March 8, 2025

Submitted electronically via https://ww2.arb.ca.gov/
Rajinder Sahota
Deputy Executive Officer for Climate Change and Research
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

Dear Deputy Executive Officer Sahota:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to respond to the California Air Resources Board's ("CARB") information solicitation (the "Information Solicitation") to inform the implementation of the Climate Corporate Data Accountability Act ("SB 253") and the Greenhouse gases: climate-related financial risk ("SB 261"), each as amended by the Greenhouse gases: climate corporate accountability: climate-related financial risk Act ("SB 219").

Many SIFMA members have been working to implement new climate disclosure regulation now required or under development by regulators and governmental authorities across the globe. Additionally, many firms have been voluntarily disclosing greenhouse gas ("GHG") emissions and information regarding climate-related financial risks for some time, often based upon international voluntary frameworks and standards developed by non-governmental entities to inform voluntary disclosure practices, such as the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"), the Greenhouse Gas Protocol (the "GHG Protocol"), the Sustainability

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org. SIFMA appreciates the assistance of Michael Littenberg and Marc Rotter of Ropes & Gray LLP in the preparation of this response.

Accounting Standards Board standards, the World Economic Forum Stakeholder Capitalism Metrics and the Global Reporting Initiative standards.

Our members may also consider financially material climate-related information disclosed by others when making investment and other business decisions. As such, SIFMA is well positioned to provide views as to how regulations adopted by CARB can elicit reliable and useful information for users while limiting the burden imposed on reporting companies. Toward that end, we have provided below a brief discussion of key principles that should inform CARB's approach to regulation under SB 253 and SB 261, followed by specific responses to select questions included in the Information Solicitation.

Key principles

To comply with its statutory mandate and tailor its regulations to elicit reliable and useful information, SIFMA recommends that CARB's approach to implementation of SB 253 and SB 261 be guided by the following key principles.

- *As mandated by SB 253 and SB 261, CARB should rely on existing reporting frameworks rather than developing its own reporting standard either from a blank page or through modifying those existing standards.*
    - Reliance on existing, well-established standards. SB 253 and SB 261 each mandate disclosure be made in accordance with existing, well-established and widely recognized disclosure frameworks. SB 253 refers specifically to the GHG Protocol and SB 261 refers to TCFD and reporting standards adopted by the International Sustainability Standards Board ("ISSB Standards"). In each case, those standards have been developed over a long period of time with significant input from both producers and users of disclosure and are well understood by a large number of relevant stakeholders. Many SIFMA members and any number of other companies prepare or have begun preparing to provide disclosure in accordance with those frameworks.

      "Standardizing" those disclosure frameworks by revising them, including by removing provisions intended to allow reporting companies to make decisions as to the information and presentation relevant to their particular circumstances,[2] would amount to CARB developing its own new disclosure standards.[3] None of SB 253, SB 261 or SB

---

[2] See, e.g., Section 6.3 of the Corporate Value Chain (Scope 3) Accounting and Reporting Standard Supplement to the GHG Protocol Corporate Accounting and Reporting Standard, available at: https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.

[3] Beginning in 2033, SB 253 allows CARB to "survey and assess currently available greenhouse gas accounting and reporting standards" and adopt a new standard "if it determines its use would more effectively further the goals of this section." However, even in that case, the statute requires that any new standard that is adopted be a "globally recognized alternative accounting and reporting standard." SB 253 does not authorize CARB to develop its own reporting standards at any point in time.

219 empower CARB to develop its own reporting standards. Rather, each requires that reporting be prepared in accordance with existing standards.

Further, requiring companies to begin developing disclosure for a new, California-specific standard would substantially increase the costs of compliance and require significant duplication of efforts as companies would be forced to establish overlapping, but not identical data gathering efforts and controls to comply with different requirements. It would also require many companies to work through separate assurance engagements for CARB-mandated disclosures and disclosures prepared in accordance with existing standards, again increasing compliance costs. Finally, it would result in companies producing disclosure on, for example, their greenhouse gas emissions for California-specific reporting that would be different from their disclosure on the same topics prepared in accordance with the GHG Protocol, TCFD, ISSB Standards or other established frameworks because the rules adopted by CARB would be out of sync with those recognized frameworks. A single company publishing multiple reports on the same topics with different information will lead to confusion among users of that information rather than useful disclosure.

  - Evolution of third-party frameworks over time. As CARB notes in Question 3.a of the Information Solicitation, the GHG Protocol and other disclosure frameworks have and are expected to continue to evolve over time. To the extent the GHG Protocol is updated, CARB should permit companies to elect to report under the newer standards (which may be necessary in order to allow companies to adopt emerging best practices and avoid duplicative reporting) or to continue to report under the framework in effect at the time SB 253 was adopted (which may be necessary to avoid imposing new, onerous burdens on companies without any consideration of those standards by CARB or a notice and comment rulemaking process). Companies should not be required to report under any new iteration of the GHG Protocol absent a future rulemaking by CARB (or legislation) to that effect. To provide companies with sufficient time to prepare for any changes to the GHG Protocol, any new rulemaking by CARB should not be effective until at least the second reporting year after it is adopted.

