Blogs
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The SEC's Climate Proposal: When Should Scope 3 Emissions Be Considered "Material"?

Following up on **Allison's blog** about the SEC's climate disclosure proposal and "materiality," this blog drills down deeper because under the SEC's proposal, companies would be required to make Scope 3 emissions disclosures – only if material (or if the company has set a GHG emissions target or goal that includes Scope 3 GHG emissions). So when it comes to Scope 3 disclosures, there is a materiality qualifier if a company hasn't established a pledge that includes Scope 3. That begs the question then, "when would Scope 3 emissions be considered material?" Of course, to answer this question, a company would have to collect all the requisite Scope 3 data to make the determination. That's where the rubber hits the road – where the extensive work and burdensome costs come in.

Disclosure That Scope 3 Emissions Aren't Material? Putting that aside, the SEC suggests on page 166 of the **proposing release**: "If a registrant determines that its Scope 3 emissions are not material, and therefore not subject to disclosure, it may be useful to investors to understand the basis for that determination." It would be pretty unusual for the SEC to have a requirement eliciting disclosure about why something wasn't material and I imagine this concept will draw a fair amount of comment.

Disclosure That "Some" Scope 3 Emissions Are Material The proposing release also suggests, "Further, if a registrant determines that certain categories of Scope 3 emissions are material, registrants should consider disclosing why other categories are not material." So some companies might be mixing and matching which Scope 3 emissions might be material.

Disclosing Actions Taken (Or Not) When Scope 3 Emissions Are Material If a company deems all of its Scope 3 emissions to be material, the proposing release suggests: "If, however, Scope 3 emissions are material, then understanding the extent of a registrant's exposure to Scope 3 emissions, and the choices it makes regarding them, would be important for investors when making investment or voting decisions." Companies here would need to disclose the actions (or inactions) they take regarding Scope 3 emissions.

Many Companies Will Deem Scope 3 Emissions to Be Material? So getting back to the question of, "when would Scope 3 emissions be considered material?," it's noteworthy that on page 162 of the proposing release, the SEC says "When recommending that the Commission require the disclosure of Scope 3 emissions, some commenters indicated that Scope 3 emissions represent the relatively large source of overall GHG emissions for many companies. Given their relative magnitude, we agree that, for many registrants, Scope 3 emissions may be material to help investors assess the registrants' exposure to climate-related risks, particularly transition risks, and whether they have developed a strategy to reduce their carbon footprint in the face of regulatory, policy, and market constraints." Note what the proposing release says here: For many companies. Yes, for many companies.

The SEC Proposes Three Things to Make Scope 3 Disclosures More Palatable As noted on page 210 of the SEC's proposing release, there are three accommodations proposed for Scope 3 disclosures: 1. Limited safe harbor for Scope 3 emissions disclosure from certain forms of liability under the federal securities laws 2. Reporting exemption for "smaller reporting companies" 3. Delayed compliance date of one year for Scope 3 emissions disclosures

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Here are our other blogs about the SEC's climate proposal so far: 1. **SEC Proposes Climate Disclosure Rules: 9 Things to Know** 2. **"How Much Is This Gonna Cost Us?" The SEC's Climate Economic Analysis** 3. **The SEC's Climate Proposal: Where Did We Wind Up With "Materiality"?**

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