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Re: **California Greenhouse Gas Reporting and Climate-Related Financial Risk Rules**

August 21, 2025 CARB Workshop and Associated Materials – Post Workshop
Comments

Dear California Air Resources Board:

These comments are submitted by Christopher P. Perzan, President and Attorney, Kyndenos LLC, a law firm concentrated on environmental and sustainability law. I appreciate the opportunity to submit these comments on the greenhouse gas (GHG) emissions and climate-related financial risk disclosure regulations under development. The comments are submitted on the firm's own behalf. While informed by discussions with impacted companies and the firm's own experience, these comments are not submitted on behalf of any client and do not reflect the thoughts or opinions of anyone but the undersigned.

First, a little background. The firm, Kyndenos LLC, is a law firm based in Chicago with a practice limited to environmental and sustainability law, with a mission that includes assisting companies in developing effective environmental and corporate sustainability programs and practices. I am the founder and principal attorney, and was previously head of environment, sustainability and environmental counsel at a heavy-duty vehicle and engine manufacturer for over a decade, with experience working with CARB rules in various contexts. I led corporate sustainability reporting and carbon footprint measurement, including full scope GHG Protocol-aligned greenhouse gas calculation, reporting and climate-related risk analysis (including EU Taxonomy and CSRD) and have long experience with vehicle GHG and fuel economy regulations. My experience prior to my time in the corporate world includes over a decade in state government at the Illinois EPA and the Illinois Attorney General's office environmental enforcement bureau. This background is simply to illustrate that these comments are informed by long real-world experience

bringing together environmental enforcement, policy and corporate sustainability specifically on the topics addressed by the rules.

With that experience, I appreciate the complexity of the task CARB has received. Taking what has evolved over years as a set of voluntary practices and standards and translating those into enforceable disclosure rules is not a straightforward task. If there is a single theme from these comments, it is this: the rules should allow sufficient time to comply, be clear, flexible and focused on whether an entity has made a reasonable effort to assess its impacts, risks and opportunities. The flexibility of voluntary standards allows a company to tailor its processes and disclosures to its situation. This aspect of the voluntary standards should be preserved to the greatest extent possible, while balancing that with the statutory mandate of meaningful disclosures.

Defining Who is Covered

Clarity on the Question of Who is Covered is a Priority

Given that the first deadline is less than four months away, CARB should prioritize certainty on the fundamental question of who is covered by these rules.

Registered Agent as Trigger for “Doing Business in California”

From the August 21 workshop, my understanding is that CARB is considering the presence of a registered agent in California for a particular entity as a signifier that the company is “doing business in California.” While the presence of a registered agent certainly can be an indicator that an entity is doing business in a certain state, it is not definitive. Companies that may be subject to litigation in California may choose to designate a registered agent without otherwise having contacts, for instance, because their products may be transported to and used within California and claims in California may arise as a result. If an entity is to be considered covered simply because of the presence of a registered agent, it should have sufficient opportunity to rebut what it may consider inaccurate.

Revenue Definition

On the revenue definition, my primary suggestion is to keep as close as possible to existing, accepted methods of calculating revenue. Of critical importance is that the revenue definition must be clear and verifiable. The revenue calculation for these purposes should bear some relation to the entity’s impact. Capturing strictly passive income, for example, may sweep entities into the reporting categories that have otherwise minimal impact on emissions and risk exposure.

From the workshop and materials, CARB may be considering the use of private financial data services to identify the revenue of companies that are private and do not publicize financial results. Private data services, however, may rely on estimates of revenue based on comparisons and other methods, not on direct measurement and, as a result, may not be sufficiently accurate in many cases.

There Should be an Opportunity to Respond if CARB Issues a List of those it Considers Covered

CARB stated in the August 21, 2025 workshop that it intends to issue a list of companies it considers to be covered by the law. I suggest CARB reconsider this, at least until the definitions are clearer than they are at present. With the uncertainties still existing under both criteria, including those discussed above and at the Workshop, CARB should allow entities named in the list to respond to their inclusion in order to challenge or clarify their inclusion. This could include the opportunity to both to challenge inclusion at all, but equally importantly, to correct errors in identifying the entity, even if the larger organization agrees that it is covered. Larger organizations often have complex legal and entity structures, so it will be particularly challenging to identify the correct entities. Allowing a chance to respond will be more efficient for the entities and for CARB itself. If it publishes the list, it should simultaneously publish instructions to those on the list outlining a mechanism to submit information to CARB challenging or clarifying the inclusion of the entity on the list.

Deadlines and Timing

The current deadlines are a statutorily-defined January 1, 2026 for SB261 reporting and a proposed deadline of June 30, 2026 for SB253. Presumably the rules under consideration will not be final until sometime in 2026. I would propose a modification of this schedule for consideration. For entities that have publicly reported scope 1 and 2 emissions for 2024 or prior years that have been subject to assurance, June 30 may be a reasonable deadline. Even those entities will need a chance to adapt their processes to these rules as finalized. For companies that have never reported, they will need longer. I suggest the October 1, 2026 or even the end of the year as an alternative deadline for companies that have not previously reported scope 1 and 2 emissions.

