BANK POLICY INSTITUTE

March 21, 2025

Via Electronic Submission

Liane M. Randolph
Chair, 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

Ladies and Gentlemen:

The Bank Policy Institute[1] appreciates the opportunity to comment on California Air Resources Board's ("CARB") information solicitation seeking feedback to inform its implementation of California Senate Bill ("SB") 253 (2023) and SB 261 (2023), each as amended by SB 219 (2024) (such bills, as amended, "SB 253" and "SB 261," respectively, and collectively, the "Climate Laws" or "Laws").[2]

I. Executive Summary

We appreciate the efforts of the CARB staff to solicit feedback to help inform CARB's implementation of the Climate Laws, especially in the face of the extraordinarily challenging circumstances created by the southern California wildfires. We support the goals of "improv[ing] transparency from companies regarding their greenhouse gas ("GHG") emissions and climate-related risk management practices to better inform the decision-making of California consumers, investors, and

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1 The Bank Policy Institute (BPI) is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ nearly 2 million Americans, make nearly half of the nation's small business loans and are an engine for financial innovation and economic growth.

2 CARB, *Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219* (Dec. 16, 2024), *available at* https://ww2.arb.ca.gov/sites/default/files/2024-12/ClimateDisclosureQs_Dec2024.pdf (the "Information Solicitation"). BPI recognizes that there is ongoing litigation regarding the Climate Laws. BPI is submitting this letter to be responsive to CARB's Information Solicitation and is not expressing any view on the litigation.

members of the public."[3] Our members actively evaluate climate-related financial risks and their potential impacts and are developing resources to develop risk management capabilities to identify, measure and mitigate these risks. In the context of general corporate disclosures, many of our members already publish extensive climate-related information, including with respect to certain GHG emissions and climate risk management.

However, we are deeply concerned about the compliance timeline under the Climate Laws, with initial reports due in 2026. Although our members have been tracking and disclosing certain climate-related information, until CARB finalizes regulations to implement the Climate Laws (the "Climate Regulations" or "Regulations"), our members will not know with certainty how certain provisions of the Climate Laws should be interpreted, including, among other interpretive questions, which entities are reporting entities subject to the Climate Laws,[4] whether substituted compliance is available under certain circumstances, and what additional data and information will need to be collected and reported by them under the Climate Laws and Regulations. Therefore, our members will not be able to prepare for full compliance with the Climate Laws until CARB finalizes the Regulations.

To address this significant concern and to ensure that meaningful climate-related information is provided to California consumers, investors and members of the public without undue burdens and duplication of efforts on reporting entities, we believe five overarching principles should guide CARB's implementation of the Climate Laws:

- CARB should delay enforcement of noncompliance with the Climate Laws until the reporting entities have adequate notice and time to prepare for compliance following the finalization of the Regulations.

- The Climate Regulations should maintain the flexibility afforded to the reporting entities under the Climate Laws and avoid standardizing or otherwise modifying the external climate reporting standards or protocols mandated by the Climate Laws or creating any prescriptive reporting format.

- The Climate Regulations should allow substituted compliance to the maximum extent possible.

- CARB should recognize that reporting of GHG emissions and management of climate-related financial risks are often a global, enterprise-wide endeavor that is routinely developed and coordinated at the group level, and it would be impracticable to require reporting entities that are part of a group to each provide subsidiary-level climate-related disclosures required by the Climate Laws, which would not provide meaningful information.

- In accordance with the California Administrative Procedure Act ("CA APA"), CARB should assess the potential for adverse economic impact of its Climate Regulations on California business enterprises and individuals and avoid the imposition of unnecessary or

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3 Information Solicitation, at 1.

4 We use the term "reporting entities" to generally refer to both "reporting entities" as defined in SB 253 and "covered entities" as defined in SB 261 for purposes of this letter, unless otherwise specified with respect to a particular Climate Law.

unreasonable reporting or compliance requirements.

Sections II through VI below provide more detail on these principles and recommendations. Section VII below provides our responses to certain of CARB's questions. Section VIII below provides our additional comments and recommendations on certain other specific aspects of the Climate Laws.

II. CARB should delay enforcement of noncompliance with the Climate Laws until the reporting entities have adequate notice and time to prepare for compliance following the finalization of the Regulations.

We are deeply concerned about the compliance timeline under the Climate Laws, with initial reports due in 2026.[5] We agree with CARB's rationale for exercising enforcement discretion as set forth in its Enforcement Notice relating to SB 253.[6] In the Enforcement Notice, CARB recognizes that "companies may need some lead time to implement new data collection processes to allow for fully complete scope 1 and scope 2 emissions reporting" and states that it "will exercise enforcement discretion for the first reporting cycle" and "will not take enforcement action for incomplete reporting against entities, as long as the companies make a good faith effort to retain all data relevant to emissions reporting for the entity's prior fiscal year."[7] CARB's recognition that companies need time to implement new data collection processes is essential for ensuring a smooth transition into compliance.

However, we are concerned that the Enforcement Notice does not fully address the issue of lack of sufficient notice and time for reporting entities to comply with the Climate Laws. First, the Enforcement Notice only clarifies CARB's intent to exercise enforcement discretion with respect to reporting entities' compliance with SB 253 but is silent on SB 261. Second, the Enforcement Notice only addresses CARB's intent to exercise enforcement discretion with respect to reporting entities' first reporting cycle under SB 253 (*i.e.*, the initial reporting due in 2026), when the reporting entities could face the same challenges in later reporting cycle(s) under both Climate Laws, depending on when CARB finalizes the Climate Regulations. Until CARB finalizes the Climate Regulations, companies will not know with certainty how certain provisions of Climate Laws should be interpreted, including, among other interpretive questions, which entities are reporting entities subject to the Climate Laws, whether substituted compliance is available under certain circumstances, and what data and other information will need to be collected and reported, and companies will not be able to prepare for full compliance

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5 SB 253 provides that CARB shall adopt regulations to require a "reporting entity" to publicly disclose all of the reporting entity's Scope 1 and Scope 2 emissions for the reporting entity's prior fiscal year "starting in 2026 on or by a date to be determined by [CARB], and annually thereafter," whereas SB 261 requires a "covered entity" to prepare and make available to the public a climate-related financial risk report "on or before January 1, 2026, and biennially thereafter." Cal. Health & Safety Code §§ 38532(c)(2) & 38533(b)(1) & (c)(1).

6 CARB, *The Climate Corporate Data Accountability Act, Enforcement Notice* (Dec. 5, 2024), *available at* https://ww2.arb.ca.gov/sites/default/files/2024-12/The%20Climate%20Corporate%20Data%20Accountability%20Act%20Enforcement%20Notice%20Dec%202024.pdf (the "Enforcement Notice").

7 Enforcement Notice, at 1-2. CARB further explained that "for the first report due in 2026" under SB 253, "reporting entities may submit scope 1 and scope 2 emissions from the reporting entity's prior fiscal year that can be determined from information the reporting entity already possesses or is already collecting at the time this Notice was issued." Enforcement Notice, at 1.

with the Climate Laws and Regulations.

Accordingly, applying the rationale articulated in the Enforcement Notice, we urge CARB to delay enforcement of noncompliance with the Climate Laws, except for nonfiling, until the reporting entities have adequate notice and time to prepare for compliance following the finalization of the Regulations. Specifically, we recommend CARB to further clarify that, with respect to each Climate Law, it will not enforce against a reporting entity for noncompliance, except for nonfiling, until the entity's first reporting cycle with respect to its fiscal year that begins at least 180 days after the effective date of the Climate Regulations implementing the Climate Law, as long as the entities make a good-faith effort to comply with the Climate Law. For example, assuming the Climate Regulations implementing both Climate Laws become effective on July 1, 2025, CARB should not enforce against a reporting entity with a December 31 fiscal year-end for noncompliance with the Climate Laws and Regulations until the reporting cycle with respect to the entity's fiscal year that begins on or after January 1, 2026, whereas CARB should not enforce against a reporting entity with an October 31 fiscal year-end for noncompliance with the Climate Laws and Regulations until the reporting cycle with respect to the entity's fiscal year that begins on or after November 1, 2026, in each case except for nonfiling.

