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VIA ELECTRONIC SUBMISSION

California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219

To Whom It May Concern:

The Institute of International Bankers ("IIB") welcomes the opportunity to submit this letter in response to the request of the California Air Resources Board ("CARB") for information[1] relevant to its implementation of the Climate Corporate Data Accountability Act, Senate Bill 253[2] ("SB 253") and the Climate-related Financial Risk Act, Senate Bill 261[3] ("SB 261"), both as amended by Senate Bill 219[4] ("SB 219") (collectively, the "Climate Disclosure Bills").

The IIB represents the U.S. operations of internationally headquartered financial institutions from more than 35 countries around the world. The membership consists principally of international banks that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States. The IIB works to ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers and comprise the majority of U.S. primary dealers. These institutions also enhance the depth and liquidity of U.S. financial markets and contribute significantly to the U.S. economy through direct employment of U.S. citizens, as well as through other operating and capital

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1 CARB, Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219 (Dec 16, 2024) (the "Solicitation"), available *here*.

2 SB 253, 2023-2024 Regular Session (Cal. 2023), codified at Cal. Health & Safety Code § 38532.

3 SB 261, 2023-2024 Regular Session (Cal. 2023), codified at Cal. Health & Safety Code § 38533.

4 SB 219, 2023-2024 Regular Session (Cal. 2023), amending Cal. Health & Safety Code §§ 38532-3.

expenditures. Climate-related reporting is an important issue, and one our members are focused on. As such, we welcome the opportunity to offer our perspectives.

Our members recognize the global significance of emissions and climate-related financial risk disclosures. Many of our members are already in the process of implementing greenhouse gas ("GHG") emissions and climate-related financial risk disclosure standards at the enterprise level, and are or soon will be disclosing climate-related information. As international institutions operating across multiple jurisdictions, our members often must navigate multiple, sometimes disparate requirements. As such, we write to emphasize the importance of the provisions in the Climate Disclosure Bills that seek to minimize duplicative efforts and recognize the sufficiency of disclosures made pursuant to regulatory requirements in other jurisdictions or internationally recognized voluntary frameworks. In addition, as climate-related disclosure requirements and standards continue to evolve, we encourage CARB to coordinate with other domestic and international authorities on climate-related disclosures to ensure that the Climate Disclosure Bills are implemented in a manner that is broadly compatible with other domestic and international standards and allows flexibility for these standards to evolve.

Our comments on the Solicitation seek to clarify several points of particular importance to internationally headquartered financial institutions.

- Subsidiaries of internationally headquartered financial institutions that are in scope of the Climate Disclosure Bills may comply with the reporting requirements of the Bills by submitting consolidated parent-level reports prepared in compliance with other climate-related disclosure regimes.

- A single consolidated parent-level report should satisfy the reporting requirements for all in-scope subsidiaries (a) notwithstanding the parent entity not being subject to the Bills' requirements, and (b) without further need for segmentation or extraction of in-scope subsidiary-specific data.

- Both Bills establish a broad scope for recognition of foreign regulatory disclosure obligations and for voluntary disclosures, and should be implemented to provide maximum flexibility to use reports prepared under other disclosure frameworks, both as they exist today and as they evolve in the future.

- Because a U.S. branch, agency or representative office of an internationally headquartered bank is not a separate legal entity, but instead a U.S. office of the parent bank, it is not in scope as a "covered entity" or a "reporting entity" for purposes of the Climate Disclosure Bills.[5]

Following discussion of these critical points, this letter addresses certain other implementation issues important to our members. The Appendix to this letter provides additional information regarding some of the additional climate-related disclosure regimes that our members are already subject to, are likely to become subject to, or are in the process of implementing, outside of the United States.

I. A single consolidated parent-level report should satisfy the reporting requirements for all in-scope subsidiaries notwithstanding the parent entity not being subject to the Bills' requirements, and without further need for segmentation or extraction of in-scope subsidiary-specific data.

Our members continue to analyze the Climate Disclosure Bills to determine whether they may be in scope. Many of our members already prepare consolidated climate-related disclosures at the enterprise level, however, pursuant to either mandatory or voluntary reporting standards, or expect to become subject to such requirements in the next several years. If any of our members, or certain of their subsidiaries, are ultimately subject to the requirements of the Climate Disclosure Bills, it will be important for them to be able to leverage their preexisting disclosures.