In the case of scope 3 reporting in 2027 the issue of deadlines is even more critical. Companies often must gather extensive data from a large supply base for these calculations. The company will not only be learning the regulatory process itself, but also training its supply base to gather, analyze, validate and transmit the needed data. This can

also involve renegotiation of contracts and other commercial agreements in the process. Even if the deadline is placed at the end of 2027 and the final rules come out in the first quarter of 2026, that leaves less than two years to create the governance structure, legal contracts, metric methodologies, vendor outreach, internal and external training, data collection, data analysis, internal validation procedures, third party assurance and reporting format. All of these things take time and resources. Companies with experience in this area will be likely be challenged to align all of their procedures with the rules once they are finalized, those without prior experience will be extremely challenged. CARB should take this into account and phase-in the requirements with this in mind. Set the deadline as late in 2027 as possible. Allow limited scope 3 disclosures as a minimum requirement initially and to give companies time to build the infrastructure not only to meet the requirements, but to use the data to understand their business, its impacts, risks and opportunities.

Substantive Reporting Issues

Scope 3 – Purpose

As CARB develops these rules, I believe it is critical to keep in mind the purpose of scope 3 emissions calculations. This concept was developed and refined by the organizations that created GHG Protocol to allow companies to measure the impact that their business was creating outside their direct control. Armed with that knowledge, companies can then see risks arising from their activities, as well as opportunities, more clearly and devise plans of action accordingly.

The scope 3 framework was developed as a voluntary set of guidelines and is adaptable to companies as they grow in maturity and capability. In practice, it is very iterative in nature. Few companies can analyze and report data at the most mature level within a couple years of starting the process.

Contrast this with the typical purpose for emissions reporting: measurement of an emission level against a discrete regulatory emission standard, generally using defined measurement methodologies. In the scope 3 context, you are not comparing a number to a standard, but rather trying to see where material impacts are in a value chain that is outside a company's direct control. For scope 3 the estimation methods and data are more limited and materiality is critical. As a result, a regulatory reporting scheme that is flexible, allows a company to innovate new methods to develop the data and concentrate on the areas material to the company will be more likely to succeed and be meaningful to both the company and external stakeholders.

GHG Emissions Reporting Geographic Scope

During the workshop there was some discussion of whether the rule should require disclosure of emissions within California alone, or nationally. CARB stated that it would appreciate comment on this. I suggest that CARB set the minimum requirement for the rule as California-only emissions, with an option to report emissions nationally or internationally.¹ If a company chooses to report national or international emissions option, it should not be required to report California emissions separately. This will be particularly important once the reporting requirement extends to scope 3. While scope 1 emissions are typically easier to isolate to a geographic location, it becomes much more difficult once a company is calculating, for example, scope 3 category 1 (purchased goods and services) emissions since it would require a reporting entity to collect not only data related to emissions, but where those emissions occur. The very limited value of obtaining geographic information on the scope 3 emissions is far outweighed by the cost and burden.

Even scope 1 can pose a challenge to isolate geographically, for example, when scope 1 emissions are from an internal vehicle fleet that is moving across state lines. Common data sources for this calculation often track the amount of fuel used, but may not include exactly where that fuel was burned, which is necessary to isolate in what state the emissions may have occurred.

The easiest way to overcome this would be to allow companies to choose whether to report California-only or on a national or other basis. This would also align with the structure of the risk reporting requirement, which allows a covered subsidiary to report at a parent level, even though, presumably, that parent may not be covered and is reporting risk unrelated to specific geography. Certainly the rule could require that companies explain the geographic boundary of their reporting and the rationale behind it.

The Rule Should Anticipate and Allow for Data Adjustments

Corporations may from time to time adjust previously reported data. Adjustments may be made because of changes in corporate boundaries (including those that result from mergers or acquisitions), improved methodology, correction of errors, insourcing, outsourcing or other changes. These may involve base-year revisions or revisions in subsequent reporting years. This is an important part of a process that incorporates

¹ Since California does not have authority to mandate emissions disclosures when those emissions are outside its jurisdiction, national or international reporting must be an option, not a mandate. The baseline requirement must be California emissions reporting.

continual improvement and should be encouraged in line with a company's adjustment policies and reasonable disclosure of the basis for adjustments.

Parent – Subsidiary Reporting

These reporting rules should not alter the existing corporate boundaries (ie, which subsidiaries are covered) for reporting and targets any more than necessary. From a corporate sustainability perspective, it is important to look at the entire organization to determine materiality, impact and to design meaningful goals. For many companies who have been reporting, the boundaries have long been set. While, of course, it is also important to know the performance of constituent portions of the company, impact doesn't always align to where the legal entities are, since legal entities are generally established with different criteria in mind than emissions.

