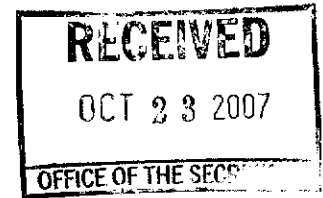


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October 22, 2007



Ms. Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

4-549

Re: Petition for Interpretive Guidance on Business Risk of Global Warming
Regulation

Dear Ms. Morris,

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") to issue interpretive guidance pursuant to the Securities Act of 1933 (the "Act") that would require registrants to disclose to shareholders the business risks of laws and regulations intended to address global warming concerns.

While it is widely recognized that global warming regulations are likely to materially and adversely impact corporate earnings and shareholder value, few publicly-owned corporations have disclosed these business and financial risks to shareholders. In addition to this failure to disclose, many corporations that are actively lobbying for, and otherwise promoting global warming regulation are not disclosing such risky activities to shareholders.

Case Study: U.S. Climate Action Partnership (USCAP)

To investigate whether publicly-owned corporations are disclosing the business risks of global warming regulation to their shareholders, we examined the most recent annual disclosures¹ made by publicly-owned corporations² that belong to the U.S. Climate Action Partnership³ (USCAP), a coalition of publicly-owned corporations and environmental activist groups that are actively lobbying for federal regulation of greenhouse gas emissions.

¹ U.S. Securities and Exchange Commission (SEC) Form 10-K for the most recent fiscal year.

² USCAP members examined included: Alcoa (AA), Alcan (AL), American International Group (AIG), Boston Scientific (BSX), Caterpillar (CAT), Conoco-Phillips (COP), Deere & Co. (DE), Dow Chemical Co. (DOW), Duke Energy Corp (DUK), El DuPont de Nemours & Co. (DD), Ford Motor Co. (F), Florida Power & Light (FPL), General Electric Co. (GE), General Motors Corp (GM), Johnson & Johnson (JNJ), Marsh and McLennan (MMC), NRG Energy (NRG), PepsiCo (PEP), PG&E (PCG), PNM Resources (PNM) and Xerox (XRX).

³ <http://www.us-cap.org>

Ms. Nancy M. Morris
October 22, 2007
Page 1 of 6

The results are summarized in the attached Appendix.

We found that the 21 USCAP members have disclosed to shareholders a wide variety of business risks in their most recent Form 10-K filings. But we found that only 5 corporations specifically disclosed that global warming regulation is a business risk. We also found that since the formation of USCAP in early 2007, only five corporations disclosed in SEC filings⁴ their membership in USCAP. To date, no USCAP member has disclosed to shareholders that the group's lobbying activities may actually harm corporate earnings and shareholder value, and may not be in shareholders' best interests.

Our results reveal that USCAP members are keeping shareholders in the dark with respect to the potential material adverse consequences on corporate earnings and shareholder value of greenhouse gas regulation. Additionally, USCAP members have so far failed to disclose that they may actually be lobbying against their own earnings and shareholder value. We did not determine whether this failure to disclose the business risks of such regulation and lobbying is intentional or simply negligent.

Support for global warming regulation is already causing a series of unintended consequences for USCAP members. Congress and the state of California, for example, are considering legislation to ban the incandescent light bulb and force consumers to purchase compact fluorescent light bulbs (CFLs). Because USCAP member GE manufactures CFLs in China, it now faces labor problems with its U.S. employees who make incandescent bulbs. To educate the public about the threats CFLs pose to their jobs, GE employees established a web site⁵ and protested at the 2007 annual shareholder meeting.

