Douglas Hileman Consulting, LLC

Douglas Hileman Consulting, LLC
Van Nuys, CA 91405-4235
www.douglashileman.com

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California Air Resources Board (CARB)
1001 I Street
Sacramento, CA 95814
submitted via email to climatedisclosure@arb.ca.gov

Subject: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation Submittal of Comments

Douglas Hileman Consulting LLC (DHC) is pleased to submit comments to the California Air Resources Board (CARB) on Implementation of California Climate-Disclosure Legislation, as published December 16, 2024. DHC is a sole proprietor LLC. I have over forty years' experience in Sustainability compliance, risk, audit, and related areas. I am an author of COSO's "Achieving Effective Internal Controls over Sustainability Reporting (ICSR)," released to wide, global acclaim two years ago. The comments here are my own, and do not reflect any client, professional association, or other party.

General: Applicability

Q1: Definition of "does business in California". DHC recommends Option A. In general, DHC strongly recommends leveraging precedent when there is one. Option A (Revenue and Tax Code) is already established. This definition is well understood by functional leaders within organizations (Finance, Legal, Accounting, Controller) who are assuming more responsibilities over reporting and disclosures of Sustainability topics.

Q2: Cost effective manner to identify all businesses. DHC does not suggest either of the options presented as the preferred cost-effective manner to identify all businesses covered by the laws. DHC questions whether it should be the remit of CARB to undertake this task. Passage of California's climate laws was widely communicated through mainstream press, specialty press, bulletins from professional organizations, and social media. Organizations that fail to submit disclosures can be subject to enforcement actions. DHC suggests that CARB defer action on this step, focusing more on efforts to encourage disclosures, opening channels of communications (tip lines) to receive input on potential non-disclosures, and take a measured approach to administrative enforcement actions to drive disclosures.

General: Standards in Regulation

Q3: Protocols or Standards. CARB should specify the use of the Greenhouse Gas (GHG) Protocol standards and guidance for all parameters where GHG Protocol standards and guidance apply. For aspects of disclosures not covered by GHG Protocol (for example, narrative of the approach to risk identification and management), CARB should defer to ISSB S-2. Both have been in the public domain for at least five years, and have been widely adopted worldwide.

> The Task Force on Climate-Related Financial Disclosures (TCFD) established the four "pillars" of climate-related disclosures as deemed relevant to financial markets: governance, strategy, risk, metrics and targets. TCFD has been merged into the International Sustainability Standards Board (ISSB), part of the International Financial Reporting Standards (IFRS), the global framework for financial reporting and disclosures. ISSB Standard S-2 covers [only!] climate related disclosures. The SEC climate disclosure rule embraced the four pillars of TCFD.
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> GHG Protocol is already used by 1000's (I not more) entities. It is used globally by reporting entities, technical solution vendors, internal auditors, and assurance providers. GHG Protocol and ISSB S-2 are available at no charge, whereas other resources (notably from ISO) require purchase and/or licensing.

General: Data Reporting

Q4: Costs. No response.

Q5: Reporting. CARB should require reporting via the CDP website. CARB should provide guidance to covered entities annually regarding what fields in the CDP questionnaire are required to fulfill the California climate disclosure laws, what fields are related and voluntary. CARB should be silent on other fields in the CDP questionnaire that go beyond the requirements and objectives of the climate disclosure laws – for example, disclosures on water use. **CARB should not expend resources to create another disclosure mechanism specific to California.** This would be an inexcusable waste of the state's budget. This would impose unnecessary burden on the regulated community at a time when organizations are facing significant financial and operational challenges. It could also set an unproductive precedent for other states considering similar disclosure laws.

Q6: Non-profits or companies that provide reporting services. Many companies, non-profits, and other organizations provide climate-related services. The experience, quality, and costs vary considerably. **CARB should not be in the business of requiring or suggesting resources to be used.** CARB would incur additional burden and cost. If CARB establishes minimum criteria for inclusions (revenues, size, quality, referrals), this will leave some resources out. If CARB does not establish minimum criteria, this opens the door for entities with little experience, quality control procedures, and/or business ethics – putting CARB at risk.

SB 253: Climate Corporate Data Accountability Act

Q7: Standardization of Aspects of GHG Protocol: DHC does not see value in CARB attempting to standardize aspects of GHG Protocol reporting, disclosures or formats. Many analysts for the capital markets (Bloomberg, Ecovadis, Moody's, Standard and Poors, etc.) have developed their own tools and methodologies for capturing and analyzing GHG emissions disclosures. They have encouraged companies to adopt disclosure structures and content that facilitate comparability. DHC suggests that this market of users of carbon disclosure information has already accomplished this objective. DHC further suggests that users already have options if they are seeking additional information, including contacting the entities directly and/ or using AI.

