a necessity for investors.[8]

Mindy Lubber, President of petitioner Ceres and Director of the Investor Network on Climate Risk, described the growing investor demand for information about climate risk and the various ways that climate change can affect companies' financial position. Ms. Lubber's testimony concluded:

> The steadily growing demand from investors for information about climate risk * * * [suggests] that 'reasonable investors' exercising human judgment increasingly consider climate risk part of the total mix of information they assess to make investment decisions. Members of the Investment Network on Climate Risk have repeatedly requested SEC action to clarify the need for climate risk disclosure. Corporate leaders themselves have also recognized the critical importance of climate risks, in the form of both regulatory developments and physical risks, to the global economy.
>
> The financial markets have judged that climate risk is important to investors' ability to access corporate operations and performance. This judgment, along with the importance of climate risk for many companies' financial prospects, compels the conclusion that material climate risk should be disclosed under the Commissions' regulations. The Commission should promptly issue guidance that clarifies that climate risk demands the same careful attention and disclosure given to other forms of risk.

Jeffrey Smith, partner-in-charge of the environmental law practice at Cravath, Swaine & Moore LLP and past Chairman of the Environmental Disclosure Committee of

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[8] Written testimony of Russell Read, Chief Investment Officer, California Public Employees' Retirement System at *Climate Disclosure: Measuring Financial Risks and Opportunities* hearing before the Subcommitee On Securities, Insurance, and Investment of the Senate Committee on Banking, Housing, and Urban Affairs, 110th Cong. 4-5 (2007) , *available at* http://banking.senate.gov/_files/ACF1DD7.pdf.

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the American Bar Association's Section on Energy, Environment and Resources, also testified on the importance of improving climate disclosure in SEC filings:

> It is not an exaggeration to say that the climate change disclosure market has been largely privatized, and that most of the best and most thorough reporting on climate change has been done outside the mandates of '33 Act and '34 Act disclosure, and through frameworks that the SEC did not participate in creating.
>
> Many aspects of these developments are positive, and have resulted in a significant transfer of information to the marketplace. It would be a mistake, however, to believe that this voluntary activity, no matter how sophisticated and well-intentioned, could become a permanent substitute for mandatory reporting. Because there is no agreed-upon format or objective for these reports, notwithstanding the effort with which they are compiled and verified, they do not create ready basis for comparison among and between themselves, or an accessible measurement against a recognized benchmark vetted through well-recognized channels under well-established principles.

Mr. Smith concluded that the SEC should provide clear guidance on climate risk disclosure as well as give climate change ongoing attention:

> It is important for the SEC to move with deliberate speed to reassert its gatekeeper role for the market and to clarify its expectations, but to do so within the rubric of well-settled principles. Over-reaction or radical change will create confusion and could unleash a flood of defensive filings of immaterial and premature information, which ultimately will be damaging to investors and the marketplace. It is also important for the SEC to recognized that it must give climate change ongoing attention, because the lessons of Superfund disclosure strongly suggest that no matter how well intended, public companies will not get it completely right the first time, and that changing circumstances will dictate changing responses.

(4) Senators' Request for Interpretive Guidance and an Analysis of the Adequacy of Climate Change-Related Disclosure

As the Commission is aware, on December 6, 2007, Senator Chris Dodd, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs and Senator Jack Reed, Chairman of the Subcommittee on Securities, Insurance and Investment, wrote a letter to Chairman Cox urging that the Commission issue guidance on climate disclosure, asking for ongoing updates about efforts to enhance guidance, and requesting a report on the adequacy of disclosure relating to climate change and the regulation of greenhouse gas emissions. The letter stated:

> We believe the SEC should issue definitive guidance in the form of an interpretive release to ensure greater consistency and completeness in disclosure of material information related to climate change and current and probable

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future governmental regulation of greenhouse gas emissions, provide information for registrants on whether and how to disclose such matters; and ensure that investors have access to material climate change information. In our view, this is an appropriate time for the Commission to issue such a release.

