

## SEC Committee Mulls 'TurboTax-Like' Fix For Climate Reports

By **Al Barbarino**

*Law360 (May 6, 2022, 7:25 PM EDT)* -- As the U.S. Securities and Exchange Commission's small business capital formation committee assessed the agency's recent climate risk-related disclosure proposal Friday, its newest member envisioned a cost-cutting software solution akin to a "TurboTax for climate reporting."

The ray of optimism from Donnel Baird, CEO of Brooklyn-based climate tech startup BlocPower LLC, came amid a meandering two-hours-plus-long discussion that otherwise harped on the burdens that the SEC's March proposal could place on small businesses.

"I do think in a future state there will be a TurboTax for climate reporting for small businesses. Like, that will happen," said Baird, who was welcomed at Friday's webcast as the small business committee's newest member.

Baird suggested that a program like the popular tax preparation software would streamline the reporting process, largely minimizing the legal and consulting costs that his fellow committee members and other guest speakers said they are worried about.

The SEC proposal would require public companies to disclose certain greenhouse gas emissions, the business risks related to severe weather events, and those related to a transition to a smaller carbon footprint.

Committee members and expert guests voiced vast concerns about the SEC's plan, including the costs small public companies would face if they have to pay lawyers or consultants to handle the reporting.

The committee wondered if furnishing the information versus filing was a better option, if the SEC should formalize an "incentive structure instead of a penalty structure," and if the rules could dissuade small companies from going public. The committee will convene at a later date to incorporate these and other concerns into formal recommendations.

Among the proposed rule's requirements, all public companies would be required to report Scope 1 and Scope 2 emissions, which are tied to their direct and indirect emissions linked to their operations and energy purchases.

Betty Huber, global co-chair of Latham & Watkins LLP's environmental, social and governance practice, was among the guests invited by the committee to speak at Friday's meeting.

"Scope 1 and 2 ... are very difficult for small businesses to calculate and costly, and probably not many of them are doing that today," Huber said.

Under the proposal, larger companies in some cases would need to report Scope 3 emissions, which are considered to be the most difficult to measure because they factor in emissions of their suppliers and customers.

While small companies would be exempt from the Scope 3 requirement, Huber and others noted that private companies downstream from the big banks and Walmarts of the world would be impacted as well.

"What if the small private company is not able to provide that data? Could it be possible that the publicly traded bank would be kind of disincentivized to provide capital to the small businesses," Huber said.

Sara Hanks, a committee member and CEO of CrowdCheck Inc., which provides legal, due diligence, disclosure and compliance services to help companies raise capital, wondered if the SEC should be playing the part of "hall monitor for corporate America."

Hanks was among those who suggested that the disclosure costs were a burden large enough to dissuade some small companies from launching IPOs.

"There's got to be space there for the teeny tiny companies to become registered public companies," Hanks said. "With all due respect to Betty [Huber]," the companies Hanks works with can't afford Latham's fees, she quipped.

Many of those companies have just recently gone public and have revenues of just \$1 million to \$4 million, and they could end up spending as much as 30% of that "on consulting fees to comply with this sort of thing," she said.

That's where Baird continued to push for "TurboTax-like" software to help smaller companies comply.

"I don't think that small businesses are going to have to hire expensive consultants," Baird said. "Hopefully there will be multiple versions of TurboTax for climate reporting, and [that] will bring the efficiencies of technology and software to these processes."

Baird was of course referring to the popular software for the preparation of U.S. income tax returns, produced by Intuit. "If Intuit was smart they would actually just add this as one of their applications that they offer," he said.

Ironically, in an unrelated matter, Intuit agreed to pay \$141 million Wednesday to **settle claims** that it tricked customers into paying for its products when free services were available.

But Baird's suggestion was well-received, at least by one other committee member.

It would be a "great idea" to "create software programs that make it easy to comply," said Jeffrey M. Solomon, CEO of financial services company Cowen Inc.

Solomon suggested the potential for the SEC to launch some type of tech "incubator" program to develop its own proprietary software to help small companies, and that the agency might otherwise consider reducing registration fees for smaller firms to reduce costs.

"If you want people to comply ... reduce their registration fees. That's well within the SEC's purview," Solomon said. "There's a bunch of stuff like that [that we can] help to bridge the gap on."

Solomon applauded Baird for the "value added on day one" for the TurboTax suggestion, to which Baird jokingly replied that he would "hereby resign" from the committee in order to go out "on a high note."

Also on hand to quell some of the committee's concerns was Erik Gerding, deputy director of legal and regulatory policy in the SEC's corporation finance division.

Gerding reiterated that smaller companies would be exempt from the Scope 3 requirements and that they have a longer time frame to comply with the other disclosures — one to two years in most cases. They would also enjoy certain safe harbors for legal liability, he added.

--Editing by Patrick Reagan.