We believe this approach is consistent with the spirit of the Enforcement Notice as well as the safe harbor provided in SB 253 for Scope 3 emissions reporting in the initial reporting years, which provides that "[p]enalties assessed on scope 3 reporting, between 2027 and 2030, shall only occur for nonfiling."[8] This approach is necessary to ensure that companies that are potentially subject to the Climate Laws and Regulations have sufficient notice and time to prepare for compliance with such Laws and Regulations before they become subject to penalties for noncompliance with the reporting requirements therein. Furthermore, under this approach, we believe the reporting entities will be better equipped to provide accurate and complete reporting data and other information required by the Climate Laws.

We recommend CARB to adopt this recommended clarification as part of the Climate Regulations pursuant to its authority under each Climate Law to "adopt regulations that authorize it to seek administrative penalties" for failure to meet the requirements of the Climate Law[9] or, in the case of SB 253, pursuant to its authority to "adopt or update any other regulations that it deems necessary and appropriate to implement [SB 253]".[10] However, if it is not practicable for CARB to do so in the Climate Regulations, we recommend CARB to adopt our recommended approach in a formal, published enforcement notice similar to the Enforcement Notice.

III. The Climate Regulations should maintain the flexibility afforded to the reporting entities under the Climate Laws and avoid standardizing or otherwise modifying the external climate reporting standards or protocols mandated by the Climate Laws or creating any prescriptive reporting format.

The Climate Laws require reporting entities to report climate-related information consistent with certain external climate-reporting standards and protocols, which have been long-established and

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[8] Cal. Health & Safety Code § 38532(f)(2)(C).

[9] Cal. Health & Safety Code §§ 38532(f)(2) & 38533(f)(2).

[10] Cal. Health & Safety Code §§ 38532(c)(4).

widely adopted, and continue to evolve. Certain methodology flexibilities have been incorporated into those external standards and protocols to allow entities to refine their approaches as newer data becomes available and as reporting processes improve.

CARB should avoid standardizing or otherwise modifying the climate reporting standards or protocols mandated by the Climate Laws. Any such standardization or modification may hinder a reporting entity's ability to choose the methodologies most appropriately tailored to its circumstances and may result in the need of a reporting entity to prepare a separate set of climate disclosures solely for the purposes of complying with the Climate Laws instead of relying on substituted compliance, without commensurate benefits to California consumers, investors or the members of the public.

Similarly, CARB should avoid creating any prescriptive reporting format for reporting under the Climate Laws. To achieve the goal of better informing the decision-making of California consumers, investors and members of the public, it is critical for reporting entities to be able to provide the context in relation to the climate-related data and information required under the Climate Laws, including the relevant metrics and calculation methodologies used. Requiring reporting entities to provide climate-related data and information pursuant to prescriptive reporting format (such as any particular tabular format) without the ability or with limited ability to provide the necessary context would be counterproductive to the goal of providing meaningful information, could potentially result in incomplete or misleading data and information, and would significantly hinder reporting entities' ability to rely on substituted compliance. A prescriptive approach to reporting format is also inconsistent with the general disclosure approach under the external climate reporting standards or protocols mandated by the Climate Laws, which focus on the substance, rather than the form, of climate-related disclosures.

IV. The Climate Regulations should allow substituted compliance to the maximum extent possible.

As noted above, many of our members already publish extensive climate-related information, including with respect to certain GHG emissions and climate risk management. In some cases, climate-related disclosures are made voluntarily. In other cases, climate-related disclosures are or will be made to comply with applicable climate disclosure laws and regulations in other jurisdictions, including non-U.S. jurisdictions.

Consistent with the statutory language of the Climate Laws, CARB should permit reporting entities to rely on substituted compliance to the maximum extent possible to comply with the Climate Laws to avoid undue burdens and duplication of efforts. In support of this general principle, we have included a few specific recommendations to CARB to avoid inconsistency and to enhance clarity and certainty on the substituted compliance option under the Climate Laws. These recommendations are discussed in our response to Question 3.b.

V. CARB should recognize that reporting of GHG emissions and management of climate-related financial risks are often a global, enterprise-wide endeavor that is routinely developed and coordinated at the group level, and it would be impracticable to require reporting entities that are part of a group to each provide subsidiary-level climate-related disclosures required by the Climate Laws, which would not provide meaningful information.

Many of our members have a holding/parent company structure and operate in multiple jurisdictions through subsidiaries. However, reporting of GHG emissions and management of climate-related financial risks are often a global, enterprise-wide endeavor that is routinely developed and coordinated at the group level. In addition, to the extent our members have, as a matter of business strategy, set climate-related targets or goals, including GHG emission reduction goals, those targets or goals are typically established at the enterprise level or, in some cases, based on the types of businesses, but not at the subsidiary legal entity level.

We believe the Climate Laws appropriately recognize the need to allow consolidated reporting at parent company level to avoid duplication of efforts for a business group with more than one reporting entity. However, to provide further clarity and certainty for reporting entities and to minimize duplication of effort for reporting entities, we recommend CARB to include several clarifications with respect to the consolidated reporting option in the Climate Regulations. These recommendations are discussed in our response to Question 3.b.

VI. In accordance with the CA APA, CARB should assess the potential for adverse economic impact of its Climate Regulations on California business enterprises and individuals and avoid the imposition of unnecessary or unreasonable reporting or compliance requirements.

We support CARB's effort to seek initial feedback from the public and look forward to reviewing and commenting on CARB's proposed Climate Regulations and the accompanying notice, statements and analyses (collectively, the "Proposed Rulemaking Materials").

Consistent with the CA APA, Cal. Gov. C. § 11340 *et seq*., CARB should provide its reasons for adopting the Climate Regulations and assess the potential adverse economic impact of the Climate Regulations in the Proposed Rulemaking Materials.[11] Many of our recommended approaches described in this letter are intended to facilitate the achievement of the purpose of the Climate Laws while reducing compliance burdens on reporting entities. To the extent that CARB has considered but rejects these recommendations in the proposed rulemaking process, we believe CARB should explain its reasons for rejecting them in the Proposed Rulemaking Materials. We believe addressing these important issues in the Proposed Rulemaking Materials will help interested parties understand CARB's rationale and facilitate the public comment process.

VII. Comments on certain questions in the Information Solicitation

For ease of reference, all questions in the Information Solicitation to which we choose to respond are reproduced below in bolded text, followed by our responses.

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[11] Cal. Gov. C. §§ 11346.2 & 11346.3.

General: Applicability

1. **SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes.**

   a. **Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?**

CARB should not adopt the interpretation of "doing business in California" in Section 23101 of the California Revenue and Taxation Code ("Taxation Code") for purposes of the Climate Laws and Regulations. The Taxation Code defines "doing business" to mean "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."[12] The Taxation Code further provides that an entity is doing business in California for a taxable year if it is organized or commercially domiciled in California, or if any of the entity's sales, property or payroll in California exceed a certain threshold amount.[13] The threshold amount is the lesser of a dollar amount ($735,019, $73,502 or $73,502 for sales, property or payroll, respectively, for 2024) or 25% of the entity's total sales, property or payroll, respectively.[14]

Neither an entity's active engagement in any transaction for the purpose of financial or pecuniary gain or profit in California, without any minimum dollar amount threshold, nor a small amount of sales, property or payroll in California should be deemed to result in a meaningful nexus to California such that the entity becomes subject to the reporting requirements under the Climate Laws. It would not be in the best interest of California and its consumers and investors for CARB to allocate resources to regulate and enforce the climate disclosures of entities that do not have a meaningful presence in California but may be caught by a broad interpretation of "doing business in California" as a result of a "one-off" or a small number of transactions in California or a small amount of sales, property or payroll in California.