Moreover, GE's investment in increasing the efficiency of incandescent bulbs is jeopardized by the legislative bans.⁶

GE also has a business interest in coal – a major source of carbon dioxide emissions. Not only does GE manufacture turbines for traditional coal-fired power plants, it is also developing Integrated Gasification Combined Cycle (IGCC) technology – a system for capturing carbon dioxide from coal-fired electricity plants. Although GE needs greenhouse gas regulations to drive growth for IGCC, its entire coal business is threatened by special interest groups that are using the global warming issue to advocate an outright ban on coal-fired power plants. Recent pressure from special interest groups resulted in the cancellation by TXU Corp. of eight coal-fired power plants the company planned to build. Because of the cancellation of the coal-fired power plants caused, TXU cancelled its orders with GE for steam turbine generators.⁷

⁴ SEC Form 8-K.

⁵ See, ScrewThatBulb.com.

⁶ See <http://online.wsj.com/article/SB118973485406827339.html>.

⁷ Ibid.

USCAP member PepsiCo's bottled water business is also being jeopardized by promotion of global warming alarmism. The mayor of San Francisco recently banned the purchase of bottled water by the city government because plastic bottles sold to U.S. consumers "require about 47 million gallons of oil, the equivalent of one billion pounds of carbon dioxide that is released into the atmosphere." The mayor stated that, "As the city advances its Local Climate Action Plan to combat global warming, it is paramount that we initiate policies that limit the most significant contributions to climate change."⁸

San Francisco is not an isolated case. The mayor of Salt Lake City is urging the U.S. Conference of Mayors to promote tap water as a way to limit greenhouse gas emissions.⁹

For energy-intensive companies like USCAP members Alcoa, Alcan, Dow Chemical and DuPont, high-energy prices are a significant business risk – a fact disclosed in their 10-K filings. Confronted with the possibility of greenhouse gas regulations, these companies may believe that a proactive strategy to fashion the terms of the legislation offers an opportunity to offset the increase in energy prices and possibly generate profits from trading carbon credits.

Under an ideal cap-and-trade scenario, these companies can meet or fall below their carbon dioxide allocations by moving their energy intensive operations overseas and then selling their excess credits for profit. Alcoa and Dow Chemical are already shifting operations away from the U.S. to countries with cheaper energy.¹⁰

However, achieving the ideal law from Congress is unlikely. There is no guarantee that these companies will attain favorable terms in any cap-and-trade scheme that may ultimately be enacted into law. As the legislation evolves, it is possible that Congress may decide to auction the carbon credits instead of giving them away at no cost and the companies may not get financial recognition they desire for past efforts in improving the energy efficiency of their operations.

Moreover, building momentum for regulation can pose an unintended business risk if the legislation veers in a different direction. For example, a counter legislative proposal that would simply tax the use of carbon-based forms of energy is gaining traction. Renowned economists such as former Federal Reserve Board chairman Alan Greenspan, Arthur Laffer and Greg Mankiw have criticized cap-and-trade as detrimental to the economy. They believe a carbon tax combined with a reduction in marginal income tax rates is a better policy alternative to address global warming. Importantly, Congressman John

⁸ See <http://www.sfgov.org/site/uploadedfiles/mayor/Executive%20Order%2007-07,%20Executive%20Order%20on%20Bottled%20Water.pdf>.

⁹ See <http://www.msnbc.msn.com/id/19358329/site/newsweek/>.

¹⁰ See http://online.wsj.com/article_email/SB118964339640225850-1MyQjAxMDE3ODE5NTYxNDUzWj.html and <http://www.marketwatch.com/news/story/dow-chemical-inks-pacts-expand/story.aspx?guid=%7B14E5FC9A-7B30-448E-9A8A-C0D8207BFA11%7D>.

Dingell, Chairman of the Energy and Commerce Committee, is considering legislation that would impose a carbon tax.¹¹

If cap-and-trade legislation moves in the wrong direction, these companies would be responsible for initiating a foreseeable and material business risk. Significantly, current and prospective shareholders are being misled because these USCAP members failed to disclose the consequences of an unsuccessful legislative strategy in their 10-K filings.

The corporate failure to disclose the risk of global warming regulation goes beyond USCAP members.