The Climate Disclosure Bills permit covered entities to provide reports "consolidated at the parent company level."[6] They also provide that reports prepared to meet other national or international reporting requirements can be used to satisfy reporting obligations under the Bills.[7] To give maximum effect to these provisions and to further the statutory directive to minimize burden and duplication of effort, CARB should confirm that a consolidated parent-level report can be provided even if the parent is not a covered entity, and that no segmentation or extraction of subsidiary-specific data shall be required.

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5 The definition of "reporting entities" subject to the requirements of SB 253 and "covered entities" subject to the requirements of SB 261 are essentially identical, except for the relevant revenue threshold for coverage. For purposes of this letter, we refer to entities subject to the disclosure requirements under either Bill as "covered entities."

6 *See* Cal. Health & Safety Code §§ 38532(c)(2)(A)(iii) and 38533(b)(2).

7 *See id*. at § 38532(c)(2)(D)(i) ("[E]missions reporting [should be] structured in a way that minimizes duplication of effort and allows a reporting entity to submit . . . reports prepared to meet other national and international reporting requirements . . ."); *id*. at § 38533(b)(3) ("[A] covered entity satisfies the requirements of [SB 261] if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information . . . [p]ursuant to a law, regulation, or listing requirement issued by any regulated exchange, national government, or other governmental entity . . . ").

We also recommend that a parent with multiple in-scope subsidiaries be permitted to provide one consolidated parent-level report that covers all its covered entity subsidiaries, without identifying each individual subsidiary covered by the report. The public disclosure purposes of the Bills are served by the preparation and publication of the consolidated report, and it should not be necessary for an enterprise with multiple operating subsidiaries to conduct a complicated subsidiary-by-subsidiary analysis to determine which subsidiaries are doing business in California and have the annual revenues required to be considered covered entities.

Importantly, the use of a consolidated parent-level report would not create California or U.S. jurisdiction over a foreign bank or other non-U.S. parent or any of its non-U.S. subsidiaries, nor would it concede applicability of the Climate Disclosure Bills to the non-U.S. parent or its non-U.S. subsidiaries. Similarly, the use of a consolidated parent-level report to cover multiple U.S. subsidiaries would not automatically concede that all the parent's U.S. subsidiaries are covered entities.

II. Both Climate Disclosure Bills establish a broad scope for recognition of foreign regulatory disclosure obligations and voluntary disclosures and should be implemented to provide for maximum flexibility to rely on other disclosure frameworks, both as they exist today and as they evolve in the future

Both Climate Disclosure Bills permit a covered entity to submit a report that has been prepared to comply with other regulatory requirements, including foreign governmental requirements, assuming it meets the criteria set out in the Bills. We urge CARB to implement these provisions in a way that provides maximum flexibility for internationally active institutions to leverage reporting required under other applicable legal regimes and voluntary frameworks. Variations in requirements, standards and implementation choices between frameworks and institutions should not disqualify a broadly comparable reporting framework from recognition. The purpose of the Climate Disclosure Bills is to provide increased public transparency regarding GHG emissions and climate-related financial risk. So long as these broad goals are satisfied, CARB should afford covered entities maximum flexibility to use a voluntary report or a report prepared pursuant to a law, regulation or listing requirement that incorporates or otherwise is generally consistent with the external standards referenced in the relevant Bill.

SB 261 permits its reporting requirements to be satisfied by a report prepared "pursuant to an equivalent reporting requirement" and further specifies acceptable reports to include (1) a mandatory report (including as required by the laws of a foreign jurisdiction) "incorporating disclosure requirements consistent with" the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD Recommendations"), including reports prepared in accordance with the International Financial Reporting Standards Sustainability Disclosure Standards ("ISSB Standards") issued by the International Sustainability Standards Board ("ISSB"), and (2) voluntary reports using a framework consistent with the TCFD Recommendations or ISSB Standards.[8] Consistent with this directive, the legislature also explicitly excluded insurance companies from SB 261 because the National Association of Insurance Commissioners has adopted a new standard for insurance companies to report their climate-related risks in alignment with the TCFD Recommendations.[9] This exclusion reinforces the legislature's intent to avoid duplicative reporting requirements and recognize other reporting regimes as sufficient to accomplish the Bill's public disclosure purpose.

SB 253 is less specific about recognition of other reporting regimes, but it also provides that emissions reporting should be structured in a way that minimizes duplication of effort and allows a covered entity to submit "reports prepared to meet other national and international reporting requirements," provided they meet the requirements of the Bill.[10] Those requirements include annual reporting of scope 1, scope 2 and scope 3 emissions in accordance with the Greenhouse Gas Protocol standards and guidance ("GHG Protocol"), and standards for assurance.[11] Although SB 253 does not identify specific reporting frameworks that CARB should consider equivalent, the statutory directive to "minimize[s] duplication of effort" indicates the legislature also intended CARB to implement these requirements flexibly, provided the public disclosure goals of the Bill are satisfied. This should include both mandatory and voluntarily disclosures of GHG emissions prepared consistent with the GHG Protocol.