We recommend that CARB adopt a definition of "doing business in California" that reflects a meaningful nexus to California. We believe this can be achieved by, among other potential alternatives, limiting entities "doing business in California" to those organized or commercially domiciled in California, or to those that do business in California as defined and interpreted in the Taxation Code and on average pay at least a certain amount of taxes to California over the course of several years (with such amount being sufficiently large to establish meaningful nexus to California).

   d. **Should entities that sell energy, or other goods and services, into California through a separate market, like the energy imbalance market or extended day ahead market, be**

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12 Cal. Rev. & Tax. Code § 23101(a).

13 Cal. Rev. & Tax. Code § 23101(b).

14 *Id*. *See also*, California Franchise Tax Board, *Doing business in California*, *available at* https://www.ftb.ca.gov/file/business/doing-business-in-california.html. Even if an entity has less than the threshold amounts of sales, property or payroll, the entity can still be doing business in California if it actively engages in a transaction in California for the purpose of financial gain or profit. *See* California Franchise Tax Board, *Help with doing business in California*, *available at* https://www.ftb.ca.gov/file/business/help-with-doing-business-in-california.html.

covered?

Sale of goods and services into California through a separate market should not be deemed "doing business in California" because it appears inconsistent with a plain reading of the phrase. Furthermore, nothing in the legislative records suggests that the California legislators intended to require entities that sell goods and services into California, rather than in California, to be subject to the Climate Laws. Finally, the novelty of this interpretation could result in interpretive questions and practical compliance challenges.

2. **What are your recommendations on a cost-effective manner to identify all businesses covered by the laws (i.e., that exceed the annual revenue thresholds in the statutes and do business in California)?**

   b. **In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that report under a parent are clearly identified and included in any reporting requirements?**

As discussed in Section V above, CARB should recognize that reporting of GHG emissions and management of climate-related financial risks are often a global, enterprise-wide endeavor that is routinely developed and coordinated at the group level.

A parent-level consolidated report should be deemed to cover all reporting entity subsidiaries that are consolidated in that report. We do not believe it is necessary, nor would it be helpful, for CARB to require reporting entities to track and identify each reporting entity subsidiary in a business group with multiple reporting entities. Doing so would unnecessarily increase compliance burdens on reporting entities without producing meaningful information for California consumers, investors, or the members of the public.

General: Standards in Regulation

3. **CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.**

   a. **How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?**

SB 261 requires reports thereunder to comply with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017)[15] (the "TCFD Recommendations") published by the Task Force on Climate-related Financial Disclosures ("TCFD"), or any successor thereto, while permitting companies to satisfy such reporting requirements via "comply or explain" or substituted compliance.[16] We believe SB 261 provides a reasonable framework for relying on external standards to prescribe the reporting

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15 *See* TCFD Recommendations, *available at* https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf.

16 Cal. Health & Safety Code §§ 38533(b)(1) & 38533(b)(3).

standards. The SB 261 framework (1) provides companies with certainty by prescribing the TCFD Recommendations, which have been long-established and are widely adopted, (2) affords companies flexibility by permitting "comply or explain" and substituted compliance, and (3) allows the reporting requirements to be kept current and in alignment with external standards as they continue to evolve by permitting compliance with "or any successor" to the TCFD Recommendations and permitting substituted compliance.

When adopting Climate Regulations to implement SB 253, CARB should follow the same framework used by SB 261 for prescribing the reporting standards for GHG emissions reporting under SB 253. Specifically, we recommend that the Climate Regulations address the following three aspects of the reporting standards. First, the Climate Regulations should clarify that the Greenhouse Gas Protocol ("GHG Protocol") standards and guidance specified in SB 253 mean the versions of such GHG Protocol standards and guidance that were in effect as of January 1, 2024, the effective date of the original SB 253, or any successor thereto. Second, as discussed further in our response to Question 3.b, the Climate Regulations should harmonize the substituted compliance provisions of the Climate Laws to avoid inconsistency. Third, the Climate Regulations should permit a "comply or explain" approach for complying with SB 253 like that permitted under SB 261—*i.e.*, if a reporting entity does not complete a report consistent with all required disclosures pursuant to the prescribed reporting standards, it should provide an explanation for reporting gaps and describe steps the company will take to prepare complete disclosures. We believe the recommendations above will provide reporting entities with certainty (particularly with respect to initial compliance) and flexibility, while allowing the reporting standards prescribed under SB 253 to evolve as external standards continue to evolve.

Based on the legislative materials for the Climate Laws, we believe the California Legislature has already carefully assessed whether the external protocols and standards specified in the Climate Laws address California-specific needs and concluded that they do.[17] Although we appreciate CARB's desire to reassess whether these evolving external protocols and standards continue to address California-specific needs, to maintain certainty and continuity, we caution against frequent reassessment or modification of the reporting standards as that would be inconsistent with the flexible approach adopted by the Climate Laws.

However, if CARB ultimately determines that a periodic assessment process is necessary, it should do so consistent with the requirements of the Climate Laws. Specifically, SB 253 provides that "[s]tarting in 2033 and every five years thereafter, the state board may survey and assess currently available greenhouse gas accounting and reporting standards. At the conclusion of this assessment the state board may adopt a globally recognized alternative accounting and reporting standard if it determines its use would more effectively further the goals of this section."[18] Thus, before 2033, CARB should not conduct any periodic assessment of the GHG Protocol for its appropriateness as the external climate reporting standards mandated by SB 253.

In addition, to promote regulatory consistency and avoid the burdens on both CARB and the reporting entities, any formal reassessment process established by CARB to review the reporting

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[17] *See*, *e.g.*, California Senate Rules Committee, Office of Senate Floor Analyses, SB 253 (Sept. 11, 2023) (discussing background of the GHG Protocol); and California Senate Rules Committee, Office of Senate Floor Analyses, SB 261 (Sept. 12, 2023) (discussing background of the TCFD Recommendations).

[18] Cal. Health & Safety Code § 38533(c)(2)(A)(iv).

standards prescribed in the Climate Laws should not occur more frequently than every five years, should be public and transparent and involve stakeholder engagement to assess the feasibility and impact of any proposed modifications to the reporting requirements, and should afford reporting entities adequate lead time to comply with any modified or new requirements, taking into consideration time required to make necessary changes to reporting entities' data collection and reporting processes.

b. How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?

To minimize duplication of effort for reporting entities, CARB should (1) clarify and harmonize the substituted compliance option under the Climate Laws, and (2) clarify the consolidated reporting option for business groups with multiple reporting entities subject to the Climate Laws.

Substituted Compliance

Consistent with the statutory language of the Climate Laws, CARB should permit reporting entities to rely on "substituted compliance" to comply with both Climate Laws.

SB 261 expressly provides for a "substituted compliance" option for compliance. SB 261 allows a reporting entity to prepare a report disclosing its climate-related financial risk in accordance the TCFD Recommendations, or any successor thereto, or pursuant to an equivalent reporting requirement.[19] SB 261 further provides that a reporting entity satisfies the equivalent reporting requirement if it prepares a report (1) pursuant to a law, regulation or listing requirement issued by any regulated exchange, national government, or other governmental entity that incorporates disclosure requirements consistent with the requirements of the TCFD Recommendations or any successor thereto, including the International Financial Reporting Standards ("IFRS") Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board ("ISSB") (such standards, the "ISSB Standards"), or (2) voluntarily using a framework that meets the requirements of the TCFD Recommendations or any successor thereto, or the ISSB Standards.[20]

Similarly, SB 253 provides that the law is 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, as long as those reports satisfy all of the requirements of SB 253.[21]

Although the statutory language of both Climate Laws contemplates "substituted compliance," to avoid inconsistency and enhance clarity and certainty, we recommend the CARB to clarify and harmonize the substituted compliance option under each Climate Law as follows.