For example, while the Science Based Targets Initiative allows targets at the subsidiary level, it strongly encourages them to be established at the parent or group level.² If a target is established at the subsidiary level, the emissions of that subsidiary still have to be considered and addressed at the parent level. Deviations from this guideline tend to arise from differences in structural conditions. For example, a company with subsidiaries in North America and South America may decide to have each subsidiary adopt and report to a target aligned with the operating conditions in their area, which may materially impact the methods of achieving and even tracking the target.

CARB should allow maximum flexibility when choosing at which level to report. CARB should provide that once an entity within a corporate structure is subject to the reporting laws, the entity as a whole can then choose at which level to report and explain that choice and the rationale behind it.

Further, at the August workshop CARB indicated that covered subsidiaries that report will still be subject individually to each pay a fee. This seems inequitable and unwieldy. That means, instead of identifying a covered entity within an organization and then reporting at the parent level, a company will have to, on an ongoing basis, review and determine whether each entity in their structure is covered for fee purposes alone, even if that makes no difference for the parent-level reporting. This does not seem to be mandated by the statute, which provides that the fee be paid by the reporting entity upon filing its disclosure, which references the filing of the disclosure as the trigger for the fee.³ In the case of a parent filing, it is only the parent that will be filing the disclosure for these purposes.

² Science Based Targets Initiative, Corporate Net Zero Standard, version 1.2, at Section 5.2.1.1.

³ Cal. HSC 38532(c)(i)(G)

Assurance

I urge CARB to set out clear standards beyond those general principles discussed during the Workshop for assurers as soon as possible. Assessing the four particular standards CARB addressed in the Workshop and accompanying presentation⁴ is out of my area of expertise, so I will not comment on which may be more appropriate. I will comment that companies need to find assurers soon and need to know what qualifications to require of the assurance provider. This is particularly so given that most companies would likely prefer to work with an assurer for more than one reporting cycle, so that assurer gets to know the company and a new assurer coming on after a previous cycle does not feel it has to review from scratch the previously assured cycles. Companies have to enter into agreements with assurers now or very soon to make the 2026 deadline and clarity on the criteria for assurers is necessary.

I recommend that CARB develop clear criteria for assurers and, eventually, an accreditation process for assurers, similar to the MRR verification accreditation process. This certainly is not possible for the upcoming year, but a process in future years for assurers seems feasible, given that CARB should be able to adapt existing accreditation processes. The basis for this recommendation is that, currently, the onus is entirely on the entity to screen, evaluate and select an appropriate assurer. This can be challenging, particularly for companies that do not have regular contact with California regulations and are based in other states, of which many will be covered by these rules.

Climate-Related Financial Risk

Reporting Standard Framework

The workshop and subsequent checklist provide three options for frameworks: 1) TCFD 2017, 2) IFRS S2 and 3) a report issued under governmental standard, with a specific reference to US law.

Of these, the most unclear is option 3: what government standard would suffice for a report. If an entity issues a 10-K under current SEC rules and addresses climate risk such that the 10-K is compliant with SEC rules, does that suffice, or does the entity need to

⁴ Slide 43, Initial Staff Concept for Assurance

essentially comply with IFRS S2 within its report under option 3? This is not clear, and CARB should provide clarity on what is the minimum requirement under option 3.

Governance

I suggest broadening the language beyond reference to a Board, such as “or other management structure with overall responsibility for the management of the entity”. A Limited Liability Company, for example, may be managed by its members, or a manager. I would also point out that often within an organization there is a single level at which climate and environment-related issues are governed, for example, at the top parent board or board committee. As a result, a covered subsidiary, which may have a very small board with a limited practical focus, may well not be the appropriate governance entity for those issues within the context of the larger organization.

Strategy

CARB’s proposal to encourage, but not require, scenario-based is reasonable in light of the wide scope of the rule, including companies of various levels of maturity. In addition, scenario-based analysis adds complexity and may be difficult for companies to complete in the required timeframe for the initial disclosure.

Metrics and Targets

CARB rightly does not propose including scope 1, 2 and 3 emissions as part of the minimal requirements for risk disclosure. It may be helpful to clarify, however, that a company **may** use pre-existing data, including data that has not been assured, in its analysis. This will make it clear that companies can consider, for instance, data that yet does not meet the full requirements of the GHG reporting rule. Such data may well still be very useful for the risk analysis, even if it is not fully aligned with the GHG rule disclosures later in 2026.

It is also important to clarify that the statute and rules require disclosure, but do not require the adoption of targets. This is a potential source of confusion since TCFD discusses extensively how companies should disclose their targets. The TCFD discussion of target disclosure does not create a requirement that a company affirmatively set targets it did not otherwise have in place or in planning simply because the disclosure requirement was incorporated into law by SB261. That said, a company should review and discuss all of its current targets as part of its disclosure, including those that may be the result of regulatory requirements, such as fuel efficiency or energy efficiency standards that may apply to its products.

Conclusion

Once again, I appreciate the opportunity to submit these comments. I encourage CARB to find the right balance of flexibility, clarity and meaningful disclosure as it moves forward with these rules.

Thank you for your consideration of these comments.

Respectfully submitted,

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