Flexibility should extend to all aspects of the Climate Disclosure Bills, including the substance of disclosures, procedural matters, timing of reports, assurance standards and future changes, to accommodate the variation and evolution of other mandatory and voluntary disclosure frameworks in the future. So long as the transparency goals of the Climate Disclosure Bills are served, these details of implementation should not disqualify another disclosure framework from recognition.

In particular:

- *Assurance Standards under SB 253*: SB 253 requires CARB to adopt standards for a covered entity to obtain an assurance engagement performed by an

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8 Cal. Health & Safety Code §§ 38533(b)(1)(A)(i) and (b)(3).

9 *See id*. at § 38533(a)(4) ("'Covered entity' does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state."). *See also* Senate Committee on Environmental Quality, SB 261 (Mar. 15, 2023).

10 Cal. Health & Safety Code § 38532(c)(2)(D)(i).

11 *Id.* at § 38532(c)(2)(A)(ii).

independent third-party assurance provider on the covered entity's GHG emissions.[12] In adopting these standards, CARB is required to "ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity."[13] Beyond certain baseline standards regarding the level of assurance required and the basic qualifications of assurance providers,[14] CARB has significant flexibility to implement assurance standards in regulation in a way that minimizes burdens and unnecessary costs, consistent with this mandate. For example, CARB has discretion regarding whether to establish an assurance requirement for scope 3 emissions before 2030,[15] and SB 253 does not define key terms, including limited assurance and reasonable assurance. We recommend that CARB implement these assurance standards flexibly to avoid unnecessary duplication of effort, mitigate the costs and compliance burdens on covered entities connected to the assurance process and "minimize[] the need to engage multiple assurance providers."[16] For example:

- Covered entities that use a parent-level report prepared according to other non-U.S. laws, regulations or listing requirements, or a voluntary regime with assurance standards, should be able to follow the methodology and the level of assurance that is used to prepare their parent-level reports. If a home country regulator would only require limited assurance over a specific scope of GHG emissions, for example, the covered entity relying on that parent-level report should not be required to recertify the report under a higher level of assurance to meet its obligations under SB 253.

- CARB should provide covered entities flexibility in choosing assurance providers that meet home country requirements so long as the assurance providers have the requisite experience and qualifications required under SB 253 to perform the assurance work.

- Because the introduction of a specific assurance standard may vary by jurisdiction, to the maximum extent possible, CARB should also extend

12 *Id*. at § 38532(c)(1).

13 *Id*. at § 38532(c)(2)(F)(v).

14 *See id*. at § 38532(c)(2)(F)(ii) (requiring limited assurance for scope 1 and 2 emissions beginning in 2026, and reasonable assurance beginning in 2030); *id*. at § 38532(c)(2)(F)(iv) (assurance provider experience and independence standards).

15 *Id*. at § 38532(c)(2)(F)(iii).

16 *Id*. at § 38532(c)(2)(F)(v).

flexibility to accommodate gaps in timing between jurisdictions (if, for example, a covered entity's parent jurisdiction introduces a reasonable assurance requirement later than SB 253, CARB should accommodate that timing and defer to the parent's home country regime, rather than require the covered entity to enter into a separate assurance engagement at a higher standard).

  - To the maximum extent possible, CARB should remain flexible regarding reasonable assurance requirements in light of recent developments internationally to move away from a reasonable assurance standard.[17]

- *Adoption of Supplementary Reporting Methodologies*: Many financial institutions, including many of our members, have used a standard developed by the Partnership for Carbon Accounting Financials (the "PCAF Standard") as a guide to assist in measuring GHG emissions that result from lending and investment activities.[18] The PCAF Standard is a voluntary set of standards designed to be consistent with the GHG Protocol that provides additional detail and guidance on calculating financed emissions from certain lending and investment asset classes. Covered entities should have the flexibility to adopt supplemental methodologies like the PCAF Standard, in whole or in part, to assist them in complying with their GHG reporting obligations.[19]

- *Software Systems Used in Voluntary Reporting*: Question 9(e) in the Solicitation asks what software systems are commonly used in voluntary reporting for scope 1 and 2 GHG emissions. The commonly used software systems in voluntary reporting may differ from jurisdiction to jurisdiction, and CARB should not mandate the use of any specific software systems for compliance with either Climate Disclosure Bill.

