

**MEMO# 35482**

October 10, 2023

# California's Climate Accountability Package

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TO: ESG Advisory Group

SEC Rules Committee SUBJECTS: ESG RE: California's Climate Accountability Package

Governor Newsom signed into law the "California Climate Accountability Package" (Climate Package).[\[1\]](#) In a signing message, Newsom noted the need to refine the Climate Package and expressed a willingness to work with the business community to address their concerns through rulemaking and subsequent legislation. Additionally, the Governor noted his concerns about the fiscal impact of the Climate Package, as well as the infeasibility of its deadlines.[\[2\]](#)

The Climate Package applies to any reporting entity, which includes any public or private partnership, corporation, or other business entity doing business[\[3\]](#) in California that meets certain gross revenue requirements. The Data Accountability Act applies to companies with greater than one billion dollars in revenue, and the Financial Risk Act applies to companies with greater than five million dollars in revenue. The bills are summarized below.

## I. Data Accountability Act

Reporting entities doing business in California will have to annually disclose their Scopes 1 and 2 greenhouse gas emissions (beginning in 2026) and Scope 3 greenhouse gas emissions (beginning in 2027) to the California Air Resources Board (CARB). In addition, they will have to obtain limited assurance (beginning in 2026) and reasonable assurance (beginning in 2030) for their reported emissions by an appropriately experienced third-party assurance provider.[\[4\]](#) Emissions disclosures would be housed on a new publicly available digital registry. The registry would enable users to review individual reporting entity disclosures and analyze underlying data elements.

Reporting entities will have to pay CARB an annual fee, which must be set at an amount sufficient to cover CARB's full costs. CARB may impose a penalty of up to \$500,000 on a company in a reporting year for failure to file, filing late, or any other failure to meet the program's requirements. CARB also is required to consider all relevant circumstances, including the company's past and present compliance and its good faith efforts to comply, before assessing a penalty.

## II. Financial Risk Act

The Financial Risk Act requires any covered entity to report, by January 1, 2026 (and biennially thereafter), their climate-related financial risk<sup>[5]</sup> as well as steps undertaken to reduce such risks. Reports must be in accordance with Task Force on Climate-Related Disclosures (TCFD) (and its successors).<sup>[6]</sup> CARB will have to contract with a climate reporting organization to biennially prepare a public report, which includes: (i) a review of the disclosure of climate-related financial risks by industry; (ii) an analysis of the system and sector-wide climate-related financial risks facing California; and (iii) identification of insufficient reports. In addition, CARB may impose a penalty of up to \$50,000 in a reporting year against any covered entity for failing to make reports publicly available on its website or publishing insufficient reports. CARB also is required to consider all relevant circumstances, including past and present compliance and good faith efforts to comply before assessing penalties.

At a September 27 House Financial Services Committee oversight hearing, Rashida Tlaib (D-Mich.) questioned Chair Gensler on whether any final SEC rule would be issued in light of the California bills and, if so, whether it would require Scope 3 greenhouse gas emissions to be reported. SEC Chair Gensler, in response stated that passage of the California bill would affect the Commission's economic baseline for any SEC final rule requiring public companies to make climate-related disclosures but not make a final SEC rule unnecessary.<sup>[7]</sup>

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

### Notes

<sup>[1]</sup> The Climate Corporate Data Accountability Act (Senate Bill 253) (hereinafter referred to as Data Accountability Act) and Climate-Related Financial Risk Act (Senate Bill 261) (hereinafter referred to as Financial Risk Act) are available, respectively, at [https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=202320240SB253&howamends=false](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202320240SB253&howamends=false); <https://legiscan.com/CA/text/SB261/id/2841405/California-2023-SB261-Enrolled.html>

<sup>[2]</sup> Governor Newsom's signing message is available at <https://www.gov.ca.gov/wp-content/uploads/2023/10/SB-253-Signing.pdf>

<sup>[3]</sup> The bill defines doing business as engaging in any transaction for the purpose of financial gain within California, being organized or commercially domiciled in California, or having California sales of \$610,395, property of \$61,040, or payroll of \$61,040 as of 2020.

<sup>[4]</sup> The Data Accountability Act would require reporting entities to disclose their Scope 3 emissions. In contrast, the SEC's proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, would require a company to disclose its Scope 3 emissions when "material" or if the company has a Scope 3 emissions reduction target.

<sup>[5]</sup> The bill defines "climate-related financial risk" as a material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand,

and financial markets and economic health.

[6] The bill also requires CARB to contract with a qualified climate reporting organization to review and publish an analysis of those reports. If a covered entity does not complete the required disclosures, they must provide the recommended disclosures to the best of its ability with a detailed explanation for any reporting gaps and describe steps the covered entity will take to prepare complete disclosure. The bill defines "Climate reporting organization" as a nonprofit climate reporting organization that currently operates a voluntary climate reporting organization for organizations operating in the U.S. and that has experience with voluntary climate-related financial risk disclosure in California.

[7] Chair Gensler stated that "while it may change the economics over the course of the years, California's rule wouldn't be in place until 2027 ... . The SEC [still will] have to stay within our remit and the laws as Congress has passed and it's about investor decisions and what [is] ... being disclosed."

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