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**VIA E-MAIL**

California Air Resources Board  
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**Re: Comments on Proposed Climate Disclosure Regulations under SB 253 and S.B. 261**

Dear Members of the California Air Resources Board:

Troutman Pepper Locke LLP (“Troutman”), a global law firm that represents a diverse array of small and middle market capitalized private and publicly traded entities that operate nationally and internationally is pleased to submit comments that address the interests of clients who have chosen to remain confidential. These comments are being submitted in response to the request made by the California Air Resources Board (“CARB”) staff (“Staff”) at the August 21, 2025 public workshop concerning California S.B. 253, the Climate Corporate Data Accountability Act and S.B. 261, the Climate Related Financial Risk Act, both as amended by S.B. 219 (collectively, the “200s,”) which are codified in the California Health and Safety Code at §§ 38532 and 38533.

Since the passage of S.B. 253 and S.B. 261, we and our clients have tracked CARB’s regulatory activity and proposals for implementing the 200s. We appreciate CARB’s efforts to create a stable regulatory program to implement the 200s and Staff’s recognition that this is not an easy task. To ensure fairness and consistency with state and federal law, CARB’s implementing regulations must be narrowly tailored to ensure the 200s do not impermissibly regulate companies with minimal connections to the state.

Extending the reach of the 200s to entities that have minimal connections to California conflicts with California law and would violate the U.S. Constitution. Under the dormant Commerce Clause doctrine, states cannot enact regulations that unduly burden interstate commerce or attempt to control conduct beyond their borders. The U.S. Supreme Court has consistently held that states may not impose obligations on out-of-state entities unless there is a

substantial nexus to the state.<sup>1</sup> California courts have also required strong connections to California to support finding entities are doing business in California.<sup>2</sup> Applying the 200s climate disclosure requirements to entities with limited connections to California or for whom revenues generated from activities in California fall below the thresholds of S.B. 253 and S.B. 261 would overly burden interstate commerce and violate well-established principles of constitutional law.

Consistent with these principles, we provide the following comments for CARB's consideration in developing proposed regulations to implement the 200s.

**1. "Doing business in California" requires more than minimal contacts with the State.**

At the August 21 workshop, staff announced that it was considering a definition of "doing business in California" that would hinge on whether an entity had appointed a California agent for service of process, as recorded in the California Secretary of State's business entity database.

This represented a significant change from the initial concepts Staff presented at the May 18, 2025 workshop where Staff suggested it was considering adopting the definition of "doing business in California" found in the California's Revenue and Taxation Code, which defines "doing business in California," as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit," and being either (i) domiciled in California, or (ii) meeting certain California sales, property, or compensation thresholds. The California Revenue and Taxation Code § 23101 definition of doing business in California is far too broad and would subject companies that have little connection to California to the 200s.

Likewise, extending the 200s to companies with a registered agent for service of process but with little or no other connections to the State would subject companies that do not transact business in the State, or have any other meaningful connection to California, to the 200s. Simply having a registered agent is an insufficient basis to consider an entity in scope for the 200s. CARB should instead consider the entirety of the California Corporations Code's requirements for forming or qualifying to do business in California, including how the California Corporations Code defines "transacting in intrastate business." For example, under California Corporations Code § 191(c)(2), holding board or shareholder meetings or engaging in activities related to internal affairs does not constitute transacting intrastate business for a foreign corporation.<sup>3</sup> Thus, an entity could choose to qualify with the California Secretary of State, a process that requires appointing an agent

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<sup>1</sup> See, e.g., *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945) (state regulations must not place undue burdens on commerce that extend beyond state boundaries); see also, *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (burdens on interstate commerce must be proportional to the putative local benefits).

<sup>2</sup> See, e.g., *Swart Enters., Inc. v. Franchise Tax Bd.*, 212 Cal. Rptr. 3d 670, 674 (Cal. Ct. App. 2017).

