Memorandum

To: Christopher Cox, Chairman, Securities & Exchange Commission
From: Mindy Lubber, Ceres President & Director, Investor Network on Climate Risk
Date: June 14, 2006
Re: Request for SEC Leadership on Climate Risk

This memorandum supplements the enclosed letter from INCR members. It includes more information about three steps mentioned in the letter which the SEC could take to improve corporate disclosure on climate risk.

A. Continued underreporting of climate risk in SEC filings

In both the investing and corporate communities, there is growing recognition that climate change presents material risks to numerous sectors of the economy, with recent evidence suggesting that in certain sectors the cost of climate change to shareholder value can represent as much as 15 percent of total market capitalization of major companies.

However, a recent report, Fourth Survey of Climate Change Disclosure in SEC Filings of Automobile, Insurance, Oil & Gas, Petrochemical, and Utilities Companies[1], demonstrates the inadequacy of current corporate disclosure of climate risk. The findings of the report suggest that while overall climate reporting rates are improving, many public companies are failing to adequately disclose climate change-related risks to their shareholders. In two sectors which are highly vulnerable to climate change, oil and gas and utilities, a majority of companies surveyed disclose their climate risk—a clear sign that this risk is material to companies in these industries. However, almost 30% of oil and gas companies and 4% of utilities did not report their climate risk to shareholders. In the insurance industry, one of the sectors most vulnerable to climate change, 85% of companies surveyed did not disclose.

The report identifies companies in these three industries that have not provided any climate risk reporting in the past four years – in marked contrast to some of their competitors. Adequate risk reporting is critical to investment decision-making, making corporate disclosure of climate risk to investors essential—and even prudent, in terms of competition in the marketplace. Therefore, SEC enforcement of existing disclosure requirements on material risks such as climate change, which are currently underreported, would be extremely helpful to investors.

B. The need for interpretive guidance on the materiality of climate risk

The SEC already requires companies to disclose material risks that may affect their financial conditions or results of operation. Specifically, Item 303 of Regulation S-K requires disclosure in the MD&A section where "a trend, demand, commitment, event or uncertainty is both presently known to management and reasonably likely to have material effects on the registrant's financial condition or results of operation." Further, Item 101 of Regulation S-K, which deals with General Description of Business Operations, requires disclosure of "the material effects that compliance with Federal, State, and local provisions which have been enacted or adopted regulating the discharge of materials into the

[1] The report, written by Michelle Chan-Fishel of Friend of the Earth, was released in September 2005.

environment, or otherwise relating to the protection of the environment." But despite these rules, companies are not providing, and investors are not receiving, adequate climate risk information. Interpretive guidance from the SEC clarifying the materiality of climate change in MD&A reporting would offer provide investors much-needed information.

C. Shareholder resolutions on climate risk reporting should not be considered "ordinary business"

To improve corporate disclosure of climate risk, investors have filed shareholder resolutions requesting information on climate change. However, they have been unable to file resolutions asking for a company assessment of climate risk because Commission Staff has considered them excludable under the "ordinary business" exclusion. Staff has stated that these matters are more appropriate for disclosure in ordinary SEC filings, where, as noted, such disclosure is inconsistent and at times inadequate. According to a recent Staff Legal Bulletin (SLB 14C on Shareholder Proposals, issued June 28, 2005), "to the extent that a proposal and supporting statement focus on the company engaging in an internal assessment of the risks or liabilities that the company faces as a result of its operations that may adversely affect the environment or the public's health, we [the SEC] concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7) as relating to an evaluation of risk."

Because these proposals are excluded, shareholders are not able to make use of an important tool for remedying the current problem of inadequate climate reporting in 10-Ks. A revision of the Staff's interpretation of Rule 14a-8's "ordinary business" exclusion, to require a registrant to include in its proxy statement a shareholder proposal asking the registrant to report on financial risks due to climate change, would be very helpful to investors.

In conclusion, the Commission could address these issues in several ways. It could build staff expertise on climate risk; host a forum for brokerage firms, asset managers, and investors to discuss climate risk and opportunities; take enforcement action against companies that fail to disclose this risk to investors; or require mandatory disclosure of climate risk to investors.