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Attestation: Practical Reflections on What the SEC Climate Proposal Will Require

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Among the many changes set forth in the U.S. Securities and Exchange Commission's proposed rules governing climate-related disclosures are the attestation requirements[1] covering registrants' greenhouse gas (GHG) emissions disclosures. This article provides a general overview of these attestation requirements and identifies some practical consequences public companies could experience as they anticipate compliance with the new rules.

Under the proposed rules, large accelerated filers and accelerated filers would be required to provide an attestation report covering the Scope 1 and Scope 2 emissions disclosures in their annual reports and registration statements. The attestation reports initially would be required to provide limited assurance (equivalent to the level of assurance provided for a registrant's quarterly financial statements in a Form 10-Q) for such emissions disclosures, and eventually would be required to provide reasonable assurance (equivalent to the level of assurance provided for a registrant's audited annual financial statements in a Form 10-K). The proposed rules do not prescribe a particular attestation standard to be used. Instead, the SEC proposes that the attestation report be provided pursuant to publicly available standards that have been adequately developed following due process procedures, similar to the requirements for determining the framework for use in management's evaluation of internal control over financial reporting. Moreover, public companies would have to (1) use an attestation provider that meets specified requirements, including minimum expertise and independence standards; (2) ensure that the report produced by the attestation provider includes certain minimum elements; and (3) provide additional disclosures about the attestation provider and the attestation engagement.

Plan for the scramble for talent

Under the proposed rules, a qualified attestation provider is one that (1) has expertise in GHG emissions based on significant experience measuring, analyzing, reporting, or attesting to GHG emissions and (2) is independent from the registrant, and any of its affiliates, for whom it is providing the attestation report. Although the proposed rules state that an attestation provider need not be a registered public accounting firm, few ESG advisory companies are likely to have the requisite environmental knowledge and industry experience needed to perform the attestation to meet both the SEC's standard and the company's expectation. In essence, the attestation requirements in the proposed rules will drive a major expansion in the marketplace, with the likely result that the universe of *qualified* attestation providers will lag behind the demand necessitated by the adoption of these rules.

To mitigate future difficulty, public companies should consider bringing top talent in-house to facilitate company engagement with outside reviewers or government and compliance staff. The presence of a reliable internal resource should ensure access to expertise and associated external professional networks. Because of the independence requirements under the SEC rules, companies will not be able to remove the need for external resources entirely but taking proactive measures now should help prevent undesirable dependence on external guidance and provide for a more efficient attestation process.

Be intentional about coordinating assurance services

Another unique aspect of the attestation requirements is the integration of climate-related disclosure (specifically GHG emissions) into existing, audited financial statements.[2] Although the accounting profession ***believes*** that CPAs are prepared for the task of providing assurance for sustainability information and has published a ***roadmap*** to assist companies with voluntary ESG/sustainability reporting, these guidelines may not adequately address the complexities in scoping, measuring, reconciling, and reporting emissions data across the entire operational and geographic footprint of not only the company itself but its Scope 2 suppliers; namely, the complexity of standardizing *judgments* that will need to be articulated within the financial statements regarding certain financial impacts. In most instances (at least in the short term), financial statement auditors will lack the expertise to provide assurance on the emissions data and, conversely, GHG attestation providers who are not the company's financial statement auditors will want to steer clear of everything else in the financial statements. To comply with both the emissions attestation requirements and the financial statement audit requirements, significant coordination in the form of extensive discussions and written documentation will be required among company leadership, attestation providers and external auditors.

Recognize that there are varied standards for GHG emissions attestation

While the framework for climate-related disclosure in the proposed rules largely has been borrowed from the TCFD[3] and the GHG Protocol[4] in an attempt to provide consistent, comparable data, the multiplicity of approaches for attestation, developed over the years to verify the validity of emissions data, emissions offsets, and other elements of ESG reporting, means that there is no uniform approach to data integrity or the attestation of data integrity, especially across the full operational and geographic range of companies in varied industries. Thus, achieving compliance in this inchoate landscape will require strong governance from the outset to ensure that data is correctly analyzed and classified based on its respective origin and method of production.

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1. As proposed, the attestation requirements would be in new ***Rule 1505*** under Regulation S-K.

2. Additionally, further integration and consideration may be required for some industries/companies already required to annually report and certify certain GHG emissions to the EPA under ***40 CFR Part 98***. To comprehend the complexity they'll be facing to blend GHG reporting requirements, covered companies should consider studying how to coalesce the broader duties of the SEC schema with any preexisting requirements of the EPA. Any

distinctions will further necessitate company coordination to successfully report and attest.

3. The TCFD or "Task Force on Climate-Related Financial Disclosures" was created in 2015 by the Financial Stability Board (FSB) to develop consistent climate-related financial risk disclosures for use by companies, banks, and investors in providing information to stakeholders.

4. The GHG Protocol establishes comprehensive global standardized frameworks to measure and manage greenhouse gas emissions from private and public sector operations, value chains and mitigation actions. Notably, the GHG Protocol ***recently announced*** an initiative to determine the need for additional guidance on its existing corporate GHG accounting and reporting standards.