- *CARB should clarify that companies may utilize reporting prepared under regulatory regimes adopted by other jurisdictions that address Scope 1, Scope 2 and (beginning in 2027) Scope 3 greenhouse gas emissions and climate-related financial risks to satisfy requirements under SB 253 and SB 261.* Each of SB 253 and SB 261 includes provisions intended to limit duplication of effort and costs by allowing companies to utilize disclosure included in reports prepared to comply with requirements in other jurisdictions. CARB should clarify that information produced in accordance with mandatory disclosure requirements in other jurisdictions that require disclosure of Scope 1, Scope 2 and (beginning in 2027) Scope 3 greenhouse gas emissions will satisfy the requirements of SB 253, including in cases where those mandatory requirements may differ in some respects from the GHG Protocol. Similarly, CARB should clarify that climate-related financial risk disclosure prepared in accordance with mandatory disclosure requirements in other jurisdictions will satisfy the requirements of SB 261, including in cases where requirements are based on the TCFD or ISSB Standards but include some modifications to those standards. Otherwise, companies will be forced to produce California-specific disclosure

that addresses the same topics as disclosure produced to comply with requirements in other jurisdictions but uses a different reporting framework mandated by California. As discussed above, that will result in substantially increased costs, duplication of efforts, multiple assurance engagements in different jurisdictions and confusion among users of the information.

Consistent with the above approach, to avoid imposing unnecessary costs on reporting companies CARB should not adopt prescriptive requirements as to the form of disclosure required to satisfy the requirements of SB 253 and SB 261. Reporting companies should not be required to restate, data tag or otherwise reformat reports in order to satisfy SB 253 or SB 261, provided that the reports include the necessary substantive information. To the extent companies are required to submit reports under SB 253 (SB 261 only contemplates reports being posted on the website of the reporting company and does not contemplate companies submitting reports to any party), such reports should only be required to be submitted to a repository maintained by CARB.

Additionally, to mitigate the need to reproduce disclosure published elsewhere, companies should be permitted to incorporate by reference part or all of the information required under SB 253 and SB 261 from other publicly available materials by directing the reader to those materials.

- *When adopting regulations, CARB should utilize discretion granted to it under SB 253 and SB 261 to provide companies with as much time as is permitted under the statutes to publish disclosure and, where applicable, obtain assurance.*
  - Reporting Deadlines. SB 253 expressly provides CARB with discretion as to the date on which greenhouse gas emissions information must be disclosed. Question 10 of the Information Solicitation indicates that CARB may also seek to clarify the requirements for publishing disclosure required under SB 261.

    CARB should require that disclosure under SB 253 for any particular fiscal year be published by no later than the last day of the subsequent fiscal year unless disclosed earlier pursuant to a different reporting regime (e.g., disclosure required for a fiscal year ending December 31, 2024 would be required by December 31, 2025) in order to provide companies with sufficient time to produce reliable data and obtain assurance.

    Reporting obligations under SB 261 should also be clarified. We provide specific recommendations in response to Question 10 below.
  - Assurance requirements. SB 253 also provides CARB with discretion as to the application of certain assurance requirements. Section 38532(c)(2)(F)(ii) states that assurance on Scope 1 and Scope 2 emissions "shall be performed … at a reasonable assurance level beginning in 2030." CARB should clarify in its regulations that reasonable assurance for Scope 1 and Scope 2 emissions will be required when reporting on information for fiscal year 2030, not reporting for fiscal year 2029. Reasonable assurance is a substantially more onerous standard than limited assurance, and the requirement to obtain reasonable assurance over greenhouse gas emissions is atypical among climate reporting regimes. For example, the European Union's Corporate Sustainability Reporting Directive ("CSRD") only requires limited assurance.

As such, it is important that companies be given as much time as possible to prepare for the heightened assurance standard required by SB 253.

SB 253 also provides CARB with discretion as to assurance requirements on Scope 3 emissions. Section 38532(c)(2)(F)(iii) provides that limited assurance on Scope 3 emissions will be required "beginning in 2030" and that CARB may require companies to obtain assurance over those emissions at an earlier date. As with Scope 1 and Scope 2 emissions, CARB should clarify that limited assurance over Scope 3 emissions will be required when reporting on information for fiscal year 2030, not reporting for fiscal year 2029 or any earlier periods.

- *CARB should use its regulations to address key ambiguities in the statutes.*
  - Definitions of "Doing business in California" and "Total Annual Revenues." As CARB notes in the Information Solicitation, neither SB 253 nor SB 261 defines the phrase "doing business in California." Nor does either statute define how "revenue" should be calculated for purposes of the statute.