First, CARB should permit reporting entities to comply with the reporting requirements under the Climate Laws by using one or more reports prepared for other purposes, including (1) reports prepared voluntarily and (2) reports prepared pursuant to a law, regulation, guideline, listing

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19 Cal. Health & Safety Code § 38533(b)(1).

20 Cal. Health & Safety Code § 38533(b)(3).

21 Cal. Health & Safety Code § 38532(c)(1)(D)(i).

requirement or other requirement issued by any regulated exchange, national government, or other governmental entity (referred herein as “mandatory reports”), in each case so long as the reports taken together disclose information that meets the reporting standards set forth in the respective Climate Laws or any successor thereto or, in the reporting entity’s good-faith determination, equivalent reporting standards or requirements. CARB should also clarify that a reporting entity may comply with the reporting requirements under the Climate Laws by providing a new report that partially or fully incorporates by reference information from one or more of such voluntary or mandatory reports or other published materials as long as the information in the new report collectively satisfies the reporting requirements under the Climate Laws.

Second, we recommend CARB to provide, as guidance accompanying the Climate Regulations, a non-exhaustive list of equivalent reporting standards and requirements the alignment or compliance of which is deemed to enable reporting entities to rely on the substituted compliance option under the Climate Laws. This list should include, but should not be limited to the following and may be updated by CARB from time to time:

- Voluntary Reports:
    - ISSB Standards (including IFRS S2 Climate-related Disclosures) or any successor thereto.
    - CDP’s disclosure framework or any successor thereto.
- Mandatory Reports:
    - EU’s Corporate Sustainability Reporting Standard (“CSRD”) or any successor thereto.
    - UK’s Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022, UK’s Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022, or any successor thereto.
    - Canadian Office of the Superintendent of Financial Institution’s Guideline B-15 entitled “Climate Risk Management” or any successor thereto.
    - Any law, regulation, guidelines, listing requirement or other requirements issued by any regulated exchange, national government, or other governmental entity that (1) in the case of substituted compliance under SB 253, requires Scope 1, 2 and 3 GHG emissions disclosures that are generally aligned with the GHG Protocol, even if such requirements deviate from the GHG Protocol in certain aspects and contain jurisdictional-specific phase-in and transitional provisions, and (2) in the case of substituted compliance under SB 261, is generally aligned with the TCFD Recommendations or the ISSB Standards, even if such requirements deviate from such voluntary disclosure frameworks in certain aspects and contain jurisdictional-specific phase-in and transitional provisions.

Finally, please refer to our response to Question 7.b. for our recommended approach with respect to CARB's implementation of the assurance standards in SB 253, which we believe is necessary to enable reporting entities to rely on substituted compliance as a practicable matter.

Consolidated Reporting

Both Climate Laws allow reports required thereunder to be consolidated at the parent company level. Specifically, both Climate Laws provide that if a subsidiary of a parent company qualifies as a reporting entity thereunder, the subsidiary is not required to prepare a separate report.[22]

We believe these provisions in the Climate Laws appropriately recognize that the effective management of climate-related risks and GHG emissions reporting are often a global, enterprise-wide endeavor that is routinely developed and coordinated at the parent level and, therefore, a reporting entity that is part of a business group with a parent company structure may leverage the policies, procedures, and processes developed at the parent level for managing climate-related risks and for tracking and reporting GHG emissions.

However, to provide clarity and certainty for reporting entities and to minimize duplication of effort for reporting entities, we recommend CARB to provide the following clarifications with respect to the consolidated reporting option in the Climate Regulations.

First, the Climate Regulations should provide that the consolidated reporting option is available, and a reporting entity subsidiary may use its parent's report to satisfy the reporting requirement under the relevant Climate Law, regardless of whether (1) the parent is the top-tier global parent or the top-tier U.S. parent and (2) separately, regardless of whether the parent itself is a reporting entity subject to the applicable Climate Law. For example, if the reporting entity has a parent entity organized outside of the United States, the reporting entity should be able to submit the consolidated climate report prepared by the non-U.S. parent entity to satisfy the reporting entity's obligations to the extent that the parent entity's report satisfies the requirements of the Climate Laws. These clarifications are critical to minimize duplication of effort for business groups with multiple reporting entities subject to the Climate Laws and will provide such business groups with flexibility to choose how to comply with the Climate Laws, taking into consideration, among other factors, other climate reporting obligations to which they are or are expected to be subject.

Second, the Climate Regulations should clarify that if a business group with multiple reporting entities opts to comply with the Climate Laws by filing a consolidated report, the consolidated report should be deemed to satisfy the Climate Laws as long as it satisfies the relevant reporting requirements at the consolidated level. In other words, the consolidated report should not be required to separately provide unconsolidated climate information with respect to each individual reporting entity subsidiary covered by the consolidated report.

In addition, to avoid disincentivizing business groups from relying on the consolidated reporting option, CARB should provide a safe harbor providing that the use of a parent's reports to satisfy the Climate Laws with respect to the parent's reporting entity subsidiaries does not in and of itself subject the parent to the jurisdiction of California or the United States (if the parent itself is not a reporting

[22] Cal. Health & Safety Code § 38532(c)(2)(iii) & § 38533(b)(2).

entity or otherwise subject to the jurisdiction of California or the United States).

c. To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?

Reporting entities should not be required to select a specific reporting methodology and consistently apply the same method year-to-year. Reporting entities should have the flexibility to adjust their methodologies to reflect changes to their businesses, evolving climate disclosure requirements, improvements in data availability and quality and reporting processes, and developing market and industry practices, provided they clearly disclose the methodologies used in the reports.

The GHG Protocol recognizes the need for methodology flexibility, allowing entities to remain nimble in their climate-related reporting and refine their approaches as newer data becomes available and as reporting processes improve. For example, improved data quality or availability may allow entities to enhance the accuracy of their estimates. In addition, updates to industry standards or sector-specific guidance may necessitate adjustments to reporting methodologies to remain aligned with best practices. Retaining flexibility in reporting methods is particularly important considering the speed at which climate-related reporting has been evolving, both in voluntary and mandatory reporting.

General: Data Reporting

4. To inform CARB's regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?

The cost of compliance will vary for different companies. As discussed in Sections III through V above, key factors that may affect the cost for entities to comply with the Climate Laws and Regulations include whether the entities have previously made similar climate-related disclosures, the extent to which flexibility is afforded to the reporting entities (*e.g.*, methodology flexibility and "comply or explain" approach), whether substituted compliance is permitted to the maximum extent possible, and whether the required climate reporting for business groups with multiple reporting entities is allowed to be provided at the group level consistent with how GHG emissions are tracked and reported and how climate-related risks are managed in the ordinary course of business.

For example, for entities that have not previously made similar climate-related disclosures, the costs are expected to be significant, as these entities will need to build up climate reporting-related infrastructure, technology, personnel (including potentially hiring new employees and engaging external experts), and procedures and processes to be able to comply with the Climate Laws and Regulations. For reporting entities that already report climate-related disclosures either voluntarily or under another regime, however, substituted compliance should significantly lower the costs and ease the burdens on compliance with the Climate Laws and Regulations.

On the other hand, if CARB reduces reporting entities' flexibility in complying with the Climate Laws and Regulations, including by requiring standardization or other modification of certain aspects of the external climate reporting standards or protocols or by requiring any prescriptive reporting format, then the costs for reporting entities to comply with the Climate Laws and Regulations are expected to increase. This is because the reporting entities, including those that have previously made similar climate-related disclosures, may need to incur additional costs to ensure that the relevant infrastructure, technology, and personnel are in place to address these CARB-specific reporting requirements, which may require the establishment of new data collection processes and related internal controls and procedures.