Wal-Mart, which does not belong to USCAP, has embraced global warming as a key “sustainability” initiative. As part of its strategy, the company partnered with the Carbon Disclosure Project (CDP) to require some of its suppliers to provide estimates of the energy used to make various products.¹² While seemingly innocuous, the consequences of this reporting stipulation may harm Wal-Mart’s business as this requirement will allow special interest organizations to use greenhouse gas emissions data to question the necessity of some products – as they are currently doing with bottled water.

Moreover, by emphasizing on greenhouse gas emissions, Wal-Mart is actively promoting the notion that human activity is causing catastrophic global warming. The company is thereby increasing the possibility of regulations that would drive energy prices higher.

But high-energy prices are a major business risk to Wal-Mart. The company’s disappointing earnings in August 2007, for example, were attributed to an “increase in the cost of living and gas prices” and the fact “that many customers are running out of money towards the end of the month.” In addition to the negative impact on the consumer, high-energy prices will significantly increase the cost of Wal-Mart’s operations as it is the largest private user of electricity in the U.S. Each of its 2,074 supercenters uses an average of 1.5 million kilowatts annually – enough as a group to power all of Namibia. Wal-Mart’s fleet of trucks is the second largest as its vehicles travel a billion miles a year.¹³

In addition to disclosing that they may be lobbying against their own earnings, USCAP members should also disclose to shareholders precisely why they have joined USCAP. A variety of possible rationales exist.

¹¹ See

<http://www.nytimes.com/2007/09/16/business/16view.html?ei=5090&en=c01f6ef93ec7eb6e&ex=1347595200&adxnnl=1&partner=rssuserland&emc=rss&adxnnlx=1190646244-TsrtNf1tdZyryqyQX7WraQ;>
[http://query.nytimes.com/gst/fullpage.html?res=9D03EEDC113BF936A3575AC0A9619C8B63;](http://query.nytimes.com/gst/fullpage.html?res=9D03EEDC113BF936A3575AC0A9619C8B63) and
[http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=ind_focus.story&STORY=/www/story/09-17-2007/0004664103&EDATE=MON+Sep+17+2007,+12:33+PM.](http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=ind_focus.story&STORY=/www/story/09-17-2007/0004664103&EDATE=MON+Sep+17+2007,+12:33+PM)

¹² See http://online.wsj.com/article/SB119060320477237097.html?mod=googlenews_wsj.

¹³ See http://money.cnn.com/magazines/fortune/fortune_archive/2006/08/07/8382593/

Second Quarter 2008 Earnings Pre-Recorded Phone Call.

- Some USCAP members may believe that they can profit from global warming regulation. General Electric, for example, wants to profit by selling equipment for generating wind power. Companies like Alcan, Alcoa, Dow Chemical, and Dupont expect Congress award them with tradable carbon credits at low or no cost that may be sold for profit on climate exchanges.
- Some USCAP members may believe that greenhouse gas regulation is inevitable and that they either need “a seat at the table” or want to be recognized for early action on the issue.
- Some USCAP members have no obvious direct economic interest in greenhouse gas regulation — e.g., Boston Scientific and PepsiCo — and may believe that they will gain a public relations advantage from a high-profile stance on the climate change issue.

It may be incumbent upon companies making these claims to disclose to shareholders how the profitability from these activities is counterbalanced by the direct and indirect economic impacts of global warming regulation.

Shareholders of some USCAP companies may be surprised to learn that corporate managements have conducted no due diligence that might justify membership in USCAP.

Heavy-equipment manufacturer Caterpillar’s decision to participate in USCAP was not based on a thorough examination of the costs and benefits of global warming regulation on its business. At its 2007 shareholder meeting, shareholders raised questions about whether a cap-and-trade scheme might harm future earnings because of its negative effect on economic growth and energy producers, including the coal industry — a major purchaser of customer of Caterpillar’s product. These shareholders cited a recent Congressional Budget Office study that found coal production would drop by 40 percent under a cap-and-trade regulatory scheme.