[We] would be interested in learning on an ongoing basis about efforts to enhance guidance to issuers of disclosures related to climate change. We also request that the SEC analyze and report to us on the adequacy of disclosure relating to climate change and the regulation of greenhouse gas emissions in 10-K filings.

(4) State and Regional Actions:

As demonstrated in Appendix C to our petition, states and regional entities have enacted a wide variety of measures to limit greenhouse gas emissions, including mandatory emissions limits. The following are some of the significant actions that occurred since our petition was filed:

- *Midwestern Greenhouse Gas Reduction Accord:* Minnesota, Illinois, Indiana, Iowa, Michigan, Kansas, Ohio, South Dakota, and the Canadian Province of Manitoba signed this accord on November 15, 2007.[9] The accord "will establish a system to enable tracking, management, and crediting for entities that reduce greenhouse gas emissions and will develop and implement additional steps as needed to achieve the reduction targets, such as a low-carbon fuel standard and regional incentives and funding mechanisms. Within the next 12 months, the group will develop a proposed cap-and-trade agreement and a model regulation to implement the system. Full implementation of the system is expected to be completed within 30 months."[10]

- *Colorado:* Governor Bill Ritter announced the Colorado Climate Action Plan on November 5, 2007. The Plan sets a greenhouse gas emissions reduction goal of 20 percent below 2005 levels by 2020 and 80 percent below 2005 levels by 2050.[11]

- *Florida:* The Department of Environmental Protection, in accordance with Governor Charlie Crist's Executive Order No. 07-127, is initiating three rulemaking proceedings aimed at reducing the state's greenhouse gas emissions:[12]

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[9] Midwestern Governors' Association, Midwestern Greenhouse Gas Reduction Accord (2007), *available at* http://graphics.jsonline.com/graphics/news/img/nov07/MGAGreenhouseGasAccord.pdf.
[10] *See* Nora Macaluso, *Midwest States Commence Work on Details of Regional Climate Strategy*, 225 DAILY ENVT. REP., Nov. 23, 2007, at A-8.
[11] GOVERNOR BILL RITTER, JR., COLORADO CLIMATE ACTION PLAN: A STRATEGY TO ADDRESS GLOBAL WARMING (2007), *available at* http://www.colorado.gov/energy/in/uploaded_pdf/ColoradoClimateActionPlan_001.pdf.
[12] Florida Dep't of Envt. Protection, Rulemaking Process for Greenhouse Gas Emissions Reductions, http://www.dep.state.fl.us/climatechange/rulemaking.htm (last visited Feb. 29, 2008).

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- Electric Utility Greenhouse Gas Reduction Program
- Adoption of California Motor Vehicle Emissions Standards
- Heavy-Duty Vehicle Idling Reduction

In addition, the Florida Governor's Action Team on Energy and Climate Change recently recommended mandatory emissions reporting by electric utilities within the state.[13]

- *Michigan:* Governor Jennifer Granholm issued an Executive Order on November 15, 2007 establishing the Michigan Climate Advisory Council and charging it with making recommendations for state actions by December 31, 2008.[14]

- *Montana:* Governor Brian Schweitzer unveiled the "20x10 Initiative" under which state agencies will aim to cut their energy use 20 percent by 2010. The state also committed to join the Western Climate Initiative.[15]

- *Virginia:* Governor Tim Kaine adopted an Executive Order on December 21, 2007 that provides for reducing Virginia's greenhouse gas emissions to 2000 levels by 2025.