The initial and annual reporting timeline will also affect the cost of compliance. Because reporting entities have limited personnel and resources to work on climate and other types of reporting at a given time, the shorter the period between the finalization of the Climate Regulations and the due date of the initial report, and the more overlapping of the annual climate reporting timeline and the timeline for other types of corporate disclosures, including financial reporting, the higher the anticipated compliance costs for reporting entities there will be.

In addition, the cost of compliance will also vary across industries. For the reasons discussed in our response to Question 7 below, financial institutions face unique challenges in reporting Scope 3 emissions and, as a result, the cost of compliance with the Scope 3 reporting requirements will be particularly high for financial institutions. Furthermore, assessing climate-related risks and conducting scenario analysis present unique challenges for financial institutions given their broad exposures to different market sectors through their customers. This complexity is expected to further increase the cost of compliance for the financial sector.

5. **Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?**

The state should require reporting entities to report directly to CARB, given the focus of the Climate Laws and Regulations on California consumers, investors, and members of the public. If CARB proposes to engage an "emissions" and/or "climate" reporting organization, CARB should explain in the Proposed Rulemaking Materials its rationale for this decision, the scope of the engagement and the benefits and costs of such engagement.

SB 253: Climate Corporate Data Accountability Act

7. **Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, which allows for flexibility in some areas (i.e., boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?**

As discussed in Section III, CARB should maintain the flexibility afforded to the reporting entities under the Climate Laws and should not require standardization under the Climate Regulations or in implementing SB 253 of any aspects of the GHG emissions reporting. The GHG Protocol is a globally recognized framework that offers methodologies for measuring and reporting GHG emissions. Its design already balances the need for standardization with the practical challenges entities face in collecting and disclosing emissions data, making it an important tool for achieving transparent disclosure. For example, the GHG Protocol allows for fully disclosed and justified exclusions when data is unavailable, infeasible to collect, or when certain emissions categories are irrelevant or insignificant to a company's overall footprint.[23] Importantly, this balances public accountability while focusing disclosures on the most significant and insightful categories of emissions. The flexibilities embedded in the GHG Protocol are particularly important for addressing the complexities of emissions reporting, including the challenges with Scope 3 emissions.

Financial institutions face unique challenges in reporting Scope 3 emissions, because, as discussed below, many counterparties operate in jurisdictions without robust sustainability reporting requirements, data availability and quality can vary significantly across industries and sectors, and there are no standardized methodologies for Scope 3 emissions calculation for all asset classes.

- *Data collection challenges*. Financial institutions calculate Scope 3 emissions—driven primarily by financed emissions—by aggregating data from a wide range of counterparties, including borrowers, investees, and other third parties. This data is often sourced through external data vendors that collect information from publicly available disclosures, private reporting, and estimates. This process typically results in a 12-month to 18-month time lag in emissions data, which presents significant challenges, as the emissions data used for reporting may not reflect the most current operational activities of counterparties. For example, it is widely accepted across the financial services industry that a financial institution's Scope 3 financed emissions calculation for fiscal year 2024 would entail 2024 exposure data and either 2022 or 2023 emissions data (based on the latest emissions data available from each of the external data vendors).

- *Availability and quality of data*. The availability and quality of data required for Scope 3 emissions vary widely. Many counterparties operate in jurisdictions without robust sustainability reporting requirements, leading to data gaps. Even when emissions data is available, the quality and consistency of that data can vary significantly across industries. Financial institutions often must rely on estimates or proxy data, which complicates assurance and comparability and may lead to volatility in year-over-year reporting as estimates and proxy methodologies are refined over time.

- *Lack of universally accepted methodologies*. Although the GHG Protocol provides a foundation for emissions accounting, there are no universally accepted methodologies for calculating Scope 3 emissions across all asset classes. Asset classes such as loans to small businesses, private equity investments, asset management, or sovereign debt often lack specific guidance for calculating emissions.

CARB should afford reporting entities the maximum flexibility under the evolving GHG Protocol standards and guidance, which will support reporting entities' efforts to apply reporting methodologies in a manner that is best suited for their businesses and circumstances and avoid potentially restricting reporting entities' ability to apply industry standards that supplement the GHG Protocol to address industry-specific issues.

For example, many financial institutions have joined the Partnership for Carbon Accounting

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[23] The GHG Protocol Corporate Value Chain (Scope 3) Standard provides clear guidance on these flexibilities in the following sections: (1) Section 6.2 – Data Availability, which allows companies to exclude categories where data cannot reasonably be obtained, provided the exclusions are disclosed and explained; and (2) Section 6.3 – Disclosing and justifying exclusions, which permits exclusions where emissions are deemed insignificant in the context of the company's overall footprint.

Financials ("PCAF"), a global industry-led initiative to develop and implement a harmonized approach to assessing and disclosing the GHG emissions associated with financial institutions' loans and investments.[24] The PCAF builds upon the GHG Protocol by providing more detailed guidance to the financial sector and has published the *Global GHG Accounting and Reporting Standard for the Financial Industry* (the "PCAF Standard").[25] The GHG Protocol has reviewed the PCAF Standard and found that the PCAF Standard is "in conformance with the requirements set forth in the [GHG Protocol's] Corporate Value Chain (Scope 3) Accounting and Reporting Standard, for Category 15 investment activities."[26] Although CARB should not require financial institutions to report under the PCAF Standard, CARB should also avoid adopting Climate Regulations that potentially restrict the ability of reporting entities that are financial institutions to apply the PCAF Standard when calculating Scope 3 emissions.

8. SB 253 requires that reporting entities obtain "assurance providers." An assurance provider is required to be third-party, independent, and have significant experience in measuring, analyzing, reporting, or attesting in accordance with professional standards and applicable legal and regulatory requirements.

a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

Companies currently have several options for third-party verification or assurance for Scope 3 emissions. Some companies engage boutique firms that specialize in ESG assurance, while others work with ESG assurance providers that are part of the same firm as their financial auditor. The choice of assurance provider will depend on the company's specific needs, such as the complexity of their emissions profile and the availability of data.

We believe that CARB should afford reporting entities the flexibility in choosing assurance providers as permitted by SB 253, as long as the assurance providers satisfy the experience and independence requirements in Section 38532(c)(2)(F) of SB 253. CARB should not require the reporting entities to choose from any list of assurance providers approved by CARB. Doing so would be contrary to SB 253's requirement that CARB "shall ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity."[27] Without the flexibility to choose assurance providers, reporting entities that choose to report through substituted compliance may have to engage additional assurance provider(s) for the same report in order to satisfy the assurance requirement in SB 253.

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[24] *See* About PCAF, *available at* https://carbonaccountingfinancials.com/en/about.

[25] *See* PCAF, *The Global GHG Accounting and Reporting Standard for the Financial Industry*, *available at* https://carbonaccountingfinancials.com/standard.

[26] *See* GHG Protocol, *The Global GHG Accounting and Reporting Standard for the Financial Industry*, *available at* https://ghgprotocol.org/global-ghg-accounting-and-reporting-standard-financial-industry.

[27] Cal. Health & Safety Code § 38532(c)(2)(F)(v).

b. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for "reasonable assurance" in MRR be utilized, and if not why?

To "ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity," as CARB is required to do under SB 253,[28] we recommend CARB to incorporate the following recommendations when considering the definitions of "limited assurance" and "reasonable assurance" for purposes of implementing SB 253.

First, CARB should adopt definitions for limited assurance and reasonable assurance that align with established international and professional standards by including broad language in the Climate Regulations that refer to globally recognized external assurance standards. For example, CARB could refer to the terminology and frameworks outlined by assurance providers under the American Institute of Certified Public Accountants (AICPA) assurance standards, the International Standards on Assurance Engagements (ISAE), or the International Standard on Sustainability Assurance (ISSA) 5000. As assurance standards in the context of climate reporting continue to evolve, aligning with globally recognized external standards ensures consistency with the practices of professional assurance providers, avoids unnecessary duplications, facilitates integration into entities' existing assurance processes, and aligns with the substituted compliance methods permitted under the statutes. The approach of aligning the assurance standards under the Climate Regulations implementing SB 253 with globally recognized external assurance standards is also consistent with the California Legislature's approach of aligning the climate reporting standards or protocols under the Climate Laws with globally recognized external climate reporting standards or protocols.