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[17] *See* EU Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (Feb. 26, 2025) ("Omnibus Proposal I") at 4 (proposing to amend assurance requirements for the Commission's Corporate Sustainability Reporting Directive to reduce burden).

[18] *The Global GHG Accounting and Reporting Standard for the Financial Industry*, Partnership for Carbon Accounting Financials (2025), available *here*.

[19] The PCAF Standard is a useful aide for calculating certain classes of financed emissions, but there is not an industry consensus around all aspects of its methodology, and it should not serve as an additional requirement for reporting under SB 253. Instead, it is important to acknowledge that GHG reporting standards are still evolving, and a range of broadly consistent methodologies that aim towards a common goal should be acceptable.

- *Flexibility to Recognize Future Evolution in Parent-level Reporting*: The flexibility to use reporting required under other applicable legal regimes and voluntary frameworks should apply not only to alternative reporting frameworks as they exist today, but should also accommodate the future development and evolution of standards. Standards for reporting GHG emissions and climate-rerated financial risk are continuing to evolve as countries and organizations gain experience with reporting, and the Climate Disclosure Bills should be implemented in a manner that encourages that evolution. For example, we note that the reporting standards appliable in the context of the EU's Corporate Sustainability Reporting Directive ("CSRD") (described in the Appendix) are scheduled to be further developed in the EU in 2026 (for limited assurance) and 2028 (for reasonable assurance), and that the European Commission recently published an "Omnibus Package" of proposals, including proposals to reform and simplify the CSRD reporting framework, which would, among other things, amend assurance requirements to reduce burden and push back compliance dates for many enterprises.[20] The Climate Disclosure Bills should be applied flexibly enough to recognize this and other reporting frameworks as they evolve, and we recommend that CARB remain engaged with other regulators and non-governmental standard setting bodies to continue to promote consistency, harmonization and mutual recognition.[21]

III. CARB should confirm that, because the U.S. federal- and state-licensed branches, agencies and representative offices of internationally headquartered banks are not separate U.S. legal entities, they are outside the scope of the Climate Disclosure Bills

Our members engage in business in the United States through a variety of structures, including separate bank, broker-dealer and other subsidiaries that are established as separate legal entities, as well as through federal- and state-licensed branches, agencies and representative offices (collectively, "U.S. offices") that do not have a separate legal existence. CARB should confirm that the U.S. offices of banks headquartered outside the United States ("foreign banks") are not "reporting entities" under SB 253 or "covered

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20 *See* EU Commission, *Commission proposes to cut red tape and simplify business environment* (Feb. 26, 2025), available *here*; Omnibus Proposal I; EU Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements (Feb. 26, 2025) ("Omnibus Proposal II").

21 To the extent the Climate Disclosure Bills do not provide CARB with the flexibility to adapt to lessons learned in the implementation process and to evolving international standards and expectations, it may be necessary for the California legislature to update the Bills in a future legislative session, similar to how the legislature addressed certain early concerns with the original Bills in SB 219.

entities" under SB 261, and that a foreign bank does not come within the scope of the Climate Disclosure Bills solely because it maintains a U.S. office that does business in California.

The Climate Disclosure Bills limit the scope of covered entities to U.S. legal entities—specifically, as any: "partnership, corporation, limited liability company, or other business entity formed under the laws of the state, the laws of any other state of the United States or the District of Columbia, or an act of the Congress of the United States."[22]

A U.S. office is not a "partnership, corporation [or] limited liability company." Read in context, it is also clear that a U.S. office should not be considered an "other business entity." "Other business entity" is not defined in the Climate Disclosure Bills, but pursuant to the commonly applied canon of statutory construction known as *ejusdem generis*, a general term that follows a list of specific items should be interpreted as restricted to those things that are of the same type or kind as the specific items in the list.[23] Partnerships, corporations and limited liability companies are all types of business organizations that have separate legal existence; "other business entities" should be interpreted to include other types of business organizations that also have a separate legal existence.[24] The use of the word "formed" after "partnership, corporation, limited liability company, or other business entity" demonstrates that this is the correct reading of the statutory scope.[25] The U.S. office of a foreign bank is not a business organization with a separate legal existence, and is not separately "formed" under U.S. state or federal law; it is legally part of its foreign bank parent, with a specific license granted by the state or federal government to conduct banking business in the United States.[26]

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[22] Cal. Health & Safety Code §§ 38532(b)(2) and 38533(a)(4).

