Columbia Law School | COLUMBIA CLIMATE SCHOOL
SABIN CENTER FOR CLIMATE CHANGE LAW

March 19, 2025

California Air Resources Board
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

Re: Response to the California Air Resources Board's Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation

To Whom it May Concern:

Columbia Law School's Sabin Center for Climate Change Law ("Sabin Center") respectfully submits these comments in response to the California Air Resources Board's ("CARB's") December 16, 2024 Information Solicitation to Inform Implementation of California's Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219 (the "RFI")[1].

The Sabin Center develops legal techniques to fight climate change, trains students and lawyers in their use, and provides the public with resources on key topics in climate law and regulation. It is affiliated with the Columbia Climate School, the nation's first climate school, designed to advance new areas of climate inquiry, research, and impact across Columbia University.

<u>Introduction</u>

Senate Bills 253 and 261 both acknowledge that "extreme weather events"[2] associated with climate change are already impacting Californians, including "devastating wildfires, sea level rise, drought, and other impacts."[3] These findings are consistent with the overwhelming scientific

1. California Climate-Disclosure Information Solicitation (Dec 2024), https://ww2.arb.ca.gov/our-work/programs/california-corporate-greenhouse-gas-ghg-reporting-and-climate-related-financial.
2. SB 253, Climate Corporate Data Accountability Act, CAL. HEALTH & SAFETY §38532; SB 261, Greenhouse Gases: Climate-Related Financial Risk, CAL. HEALTH & SAFETY §38533.
3. SB 253, Climate Corporate Data Accountability Act, CAL. HEALTH & SAFETY §38532.

consensus that human activities are increasing atmospheric greenhouse gas ("GHG") concentrations, which is causing global average temperatures to rise. In a 2021 report, the United Nations Intergovernmental Panel on Climate Change ("UN IPCC") concluded that "[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land."[4] The IPCC found that "[e]ach of the last four decades has been successively warmer than any decade that preceded it since 1850. Global surface temperature in the first two decades of the 21st century (2001-2020) was 0.99 [degrees Celsius] higher than 1850-1900."[5] Rising temperatures are increasing the frequency and severity of many types of weather extremes, such as heatwaves and floods, and contributing to sea-level rise and other slow-onset phenomena.

Enacted to identify and manage climate-related financial risk, Senate Bills 253 and 261 find further that climate change creates "significant risk to companies' long-term economic success" and disruptions to corporate value chains.[6] The conclusion that climate change creates financial risk is consistent with the findings of regulators and investors across the global financial markets.[7] What was once viewed by the finance community as an ethical issue is now clearly recognized as a source of financial impact with risks for individuals, investors and financial institutions.[8] Indeed, as the California legislature warns in SB 261, "failure of economic actors to adequately plan for and adapt to climate-related risks to their businesses and to the economy will result in significant harm to California, residents, and investors, in particular to financially vulnerable Californians who are employed by, live in communities reliant on, or have invested in or obtained financing from these institutions."[9]

The adverse impacts on financial assets associated with these and other consequences of climate change are undeniable and increasing.[10] Numerous studies confirm the conclusion that climate risk is not extraneous to the financial marketplace. Indeed, a 2019 study by CDP, a not-for-profit organization that measures climate risk, found that 215 of the largest companies globally face almost $1 trillion in potential financial risk from climate change, with approximately half of that

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4. United Nations ("UN") Intergovernmental Panel on Climate Change ("IPCC"), *Summary for Policymakers, in* CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 4 (V. Masson-Delmotte et al., eds, 2021).
5. *Id*. at 5.
6. SB 253, Climate Corporate Data Accountability Act, CAL. HEALTH & SAFETY §38532.
7. *See generally* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, FINANCIAL MARKETS AND CLIMATE TRANSITION: OPPORTUNITIES, CHALLENGES AND POLICY IMPLICATION 15-22 (2021), https://perma.cc/F36N-HA58.
8. *See generally* BANK OF INTERNATIONAL SYSTEMS, THE GREEN SWAN: CENTRAL BANKING AND FINANCIAL STABILITY IN THE AGE OF CLIMATE CHANGE (2020).
9. SB 261, Greenhouse Gases: Climate-Related Financial Risk, CAL. HEALTH & SAFETY §38533.
10. *See, e.g.,* FINANCIAL STABILITY OVERSIGHT COUNCIL ("FSOC"), REPORT ON CLIMATE-RELATED FINANCIAL RISK (2021), https://perma.cc/6V34-EU4F; BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FINANCIAL STABILITY REPORT (2020), https://perma.cc/2VWA-67LV; BANK OF INTERNATIONAL SYSTEMS, *supra* note 8.

risk identified as "likely, very likely, or virtually certain to materialize [...] [within] five years."[11] In its 2021 report on Climate-Related Financial Risk, the Financial Stability Oversight Council ("FSOC") noted that "[t]he intensity and frequency of extreme weather and climate-related disaster events are increasing and already imposing substantial economic costs."[12] The FSOC recognized that, as the magnitude of climate hazards and associated costs increase in coming years, so too will risks to the financial system.[13]

Indeed, in the same report, the FSOC noted that "climate-related financial risks are an emerging threat to the financial stability of the United States."[14] This is partially due to an under-appreciation of the risk. The UN IPCC has warned that "climate-related financial risks remain greatly underestimated by financial institutions and markets,"[15] leading to market distortions driven largely by the failure of market participants to price in these risks.