Second, CARB should clarify that reporting entities have the option of relying on substituted compliance for purposes of complying with the assurance requirements under SB 253. Similar assurance standards exist in the context of other climate reporting standards and regimes, such as the CSRD.[29] Accordingly, where a reporting entity relies on compliance with another climate reporting regime (*e.g.*, CSRD) to comply with SB 253 and the Climate Regulations consistent with the substituted compliance option permitted by SB 253, the reporting entity should be deemed to satisfy the assurance requirements under SB 253 and the Climate Regulations if it satisfies the assurance standards required or permitted by the other climate reporting regime. This recommendation is intended to enable reporting entities relying on the substituted compliance option to utilize the same assurance providers and standards as they do for reporting under another climate reporting regime.

Finally, CARB should not adopt any assurance requirement for Scope 3 emissions at this time. SB 253 provides that "[d]uring 2026, [CARB] shall review and evaluate trends in third-party assurance requirements for scope 3 emissions" and that "[o]n or before January 1, 2027, [CARB] may establish an assurance requirement for third-party assurance engagements of scope 3 emissions."[30] The calculation, verification and assurance processes for Scope 3 emissions are not yet standardized and are still

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[28] Cal. Health & Safety Code § 38532(c)(2)(F)(v).

[29] The CSRD's assurance requirements may be revised as part of the EU's omnibus package of proposals to simplify certain EU sustainability rules. *See infra* note 35.

[30] Cal. Health & Safety Code § 38532(c)(2)(F)(iii).

evolving, which often lead to disparate approaches by different assurance providers. Consistent with the text of SB 253, CARB should revisit potential assurance requirements for Scope 3 emissions when assurance standards are further developed.

9. How should voluntary emissions reporting inform CARB's approach to implementing SB 253 requirements? For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:

c. What frequency (annual or other) and time period (1 year or more) are currently used for reporting?

Financial institutions typically report select emissions data annually, covering a one-year period compared against a designated baseline position. This annual frequency aligns with standard reporting practices and allows entities to obtain emissions data from third parties and track progress over time in a consistent manner. Additionally, assurance is typically conducted only on the annual emissions measurement, further reinforcing the need for a reporting cycle that is not shorter than an annual reporting cycle.

d. When are data available from the prior year to support reporting?

Financial institutions generally require a reporting lag of at least six months for Scope 1 and 2 emissions reporting. This period allows time to collect Scope 1 and 2 emissions data from the prior reporting period set by the reporting entity and supports the preparation of comprehensive and reliable disclosures.

Financial institutions require a much longer reporting lag for Scope 3 emissions reporting. As discussed in our response to Question 7, financial institutions often need to obtain Scope 3 data from third-party sources and use estimated or modeled data. This process typically results in a 12-month to 18-month time lag in emissions data, but Scope 3 data for some Scope 3 emissions sources may be available only on a longer time lag (*e.g.*, Scope 3 emissions data for automotive manufacturing data obtained from publicly available regulatory reporting is disclosed on a three-year lag).

Additionally, given that assurance by an independent third-party assurance provider is required under SB 253, reporting entities will need additional time to work with their assurance providers to complete the assurance process. This assurance process will take longer as more stringent assurance requirements come into effective (*e.g.*, transitioning from "limited assurance" to "reasonable assurance").

e. What software systems are commonly used for voluntary reporting?

Software systems used for voluntary reporting vary across institutions and include both third-party platforms and proprietary systems. Reporting entities should have the flexibility to choose the software systems for emissions reporting that are best suited to their businesses and circumstances. Therefore, we recommend CARB not to require the use of any specific software systems in the Climate Regulations.

SB 261: Climate-Related Financial Risk Disclosure

10. **For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate time frame within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?**

Reporting Time frame

We believe the appropriate reporting time frame should be 12 months after the fiscal year-end of the relevant entity whose report is used to comply with SB 261. The reporting time frame should be based on the fiscal year end of a covered entity or, if a consolidated parent-level report is used to comply with SB 261 with respect to one or more covered entity subsidiaries, then the fiscal year-end of the parent. This reporting time frame should allow companies to obtain the necessary data and information, including third-party data, to prepare the reports, without imposing undue burden on personnel and resources that may also be involved in financial reporting.

In this regard, we are concerned that the deadline for preparing and making available to the public the initial climate-related financial risk report required under SB 261, which is January 1, 2026,[31] is not workable. In addition to the issue discussed in Section II of an initial reporting date occurring before the covered entities have adequate notice and time to prepare for compliance taking into consideration CARB's final Climate Regulations, a January 1 reporting deadline generally does not work where the report covers data and other information of the prior year because it does not afford entities sufficient time to collect or report the data and information. In addition, as noted above, any reporting time frame should be based on fiscal years, rather than calendar years, because many companies have fiscal years that are different from the calendar years.

We believe the many issues with the January 1, 2026 initial compliance date noted above provide further support to our recommendation that CARB clarify its enforcement approach with respect to the reports required under SB 261, which is discussed in more detail in Section II.

"Biennial" Report

We recommend CARB to clarify in the Climate Regulations the meaning of "biennially" or "biennial report" for purposes of SB 261. In particular, we recommend CARB to clarify that a biennial report is not required to comply with the reporting requirements with respect to the two years immediately prior to the year in which the biennial report is due; rather, "biennially" addresses the frequency of the reports and each biennial report is only required to comply with the reporting requirements with respect to one fiscal year. Requiring a report to only cover the data and information for one fiscal year (other than certain historical data and information included for purposes of year-over-year comparison) is the common approach in voluntary climate and sustainability reports, as well as enacted and proposed climate disclosure requirements in other jurisdictions and will help reduce duplication of efforts.

Furthermore, considering the issue with a January 1 reporting deadline set forth in SB 261 noted above under "Reporting Time frame," we recommend CARB to clarify in the Climate Regulations that

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[31] Cal. Health & Safety Code § 38533(b)(1) & (c)(1).

each biennial report due on January 1 of a particular year is only required to comply with the reporting requirements with respect to one prior fiscal year that ended on a date that occurred within two calendar years prior to the calendar year in which the report is due. For example, if a covered entity has a fiscal year-end of December 31, the covered entity's biennial report due by January 1, 2026 should only be required to cover its fiscal year ended on December 31, 2024 (requiring the covered entity's biennial report due by January 1, 2026 to cover its fiscal year ended December 31, 2025 is impracticable). As another example, if a covered entity has a fiscal year-end of March 31, the covered entity should have the flexibility to determine whether its biennial report due by January 1, 2026 covers its fiscal year ended on March 31, 2024 or March 31, 2025. However, in either example, the covered entity would have to have the appropriate information collection and reporting procedures and processes in place at the beginning of the fiscal year covered by the initial report due by January 1, 2026. We believe these examples further illustrate the impracticability of covered entities complying with SB 261 during the initial reporting cycle and lend support to our recommendation that CARB should delay enforcement as discussed in Section II.

Assurance Review

This Question 10 refers to "the necessary assurance review". However, nowhere in SB 261 is assurance required for reports submitted thereunder.[32] Accordingly, CARB should not require assurance or imply that assurance may be required in the Climate Regulations implementing SB 261.

11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?

CARB should allow covered entities the maximum extent of flexibility with respect to the reporting timeline to the extent permitted by SB 261. Flexibility in the reporting period is necessary to accommodate covered entities with different fiscal years and to allow covered entities to align disclosures with the most reliable and up-to-date data, enhancing the accuracy and usefulness of reports.