- *Kansas:* On October 18, 2007, Kansas' Department of Health and Environment denied an application for an air quality permit for two proposed coal-fired electric power generating units in western Kansas due to their carbon dioxide emissions. Roderick Bremby, the Secretary of the Department of Health and the Environment, said, "I believe it would be irresponsible to ignore emerging information about the contribution of carbon dioxide and other greenhouse gases to climate change and the potential harm to our environment and health if we do nothing."[16]

- *California:* In October 2007, the California Air Resources Board previewed a draft rule for annual greenhouse gas emissions reporting that would cover about 800 industrial and commercial facilities.[17]

- *Regional Greenhouse Gas Initiative:* On October 24, 2007, New York Governor Eliot Spitzer announced that proposed regulations had been issued by two state

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[13] *See* Drew Douglas, *Florida 'Action Team' Recommends Mandatory Reporting by Electric Utilities*, 213 DAILY ENVT. REP., Nov. 5, 2007, at A-6.
[14] *See* Thom Wilder, *Nine Midwestern States, Canadian Province Sign Greenhouse Gas Reduction Accord*, 221 DAILY ENVT. REP., Nov. 16, 2007, at A-14.
[15] *See* Sherry Jones, *Montana Governor Announces Inititative to Cut Energy Use 20 Percent by 2010*, 226 DAILY ENVT. REP., Nov. 26, 2007, at A-5.
[16] Press Release, Kansas Dep't of Health & Envt., KDHE Denies Sunflower Electric Air Quality Permit. (Oct. 18, 2007), *available at* http://www.kdheks.gov/news/web_archives/2007/10182007a.htm; *see also* Christopher Brown, *Kansas Governor Says Rejection of Permit for Power Plant Will Improve Public Health*, 208 DAILY ENVT. REP., Oct. 29, 2007, at A-7.
[17] Carolyn Whetzel, *California Releases Draft Reporting Rule Covering 800 Industrial, Commercial Units*, 211 DAILY ENVT. REP., Nov. 1, 2007, at A-15.

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agencies to implement the Regional Greenhouse Gas Initiative in New York State. The proposed regulations would establish a cap-and-trade program to reduce carbon dioxide emissions from fossil fuel-fired power plants starting in 2009.[18]

- *EPA's Denial of California's Waiver Request for Automotive Greenhouse Gas Emissions Standards*: On December 19, 2007, EPA Administrator Stephen Johnson sent a letter to Governor Arnold Schwarzenegger concerning California's request for a waiver of preemption under Section 209(b) of the Clean Air Act (see Petition, Appendix C-6) so that California's greenhouse gas emissions standards for motor vehicles may come into effect. The letter states that "I have decided that EPA will be denying the waiver and have instructed my staff to draft appropriate documents setting forth the rationale for this denial . . ." As noted below, states and private parties have sought judicial review of the Administrator's decision.

(5) Climate-Related Litigation

Significant developments in climate change litigation include the following:

- *State of California v. EPA:* On January 2, 2008, California filed suit in the United States Court of Appeals for the Ninth Circuit to challenge EPA's December 19, 2007 decision to deny California's request for a waiver under the Clean Air Act that would allow the state's vehicle emissions standards to go into effect.[19] Eighteen states that have adopted or are considering adopting the California standards have moved to intervene in support of California. Environmental organizations have also filed suit in the Ninth Circuit to challenge that decision.

- *Center for Biological Diversity v. NHTSA*[20]*:* On November 15, 2007, the U.S. Court of Appeals for the Ninth Circuit held invalid the Department of Transportation's (DOT) corporate average fuel economy (CAFE) standards for light trucks for model years 2008 through 2011. The Court held that the agency had violated the Energy Policy and Conservation Act in various ways that led the standards to be too lax. The Court also ruled that, in performing its benefit-cost study of the proposed regulations, DOT had acted arbitrarily and capriciously by failing to account for the value of reducing heat-trapping carbon dioxide emissions in setting the standards. Noting that reducing carbon emission was the "most significant benefit of more stringent CAFE standards," the court found DOT's failure to assign a monetary value to this benefit arbitrary and capricious. While the expert literature on the value of reducing GHG emissions showed "a

