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Securities Filings Should Disclose Material Environmental Preferences in Purchasing

The SEC should expand filing companies' disclosures of material environmental preferences in purchasing in their markets. Such preferences are increasingly applied by large governmental as well as private purchasers. They affect companies' competitive positions, demand for their products and services, and prospects for their costs and revenues. Investors should have the benefit of SEC-filed information and standards of truthfulness, rather than spotty claims and omissions in companies' marketing information or voluntary releases.

Purchasers of products and services are increasingly sensitive to companies' environmental impacts. To illustrate:

- President Obama's Executive Order 13693 ("Planning for Federal Sustainability in the Next Decade", issued in March 2015) requires the U.S. federal agencies – large customers for many businesses – to ensure that certain "environmental performance and sustainability factors are included to the maximum extent practicable for all procurements". The preferences include products designated by U.S. EPA for recycled content; energy and water efficiency (ENERGY STAR qualified or WaterSense certified); alternatives to ozone-depleting substances (Significant New Alternative Policy designated); chemically safer ingredients (Safer Choice labeled); and fuel efficient vehicles (SmartWay Transport partners and products). Among the acquisition standards in this Executive Order are at least 30 percent postconsumer recycled content for printing and writing paper, products designated by the Department of Agriculture as BioPreferred and biobased, and products identified by the Department of Energy's Federal Energy Management Program.

- Many state, county and municipal governments apply environmental preferences in purchasing. Examples include government entities applying the EPEAT standard in selecting computer hardware products – California, Colorado, Illinois, Massachusetts, New York, Ohio, Pennsylvania, and Washington, as well as the cities of Phoenix, San Francisco, San Jose, Santa Clarita, and Seattle (as of mid-2015).

- Large corporations require their suppliers to satisfy environmental certifications:

- companies committed to buy products certified by the Roundtable on Sustainable Palm Oil, include Johnson & Johnson, H J Heinz, Hershey, ConAgra, General Mills, Mars, Wal-Mart, McDonald's, PepsiCo, Procter& Gamble, and Colgate-Palmolive;
- in 2014 Kimberly-Clark announced a goal of by 2025 sourcing 90 percent of all fiber from "environmentally preferable sources," such as Forest Stewardship Council-certified fiber, recycled fiber and "sustainable alternative fibers";
- in 2010 Target committed to improving its purchases to 100 percent sustainable, traceable seafood based on the Monterey Bay Aquarium's Seafood Watch Program certification; and
- in 2007 McKesson adopted EPEAT registration in its selection criteria for personal computer vendors, and now uses EPEAT Gold level as a benchmark.

Environmentally motivated shifts in demand aim to affect corporate earnings, positively for environmental leaders and negatively for heavy polluters and other bad actors.

The SEC should act under the existing terms of Regulation S-K, especially Items 101(c), 303 and 503(c). With application especially to government purchasing standards which protect the environment, Item 101(c) provides that disclosure should address the material effects that compliance with "provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant", including estimated capital expenditures for environmental control facilities. Moreover, the SEC's guidance in 2010 related to climate change covers disclosures of indirect consequences, including when corporate environmental footprints cause reputational damage leading the public to steer purchases away from the polluter.

Requiring companies to address environmental certifications affecting a market in their SEC filings would help the investor or shareholder assess marketing information or news coverage highlighting an environmental credential. In deciding whether to buy a stock, how much weight should an investor give to an environmental certification held by one company but not by a competitor? What are the likely impacts on earnings and risks? It would be helpful to have available to this investor in securities disclosures analyses by the managements of the companies which cover this competitive factor. Additionally, such analyses would be subject to the legal standard of truthfulness for statements in securities filings, which is tougher than the laws applicable to marketing materials or press releases.

From a different perspective, reflecting a company's environmental claims in its securities filings could raise the reliability of such information. In marketing media, press statements, submissions to databases and reports, many companies make environmental claims that are not subject to independent third-party verification or rigorous monitoring systems to substantiate them. Moreover, the claims may be misleading or present an incomplete picture. In securities filings, the framework of corporate officer and other liability for misstatements strongly encourages truthful disclosures of material facts without material omissions. This standard of veracity could improve the quality of environmental information on companies relied on by investors as well as purchasers of products and services.

The growth in environmentally preferred purchasing should spur companies to disclose in their securities filings more information on the environmental attributes of their products and services as well as on the environmental preferences applied by material government and private buyers.