12. SB 261 requires entities to prepare a climate-related financial risk report biennially. What, if any, disclosures should be required by an entity that qualifies as a reporting entity (because it exceeds the revenue threshold) for the first time during the two years before a reporting year?

An entity that first becomes a reporting entity during a two-year reporting cycle should not be required to prepare and make public its climate-related financial risk until the next two-year reporting cycle.

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[32] SB 261 does not refer to "assure" or "assurance" at all. The only provision in SB 261 that may be interpreted as referring to assurance provides that "[t]o the extent a climate-related financial risk report contains a description of a covered entity's greenhouse gas emissions or voluntary mitigation of greenhouse gas emissions, the state board may consider the covered entity's claims if those claims are verified by a third-party independent verifier," which does not require a covered entity to obtain assurance review. Cal. Health & Safety Code § 38533(b)(4). TCFD (2017) Recommendations, the reporting standards referenced in SB 261, also do not require external assurance.

13. **Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.**

    f. **What other types of existing climate financial risk disclosures are entities already preparing?**

We encourage CARB to minimize duplicative reporting burdens for entities already subject to robust disclosure requirements and to ensure that the Climate Regulations are harmonized with other frameworks.

A few examples of other types of existing climate financial risk disclosures are as follows. As voluntary reporting practices and mandatory requirements regarding climate financial risk disclosures continue to evolve rapidly, we expect further developments in this area in the coming years.

- *Voluntary sustainability reports*. Many financial institutions already produce annual sustainability and climate disclosures aligned with voluntary climate disclosure frameworks, like the TCFD Recommendations specified in SB 261. Although the TCFD was officially disbanded in October 2023 following the adoption of the ISSB Standards, many financial institutions in the United States currently continue to align their voluntary sustainability and climate disclosures with the TCFD Recommendations because the ISSB Standards present a number of significant challenges (as discussed below) and it takes time and resources to prepare for transitioning to the ISSB Standards.

- *ISSB Standards*. Following the adoption of the ISSB Standards in June 2023, many jurisdictions have stated their intention to align their sustainability (including climate) reporting frameworks with the ISSB Standards. As of September 2024, 30 jurisdictions have decided to use or are taking steps to introduce the ISSB Standards in their legal or regulatory frameworks.[33] Many companies are preparing to transition from making disclosures prepared using the TCFD Recommendations to disclosures prepared using the ISSB Standards.[34] Unlike the TCFD Recommendations, the ISSB Standards were designed to be incorporated into corporate financial reporting and integrated with the broader IFRS and International Accounting Standards Board (IASB) frameworks. The ISSB Standards build on and go beyond the TCFD Recommendations in several areas, making it more detailed and challenging for companies to comply with.

- *EU's Corporate Sustainability Reporting Directive (CSRD)*. The CSRD entered into force on January 5, 2023. Under the CSRD, EU companies, non-EU companies meeting certain thresholds for net turnover in the EU, and companies with securities listed on a regulated EU market are required to disclose detailed sustainability information according to mandatory European Sustainability Reporting Standards (ESRS), including disclosures regarding climate risks and opportunities, based on a phased-in compliance timeline. Depending on the size or location of the company, the initial compliance year begins from 2025 (with respect to fiscal year 2024) to 2029 (with respect to fiscal year 2028). On February 26, 2025, the EU released an omnibus package of proposals to simplify, among other EU rules, certain EU sustainability rules, including proposals to reduce the reporting

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[33] IFRS, Progress on Corporate Climate-related Disclosures—2024 Report (Nov. 2024) (the "IFRS Progress Report"), at 4, *available at* https://www.ifrs.org/content/dam/ifrs/supporting-implementation/issb-standards/progress-climate-related-disclosures-2024.pdf.

[34] *Id*. at 6.

burden under the CSRD and to postpone the application of the CSRD reporting requirements for certain in-scope companies.[35]

g. For covered entities that already report climate-related financial risk, what approaches do entities use?

Many financial institutions already produce annual sustainability and climate disclosures that address climate-related financial risk. These disclosures, to the extent included in voluntary sustainability or climate reports, are typically aligned with voluntary climate disclosure frameworks, such as the TCFD Recommendations.

The TCFD Recommendations are structured around four thematic areas that represent core elements of how organizations operate:

- *Governance*. An organization's governance around climate-related risks and opportunities.
- *Strategy*. The actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy and financial reporting.
- *Risk management*. The processes used by the organization to identify, assess, and manage climate-related risks.
- *Metrics and targets*. The metrics and targets used to assess and manage relevant climate-related risks and opportunities.[36]

If the climate-related financial risk disclosures are included in reports required pursuant to legal or regulatory requirements of certain jurisdictions, companies may be required to include additional jurisdictional specific information in the reports.

h. In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures?

Although many companies, including financial institutions, already produce annual sustainability and climate disclosures aligned with the TCFD Recommendations, their current reporting may differ from the TCFD Recommendations in certain aspects. For example, companies that voluntarily disclose against the TCFD Recommendations may not always provide all the information recommended by the

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35 *See* European Commission, Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief (February 26, 2025), *available at* https://finance.ec.europa.eu/publications/commission-simplifies-rules-sustainability-and-eu-investments-delivering-over-eu6-billion_en.

36 *See* the TCFD Recommendations. However, it is important to note that GHG emissions targets – such as reducing the carbon intensity or absolute emissions of financed portfolios – are not risk-based but reflect broader business strategy decisions related to climate and sustainability goals.

TCFD Recommendations.[37]

On the other hand, entities may provide additional information in their climate disclosures not required by the TCFD Recommendations, either voluntarily or pursuant to applicable mandatory requirements. The additional information may include disclosures in response to changes to the TCFD Recommendations introduced by the TCFD's Guidance on Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (October 2021) and the guidance on Metrics, Targets, and Transition Plans (October 2021)[38] (collectively, the "2021 TCFD Guidance"). The 2021 TCFD Guidance implements certain enhanced climate disclosure requirements and was later integrated into the ISSB Standards. However, due to the challenges discussed below, this type of enhanced climate disclosure is not typically included in companies' voluntary climate reports.

First, the 2021 TCFD Guidance introduced detailed requirements for disclosing financial impacts and potential financial impacts tied to climate-related risks and opportunities, but many companies do not disclose this information in their voluntary reports due to the significant uncertainties associated with assessing such financial impacts. Isolating financial impacts solely attributable to climate-related risks is difficult, as outcomes like credit losses often stem from a combination of factors, including economic, regulatory, and climate-related drivers. Adding to the complexity is the requirement to assess potential financial impacts, which could be interpreted to include opportunity costs related to "what-if" scenarios (*e.g.*, deals that did not materialize). This type of analysis is speculative, requiring significant assumptions and estimates that lack precision. For instance, the introduction of a new regulation might lead to shifts in market behavior and investment priorities, but attributing these changes directly to climate-related factors is highly uncertain. Companies often do not include this type of highly uncertain information in their voluntary climate reports because such information would not provide meaningful information to stakeholders, and the cost of conducting this sort of financial impacts analysis (even assuming it could be done) would far outweigh any benefit of such information to stakeholders.

Second, the 2021 TCFD Guidance also includes the recommendation for companies to disclose transition plans, but many companies do not disclose these plans for several reasons. First, Transition plans are often considered internal business strategy documents, and disclosing them could reveal sensitive competitive information, such as client engagement approaches, financial investments, or sectoral strategies. Second, there is skepticism about the usefulness of publishing transition plans. A company's transition plan outlines how the company plans to navigate the net-zero transition, but the success of the transition plan is heavily reliant on many factors outside the company's control, such as real economy conditions, public policy, regulatory developments, technological advancements, and market dynamics. Third, transition plans may also need to evolve as external conditions change, creating potential liability risks if companies disclose plans that later require substantial revisions. These challenges result in highly variable levels of detail among companies that disclose transition plans, and many companies have opted not to disclose their transition plans at all, unless they are required to do

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37 *See*, *e.g*., IFRS Progress Report, at 4 ("Based on a sample of 3,814 public companies, in fiscal year 2023, 82% of companies disclosed information in line with at least one of the 11 TCFD recommended disclosures and 44% of companies with at least five of the recommended disclosures. Approximately 2–3% of companies reported in line with all 11 TCFD recommended disclosures.").