[23] *See Kraus v. Trinity Management Services*, 23 Cal.4th 116, 141 (Cal. 2000).

[24] We note that where California law does define other business entities, the U.S. office of a foreign bank would not be included. *See* Cal. Corp Code § 174.5 ("'Other business entity' means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance . . ."). S*ee also* Cal. Corp Code § 17710.01(k) ("'Other business entity' means a corporation, general partnership, limited partnership, business trust, real estate investment trust, or unincorporated association, other than a nonprofit association, but excludes a limited liability company or a foreign limited liability company.").

[25] Cal. Health & Safety Code §§ 38532(b)(2) and 38533(a)(4).

[26] *See U.S. v. BCCI Holdings*, 48 F.3d 551 (D.C. Cir. 1995) ("Our courts have long recognized that, while individual bank branches may be treated as independent of one another, each branch, unless separately incorporated, must be viewed as a part of the parent bank rather than as an independent

Any alternative reading that causes the U.S. offices of a foreign bank, or the foreign bank itself, to be a covered entity, would be an inappropriate and unwarranted extraterritorial expansion of scope that would be contrary to the legislature's expressed intent to limit the scope of the Climate Disclosure Bills to U.S. companies. For example, the Senate Judiciary Committee stated in its analysis of SB 261 that "[t]his bill grants no favoritism for in-state companies—all *U.S.-based companies* doing business in California with annual revenues in excess of $500 million are subject to the bill's reporting requirement."[27] The Assembly Committee on Natural Resources noted that the enactment of SB 253 would result in "5,300 *U.S. corporations* that would have to report their emissions."[28] Applying the Climate Disclosure Bills to a foreign bank, headquartered outside the United States, or to its U.S. offices, would be inconsistent with this intent.[29]

IV. Other matters related to the scope and timing of the Climate Disclosure Bills

A. Key elements of the definition of covered entity need to be defined to provide clarity regarding the scope of the Bills

SB 253 defines a reporting entity as:

> [A] partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of one billion dollars ($1,000,000,000) and that does business in California. Applicability shall be determined based on the reporting entity's revenue for the prior fiscal year.[30]

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entity."). *See also* Federal Reserve Board, Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations at 6010.1 ("The branch and its head office are one legal entity."); Office of the Comptroller of the Currency ("OCC"), Operating Subsidiaries of Federal Branches and Agencies, 66 Fed. Reg. 49093, 49094 (Sept. 26, 2001) ("Unlike a national bank, a Federal branch or agency is not a separate corporate entity but rather is an office of the parent foreign bank"); OCC, Rules, Policies, and Procedures for Corporate Activities; International Banking Activities, 68 Fed. Reg. 19949, 19953 (April 23, 2003) ("[A] Federal branch or agency is not a separate corporate entity").

27 Senate Judiciary Committee, SB 261 (April 14, 2023) (*emphasis added*).

28 Assembly Committee on Natural Resources, SB 253 (July 7, 2023) (*emphasis added*).

29 A corollary point is that, because a U.S. office of a foreign bank is legally an integral part of the non-U.S. parent, the activities of a foreign bank's U.S. offices should not be attributed to the foreign bank's U.S. subsidiaries for purposes of determining whether any of the foreign bank's U.S. subsidiaries are covered entities.

30 Cal. Health & Safety Code § 38532(b)(2).

SB 261 defines as covered entity as:

> [A] corporation, partnership, limited liability company, or other business entity formed under the laws of the state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of five hundred million United States dollars ($500,000,000) and that does business in California. Applicability shall be determined based on the business entity's revenue for the prior fiscal year.[31]

Neither Bill defines what it means to "do business in California," nor does either Bill define or provide a method of calculation for "total annual revenues." These terms must be defined in order to provide clarity regarding the scope of entities covered by the Bills; as explained further below, compliance deadlines under the Bills should also be extended until these terms have been defined and the industry has had sufficient time to assess their scope. Our members urge CARB to define and interpret them in a manner that both provides clarity of scope and ease of administrability, as well as limits the scope of applicability to entities that have a material nexus to California.

Although this letter does not endorse any one specific approach to these definitions, we have several observations about possible approaches that have developed in discussions with our members.

- First, the definition of "doing business in California" proposed in Questions 1(a) of the Solicitation, based on Tax Code Section 23101,[32] is not appropriate for the Climate Disclosure Bills, because it would impose a significant and burdensome regulatory regime even on entities that have only a minimal California nexus. CARB should adopt a definition that requires a material nexus to California.