Regulations to require corporate disclosure to address the financial risks of climate change are consistent with CARB's mandate to develop programs and actions to fight climate change, and to do so while considering effects on the economy. California's leadership on corporate climate disclosure is particularly critical in light of weaknesses in the federal disclosure regime. Notably, the Federal Acquisition Regulatory Council ("FAR Council") has withdrawn its proposed rule to require many federal contractors to disclose, and in some circumstances mitigate, their GHG emissions and to make climate-related financial risk disclosures. And the Securities and Exchange Commission's ("SEC") final rule requiring climate risk disclosure, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668, has been voluntarily stayed pending certain court challenges. The new federal administration, in conjunction with new leadership at the SEC, has stated its intent to dismantle this rule, heightening the importance of California's strong corporate climate risk disclosure requirements.

For all these reasons, the Sabin Center strongly supports CARB's efforts to respond to the financial and environmental consequences of climate change, and encourages CARB to move quickly to meet the timeline set forth in SB 219, which requires CARB to adopt regulations by July 1 of this year. The Sabin Center further offers the specific responses below with respect to standard setting, emissions reporting, and terminology, to inform CARB's implementation of SB 253 and SB 261 as it prepares to meet the July deadline.

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11. CDP, MAJOR RISK OR ROSY OPPORTUNITY: ARE COMPANIES READY FOR CLIMATE CHANGE? (2019), https://perma.cc/XVL3-YF7T.
12. FSOC, *supra* note 10, at 10.
13. *Id*.
14. *Id*.
15. *See* UN IPCC, *Summary for Policymakers, in* CLIMATE CHANGE 2022: MITIGATION OF CLIMATE CHANGE. CONTRIBUTION OF WORKING GROUP III TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE Ch. 15 (J. Skea, et al., eds, 2022).

Responses to Specific Information Requests regarding Terminology (RFI #1)

SB 253 and SB 261 both require an entity that "does business in California" to provide information to CARB, but the statutes do not provide a definition of "doing business." CARB should generally adopt the interpretation of "doing business in California" set forth in the Revenue and Tax Code, Section 23101. California's Franchise Tax Board has used this method for over a decade, and legal precedent supports its use.

However, under Section 23101 of the Revenue and Tax Code, the threshold amounts used to determine if an entity is "doing business in California" include, in the alternative, both a percentage and an absolute dollar amount. For 2024, the thresholds are met if California sales, property, or payroll exceed the following amounts: California sales exceed either 25% of total sales or $735,019; California real and tangible personal property exceeds either 25% of total property or $73,502; or California payroll compensation exceeds either 25% of payroll or $73,502 (these amounts are adjusted annually for inflation).

The absolute dollar values set forth in the tax code are likely too low for the purposes of SB 253 and SB 261. These amounts would sweep in entities that do a minimal amount of business in California and are unlikely to have high levels of GHG emissions in the state. CARB should increase the monetary threshold to ensure coverage consistent with the goals of the statutes and the legal durability of the regulations.

With respect to the definition of a "business entity" that "does business in California," federal and state government entities should not be included. Government entities are often exempt from reporting obligations under certain acts. At the federal level, this includes the Corporate Transparency Act and the Bank Secrecy Act/Anti-Money Laundering Act. Specifically related to the financial risks of climate change, state and local governments were exempted from the requirements of the FAR Council's proposed climate disclosure rule (now withdrawn).[16] And of course, the climate disclosure rule finalized by the SEC in March 2024 only applies to SEC-registered companies that are publicly traded in the United States, and therefore does not extend to government entities.[17]

We recommend that CARB offer similar exemptions. Requiring federal and state government entities to report would have fiscal implications and would greatly complicate the administration of the laws.

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[16] *Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk*, 87 Fed. Reg. 68,312 (Nov. 14, 2022).
[17] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities and Exchange Commission, Securities Act Release No.11275, Exchange Act Release No. 99678, 89 FR 21668 (Mar. 28, 2024).

However, there is no persuasive basis for exempting corporate entities that are owned in part, or wholly owned, by a foreign government. Otherwise-covered entities should be required to report under SB 253 and SB 261 without regard to foreign ownership. Allowing entities that are owned partially or wholly by a foreign government to escape reporting would create an unwarranted loophole that would reduce the effectiveness of the laws.