    SB 253 and SB 261 only apply to entities that are "doing business in California" with "total annual revenues in excess" of the amounts set out in the applicable statue. As such, it is important that those terms be clearly defined. Otherwise, whether or not many entities are required to report under SB 253 and SB 261 will remain ambiguous.

    CARB should ensure that "doing business in California" and "total annual revenues" are defined and interpreted in ways such that reporting companies under SB 253 and SB 261 have a meaningful nexus to California. Otherwise, companies may be burdened with significant compliance costs as a result of doing an insignificant amount of business in California. Specific proposals are included in response to Question 1, below.
  - TCFD framework. SB 261 specifically permits reporting "in accordance with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017) published by the Task Force on Climate-related Financial Disclosures, or any successor thereto …". In other words, the statute permits companies to report in accordance with the TCFD Recommendations as published in 2017 *or* subsequent guidance published by the TCFD or ISSB. The statute does not require (and does not empower CARB to require) that a company reporting in accordance with the TCFD Recommendations published in 2017 also comply with any subsequent standards or guidance published by the TCFD or ISSB. To avoid any ambiguity as to the appropriate reporting standard, CARB should expressly affirm that companies may report in accordance with the TCFD Recommendations as published in 2017 without taking subsequent guidance into account.
  - Safe Harbors. Each of SB 253 and SB 261 provides that CARB is required to consider whether a company took "good faith measures to comply with this section" when determining whether to impose penalties for any alleged violations of the statute. When adopting regulations, CARB should acknowledge that any statements (other than statements of historical fact) regarding transition plans, scenario analysis, internal

carbon pricing and targets and goals in reporting pursuant to SB 261 will be treated as having been made as part of "good faith measures" to comply with that section, and that companies will not be subject to liability with respect to those statements, so long as such statements are identified as forward-looking and accompanied by meaningful cautionary language. The U.S. Securities and Exchange Commission (the "SEC") took a similar approach when adopting its climate disclosure rules.[4]

- Consolidated reporting. Section 38532(c)(2)(A)(iii) of SB 253 provides that reporting under SB 253 may be prepared on a consolidated basis and that "If a subsidiary of a parent company qualifies as a reporting entity pursuant to paragraph (2) of subdivision (b), the subsidiary is not required to prepare a separate report."

  Similarly, Section 38533(b)(2) of SB 261 provides that reporting under SB 261 may be prepared on a consolidated basis and that "If a subsidiary of a parent company qualifies as a covered entity pursuant to paragraph (4) of subdivision (a), the subsidiary is not required to prepare a separate climate-related financial risk report."

  CARB should expressly confirm that reference to "covered entity" in the above quoted language from both statutes refers to the subsidiary – not the parent company. In other words, if a parent company that is not required to report under SB 253 or SB 261 (e.g., an entity organized outside the United States or, with respect to SB 261, an insurance company) prepares a consolidated report meeting the requirements of the relevant statute that includes subsidiaries that do have reporting obligations under SB 253 or SB 261, those subsidiaries are exempted from reporting. We believe that is both the intent and better reading of the plain text of the statute, and that allowing for enterprise-wide consolidated reporting is more likely to elicit disclosure that will be useful to stakeholders.[5]

  Additionally, neither SB 253 nor SB 261 prescribe the consolidation principles that should be used when preparing a consolidated report. CARB should allow reporting companies to determine the appropriate organizational boundaries and consolidation principles for consolidated reporting. The SEC took that approach when adopting its climate disclosure rules, abandoning a proposed requirement that would have required registrants to use the same organizational boundaries as their consolidated financial statements for an approach that provided "flexibility to use, for example, one of the methods for determining control under the GHG Protocol …".[6] Mandating the use of any specific approach to setting organizational boundaries and consolidation would require some reporting entities to change their historic approach, significantly increasing

[4] See SEC Release No. 33-1127 (2024) at pages 393 – 401, available at: https://www.sec.gov/files/rules/final/2024/33-11275.pdf.

[5] Relatedly, CARB should confirm that a subsidiary of an insurance company that would be included in a consolidated climate related financial risk report of that insurance company under the National Association of Insurance Commissioners standards is not required to separately post or file the report of its parent company.

[6] See SEC Release No. 33-1127 (2024) at page 251, available at https://www.sec.gov/files/rules/final/2024/33-11275.pdf. The GHG Protocol provides for flexibility in determining organizational boundaries, allowing companies to take either an equity share or control approach.

the cost of compliance and making it so disclosures prepared to comply with SB 253 are not comparable with a company's historic voluntary disclosures and how companies may set, track and report progress against targets.