- Second, many of our members believe it would be appropriate to measure total annual revenue on a net revenue basis, because net revenue, which excludes transaction-specific expenses like discounts and returns, more accurately reflects the true relative economic activity of a business enterprise than gross revenue. For banking institutions that earn a significant portion of their revenue as interest

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31 *Id*. at § 38533(a)(4).

32 *See* Cal. Rev. & Tax Code § 23101 (defining doing business as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit," and defines "doing business in [California]" as applying to any taxpayer that (1) is organized or commercially domiciled in California, (2) has sales in California exceed the lesser of $735,019 or 25% of the taxpayer's total sales, (3) has real property and tangible personal property in California exceeding the lesser of $73,502 or 25% of the taxpayer's combined total real property and tangible personal property combined, or (4) paid payroll compensation in California exceeding the lesser of $73,502 or 25% of the total compensation paid by the taxpayer). *See also* State of California Franchise Tax Board, *Doing business in California* (October 29, 2024), available *here*.

income from lending, the equivalent metric would be total revenue net of interest expense and provisions for credit losses.

- Third, our members generally believe that total annual revenue should be measured at the level of the top-tier U.S. entity that does business in California, consolidated with its U.S. subsidiaries that are also doing business in California. The revenue calculation should not include the consolidated revenues of a U.S. entity's parent if the parent is not itself a U.S. entity doing business in California, because those entities are out of scope based on other aspects of the definition.

- Fourth, CARB should consider approaches to the revenue threshold that minimize year-on-year variability and enhance predictability. For example, CARB could base applicability of the Bills on a two-year average for total annual revenue, or provide that an entity is only covered if its total annual revenue exceeds the relevant threshold for two consecutive years. These approaches would help avoid situations where a single year's results trigger applicability of the Bills, only to have entities fall out of scope the following year.

- Finally, entities that do not follow a calendar year fiscal year should be permitted to use their fiscal year calendar to measure total annual revenues.

B. <u>CARB should provide additional time for covered entities to come into compliance after finalizing implementing regulations</u>

We urge CARB to use its rulemaking authority and enforcement discretion to provide covered entities with an extended compliance date that takes effect at least six months after the finalization of the implementing regulations for the Climate Disclosure Bills, and to exercise its discretion to accept reports on a good faith efforts basis for the first two years after the compliance date. Entities that newly come in scope after the initial compliance date should be given a similar transition period before the full requirements apply. The timelines currently set forth in the Bills are unworkable given the important and unresolved questions regarding the scope of entities covered and the possibility of reliance on parent-level reporting that are raised in this letter.[33]

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33 We note that California's Administrative Procedure Act requires meaningful consideration of various aspects and impacts of a rulemaking during the administrative rulemaking process, including financial impacts and reasonable alternatives, and provides a minimum 45-day period for the public to comment on proposed regulations. Cal. Gov't Code §§ 11346.4-5. It is especially important that CARB engage in a thoughtful and considered rulemaking process here, where the financial impact on covered entities is likely to be very significant. This reinforces the need for CARB to find ways to extend the compliance dates for the Bills.

CARB's December 5, 2024, enforcement notice helpfully provides that CARB will exercise its discretion when enforcing SB 253 for reports due in 2026, but conditions that discretion on good faith efforts to comply with the law, including stating that covered entities should make a good faith effort to retain all data relevant to emissions reporting for the entity's prior fiscal year.[34] This discretion does not address the important lack of clarity around the scope of SB 253, and does not address enforcement of SB 261 at all. CARB should establish new, workable timelines for the Bills, both by extending reporting periods through regulation where it has the authority to do so, and by using its enforcement discretion to defer enforcement action until affected entities have had time to assess whether or not they are covered and how they can comply.

C. Clarifications regarding the timing of reports and reporting periods

SB 253 gives CARB discretion to set workable deadlines for reporting scope 1, 2 and 3 emissions. Specifically, it provides that scope 1 and 2 disclosures for the prior fiscal year should be provided "starting in 2026 *on or by a date to be determined by the state board*, and annually on or by that date," and annual scope 3 disclosures covering the prior fiscal year should be provided starting in 2027 "*on a schedule specified by the state board*."[35]

Many of our members have fiscal years that do not match calendar years, and may prepare parent-level GHG and climate-related financial risk reports on a non-calendar year schedule. For example, neither the CSRD's European Sustainability Reporting Standards ("ESRS") nor the ISSB Standards mandate a single reporting deadline for all companies, but rather require alignment of the reporting period for climate-related disclosures with the reporting period for a company's financial statements.[36]

We recommend that CARB set workable deadlines for SB 253 that allow flexibility for a covered entity that prepares its reports on a non-calendar fiscal year to follow its parent-level reporting schedule. More generally, CARB should set reporting deadlines that allow sufficient time after the end of a covered entity's fiscal year for the covered entity to complete and submit its report, no matter when its fiscal year ends. For example, many national governments implementing CSRD have allowed between 6 to 12 months from the end of the relevant fiscal year until when the report must be published.