Q8: Assurance Providers: CARB's question cites the requirement assurance providers are required to be "third party, independent, and have significant experience …" in applicable and relevant areas.

Q8a: Assurance Provider Options: Prospective assurance providers include Big 4 accounting firms, second tier accounting firms (BDO, Grant Thornton, etc.), boutique accounting firms, large technical firms (Bureau Veritas, ERM CVS, etc.), and smaller technical or management consultancies. **DHC recommends that CARB refrain from specifying what type of firm is required or recommended to conduct assurance.**

> As full disclosure, DHC has experience in this area. DHC submitted comments to the SEC on the proposed Dodd-Frank Conflict Minerals rule, advocating that CPAs and non-CPAs should be permitted to perform the independent assurance, as would be required. DHC's rationale is that the underlying topic and requirements [knowledge of product composition, supply chain due diligence, application of a globally-available framework] are technical in nature. SEC agreed, and referenced DHC comments in the final conflict minerals rule. Non-accountants can perform assurance engagements using the performance audit standards of the Generally Accepted Government Auditing Standards (GAGAS, commonly known as the "yellow book"). Certified Public Accountants could conduct assurance using AICPA standards. DHC conducted one of the four Independent Private Sector Audits in the first cohort of voluntary submittals. DHC continued to perform IPSAs for several years.

AICPA has Statements on Standards for Attestation Engagements [SSAEs][1]. The International Standard on Sustainability Assurance (ISSA) 5000 is a comprehensive, global standard for sustainability assurance. DHC notes that some entities in scope for California's climate disclosure laws will be headquartered outside the U.S. Since the disclosures apply on a consolidated basis, these entities may be more familiar with global standards, and should have the option of engaging assurance providers accustomed to their business.

ISO 14064-3 is a global standard for validation and verification of greenhouse gas reporting contents. Although it requires purchase, ISO does not require further membership, dues, or recurring costs to obtain the standard. Technical firms are generally lower-cost options for GHG emissions inventories than accountancies – especially the larger firms. Technical firms may be appropriate for regulated entities that are smaller in size, or that have small GHG emissions footprint compared to their revenues, or that are experiencing financial challenges.

DHC refers again to precedent set by the Dodd-Frank Conflict Minerals rule. Regulated companies are required to perform due diligence in their supply chains. The final rule mentions the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. However, the final rule does not require use of these guidelines – only that regulated entities use "nationally- or internationally-accepted" standards or framework. This provided flexibility in the event that other frameworks were developed that were better suited to the objectives of the rule.

DHC recommends that CARB expressly permit flexibility in the entities to perform assurance, as well as the assurance standards used. Rather, CARB should require the assurance standards be "nationally, internationally, or widely accepted" for use. The assurance providers should include the assurance standards they followed in performing the assurance engagement in their report.

Q8b: Definitions of limited assurance and reasonable assurance. DHC notes that these definitions are not necessarily widely understood outside the community of assurance providers, controllers, Internal Audit, and accountants. This lack of clarity pervades people in HR, Environmental, Operations, Procurement, Real Estate – even Sustainability; these are the functional groups that provide much of the input into GHG emissions calculations and the narrative surrounding governance, strategy, and climate-related risk. CARB's Information Solicitation offers a definition of "reasonable assurance" – that is one definition; there are others. CARB did not offer a definition of "limited assurance." DHC cautions CARB from venturing down a rabbit hole to define these terms that are beyond the agency's core competencies. DHC suggests that CARB require assurance providers to include their definition of limited assurance and reasonable assurance in their reports.

[1] The commenter is not a Certified Public Accountant.

Q9. Voluntary Emissions Reporting.

Q9c. Frequency of Scope 1 and 2 emissions reporting. DHC notes that CDP releases their questionnaire annually. In DHC's experience, this is the most common cadence for GHG emissions reporting.

Q9d. When is data available? **<u>DHC regards this as one of the areas in most critical need of revision.</u>** The January 1 reporting deadline in the California law is impractical, unfeasible, and out of touch with typical operations. Some large companies now publish climate disclosures (including GHG emissions inventories) concurrent with their financial reporting. DHC suggests this is a stretch for most companies, especially companies just beginning their journey. It is common for companies to begin with manual processes. Data and information are unstructured, and take months to assemble. It is common for companies to use estimates. If pushed to meet artificially-imposed deadlines, the relative portion of estimates is higher, necessitating recalculations later (and additional costs). Early efforts are often staffed by "volunteers" with other full-time responsibilities.