- ◦ Reporting by companies organized outside the United States. Each of SB 253 and SB 261 provides for consolidated reporting. CARB should clarify the application of that principle in cases where the ultimate parent company that would produce a consolidated greenhouse gas emissions or climate-related financial risk report is exempt from SB 253 or SB 261 because it is organized outside the United States. It would be consistent with SB 253 or SB 261 to clarify that all entities in a group with an exempt ultimate parent formed outside of the US are, like the ultimate parent, not required to report.

- ◦ Reporting by holding companies of insurance companies under SB 261. Section 1(i) of SB 261 notes that the National Association of Insurance Commissioners has adopted a standard for insurance companies to report their climate-related risks in alignment with the TCFD. Accordingly, the definition of "covered entity" excludes insurance companies regulated by California's Department of Insurance and companies that are in the business of insurance in any other state.

  A holding company for a group primarily comprised of regulated insurance companies should be similarly exempted from reporting under SB 261. Otherwise, the statutory exemption from reporting for insurance companies becomes meaningless for insurance groups controlled by a holding company, as the holding companies for those insurance companies would need to report.

- *Enforcement guidance*. SIFMA acknowledges the "Enforcement Notice" published by CARB on December 5, 2024 and agrees with CARB's statement 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, to the extent they do not currently possess or collect the relevant information."[7] That same concern applies to several other aspects of SB 253 and SB 261.

  - ◦ Enforcement of SB 261. Like SB 253, SB 261 will require companies to gather data and prepare fulsome reports on climate-related financial risks. In order to provide companies with adequate time to prepare for reporting under SB 261, CARB should clarify that it will take the same approach with respect to enforcement under SB 261 as the Enforcement Notice states it will take with respect to SB 253.

  - ◦ Enforcement with respect to reports for periods before companies have had the ability to review and comply with the final rules. As indicated above, a number of key aspects of SB 253 and SB 261 remain unclear and will need to be addressed in implementing regulations adopted by CARB. Reporting companies will need time after the final regulations are adopted to prepare for reporting in accordance with SB 253 and SB 261.

[7] Available at: https://ww2.arb.ca.gov/sites/default/files/2024-12/The%20Climate%20Corporate%20Data%20Accountability%20Act%20Enforcement%20Notice%20Dec%202024.pdf

CARB should extend the relief set out in the Enforcement Notice (and apply similar relief to SB 261) to reporting for any fiscal year that ends within six months of when final regulations are adopted. In other words, enforcement actions with respect to such reports would only be brought against the reporting companies for non-filing, so long as the relevant company is making a good faith effort to move towards compliance.

Under this approach, if CARB were to adopt final rules on January 1, 2026, then reports covering fiscal years ended before June 30, 2026, would only be subject to enforcement for non-filing, so long as the relevant company is making a good faith effort to move towards compliance. We believe this approach is consistent with the rationale behind the Enforcement Notice.

- Scope 1 and Scope 2 disclosure. SB 253 provides that reporting entities will "not be subject to an administrative penalty under this section for any misstatements with regard to scope 3 emissions disclosures made with a reasonable basis and disclosed in good faith." In exercising its enforcement discretion, for at least the first several reporting periods, CARB should adopt the same approach with respect to Scope 1 and Scope 2 emissions disclosures. Greenhouse gas emissions reporting is a relatively new area of disclosure, and for many companies SB 253 will represent the first-time mandatory reporting has been required. While not subject to all the unique challenges presented by Scope 3 emissions reporting, preparing Scope 1 and Scope 2 emissions disclosure will require some companies to rely on estimates and to develop new data gathering processes and controls. As such, it would be appropriate to provide companies with protection from administrative penalties so long as they are acting in good faith to produce reliable disclosure. The assurance requirements will provide a meaningful check on companies to ensure that the emissions figures presented are accurate.

Responses to Selected Questions

General Standards in Regulation

Question 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?

As noted above, CARB should ensure that "doing business in California" and "total annual revenues" are defined and interpreted such that only companies with a meaningful nexus to California are required to report under SB 253 or SB 261.

Following from that, use of the provisions set out in Section 23101 of the Revenue and Tax Code would generally be inappropriate. Section 23101(a) of the Revenue and Tax Code provides that 'Doing business' means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit" and Sections 23101(b)(2) through (b)(4) set out very low thresholds for when one is deemed to be "doing business" in California. That sort of limited engagement with California does not justify the imposition of significant costs of preparing robust and accurate disclosure under SB 253 or SB 261, or of obtaining external assurance over reporting under SB 253.

Instead, "doing business in California" should be defined to only include companies organized or "commercially domiciled"[8] in California (which would be consistent with Sections 23101(b)(1) of the Revenue and Tax Code) and companies that both generate at least a significant portion of their revenue (tested on a consolidated basis at the parent company level, as companies would be permitted to report at that level under SB 253 and SB 261) in California and have a significant number of employees in California. That would be broadly consistent with approaches taken by other mandatory sustainability regimes such as the CSRD, which looks to employee, revenue and asset thresholds to determine if an entity is in scope.