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34 CARB, Climate Corporate Data Accountability Act, Enforcement Notice (Dec. 5, 2024).

35 Cal. Health & Safety Code § 38532(c)(2)(A)(i) (*emphasis added*).

36 Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, 2023 O.J. (L 2023/2772, 22.12.2023) 15 at paragraph 73 ("The reporting period for the undertaking's sustainability statement shall be consistent with that of its financial statements.").

SB 261 requires climate-related financial risk reporting "on or before January 1, 2026, and biennially thereafter," but does not specify the relevant reporting period that should be covered by each report. We recommend that CARB adopt a flexible approach to reporting periods under SB 261 to accommodate a range of reporting cycles and timelines.

The need for flexibility is evident in the structure of the statutory deadline—it is not realistic to expect a covered entity to file a report that covers a reporting period ending December 31, 2025, on January 1, 2026. There must be a delay between the final "as of" date for a report under SB 261 and when it is filed.

Flexibility would be particularly helpful for those of our members that already prepare climate-related financial risk reporting at the parent-level. The timing and relevant periods covered by these reports will vary between institutions and between governing reporting frameworks; for purposes of SB 261, the most recent complete parent level report should suffice to address the Bill's transparency goals and minimize undue burden and duplicative reporting.

By adopting flexible reporting timelines and expectations for both Bills, CARB would ensure that covered entities have sufficient time to prepare the appropriate climate-related disclosures and the opportunity to increase reporting efficiency by using alternative emissions disclosures or climate-related financial risk disclosures completed in anticipation of a consistent reporting deadline after their fiscal year end or other applicable reporting period.

V. Information regarding other applicable reporting frameworks and methodologies

In response to Solicitation Question 13, please see attached in the Appendix to this letter additional information regarding some of the additional climate-related disclosure regimes that our members are already subject to, or are in the process of implementing, outside of the United States.

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The IIB appreciates the opportunity to submit these comments. We look forward to engaging with CARB on the implementation of these important climate-related disclosure requirements.

Sincerely,

Beth Zorc

Beth Zorc
Chief Executive Officer
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Examples of Alternative Climate-Related Financial Risk and GHG Reporting Frameworks

Many of our members are beginning to prepare reports on a voluntary or mandatory basis already as climate reporting requirements come into effect in other jurisdictions or are in the process of being implemented. Below we describe a few examples from major jurisdictions where some of our members are headquartered.

I. European Union

A. The Corporate Sustainability Reporting Directive ("CSRD") and the European Sustainability Reporting Standards ("ESRS")

CSRD took effect for certain large, listed EU companies beginning in fiscal year 2024, with later phased compliance dates for large non-listed companies and listed smaller enterprises scheduled in 2025 and 2026. CSRD is a significant sustainability reporting regime that introduces a complete set of detailed reporting standards, the ESRS, covering a range of environmental and social topics.

ESRS includes detailed climate-related financial risk disclosures that are recognized as covering all major disclosure categories from the TCFD Recommendations (i.e., governance, strategy, risk management, metrics and targets) while also implementing additional disclosure items within each category. It also covers other sustainability matters apart from climate.[37] For example, ESRS requires not only the disclosure of what risk management processes are used to identify and assess a company's climate-related risks and opportunities, but also those used to identify and assess material impacts.

ESRS specifically references the GHG Protocol in its GHG reporting requirements.[38] Under ESRS E1, companies must disclose their scope 1, 2 and 3 emissions following the GHG Protocol's methodology (including GHG Protocol's definitions and calculation methods). The World Resource Institute and the World Business Council for Sustainable Development lists all three of SB 253, ESRS and the ISSB Standards as "major climate-

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[37] *See* World Business Council for Sustainable Development, *WBCSD CFO Network: Implementation Guidance for the International Sustainability Standards Board (ISSB) Standards and the European Sustainability Reporting Standards (ESRS)*, available *here* (last visited Mar. 3, 2025). *See also* European Financial Reporting Advisory Group, *Draft European Sustainability Reporting Standards: Appendix IV – TCFD Recommendations and ESRS reconciliation table* (April 2022), available *here*.