Responses to Specific Information Requests regarding Reporting Standards (RFI #3)

While the physical and transition risks of climate change affect geographies around the world, California faces particularly severe threats, given its vulnerability to droughts, atmospheric rivers, sea level rise, wildfires, and extreme heat. The business impacts of these threats are apparent across sectors, including insurance and the state's agricultural economy. For these reasons, CARB's regulations must address California-specific needs while remaining aligned with global best practices as corporate reporting standards and protocols evolve.

There is significant value in adhering to widely-adopted standards for climate risk disclosures, both to reduce the burdens of compliance and to ensure the comparability of disclosed data. As acknowledged in SB 253, the Greenhouse Gas Protocol ("GHG Protocol") is the globally recognized GHG emissions accounting and reporting standard, and many companies already voluntarily disclose their emissions information in accordance with this protocol. SB 261 similarly relies upon the Task Force on Climate-Related Financial Disclosures ("TCFD") and its successor standards, acknowledging them as the international benchmark for climate risk disclosure.

It should be permissible for reporting entities to use protocols or standards published by external entities, but only if those protocols and standards are publicly available without charge. Standards and protocols derived from the GHG Protocol and the TCFD are most likely to align CARB's reporting requirements with other mandatory programs, and thus reduce compliance burdens and facilitate alignment of corporate emissions and climate risk reporting.

The specific reporting method utilized by a reporting entity should be disclosed in each entity's report, and reporting entities should generally be required to use the same method every year. Without this consistency, it will be difficult, if not impossible, to make year-to-year comparisons of an entity's emissions, a critical function of any emissions disclosure regime.

If a reporting entity adopts a new methodology, CARB should require disclosures specific to that change. The new methodology should be described, the reasons for its adoption should be explained, and, where possible, meaningful comparisons to the previous year's performance should be provided.

Further, consideration should be given in future updates to these regulations as to whether a particular standard has become so widely adopted, and deemed by experts to be sufficiently thorough, as to suggest a global norm. At that time, CARB may wish to require companies to shift their reporting methodology to comply with best practices.

Responses to Specific Information Requests regarding Standardization of Emissions Reporting and Reporting Periods (RFI #7, 11)

While the GHG Protocol allows for flexibility in some areas of emissions reporting, CARB should standardize aspects of Scope 1, 2, and 3 reporting to the maximum degree possible, in order to achieve comparability across reporting entities. Many companies already provide some climate-related disclosures voluntarily; others already, or soon will, disclose GHG emissions and other climate risk information in accordance with the disclosure regimes of other jurisdictions. A core need is for GHG emissions data and climate risk disclosure to be consistent, in order to allow investors, consumers, and other market participants and stakeholders to analyze comparable, decision-useful information. At a minimum, there should be standardization within sectors.

It is particularly important to require standardization in Scope 3 reporting, which, for most large companies, are substantially greater than their operational emissions.[18] To our knowledge, no entity reports all 15 of the Scope 3 categories identified in the GHG Protocol; indeed, reporting varies widely. Category 11 (use of sold products) is especially important to include and to require reporting disaggregated from other Scope 3 categories, noting that this category reflects the largest GHG impact of fossil fuel companies and vehicle manufacturers. In contrast, select categories may be lower priority: for example, Categories 12 (end-of-life treatment of sold products), 13 (downstream leased assets), 14 (franchises), and 15 (investments).

In any event, it is important that all companies be required to report on certain of these Scope 3 categories, and to specify the disaggregated data and calculation methodology for each category. Scope 3 reporting at a gross level does not offer the transparency or accountability intended under these laws.

CARB should also require a standardized reporting year (such as the examples given in the RFI of 2027, 2029, 2031, etc.), rather than permitting reporting at any time in a two-year period. This alignment of entity reporting will allow for better comparison across entities, and facilitate sector-wide analysis and other summary reviews for all reporting entities.

[18] Greenhouse Gas Protocol (June 2022): Scope 3 FAQ. A Corporate Accounting and Reporting Standard, World Resources Institute and World Business Council for Sustainable Development.

Conclusion

We appreciate CARB's attention to the financial and environmental implications of climate change, and CARB's careful consideration of the rulemaking process to implement SB 253 and SB 261. As CARB develops its regulations for these statutes, we hope it will consider the input provided above and make every effort to ensure the statutes are robustly implemented.

Thank you for the opportunity to provide comments. Please do not hesitate to contact the Sabin Center with any questions.

Respectfully submitted,

Michael Burger, Executive Director
Michael Gerrard, Faculty Director and Andrew Sabin Professor of Professional Practice
Cynthia Hanawalt, Director of Climate Finance and Regulation