Consistent with that approach, CARB should expressly affirm that SEC registered investment companies (such as mutual funds) and private funds are not required to report under SB 253 or SB 261. Such entities typically do not have employees or engage in their own operations. As such, they are differently situated than operating companies and should not be subject to reporting obligations under SB 253 and SB 261. Excluding investment companies and private investment funds would not relieve the investment advisers to those entities or their portfolio companies from reporting obligations, to the extent such entities are in scope.

In addition to the definition of "doing business in California," the definition of "total annual revenues" should also be clarified. Each of SB 253 and SB 261 only applies to entities with "total annual revenues in excess" of the threshold set out in the applicable statue. "Total annual revenues" is not defined in either SB 253 or SB 261. CARB should clarify that in each statute "total annual revenues" should be determined on a consolidated basis in accordance with the generally accepted accounting principles used by the relevant entity in preparing its financial statements.

<u>Question 3.</u> 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?

   <u>Response</u>: Companies should be *permitted* to adopt new or modified reporting standards, such as updates to the GHG Protocol, as they are adopted. Requiring companies to continue reporting under older standards when updated frameworks have become available may result in outmoded disclosure that does not conform to emerging best practices and deprives stakeholders of important information. Equally importantly, it may result in companies needing to produce duplicative disclosure to conform with both

[8] For purposes of determining if an entity is in scope for reporting under SB 253 or SB 261, CARB should state that a company will only be deemed to be "commercially domiciled" in California if its principal place of business is in California.

California's requirements and any newer standards.

However, it would be inappropriate to *require* companies to adopt new or modified reporting standards, including updates to the GHG Protocol, without undertaking a formal notice and comment rulemaking process (or legislation) with respect to adoption of the new standards. Doing so would impose new obligations on companies without any analysis by CARB of the costs and benefits of those obligations or any period during which companies and other stakeholders could provide feedback on those standards to CARB. Moreover, like prohibiting the use of new standards, mandating the use of new standards may result in companies needing to produce duplicative disclosure to conform with both California's requirements and those of any other jurisdictions that have not updated their requirements.

As such, until it has undertaken a formal notice and comment rulemaking process with respect to any new or modified reporting standards (or new legislation has been adopted), CARB should allow each reporting company to determine if it will report in accordance with frameworks such as the GHG Protocol as they existed at the time SB 253 was adopted or in accordance with newly adopted standards. To the extent that after completing a formal notice and comment rulemaking process CARB determines that compliance with new or modified reporting standards should be mandatory, companies should be given a period of at least two years after adoption of the relevant rules to begin reporting under such new or modified standards.

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?

   Response: Each of SB 253 and SB 261 provides that companies may satisfy its requirements through reporting that uses different disclosure frameworks. In SB 261, substituted compliance is addressed in Section 38533(b)(4), which allows covered entities to satisfy reporting requirements through the issuance of a publicly accessible report that "includes climate-related financial risk disclosure information" either pursuant to law or voluntarily using the TCFD framework or ISSB Standard. This provision explicitly acknowledges the flexibility for entities already subject to similar reporting requirements under other jurisdictions or frameworks.

   SB 253 implicitly allows for substituted compliance through its emphasis on minimizing duplication of effort. By permitting entities to submit emissions reports prepared for other regulatory regimes, Section 38532(c)(1)(D)(i) reflects an intent to leverage existing disclosures.

CARB should clarify circumstances under which disclosure prepared under alternate regimes would satisfy SB 253 and SB 261. In particular, CARB should clarify that reporting under other regimes will be deemed to "satisfy all of the requirements of" SB 253 so long as that disclosure includes Scope 1, Scope 2 and (beginning in 2027) Scope 3 emissions disclosure, even if some of the disclosure requirements under the relevant regime vary from the GHG Protocol (including with respect to the emissions that must be reported). Similarly, CARB should clarify that climate-related financial risk disclosure prepared in accordance with mandatory disclosure requirements in other jurisdictions will satisfy the requirements of SB 261, including in cases where requirements are based on the TCFD or ISSB Standards but include some modifications to those frameworks.

Absent clarification to that effect, companies may be required to duplicate efforts to provide both fulsome reports under other reporting regimes and separate reports solely to satisfy California's requirements. Doing so would significantly increase the cost and other burdens imposed on reporting companies, as they would need to develop parallel data gathering processes and controls – as well as going through separate assurance engagements with respect to greenhouse gas emissions. That approach would also result in confusion among users of the disclosure, as companies would be producing multiple reports on the same topics using similar but not identical reporting standards, likely leading to a single enterprise being required to report, for example, different greenhouse gas emissions numbers in different jurisdictions.

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?