[18] Gerald B. Silverman, *New York Agencies Propose Regulations to Implement Regional Controls on Emissions*, 206 DAILY ENVT. REP., Oct. 25, 2007, at A-2. Discussion of the rulemakings progressing in New York under the auspices of RGGI can be found in NYS Register. XXIX N.Y. Reg. 12-16 (Oct. 24, 2007), *available at* http://www.dos.state.ny.us/info/register/2007/oct24/pdfs/rules.pdf.
[19] California Governor Arnold Schwarzenegger, Press Release, Governor Schwarzenegger Announces EPA Suit Filed to Reverse Waiver Denial (Jan. 2, 2008), *available at* http://gov.ca.gov/press-release/8400/.
[20] 505 F.3d 508 (9th Cir. 2007).

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range of values," the court reasoned that the value of carbon emissions reduction was "certainly not zero"; several commenters and a National Academy of Sciences analysis had used a value of $50/ton of carbon, and the agency itself had employed estimates to assign monetary values to other factors despite the presence of uncertainty.

The court also held that DOT had violated the National Environmental Policy Act by failing to perform an Environmental Impact Statement concerning the impacts of alternative CAFE standards on climate change. In light of the significant impacts occurring and likely to occur from climate change, the court ruled that DOT was obligated to prepare a full environmental review under NEPA. The NEPA ruling rests upon a broad reading of agencies' responsibility to consider the impact of their decisions and actions on climate change. The court stated: "The need of the nation to conserve energy is even more pressing today than it was at the time of [the CAFE statute's] enactment."

- *Central Valley Chrysler-Jeep v. Goldstone:* [21] On December 11, 2007, the United States District Court for the Eastern District of California ruled that California's greenhouse gas emissions standards for motor vehicles were not preempted under federal law, rejecting a major challenge brought by auto manufacturers and dealers. In so ruling, the court relied on the holding and reasoning of a federal district court in Vermont that reached the same decision on the preemption question. See Petition at 25 n.52 (citing *Green Mountain Chrysler-Plymouth Dodge Jeep v. Crombie*, 508 F. Supp.2d 295 (D. Vt. 2007). The court held "it would be the very definition of folly" to prevent environmental agencies from regulating greenhouse gas emissions.

(6) International Developments

Australia's Intent to Ratify the Kyoto Protocol

In December 2007, Australian Prime Minister Kevin Rudd, in the first official act of the new Australian Government, signed documents that enable Australia to ratify the Kyoto Protocol. The official documentation was presented by the Prime Minister to the Head of the United Nations at the Climate Change conference in Bali in December 2007.[22] Australia's ratification will leave the United States as the only major industrialized country not to have ratified the Protocol.

United Nations Climate Change Talks

In December 2007, delegates from over 180 countries met at the United Nations Climate Change Conference in Bali, Indonesia. At the conference, developing countries

[21] No. 04-6663, 2007 WL 4372878 (E.D. Cal. Dec. 11, 2007).
[22] See Speech of Prime Minister Kevin Rudd, United Nations Framework Convention on Climate Change, Bali, Indonesia, December 12, 2007, *available at* http://www.pm.gov.au/topics/climate.cfm; *Applause for Australia over Kyoto Shift*, Sydney Morning Herald (Dec. 3, 2007).

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agreed for the first time to consider taking "measurable, reportable and verifiable" mitigation actions, and developed countries agreed to provide technological and financial support for those actions. At Bali, the parties to the UN Framework Convention on Climate Change – including the United States – affirmed that "deep cuts in global emissions will be required to achieve the ultimate objective to the Convention" and "emphasiz[ed] the urgency to address climate change as indicated in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change."[23]

To this end, the parties agreed to "launch a comprehensive process to enable the full, effective, and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session [in 2009]," which is to include a long term global goal for emissions reductions, mitigation actions by developed country parties, and provisions to reduce emissions in developing countries. The "Roadmap" for negotiations agreed to at Bali thus contemplates an integration of negotiations under the Convention with ongoing negotiations over a second, deeper program of emissions reductions under the Kyoto Protocol, with the expectation that the Convention negotiations and the Protocol negotiations will converge in a comprehensive agreement in 2009.