Responding the shareholder inquiries, the Caterpillar CEO admitted the company did not conduct a cost-benefit analysis before joining USCAP. Rather the decision was based on the desire for a “seat at the table” in the legislative process. The Caterpillar CEO also expressed disappointment that Murray Energy Corporation, a coal company, initiated a boycott of Caterpillar products because its participation in USCAP directly threatens the coal industry.¹⁴

¹⁴ See <http://www.chicagobusiness.com/cgi-bin/news.pl?id=25339>; and http://www.nationalcenter.org/PR_Caterpillar_James_Owens.html

Finally, it is interesting to note that the non-corporate members of USCAP include environmental activist groups¹⁵ that have previously conducted campaigns against the corporate USCAP members and their various industries. For example:

- USCAP member Environmental Defense ranks USCAP members Dupont, Duke Energy and BP among the “top polluters” in the U.S.¹⁶
- USCAP member Natural Resource Defense Council (NRDC) attacked USCAP member Caterpillar in the “Dump Dirty Diesel” campaign¹⁷ and attacked bottled water,¹⁸ a major product of USCAP member PepsiCo.
- USCAP members Environmental Defense, NRDC, the Pew Center on Global Climate Change, and the World Resources Institute have all either attacked the use of coal, or advocate policies that would make the use of coal more difficult. But the coal industry is the largest customer of Caterpillar and is a major raw material fuel for USCAP members Duke Energy, NRG Energy, PG&E, and PNM Resources.

Conclusion

Global warming regulation represents a serious risk to publicly-owned corporations, yet this threat to corporate earnings and shareholder value is not being disclosed to shareholders. The SEC should take issue interpretative guidance requiring that shareholders be informed of these risks and, where applicable, that the corporate managements may actually be lobbying against their own shareholders.

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

¹⁵ *E.g.*, Environmental Defense, Natural Resources Defense Council, Pew Center on Global Climate Change and World Resources Institute.

¹⁶ <http://www.scorecard.org/>.

¹⁷ *See e.g.*, <http://www.nrdc.org/media/pressreleases/020709.asp>.

¹⁸ *USA Today*, “Water, water everywhere; Which is the best to drink? Bottled or tap, it's all good (August 27, 2007)

Ms. Nancy M. Morris

October 22, 2007

Page 6 of 6

**SUMMARY OF BUSINESS RISK DISCLOSURES FOR
USCAP CORPORATE MEMBERS**

	GENECO	ENERGY	RAWMAT	INTCOM	ENVLIA	REGULAT	CUSTDEM	ALTFUEL	CO2CAP	USCAP	LOBRISK
AA	X	X	X				X			X	
AL	X	X	X	X	X	X	X			X	
AIG						X					
BSX	X										
CAT	X		X		X	X	X				
COP	X	X	X		X	X	X	X		X	
DE	X		X				X				
DOW	X	X	X	X	X	X					
DUK	X	X	X	X	X	X		X	X		
DD	X	X	X		X	X					
F	X		X			X			X		
FPL	X	X	X			X	X	X	X	X	
GE	X				X	X					
GM	X				X	X			X		
JNJ						X					
MMC						X					
NRG	X	X	X		X	X		X	X		
PEP	X	X	X			X	X				
PGE	X	X	X			X	X	X			
PNM	X	X	X		X	X	X			X	
XRX	X					X	X				

TABLE KEY

GENECO	General economic conditions	CUSTDEM	Change in customer demand
ENERGY	Higher energy costs	ALTFUEL	Competition from alternative fuels
RAWMAT	Higher raw materials cost	CO2CAP	Carbon dioxide regulation
INTCOM	International competition	USCAP	Membership in US Climate Action Partnership (from Form 8-K)
ENVLIA	Environmental liabilities	LOBRISK	Lobbying for carbon dioxide regulation
REGULAT	Costly/burdensome regulation		