   Response: The statute mandates that (subject to the provisions intended to avoid requiring duplicative reporting) CARB provide for reporting using the frameworks specified in the statute. It does not empower CARB to create new disclosure frameworks. Mandating the use of specific reporting methodologies or prohibiting companies from changing their approach when permitted to do so by the applicable frameworks would be akin to CARB developing its own unique reporting framework that companies would need to comply with solely to conform to California's requirements.

   Moreover, prohibiting companies from changing their approach would impair the quality of disclosure that is published. Companies may need to refine their approaches as new data becomes available and reporting processes improve, and doing so would be consistent with the TCFD and the GHG Protocol. For example, improved data quality or availability may allow companies to enhance

the accuracy of their estimates or other disclosure, and to report data for which they previously did not have sufficient or reliable information. Additionally, updates to industry standard, sector-specific guidance or market practice may necessitate adjustments in approach to remain aligned with best practices.

SB 253: Climate Corporate Data Accountability Act

Question 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?

Response: As discussed above, CARB should expressly permit reporting in accordance with the GHG protocol, including its established standards, guidance, and built-in flexibilities, rather than creating its own unique reporting standard by modifying the GHG Protocol. In addition to being mandated by the statute, allowing reporting in accordance with the GHG Protocol will allow many companies to leverage their existing voluntary reporting efforts more readily when complying with SB 253 – reducing costs of compliance and duplication of efforts.

The GHG Protocol is a globally used framework that offers methodologies for measuring and reporting GHG emissions. Its design balances the need for standardization with the practical challenges entities face in collecting and disclosing emissions data, making it an important tool for achieving comparability in disclosures. At the same time, recognizing that one size does not fit all reporting entities, 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. Importantly, this balances public information while focusing disclosures on the most significant and insightful categories of emissions.

For example, the Section 6.3 GHG Protocol Corporate Value Chain (Scope 3) Standard acknowledges "that accounting for all scope 3 emissions may not be feasible" and that "[i]n some situations, companies may have scope 3 activities, but be unable to estimate emissions due to a lack of data or other limiting factors."[9] The GHG Protocol does not permit companies to "exclude any activity that would compromise the relevance of the reported inventory."[10]

---

[9] Available at: https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.

[10] Id.

The flexibilities included in the GHG Protocol are crucial. Financial institutions face unique challenges in reporting Scope 3 emissions. Many counterparties operate in jurisdictions without robust sustainability reporting requirements, and data availability can vary significantly across industries and sectors.

While 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. Standards such as the "Global GHG Accounting & Reporting Standard for the Financial Industry" published by the Partnership for Carbon Accounting Financials remain incomplete with respect to certain asset classes and financial products that may contribute to a reporting companies financed emissions. Methodologies will take time to develop, and financial institutions may not be able to calculate Scope 3 emissions for their entire portfolio until such standards have been developed.

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 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).

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 must often 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.

CARB should ensure that entities retain the ability to utilize the flexibilities set out in the GHG Protocol, including following the GHG Protocol's approach in allowing 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 while requiring transparent disclosure and

explanation of any exclusions. This approach aligns with the statute and will support the development of reliable reporting while mitigating the burdens and costs imposed on reporting companies.

Question 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?

   Response: Entities required to report GHG emissions under SB 253 have several options for third-party verification or assurance for Scope 3 emissions. Some entities may engage boutique firms that specialize in assurance of non-financial data. Others choose to work with assurance providers that are part of the same firm as their financial auditor. The choice of assurance provider will depend on the entity's specific needs, such as the complexity of their emissions profile and the available data. CARB should permit any independent assurance provider with appropriate expertise to provide assurance reports – it should not, for example, mandate that only accounting firms can provide assurance reports or require registration of assurance providers in California.

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?

   Response: CARB should allow companies and assurance providers flexibility to determine the appropriate procedures and requirements to provide assurance, including with respect to the standards used for limited assurance and reasonable assurance. Rather than adopting prescriptive standards at this time, CARB should require assurance providers to disclose the standards used and summarize the procedures taken in assurance reports. Practice with respect to assurance over sustainability matters is rapidly evolving. As this field further develops, it may be appropriate for CARB to consider adopting specific assurance standards in the future. However, it would be premature to do so at this time. Any standard developed or adopted by CARB for purposes of SB 253 would be at significant risk of rapidly becoming inconsistent with assurance standards used in other jurisdictions and for voluntary reporting as those methodologies continue to change. That could result in significant additional costs to companies, as they may be required to go through separate or incremental assurance procedures over the same data in order to comply with CARB's requirements.

Question 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:

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

   Response: Financial institutions typically report Scope 1 and Scope 2 emissions data annually, covering a one-year period compared against a designated baseline year. This annual frequency aligns with standard reporting practices and allows entities to track progress over time in a consistent manner. Because of difficulties on obtaining Scope 3 data, financial institutions may report Scope 3 information later than Scope 1 and Scope 2 data.