B. Selected Reports and Publications on Climate Risk

Our petition listed examples of the dozens of reports that have been issued by banks, government agencies and nonprofit organizations concerning the financial implications of climate change. Since our petition was filed, the additional reports have been published, reflecting the continued importance of this issue for investors and businesses. We highlight only a few of the reports issued since the petition was filed:

(1) Carbon Disclosure Project Reports

On September 24, 2007, the Carbon Disclosure Project (CDP) released its fifth annual series of reports, analyzing climate change-related disclosure by 2,400 of the world's largest companies, including the S&P 500 and the FT 500. The CDP report on the S&P500 finds:

- While "most S&P500 respondents can identify regulatory and physical risks associated with climate change, few have attempted to quantify these risks in dollar terms or have discussed them in securities filings."

- 81% of responding companies considered climate change to present commercial risks for them; 69% saw climate change as presenting commercial opportunities;

- Half of the S&P500 responding companies have assigned board and/or upper-level management responsibility for overseeing climate related issues;

[23] United Nations Climate Change Conference, Bali, Indonesia (2007), Decision – CP-13, Bali Action Plan, *available at* http://unfccc.int/files/meetings/cop_13/application/pdf/cp_bali_action.pdf.

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- 65% of respondents had publicly disclosed greenhouse gas emissions data;
- 56% of S&P500 companies answered the survey, up from 47% in 2006;
- 23% of the responding companies declined to make their responses public;

The report also contains a detailed analysis of companies' responses, including comparisons of their CDP responses to their treatment of climate risk in their public filings with the Commission under Regulation S-K.[24]

(2) Lehman Brothers Report: *The Business of Climate Change II*

In September 2007, Lehmann Brothers released *The Business of Climate Change II*.[25] This report, authored by Dr. John Llewellyn, Lehman Brothers' Senior Economic Policy Adviser, and Camille Chaix, states:

> Many clients have asked for our view of the argument that, even assuming that scientists' projections of the likely effects of climate change are broadly correct, the effects will be felt only slowly, with little effect on asset prices over most investors' time horizons.
>
> We judge this argument as flawed, for three, linked, reasons. First, markets anticipate even slow-moving variables, such as climate change. Second, policy made in the name of climate change could have an almost immediate, up-front effect on asset prices. And third, markets anticipate policy itself. In this way, expected future effects of climate change become brought right forward to the present.
>
> Fundamentally, the economic case for considering climate change ultimately depends on the science. Our judgement is that the science will increasingly be seen as broadly correct, that the view will be progressively accepted by the weight of market opinion, and that, while the adjustment of asset prices has begun, full adjustment will take years, rather than months.
>
> * * * *
>
> In our judgement, the science is no longer the central point of the discussion. What concerns most businesses and investors now is how policies will evolve. * * * * Those investors and businesses that make the right predictions in terms of climate change policies may be able to anticipate the directions of asset prices and turn climate change and the evolution of climate change policy to their advantage.

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[24] Carbon Disclosure Project, Carbon Disclosure Project Report 2007: USA S&P500 (2007), *available at* http://www.cdproject.net/download.asp?file=CDP5_SP500_Report.pdf.

[25] JOHN LLEWELLYN & CAMILLE CHAIX, THE BUSINESS OF CLIMATE CHANGE II (2007), *available at* http://www.lehman.com/who/intcapital/pdf/TheBusinessOfClimateChangeII.pdf.

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Id. at 4, 11.

