



ATTORNEYS AT LAW

1401 New York Avenue, NW
Suite 800
Washington, DC 20005
T 202.887.1400
F 202.466.3215

Michael Stroud



June 17, 2022

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-10-22
Comments on The Enhancement and Standardization of Climate-Related
Disclosures for Investors, U.S. Securities and Exchange Commission (87 Fed. Reg.
29059) (May 12, 2022)

Dear Ms. Countryman:

On behalf of our client, Buena Veritas Certification North America, Inc., we submit the attached comments regarding The Enhancement and Standardization of Climate-Related Disclosures for Investors, U.S. Securities and Exchange Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stroud', written over a large, stylized scribble.

Michael Stroud
Nossaman LLP

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Attachment



The Enhancement and Standardization of Climate Related Disclosures for Investors (Release No.33-1042:File No S7-10-22): Comments from an Attestation Service Provider

June 2022

Introduction

Bureau Veritas Certification North America, Inc. (“Bureau Veritas”) welcomes the Securities and Exchange Commission’s proposal to amend its rules under the Securities Act of 1993 and Securities Exchange Act 1934 to require registrants to provide climate related information in their registration statements and annual reports. It has the potential to accelerate responsible change and create transparency across all sectors by standardising the disclosure, reporting, and independent attestation of climate-related metrics including Scope 1, 2 & 3 Greenhouse Gas (GHG) emissions. Its principles enable innovation towards climate-change mitigation and will undoubtedly contribute to the achievement of the USA’s climate targets.

Credibility of Disclosures

Bureau Veritas agrees that the mandatory involvement of independent attestation services providers in the verification process provides an additional layer of control to ensure trust, transparency and validity of claims. This type of service is core to the Testing, Inspection and Certification (TIC) industry’s expertise and TIC companies operate a model that has been proven to be able to provide these types of attestations in a widely acceptable format.

Potential Liability

The proposed rulemaking would amend Regulation S-K and Regulation S-X to include the new climate-related disclosure requirements. Thus, as proposed, these disclosures would be covered by Section 11 of the Securities Act when they are included or referenced in registration statements. Under Section 11, an expert who is identified as “having prepared or certified any portion of the registration statement” is subject to liability for material misstatements or omissions of fact in that portion of the statement. (15 U.S.C., sec 77k(a).) This would likely include, for example, an independent firm that provides certification or attestation services to the issuer regarding required climate disclosures when the firm is identified in the registration statement. For a variety of reasons, Bureau Veritas is concerned that this potential liability would reduce the efficacy of the disclosures and would unfairly shift legal liability from responsible parties to the firms providing attestation services.

TIC testing and attestation typically begins with testing performed under standards issued by organizations such as the International Organization for Standardization (“ISO”) and the Global Reporting

Bureau Veritas Certification North America, Inc.
16800 Greenspoint Park
Suite 300S
Houston, TX 77060



Initiative (“GRI”). TIC experts will review selected samples of work performed by the issuer under these standards. After conducting additional diligence on the issuer, the TIC expert will issue a report that reflects the work done at a specific point in time. Imposing direct liability on the TIC expert for their reliance on either the industry standards or the information provided by the issuer’s management unfairly shifts legal responsibility to the TIC expert when it is acting consistent with industry practices.

Section 11 does provide a “due diligence” defense for experts when the expert establishes that it conducted a reasonable investigation and had “reasonable ground” for believing that its statements or those that it certified were accurate. (15 U.S.C., sec. 77k(b).) Under the statute, that standard of reasonableness is that of “a prudent man in the management of his own property.” (*Id.*, subd (c).) While these provisions make clear that an expert exercising sufficient care and diligence may not be held liable, their application is not always clear. In the context of the present rulemaking, the level and scope of diligence required by Section 11 is particularly fraught. For example, there are certain accepted standards for measuring GHG emissions which are used in measuring GHG remediation and degradation. If an attestation expert uses one or more of these standards and they later turn out to be faulty or inappropriate, will this be the fault of the certifying expert? Or will the organization issuing the standard be liable under Section 11 and thus be required to demonstrate its own diligence to avoid liability?

Bureau Veritas requests that the Commission consider the ramifications of potential Section 11 liability for attestation and certifying experts in connection with these important new disclosures and address uncertainties in the application of the statutory due diligence defense through additional rulemaking. The Commission could, for example, amend Rule 176 which sets forth factors that may be relevant to determine the “reasonableness” of an expert’s investigation and ground for belief. Addressing the specific processes for attestation and certification of climate-related disclosures in this, or a new, rule would provide more certainty on the diligence required and would improve both the efficacy of the new disclosure regime and the fairness of applying Section 11 to these disclosures.

Competence of Attestation Services Providers

We agree with your proposed approach *that an attestation service provider needs to meet certain minimum qualifications. The proposed rules would not require an attestation service provider to be a registered public accounting firm.* This creates an open, competitive market, and enables engineers, environmental scientists who have subject matter expertise in climate change and understand the specifics of GHG management to an expert level.

Bureau Veritas also hold expertise in assessments of the other risk factors for an organization such as business continuity. A qualification model that could exclude ESG specialist organisations such as Bureau Veritas has the potential to damage the credibility of these attestations and reduces competitiveness in the market negatively impacting reporting companies.

Bureau Veritas Certification North America, Inc.
16800 Greenspoint Park
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Houston, TX 77060



We particularly recommend accreditation to ISO 17029: Conformity assessment — General principles and requirements for validation and verification bodies. This standard provides general principles and requirements for the competence of auditors (or attestation providers), and their consistent operation within an impartiality framework. Demonstrating impartiality needs to be at the forefront of this attestation process in order to establish the credibility of the independent attestation provider. ISO 17029 is already used by verification bodies to offer their services to assure the quality of GHG inventories at the organisation level and of carbon credits flowing from emissions avoidance and removal projects on the voluntary carbon markets. It is now more broadly applicable to validation and verification of all kinds of claims or attestations regarding planned projects to reduce emissions or improve performance in other Environmental, Social, and Governance (ESG) impacts and to verify the actual achievement. It is already applicable to all sectors and already there are many accreditation bodies including ANSI/ANAB that are offering accreditation to attestation service providers.

Conclusion

Over the course of its almost 200 year history Bureau Veritas has established a reputation for being a reliable and impartial 3rd party in the areas of quality, health, safety, environment and sustainability across every industry. Additionally, we have 15 years' experience in the regulatory (e.g.: schemes including the EU ETS, CORSIA, CDM/JI) and voluntary emissions verification (e.g.: GHG Protocol, CDP, VCS, Gold Standard) validation and verification. This type of profile and experience would benefit the credibility of the assessments related to this proposed program. We look forward to your positive response.

Sincerely,

Victoria Russell
COO BUREAU VERITAS
CERTIFICATION NORTH AMERICA, INC.

Bureau Veritas Certification North America, Inc.
16800 Greenspoint Park
Suite 300S
Houston, TX 77060