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

   Response: Financial institutions generally require a significant amount of time to gather obtain and prepare data for emissions reporting. This period is necessary to provide sufficient time to collect and verify emissions data, including Scope 3 information,[11] allow for the preparation of comprehensive and reliable disclosures and to obtain assurance, which may take up to several months to complete.

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

   Response: Software systems used for voluntary reporting vary across financial institutions. For example, there are a number of third-party platforms that are commonly used for emissions measurement and reporting. However, many institutions also rely on proprietary systems. CARB should not mandate the use of any particular software platform or approach to gathering and verifying data. Requiring the use of any specific software platform would create significant compliance hurdles and impose substantial costs on institutions that have already developed systems for gathering and reporting data and would be inconsistent with allowing reporting companies to use reports prepared under other regimes to comply with SB 253 and SB 261. Further, mandating the use of a specific software system would increase the risk of errors in reporting as companies would be mandated to transition to a new platform and, in at least some cases, to maintain both a California-specific software system and parallel systems used for other reporting.

SB 261: Climate-Related Financial Risk Disclosure

[11] As noted in response to Question 7, Scope 3 reporting by financial institutions is often based on exposures from the reporting year and the latest available emissions information, which is often for prior periods.

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

Response:

- Assurance. SB 261 does not require companies to obtain any external assurance and does not empower CARB to adopt an assurance requirement. While some companies may voluntarily obtain external assurance on climate-related financial risk disclosure and others may be required to begin doing so under regimes such as the CSRD, obtaining external assurance can require significant effort and would require companies to incur additional costs. CARB should not purport to create a new assurance requirement for disclosure under SB 261.

- Fiscal years. Reporting deadlines for and periods to be covered in reports under SB 261 should be determined based on a company's fiscal year rather than based on a specific calendar date that applies to all companies. Many companies have fiscal years that do not align with the calendar year. Requiring companies to produce SB 261 disclosure covering a different period than their financial statements would lead to confusing disclosure that is less valuable to stakeholders because readers would no longer be able to assess a company's climate related financial risks and financial performance over the same periods. It would also impose significant additional costs on companies, as new data gathering procedures and controls would need to be into place. Finally, requiring calendar year reporting would be inconsistent with other sustainability reporting regimes. For example, the CSRD and SEC's climate disclosure rules would both call for disclosure on a fiscal year basis.

- Periods covered by a report. SB 261 requires that reports be published biennially. It does not expressly specify if those reports are required to cover a single fiscal year or two fiscal years. CARB should clarify that such reports are only required to cover a single fiscal year. Requiring a report to cover two fiscal years would result in the publication of stale information and be inconsistent with voluntary reporting practices and mandatory reporting requirements in other jurisdictions.

  If reports are required to be filed the day after a fiscal year end (e.g., on January 1 for a company with a fiscal year ending December 31), those reports will not include information for the fiscal year that has just ended. It is entirely infeasible to publish a climate related financial risk report covering an entire fiscal year within 24 hours of that year ending. In other words, for a reporting company with a fiscal year ending December 31, a report required to be filed on January 1, 2026, would include information for the fiscal year ended December 31, 2024. Alternatively,

CARB could require disclosure under SB 261 be published by no later than the last day of the following fiscal year. In other words, a report with information for the fiscal year ended December 31, 2024, would be due by no later than December 31, 2025. That would provide reporting companies with sufficient time to gather the necessary information and prepare reliable and robust disclosure.

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

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

   Response: Many companies are currently producing climate-related financial risk disclosures, either voluntarily or as required by law, and more will be required to do so in the near term. As noted above and contemplated by SB 261, regulations adopted by CARB should be designed to minimize duplicative reporting burdens and allow the use of climate-related financial risk disclosures prepared under other reporting frameworks. Examples of other types of climate financial risk disclosures entities may already be preparing include:

   - Voluntary sustainability reports. Many financial institutions already produce annual sustainability and climate disclosures aligned with voluntary climate disclosure frameworks, such as the TCFD, which SB 261 references.

   - The CSRD. Financial institutions with significant operations in Europe are required to comply with the CSRD, which mandates detailed disclosures on climate risks and opportunities. Depending on the size or location of the entity and whether it is listed on a regulated market in the European Union, companies will need to begin complying with the CSRD by producing disclosure for fiscal year 2024 at the earliest and fiscal year 2028 at the latest.

   - International Sustainability Standards Board (ISSB). Some entities disclose climate-related information in alignment with the ISSB standards, particularly the ISSB Standard for climate-related disclosures. Over 20 jurisdictions have adopted or are considering adopting the standards, and global entities may already be required to disclose under these frameworks in other jurisdictions. Unlike the TCFD, the ISSB standards were designed to be incorporated into corporate financial reporting and integrate with the broader IFRS and IASB frameworks. The ISSB standards build on and go beyond the TCFD in several areas, making it more detailed and challenging for companies to comply with.