38 *See* the 2021 TCFD Guidance, *available at* https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf and https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf.

so under applicable laws or regulations.

i. If not consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures, are there other laws, regulations, or listing requirements issued by any regulated exchange, national government, or other governmental entity that is guiding the development of these reports?

The evolving voluntary and mandatory climate disclosure standards and regimes are expected to continue to have impacts on the development of companies' climate-related risk reports. As discussed above, certain companies are required to comply with the EU's CSRD. In addition, many jurisdictions have adopted or are considering adopting the ISSB Standards.[39]

VIII. Additional Comments

A. In the Climate Regulations required to be adopted by CARB under SB 253 to set annual reporting deadlines for GHG emissions, CARB should establish a December 31 deadline for Scope 1 and 2 emissions reporting starting in 2026 and for Scope 3 emissions reporting starting in 2027.

CARB is required to adopt regulations to establish the annual reporting deadline under SB 253. Specifically, SB 253 (as amended by SB 219) provides that CARB shall adopt regulations to require a reporting entity to publicly disclose (1) all of the reporting entity's Scope 1 and Scope 2 emissions for the entity's prior fiscal year "starting in 2026 on or by a date to be determined by [CARB], and annually thereafter" and (2) the reporting entity's Scope 3 emissions for the entity's prior fiscal year "starting in 2027 and annually thereafter" "on a schedule specified by [CARB] as part of the regulations adopted".[40]

We recommend a December 31 deadline for Scope 1 and Scope 2 emissions reporting starting in 2026 and for Scope 3 emissions reporting starting in 2027 to provide reporting entities additional time to collect and report GHG emissions data for the prior fiscal year, in light of the challenges in emissions reporting, particularly with respect to Scope 3 emissions reporting. As discussed above, Scope 3 emissions data is often sourced through external data vendors that collect information from publicly available disclosures, private reporting, and estimates. A December 31 timeline allows more time for data vendors to update their datasets with the most recently available data and for reporting entities to perform appropriate control processes and integrate vendor datasets into their own reporting models, providing for higher quality disclosure.

B. CARB should clarify in the Climate Regulations the compliance timeline for SB 253's assurance requirements.

SB 253 requires that the assurance engagement for scope 1 emissions and scope 2 emissions be performed at a limited assurance level "beginning in 2026" and at a reasonable assurance level "beginning in 2030."[41] CARB should clarify in the Climate Regulations that the assurance engagement for

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39 *See supra* note 33.

40 Cal. Health & Safety Code § 38532(c)(2).

41 Cal. Health & Safety Code § 38532(c)(2)(F)(ii).

scope 1 emissions and scope 2 emissions must be performed at a limited assurance level beginning with emissions data for the reporting company's fiscal year ending in 2026 (to be included in the company's report due in 2027) and at a reasonable assurance level beginning with emissions data for the reporting company's fiscal year ending in 2030 (to be included in the company's report due in 2031).

SB 253 further requires that the assurance engagement for scope 3 emissions be performed at a limited assurance level "beginning in 2030."[42] CARB should clarify in the Climate Regulations that the assurance engagement for scope 3 emissions must be performed at a limited assurance level beginning with emissions data for the reporting company's fiscal year ending in 2030 (to be included in the company's report due in 2031), but only to the extent that CARB has established an assurance requirement for third-party assurance engagements of scope 3 emissions on or before January 1, 2027, as CARB "may" but is not required to do pursuant to Section 38532(c)(2)(F)(iii) of SB 253.

C. CARB should clarify that any U.S. branch, agency or representative office or any other U.S. office of a non-U.S. bank is not a reporting entity for purposes of the Climate Laws.

Under each Climate Law, only "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" meeting certain total annual revenues threshold and that does business in California is subject to the reporting requirements thereunder.[43]

Although a U.S. branch, agency or representative office or another type of U.S. office of a non-U.S. bank may require a federal or state license to operate in the United States, such branch, agency, representative or other office is not itself a corporation, partnership, limited liability company, or other business entity formed under U.S. federal or state laws, but rather a part of the non-U.S. Bank.[44] Because such branch, agency, representative or other office of a non-U.S. bank is not a separate U.S. legal entity, it should not be captured by the definition of "reporting entity" under SB 253 or "covered entity" under SB 261.

We recommend CARB to clarify that a U.S. branch, agency or representative office or any other type of U.S. office of a non-U.S. bank is not a "reporting entity" for purposes of SB 253 or a "covered entity" for purposes of SB 261 and a non-U.S. bank is not deemed a "reporting entity" for purposes of SB 253 or a "covered entity" for purposes of SB 261 because of its U.S. branch, agency or representative office or any other type of U.S. office.

D. CARB should clarify how the "total annual revenues" test should be applied.

Each Climate Law includes a "total annual revenues" threshold ($1 billion under SB 253 and $500 million under SB 261) for purposes of determining its applicability. Each Climate Law further

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[42] Cal. Health & Safety Code § 38532(c)(2)(F)(iii).

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

[44] *See*, *e.g*., Board of Governors of the Federal Reserve System, Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations, Section 6010.1 (Asset Quality Classifications) (Effective date July 1997) ("The branch and its head office are one legal entity.").

provides that applicability of the law shall be determined based on an entity's revenue for the prior fiscal year. However, there is ambiguity as to how the total annual revenues test should be applied. We recommend that CARB clarify how the following aspects of the test should be applied.

Total Annual Revenues of Multiple Reporting Entities

We recommend CARB to clarify that, with respect to business groups with multiple reporting entities, the total annual revenue test should be applied to the total consolidated annual revenue of the highest-tier U.S. business entity(ies) that do(es) business in California. For example, if a business group has three legal entities, with Company A, the top-tier parent, owning 100% of Company B, which in turn owning 100% of Company C, and if each of Companies A, B and C is a U.S. business entity that does business in California, then the total annual revenue test should be applied to Company A only. If Company A's total consolidated annual revenue for the prior fiscal year exceeds $1 billion, then Company A is a reporting entity (and the only reporting entity within the business group) under both Climate Laws. However, if a business group has three legal entities, with Company A, the top-tier parent, owning 100% of each of Company B and Company C (*i.e.*, Companies B and C are sister companies), and if Company A is a non-U.S. business entity while each of Companies B and C is a U.S. business entity that does business in California, then the total annual revenue test should be applied to each of Companies B and C. If neither Company B nor Company C's total annual revenue individually exceeds $500 million, then this business group does not have any reporting entity under either Climate Law.

Definition of Total Annual Revenues

For purposes of determining the total annual revenues of a reporting entity, we recommend CARB to clarify that reporting entities may use their total annual net revenues as opposed to total annual gross revenues. With respect to banking organizations, net revenues reflect the net interest income and noninterest revenue. We believe total annual net revenues is a more meaningful indicator of a reporting entity's scale and profitability and provides a more comparable metric for size across business sectors and business models.

"Ramp-up" Period

To the extent practicable, CARB should also consider implementing a "ramp-up" period for the total annual revenues threshold such that an entity shall have to exceed the threshold for several (*e.g.*, three) consecutive fiscal years before becoming subject to the reporting requirements of the Climate Laws.

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BPI appreciates the opportunity to comment on the Information Solicitation. We thank CARB for its consideration and look forward to an ongoing dialogue. If you have any questions, please contact the undersigned by phone at (202) 589-2406 or by email at sam.riley@BPI.com.

Respectfully Submitted,

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