[38] ISSB, *IFRS S2: Climate-related Disclosures* (June 2023), available *here*; Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, 2023 O.J (L 2023/2772, 22.12.2023), available *here*.

related disclosure rules that are either in effect or under development that integrate GHG Protocol standards and guidance."[39]

On February 26, 2025, the European Commission published an Omnibus Package of proposed reforms to its sustainability reporting framework, including CSRD. If adopted, the Omnibus Package would make a number of simplifying changes to EU sustainability reporting requirements, including by substantially reducing the number of companies falling within the scope of CSRD, delaying the application date for CSRD for companies due to report in 2026 and 2027 by two years, and simplifying the reporting standards under ESRS (although the Commission acknowledges the need to avoid undermining interoperability with global reporting standards).[40]

II. Japan

A. Section 3 of the Corporate Governance Code

In 2021, Japan revised its Corporate Governance Code for the Tokyo Stock Exchange. Among various changes was an added climate-related disclosure regime for companies listed on the Prime Market segment of the Tokyo Stock Exchange. Such companies need to collect and analyze both financial and non-financial information regarding the "impact of climate change-related risks and earning opportunities on their business activities and profits."[41] The companies then must make climate-based disclosures based on the TCFD Recommendations or equivalent international frameworks.

B. Proposed Annual Sustainability Report Requirement

The Sustainability Standards Board of Japan (the "SSBJ") published three draft sustainability disclosure rules (the "Exposure Drafts") in March 2024, that comprised a "universal" sustainability disclosure standard and two "theme-based" sustainability disclosure standards, covering general disclosures and climate-related disclosures, respectively.[42] The Exposure Drafts largely incorporate ISSB standards, but with some modifications. On March 5, 2025, the SSBJ released finalized versions of the three standards and noted that it decided as its "basic policy" to completely align with and incorporate all the ISSB Standards in order to produce "high-quality and internationally

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[39] World Resources Institute and World Business Council for Sustainable Development, *Overview of GHG Protocol Integration in Mandatory Climate Disclosure Rules* (January 2025), available *here*.

[40] *See* EU Commission, *Commission proposes to cut red tape and simplify business environment* (Feb. 26, 2025), available *here*; Omnibus Proposal I; Omnibus Proposal II.

[41] Corp. Governance Code principle 3.1 (Japan), provisional translation available *here*.

[42] *SSBJ issues Exposure Drafts of Sustainability Disclosure Standards to be applied in Japan*, Sustainability Standards Board of Japan (March 29, 2024), available *here*.

consistent" disclosure standards.[43] Japan has discussed introducing mandatory reporting under the standards, potentially starting in 2027 for large, listed companies.

III. Canada

A. Office of the Superintendent of Financial Institutions ("OSFI") Guideline B-15

OSFI Guideline B-15 established a mandatory climate-related disclosure regime for more than 350 federally regulated financial institutions in Canada.[44] The Guideline requires institutions to annually disclose identified climate-related risks and any governance mechanisms in place to address such risks, and to disclose their scope 1, 2 and 3 emissions following the GHG Protocol's methodology. The Guidelines were updated last year to ensure the minimum mandatory climate-related disclosure expectations aligned with ISSB Standard IFRS S2.[45]

B. Canadian Sustainability Disclosure Standards

The Canadian Sustainability Standards Board published its finalized Canadian Sustainability Disclosure Standards in December 2024.[46] The new standards (the "CSSB Standards") largely correspond to ISSB Standards IFRS S1 and IFRS S2. The CSSB Standards are voluntary unless required by regulators or provincial governments, but the Canadian Securities Administrator is expected to release a new climate-related disclosure rule for listed Canadian companies soon, which will "consider" the CSSB Standards, and the Canadian government has announced that it intends to launch a regulatory process to establish mandatory climate-related financial disclosures for large Canadian private companies, which may be based on the CSSB Standards.

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[43] *SSBJ issues Inaugural Sustainability Disclosure Standards to be applied in Japan,* Sustainability Standards Board of Japan (March 5, 2025), available *here*.

[44] Office of the Superintendent of Financial Institutions of Canada, *Guideline B-15: Climate Risk Management*, Government of Canada (March 31, 2023), available *here*.

[45] Office of the Superintendent of Financial Institutions of Canada, *OSFI continues building climate resilience* (March 20, 2024), available *here*.

[46] Canadian Sustainability Standards Board, *Canadian Sustainability Disclosure Standards (CSDS 1 and CSDS 2)* (December 18, 2024), available *here*.