(3) McKinsey Global Survey

The McKinsey Global Survey of Business Executives, released in November 2007,[26] reports the results of a worldwide survey of over 2,600 executives who evaluated the effect of various societal issues on business performance. The survey found that "environmental issues, including climate change," ranked first in terms of likelihood "to have the most impact, positive or negative, on shareholder value over the next 5 years." The Survey states that: "Environmental issues, including climate change, have soared to the top of the sociopolitical agenda in executive suites around the world * * *."

(4) Intergovernmental Panel on Climate Change: Synthesis Report

On November 17, 2007, the IPCC completed its Fourth Assessment Report with the issuance of the Synthesis Report, which assembles and integrates findings from the three elements of the IPCC's comprehensive review of scientific evidence about climate change – the physical science of climate of change; impacts, adaptation and vulnerability; and the mitigation of climate change.[27] The Summary for Policymakers accompanying the Synthesis Report provides a brief overview of the science of climate change and mitigation alternatives. The Synthesis Report also provides information about sectoral impacts of climate change—including effects on the energy supply, transport and buildings sectors—that are relevant to corporate disclosure of climate risks.

(5) Ceres: Corporate Governance and Climate Change: The Banking Sector

On January 10, 2008, Ceres released a report analyzing the disclosure, governance, emissions accounting and strategic planning responses to climate change of 40 of the world's largest banks.[28] The report analyzes asset managers, diversified banks and investment banks based in the U.S. and abroad, noting that the banking sector is beginning to respond to climate change in a variety of ways, but finding that to date banks have said relatively little in securities filings to suggest that they fully appreciate the material risks and opportunities posed by climate change.[29] Specifically, the report found that 34 of the 40 banks completed the latest CDP survey and released the results publicly, but only 23 of the 40 banks included a reference to climate change in their latest annual reports. Only nine of the banks mentioned climate change or related issues in their latest SEC Form 10-K or comparable regulatory filings.[30]

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[26] The McKinsey Quartely, Assessing the impact of societal issues: A McKinsey Global Survey, (Nov. 2007), *available at* http://www.mckinseyquarterly.com/Assessing_the_impact_of_societal_issues_A_McKinsey_Global_Survey_2077.

[27] *See* http://www.ipcc.ch/ipccreports/ar4-syr.htm (last visited Feb. 29, 2008).

[28] DOUGLAS G. COGAN, CERES, CORPORATE GOVERNANCE AND CLIMATE CHANGE: THE BANKING SECTOR, (2008), *available at* http://www.ceres.org and http://www.riskmetrics.com.

[29] *Id.* at 34.

[30] *Id.* at 19.

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(6) Morgan Stanley, Citi, and JP Morgan Chase: The Carbon Principles

On February 4, 2008, three of the world's leading financial institutions released the Carbon Principles, a set of climate change guidelines for advisors and lenders to energy companies in the United States.[31] These principles outline an approach for evaluating and mitigating climate regulation risks in power project financing. Potential energy investments must go through an "Enhanced Diligence Process", which evaluates the project financing under different emissions assumptions, including a range of potential greenhouse gas emission control policies, future carbon emissions costs, and costs and feasibility of mitigating technologies. According to the signatories, the principles represent "a first step in a process aimed at providing banks and their power industry clients with a consistent roadmap for reducing the regulatory and financial risks associated with greenhouse gas emissions."[32]

Conclusion

We hope that the supplemental information we have provided will be of assistance to the Commission as it considers our request for guidance.

Sincerely,

California Public Employees' Retirement System

John Chiang
California State Controller

California State Teachers' Retirement System

Bill Lockyer
California State Treasurer

Mindy Lubber
President
Ceres

Fred Krupp
President
Environmental Defense

Karina Litvack
Director, Head of Governance &
Sustainable Investment
F&C Management

[31] Press Release, Citigroup, Leading Wall Street Banks Establish The Carbon Principles, (Feb. 4, 2008), *available at* http://www.citigroup.com/citigroup/press/2008/080204a.htm.
[32] *Id.*

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