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Experts Scratching Their Heads Over SEC Global Warming Guidance

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FOXBusiness

The Securities and Exchange Commission late last month formally issued guidelines for disclosure of risks related to global warming.

But the guidance has some experts scratching their heads as to how to proceed.

"We can't model climate change regionally; everyone – even the apocalyptics - knows that," said Patrick Michaels, a Senior Fellow in Environmental Studies at the libertarian Cato Institute and a contributing author and reviewer of the United Nations Intergovernmental Panel on Climate Change. "How is an individual company supposed to value the potential and actual impacts of climate change? I would be loath to try to value a stock based on climate changes that may happen 50 years from now."

The document issued by the SEC offers several examples of risks that could require disclosure, including changing legislation such as the passing and implementation of an emissions cap and trade policy or the effects on costs or demand resulting from already adopted legislation or international treaties.

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Few seem to argue the validity of disclosing those costs. But where it gets fuzzy, say some experts, is when the agency lists examples of physical impacts of climate change that might need to be disclosed.

"In addition to legislative, regulatory, business and market impacts related to climate change, there may be significant physical effects of climate change that have the potential to have a material effect on a registrant's business and operations," the guidance reads. "Physical changes associated with climate change can decrease consumer demand for products or services; for example, warmer temperatures could reduce demand for residential and commercial heating fuels, service and equipment."

The document also lists other examples of physical risks, including changes in weather patterns, such as increases in storm intensity, sea-level rise, melting of permafrost and temperature extremes, availability or quality of water, or other natural resources and damages to equipment.

The commission stresses that the new guidelines don't change existing rules and climate change disclosure is required only if there is a material or measurable impact to the business. But some financial experts say that's nearly impossible to determine.

"There is a point by which something is so speculative that it doesn't convey any information and this seems like that kind of scenario," said Ted Gayer, co-director of the Economic Studies program and a Senior Fellow at the liberal-leaning Brookings Institution.

There is still some uncertainty surrounding global warming and even more about its global impact, Gayer said, even among scientists.

"Even separating out that uncertainty, to get down to a business level is highly speculative and highly uncertain and certainly not in the expertise of the people who have to report on it - to the degree that it almost borders on absurdity," he said.

Asked to comment on the specific concerns raised by Gayer, Michaels and others, an SEC spokesman said only that the guidance seeks to clarify disclosure rules.

"The guidance does not change existing law – it simply promotes clarity about our existing disclosure rules," said spokesman John Nester in an email.

The decision to issue the guidance – passed by a 3 to 2 vote of the commission – was lauded by some investor groups who had petitioned the SEC to act. In an interview last week when the SEC announced the vote, Jim Coburn, senior manager at Ceres, a coalition of investors and environmental groups that work with companies to address sustainability challenges, said the guidance was an important first step.

"I think the SEC was careful to stay well within its mission here of protecting investors by focusing on materiality," Coburn said. "You don't have to disclose everything you know - just material risk."

But by disclosing speculation, the climate change waters may actually get murkier, rather than providing the clarity the SEC is hoping for, said Mark Calabria, director of financial regulation studies at the Cato Institute.

"I think the SEC has gotten into an area that is clearly beyond their expertise," Calabria said. "This actually makes disclosure far more speculative than it was and management speculation to me confuses rather than enlightens investors."

Thomas Mounteer, an attorney for Paul Hastings who has written environmental disclosures for corporate clients, said physical effects of global warming are many years down the line and attempting to predict their impact in a disclosure is next to impossible.

"Even the most recent studies that came out in 2009 talk about changes 100 years from now," Mounteer said. "How do you project that?"

Mounteer used as an example a report that the southwest would experience more than doubling of the current number of days with temperatures above 90 degrees.

"That would mean something if you were selling air conditioners or selling power in the southwest, but does anything that far out have a material effect on your operation?"

Mounteer does agree, however, that statements about legislation and treaties, as well as about indirect effects, are valuable to shareholders. If a company has exposure to environmental risk it should be disclosed, he said.

What's more, he doesn't believe the SEC's intent was to require reporting of every specific effect mentioned, but rather to offer some examples of the wide range of potential impacts.

“It’s useful from time to time to take a snapshot of a regulatory area,” he said. “Clearly this is preliminary, but it provides a useful roadmap.”

But Michaels, who said the SEC is overstepping its bounds by engaging in the global warming debate, has a different, more sinister theory, suggesting that when businesses have to talk about the cost of climate change it legitimizes the still-uncertain science.

“Maybe they understand that businesses will tell them that the cost to them of climate change is going to be enormous so then the administration can go forward with bogus scare stories of climate change and commerce,” he said.

SEC Guidance Global Warming

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