> There is a trend for finance functions (notably the Controller) to increase involvement in Sustainability reporting and disclosures, including climate-related disclosures. This group's primary function has long been to ensure the quality and timeliness of financial reporting; they do not have spare capacity. DHC further notes that Scope 3 emissions involve gathering data from supply chain and value chain. This poses significant challenges in responsiveness, accuracy, verifiability, and timeliness of data and information collection. Regulated entities must also provide data and information to their downstream value chain. DHC again cites precedent in the SEC's Dodd-Frank Conflict Minerals rule. SEC acknowledged that many of the key people who would be involved in compliance (Legal, Accounting, Internal Audit, Controller – and the financial auditors) were already resource-constrained during financial reporting season. SEC set the annual reporting deadline as May 31 for the Conflict Minerals Report covering the prior year. This allowed the regulated community to use existing staff with key competencies, and reduced the need to seek outside resources seasonally (when even these resources would be scarce – and expensive).
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> DHC also notes that CDP's deadline for submittals to be scored is on or about September 15. This is an important indicator of the time required to compile necessary information.

DHC recommends that CARB establish an annual reporting deadline of no earlier than June 30, and no later than August 31.

Q9c. Software systems used for voluntary reporting. No comment.

SB 261: Climate Related Financial Risk Disclosure

Q10. **Appropriate timeframe**. DHC suggests establishing the same reporting deadlines for qualitative and quantitative disclosures.

Q11. **Standardized reporting timeframes:** DHC notes that comparability (year-over-year for the same reporting entities, and to enable analysis across different companies contemporaneously) is one principle of TCFD (now ISSB S-2). It would be consistent with this objective to specify the same two-year reporting windows.

Q12. **Reporting requirements as a company first crosses the threshold.** DHC notes that a companies will exceed revenue thresholds for the first time in different ways. Company A may realize they are likely to exceed the threshold within one quarter of the beginning of the two-year window. Company B may experience explosive growth (including via acquisitions) in the last quarter of the two-year window. Company A has had ample time to prepare disclosures, whereas Company B will face considerable challenges. DHC suggests an approach whereby CARB "splits the difference."

> Entities that exceed the revenue threshold in the first year of the 2-year window would be required to disclose. This aligns with the typical annual reporting cycle for [quantitative] GHG emissions. To compile GHG emissions, companies must establish some type of governance – one of the pillars of TCFD. They will have ample time to build out their programs.
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> Entities that exceed the revenue threshold in the second year of the 2-year window would be required to "disclose or explain." DHC notes that many companies below California's revenue threshold already disclose via CDP. Companies that suddenly exceed the threshold near the deadline (via a merger) can disclose what they are able to, and explain why they are not prepared to make other disclosures.

Q13. **Other types of climate financial risk disclosures.**

Q13a. **Other types of climate financial risk disclosures.** DHC notes that the Sustainability Accounting Standards Board (SASB) was founded to identify non-financial topics that could pose material[2] financial risk to companies – climate among them. SASB developed disclosure parameters for a range of topics. Along with TCFD, SASB is now part of the ISSB. The disclosure parameters in ISSB S-2 are one model. Despite the likelihood that the SEC final climate disclosure law will not come into effect, the SEC issued interpretive guidance in February 2010 clarifying that climate change-related issues might trigger disclosure under existing regulations.

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[2] With "material" as defined in the U.S. Supreme Court decision in TSC Industries, Inc. v. Northway, Inc (1976).

Q13g. What approach to entities use? No comment.

Q13h. Differences from final guidance of TCFD? No comment.

Q13i. Other laws, regulations or listing requirements? DHC is aware there are disclosure requirements in many other jurisdictions, including (but not limited to) Australia, Canada, the European Union, and the UK. DHC is aware that the UK expressly requires disclosures according to TCFD. While it may be useful for CARB to scan the landscape for other models, **DHC strongly recommends sticking to applicable/ relevant portions of TCFD and/or CDP questionnaires. Whatever is required for California should be broadly usable for other jurisdictions, and should include no unique disclosure requirements**.

Respectfully submitted,

Douglas Hileman

Douglas Hileman, FSA, CRMA, CPEA, P.E.
President, Douglas Hileman Consulting LLC
doug@douglashileman.com