ASSISTING BUSINESSES WITH SHAREHOLDER ENVIRONMENTAL CONCERNS

From election of directors to shareholder initiatives, corporations need to be concerned about sustainability to satisfy shareholders. Shareholders and investors, through socially responsible investing, are using their capital to encourage corporate behavior that is consistent with their values.

Shareholder Activism: Rule 14a-8 of the Securities and Exchange Act of 1934 allows shareholders to submit a proposal to be included in the company's annual meeting proxy materials and voted on at an upcoming shareholder annual meeting. In the past, shareholders primarily voted on corporate governance issues, but now shareholder proposals are being used by shareholder activists to have their social and environmental concerns addressed by the corporation.

To submit a shareholder proposal, several procedural criteria must be met pursuant to Rule 14a-8: A shareholder must have held $2,000 worth (or 1 percent) in the company's securities (measured by market value) for at least one year, and must be present or represented at the annual meeting. Every shareholder is allowed one proposal of a maximum length of 500 words per annual meeting. The proposal must reach the company at least 120 days before the release of the proxy statements.

In addition, the proposal must meet certain content criteria. Management can exclude a proposal from being considered at the annual meeting if the proposal violates the state law of the corporation's jurisdiction, including false statements, or conflicts with a proposal by the company. Management can also exclude a proposal if there is no authority to implement it. A shareholder cannot submit a proposal that is identical to one submitted in the previous five years unless it had received at least 3 percent approval if it was voted on once, at least 6 percent if it was voted on twice and at least 10 percent if it was voted on three times in the previous five years.

SEC Disclosure Requirements

SEC Disclosure of Environmental Risks and Costs: Since the passage of the Securities and Exchange

Act of 1933 (1933 Act) and the Securities Exchange Act of 1934 (1934 Act), the Securities and Exchange Commission (SEC) has imposed disclosure obligations on public companies. A primary goal of the SEC's disclosure requirements is to provide investors with material information to aid them in making investment decisions. The 1933 and 1934 Acts impose liability on corporations and individuals who do not comply with disclosure requirements. In addition, shareholders may bring a private cause of action alleging loss because of failure to disclose material information. The SEC has issued multiple environmental disclosure mandates since 1971 when it addressed the issue for the first time.

Regulation S-K 101 requires a public company to disclose the material effects that compliance with environmental laws may have on capital expenditures, earnings and the competitive position of the company and its subsidiaries.

Regulation S-K 103 mandates disclosure of pending administrative or judicial proceedings, or one known to be contemplated by the government, arising under environmental laws, and to which the registrant or any of its subsidiaries is a party, or to which any of their property is the subject. Moreover, the SEC requires the disclosure of uncertainties that are "reasonably likely to have material effects" on the registrant's condition or results of operations, expanding the legal standard by requiring disclosure of known uncertainties unless management can determine a material effect "is not reasonably likely to occur." And, companies that disclose their environmental policies must ensure their disclosures are accurate and must make any additional disclosures to prevent the voluntary disclosures from being misleading.

In 2010, the SEC published an interpretive release to provide guidance to public companies regarding how existing disclosure requirements apply to climate change matters. In 2012, the SEC issued a rule mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act to require companies to publicly disclose their use of conflict minerals originating in the Democratic Republic of the Congo (DRC) or an adjoining country.

The U.S. Lacey Act tightened its lending requirements to forestry companies. The Act makes it illegal to import into the United States products made from trees that were harvested illegally in the country of origin. In addition, SEC now requires reporting on the use of "conflict minerals." Conflict minerals reporting requirements are laid out in Section 1502 of the Dodd-Frank Act and it's SEC Final Rule. The intent is aimed at curbing funding for armed groups that commit violent human rights violations in certain parts of central Africa. Conflict minerals include gold, wolframite, cassiterite, columbite-tantalite and their derivative metals, which include tin, tungsten and tantalum being sourced from mines under the control of violent forces in the Democratic Republic of Congo (DRC) or the surrounding countries. Tin, tungsten, tantalum and gold are used in many manufacturing components in a wide variety of products. Under Section 1502 of the Dodd-Frank Act all publicly-traded companies are required to

report annually to the SEC whether they use conflict minerals in a product that they either manufacture, or contract to be manufactured.

Our Experience with SEC Reporting and Shareholder Issues

Bick Law assists management by engaging in active dialogue with shareholders as a preferred way to achieve long-term environmental goals, while sustaining a profitable corporation. Our lawyers are also available to assist corporate clients and partner with co-counsel in SEC filings and disclosures to ensure accuracy in environmental reporting and to defend lawsuits when required.