

July 21, 2008

Ms. Florence E. Harmon  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Petition for Interpretive Guidance on Public Statements Concerning  
Global Warming and Other Environmental Issues

Dear Ms. Harmon,

We are writing on behalf of the Free Enterprise Action Fund (“FEAOX”), a publicly-traded mutual fund, to petition the U.S. Securities and Exchange Commission (“SEC” or “Commission”) to issue interpretive guidance pursuant to the Securities and Exchange Act of 1934 (the “Act”) that would warn registrants against making potentially false and misleading statements pertaining to global warming and other environmental issues.

We believe the Commission should take action immediately to protect investors.

**I. Examples of potentially false and misleading statements made by registrants.**

Below are but a few examples of the sort of potentially false and misleading statements being made by registrants. The problematic nature of these statements is discussed in Section II.

- **Exelon Corp.** issued a media release and placed full-page advertisements in major newspapers on July 15, 2008 stating, “The science is overwhelming — climate change is happening now and human activity is the primary cause.”
- **Lehman Brothers** issued a report on climate change featuring the so-called “hockey stick” graph to support the notion that humans are causing global warming.
- The **General Electric Company** issued a “Call for Action” to “slow, stop and even reverse the damage of greenhouse gasses.”
- **Toyota Motor Corp** states in a report, “When we drive a vehicle, it consumes fossil fuels and emits CO<sub>2</sub>, a major contributor to climate change.”

- **Goldman Sachs** states in a 2007 report, “By now, the dynamics of global warming are widely known, and we find no reason to dispute the scientific assumptions...”
- **Caterpillar** said in a public statement that, “We must take action now [to reduce carbon dioxide emissions] or risk serious harm to our planet.”

All these statements are potentially false and/or misleading as recent events show.

## **II. Recent events that put registrants at risk of making false and misleading statements.**

A number of recent developments have tended to expose the above-mentioned registrant statements (and probably many others) as false and/or misleading, including:

- The American Physical Society, the leading professional society for American physicists announced in July 2008 on one of its websites that, “There is a considerable presence within the scientific community of people who do not agree with the IPCC conclusion that anthropogenic CO2 emissions are very probably likely to be primarily responsible for the global warming that has occurred since the Industrial Revolution.”
- In May 2008, the Oregon Institute of Science and Medicine released a petition signed by more than 31,000 U.S. scientists stating, “There is no convincing scientific evidence that human release of carbon dioxide, methane or other greenhouse gases is causing, or will cause in the future, catastrophic heating of the Earth’s atmosphere and disruption of the Earth’s climate...”
- India’s National Action Plan on Climate Change issued in June 2008 states, “No firm link between the documented [climate] changes described below and warming due to anthropogenic climate change has yet been established.”
- Researchers belonging to the UN Intergovernmental Panel on Climate Change (IPCC) reported in the science journal *Nature* (May 1) that, after adjusting their climate model to reflect actual sea surface temperatures of the last 50 years, “global surface temperature may not increase over the next decade,” since natural climate variation will drive global climate.
- Climate scientists reported in the December issue of the *International Journal of Climatology*, published by Britain's Royal Meteorological Society, that observed temperature changes measured over the last 30 years don’t match well with temperatures predicted by the mathematical climate models relied on by the IPCC.

- A British judge ruled in October 2007 that Al Gore’s film, “An Inconvenient Truth,” contained so many factual errors that a disclaimer was required to be shown to students before they viewed the film.
- A panel of the National Academy of Sciences concluded in 2006 that the “hockey stick” graph is not proof that human activity is linked to global warming.

### **III. Conclusion**

Based on the foregoing, we request that the Commission immediately inform and remind registrants that:

1. False and/or misleading statements on material matters may violate the anti-fraud provision of the federal securities laws.
2. Statements by registrants on global warming and other environmental issues could be considered material.
3. There is considerable ongoing debate about the science of global warming and its impacts and;
4. Statements to the effect that “the science is conclusive,” “the debate is over,” and that “human activities are definitely causing harmful global warming” should be avoided.

If you have any questions, please contact the undersigned at 301-258-2852.

Sincerely,

Steven J. Milloy, MHS, JD, LLM  
Thomas J. Borelli, PhD  
Managing Partners  
Portfolio Managers, Free Enterprise Action Fund