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

Response: Financial institutions often utilize the TCFD framework in voluntary reporting. Financial institutions are currently undertaking extensive efforts to prepare for reporting in accordance with the CSRD and/or ISSB standards in order to comply with mandatory reporting requirements in other jurisdictions. Each of the CSRD and ISSB standards builds on the TCFD framework, generally requiring more extensive disclosures. Some jurisdictions, such as the UK and Japan, currently have mandatory disclosure regimes based on the TCFD in effect. As noted above, many other jurisdictions have adopted or are considering mandatory disclosure requirements based on ISSB standards. Those jurisdictions include Japan, the United Kingdom, Australia, Brazil, Canada, Hong Kong, Singapore, South Korea and others. Additionally, insurance companies may report climate related financial risks for themselves and non-insurance subsidiaries or affiliates under the NAIC Climate Risk Survey.

c. 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?

Response: Current reporting by financial institutions often differs from the TCFD's guidance, particularly with respect to scenario analysis and implementing the enhanced reporting standards issued by the TCFD in 2021. While many companies base their voluntary disclosures on TCFD's principles, scenario analysis and the TCFD's 2021 guidance present significant challenges in areas not typically included in voluntary reporting practices. Key challenges include the following:

- Scenario analysis. Financial institutions may voluntarily disclose the methodology and scenarios used but typically do not disclose the results of scenario analysis exercises. Disclosure of results may be misleading to market participants given the level of assumptions involved in scenario analysis exercises and the level of uncertainty underpinning the results. Additionally, scenario analysis disclosures are not likely to be comparable across institutions or consistent over time. Each institution's scenario analysis depends on unique portfolio compositions, assumptions, and modeling approaches, leading to significant variability in outcomes. Furthermore, the data informing these analyses, such as counterparty emissions and long-term climate projects, is often incomplete or unreliable. This lack of consistency and data quality diminishes the usefulness of the disclosed

results and raises concerns about potential liability if stakeholders perceive the results as speculative or inadequately supported. These challenges underscore why financial institutions typically limit public disclosure of scenario analysis outcomes.

- Financial impacts and potential impacts tied to climate-related risks and opportunities. The 2021 TCFD introduced detailed requirements for disclosing financial impacts and potential financial impacts tied to climate-related risks and opportunities. However, isolating financial impacts solely attributable to climate-related risks is difficult, if not impossible, as outcomes like credit losses may stem from a combination of factors, including economic, regulatory, and geo-political 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. Incorporating such speculative information into disclosures risks misleading stakeholders, which is why financial institutions often do not disclose this information in the manner the 2021 TCFD recommends.

  The SEC's proposed corporate climate disclosure rule included similar provisions on disclosure of financial impacts tied to climate-related risks, which were removed from the final rule to address concerns from market participants that these disclosure provisions were largely inoperable.[12]

- Transition plans. The 2021 TCFD also includes the recommendation for companies to disclose transition plans, but many companies do not disclose these plans for several reasons. Transition plans are often considered internal business strategy documents, and disclosing them could reveal sensitive competitive information, confidential information and trade secrets, such as client

[12] See SEC Release No. 33-1127 (2024) at pages 422-424 and 446, available at https://www.sec.gov/files/rules/final/2024/33-11275.pdf.

> engagement approaches, financial investments, sectoral strategies or unique investment strategies. Additionally, there is skepticism about the usefulness of publishing these plans because their success depends on factors outside the company's control, such as regulatory developments, technological advancements, and broader market conditions. Even when disclosed, transition plans present significant challenges. These documents do not guarantee delivery of the objectives described therein. Achievement of climate-related targets is heavily reliant on real economy conditions – such as the availability of enabling technologies, supportive regulations, and market dynamics – that may not align with company strategy. 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 when disclosing transition plans, with many opting not to disclose them at all, barring a regulatory or legal requirement to do so.

As noted above, SB 261 does not require compliance with the enhanced reporting standards issued by the TCFD in 2021 but rather with the TCFD Recommendations published in 2017. To avoid any ambiguity as to the appropriate reporting standard, CARB should expressly affirm that companies may report in accordance with the TCFD Recommendations as published in 2017 without taking subsequent guidance into account.

***

If you have any questions or would like to discuss these points further, please feel free to contact Melissa MacGregor at mmacgregor@sifma.org or 202 962 7300, or our counsel Michael Littenberg (Michael.Littenberg@ropesgray.com; 212 596 9160) and Marc Rotter (Marc.Rotter@ropesgray.com; 212 596 9138) at Ropes & Gray LLP.

Sincerely,

Melissa MacGregor

Melissa MacGregor
Deputy General Counsel & Corporate Secretary

Kim Chamberlain

Kim Chamberlain
Managing Director & Associate General Counsel, State Government Relations

cc: Michael Littenberg, Partner, Ropes & Gray
Marc Rotter, Counsel, Ropes & Gray