<sup>3</sup> Additionally, Cal. Corp. Code § 191(c), further demonstrates that a strong nexus to California is required to be "transacting intrastate commerce" through its listing of activities that do not constitute transacting interstate business. Additional exceptions listed in the statute include, effecting sales through independent contractors, soliciting or procuring orders that require acceptance outside of California before becoming binding, or conducting isolated transactions.

for service of process, but the nature of its operations could mean that it is not transacting in intrastate business for purposes of the statute. As such, an entity's presence on the Secretary of State's database should not alone be dispositive for determining whether an entity is in scope for the 200s.

CARB must ensure that implementing regulations appropriately consider whether an entity is transacting intrastate business so that the definition of "doing business in California" only captures those entities with substantive ties to the state. The definition as currently conceived, without requiring a more substantial connection to the State, would violate California law and run afoul of the U.S. Constitution.<sup>4</sup>

## **2. "Doing business in California" should be assessed at the individual entity level and parent entities of in-scope entities should not automatically be considered in-scope.**

Irrespective of how CARB proposes to define doing business in California, the regulations need to make clear that the determination of "doing business in California" should be made at the level of an individual entity, as this approach will ensure that only those entities with sufficient ties to California are regulated. According to S.B. 261 (as amended), "Climate-related financial risk reports *may* be consolidated at the parent company level. If a subsidiary of a parent company qualifies as a covered entity . . . the subsidiary is *not required* to prepare a separate climate-related financial risk report"<sup>5</sup> (emphasis added). S.B. 219 allows similar parent company reporting for entities subject to S.B. 253: "Reports *may* be consolidated at the parent company level. If a subsidiary of a parent company qualifies as a reporting entity . . . the subsidiary is not required to prepare a separate report"<sup>6</sup> (emphasis added).

Thus, the 200s permit a reporting entity or covered entity to use a report consolidated at the level of its corporate parent to satisfy its reporting obligations. Such provisions would be unnecessary if a corporate group *had* to be considered as a whole from a revenue or doing business in California perspective solely because a subsidiary crossing a reporting threshold qualified the entire corporate group as a "reporting entity" or "covered entity." Thus, the regulations should make it clear that when determining whether a subsidiary entity is subject to the 200s, this determination should be based solely on whether the subsidiary meets the definition of doing business in California, and that if it does, only the subsidiary is subject to the 200s' reporting and disclosure obligations.

California courts have found that doing business in the state requires actively engaging in business transactions and have specifically declined opportunities to interpret the definition of "doing business in California" broadly.<sup>7</sup> This approach aligns with the bedrock principles of

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<sup>4</sup> *Southern Pacific Co.*, 325 U.S. 761; see also, *Swart Enters.*, 212 Cal. Rptr. 3d 670, 674 (Cal. Ct. App. 2017).

<sup>5</sup> California Health and Safety Code, § 38533(c)(2)(A)(iii).

<sup>6</sup> *Id.*, § 38532(b)(2).

<sup>7</sup> See, *Swart Enters.*, 212 Cal. Rptr. 3d at 679.

corporate separateness, whether accruing in common law or codified in the California statutes,<sup>8</sup> which dictate that parent and subsidiary corporations that maintain separate corporate identities can and should be considered individually for purposes of extending jurisdiction over a foreign (*i.e.*, non-California) corporation. California Corporations Code § 191(b) explicitly states that “a foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business,” or owing solely to its status as a shareholder, partner or manager of a domestic or foreign business transacting intrastate business.

California courts have also consistently interpreted “doing business in California” consistent with the jurisdictional principles that determine whether a parent company is subject to judicial process in California on behalf of its parent entity.<sup>9</sup> These principles require more than a parent-subsidiary relationship to impute a subsidiary’s California contacts to its parent and find that a foreign parent company is “doing business in California.” To find a corporate parent is subject to jurisdiction in California requires facts sufficient to support piercing the corporate veil or otherwise demonstrating that a parent has purposefully availed itself to the protection and benefits of California.<sup>10</sup> As a California court noted, “[d]isregarding the corporate entity is recognized as an extreme remedy” that should only be used in exceptional circumstances.<sup>11</sup>

Finally, relevant California caselaw places a holding company even further removed from the jurisdictional contacts of its direct and indirect subsidiaries than a typical parent company.<sup>12</sup> This, in concert with the holding company exception to “doing business” in California Revenue and Taxation Code § 23102,<sup>13</sup> demonstrates that entities should be assessed at their individual level and that parent companies are not imputed to be doing business in California solely because a particular subsidiary may be doing so. Thus, for corporate groups that are organized under a parent-subsidiary model, and especially a holding company model with a single top-level holding company parent and multiple intermediate holding companies sitting over different business

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<sup>8</sup> Cal. Corp. Code § 191.

