E Compliance Insights:
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Too Green to Be True?
The Securities and Exchange Commission Scrutinizes Greenwashing

With ever more dire predictions of catastrophic climate change, growing diversity in populations, and corporate desire to appeal to younger generations of consumers and investors, the time of ESG is here. Although it lacks a universal definition, ESG broadly stands for the concept of large corporations, investment banks, and mutual funds putting greater emphasis on Environmental, Social, and Governance issues.

Many large, multi-national companies have grown so large in size and complexity, their annual revenues are larger than small or even medium-sized countries' GDPs. In 2020, Walmart had gross revenue of US$559.15 billion, larger than the GDP of all but 23 countries. (We understand it's not a direct comparison, but Walmart is huge no matter how you measure it.) Until recently, a company's mission was to maximize profits for its shareholders while complying with the law in jurisdictions where it does business. Now, investors, consumers, and third parties are requiring more. Numerous large financial institutions have initiated mutual funds emphasizing ESG or have changed the focus of existing funds.

Demonstrating ESG commitment is expensive and complicated. Many companies are committed to reducing their carbon footprint and reducing waste. The task is so large and complex, they often set the time frame in decades, for example, 2040, 2050, or beyond, to achieve carbon-neutral status. Achieving social goals, such as gender and racial diversity in senior management, can also be difficult and take time.

Despite these obstacles, many companies are setting milestones and working to improve their ESG metrics. Publicly traded companies are now reporting their achievements in disclosures filed with regulatory bodies. There lies the problem. Some of these goals are aspirational rather than achieved. But, in a desire to look good to investors, consumers, employees, prospective employees, and the public at large, some companies are overstating their current achievements – an ESG reporting dynamic known as "Greenwashing".

Some observers view greenwashing as a good thing as it sets a company on a path to ultimately achieving some or all of its goals in the future. The US Securities and Exchange Commission (SEC) takes a different view. The SEC takes the position, consistent with its mission, that when companies are required or choose to report to regulatory bodies, they must do so accurately. The SEC is becoming increasingly vocal about this issue. Its attention will grow stronger in the Biden administration. The SEC recently announced that it had created a task force to review ESG claims and, where necessary, initiate enforcement action. Other similar regulatory bodies will likely follow.

We recognize that ESG reporting is difficult. By one count, there are over 70 different reporting standards. Some are general, and some are complex, running to hundreds of pages long. Some reporting standards are industry-specific, while others only address the E or the S component. There is no one standard. Despite these challenges, our advice is relatively simple. Choose a standard that fits your company and assess your goals, achievements, and challenges. Then, report accurately. Do not lie to regulators or the public.

Setting ambitious ESG goals is laudable. Along with most of the other Planet Earth inhabitants, we applaud you and wish you well. But, set realistic targets and report on your challenges as well as your successes. Progress on ambitious goals is more laudable than completing simple goals. But be honest and accurate in your reporting, particularly on disclosures to the government.