<sup>9</sup> See *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 835-836 (Cal. Ct. App. 2000) (“Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations.”); *Empire Stell Corp. v. Sup. Ct. of Los Angeles Cy.*, 366 P.2d 502, 505 (Cal. 1961); *Communist Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 993, 41 Cal. Rptr. 2d 618, 625 (1995).

<sup>10</sup> See, *e.g.*, *Sonora Diamond*, 99 Cal. Rptr. 2d at 835-836; *DVI, Inc. v. Superior Court*, 128 Cal. Rptr. 2d 683, 687 (Cal. Ct. App. 2002); *Focht v. Sol Melia S.A.*, 2012 U.S. Dist. LEXIS 5930, \*33.

<sup>11</sup> *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995).

<sup>12</sup> For example, in *Swart Enters.*, 212 Cal. Rptr. 3d, 673, the court held, that in applying Cal. Rev & Tax Code §§ 23101 and 23102, a holding company, as a “passive investor . . . [that] had no right to manage or control the business operations of” a California company, could not “be deemed to be ‘doing business’ in California solely by virtue of holding a membership interest in an LLC doing business in California.”

<sup>13</sup> “Any corporation holding or organized to hold stock or bonds of any other corporation or corporations, and not trading in stock or bonds or other securities held, and engaging in no activities other than the receipt and disbursement of dividends from stock or interest from bonds, is not a corporation doing business in this State for the purposes of this chapter” Cal. Rev & Tax Code § 23102.

segments and operating companies (some of which are in California and some of which are not), each individual entity should be assessed to determine if the 200s apply.

**3. The definition of “revenue” should be based solely on the revenues generated by an in-scope entity and generated in California.**

Like the definition of “doing business in California,” the definition of “revenue” CARB adopts for the 200s should be based only on the revenues of the individual entity that meets the doing business definition. The revenue definition should not include revenues generated by a parent company or holding company that does not independently meet the doing business criteria. Including the revenue of a parent company or applying these thresholds to total global or national revenue for any entity, rather than revenues generated in California would effectively regulate entities based on extraterritorial conduct, raising serious constitutional concerns, as outlined above.

As such, CARB should further clarify that the financial thresholds triggering applicability—\$1 billion for S.B. 253 and \$500 million for S.B. 261—are based solely on revenue generated within California by the entity that meets the doing business in California criteria. This would further ensure that CARB is limiting the extraterritorial applicability of the 200s.

**4. Example applications of the 200s based on comments provided.**

In light of the principles outlined above, we offer the following hypothetical scenarios of appropriate and proper interpretations of S.B. 253 and S.B. 261:

- In a corporate relationship where a U.S. based corporation (not domiciled in California) with total revenues over \$1 billion has a subsidiary that is domiciled in California and the subsidiary does not meet the S.B. 261 or S.B. 253 revenue thresholds, the subsidiary would not be a covered entity or reporting entity under the 200s. Since the analysis of doing business occurs at the subsidiary level, the non-California based parent corporation also would not be subject to the 200s.

Further, if the parent’s nexus to the State is limited to the appointment of a California registered agent for service of process and the parent does not transact business in California, the parent corporation also would not be subject to the 200s.

- A non-California, U.S. corporation has global operations with consolidated revenues of \$20 billion. The corporation does not have a California agent for service and does not individually generate revenue in California. It has three subsidiaries in California, each of which is qualified to do business in California under the California Corporations Code and therefore each have a registered agent for service of process and are accordingly listed in the Secretary of State’s business entity database. California subsidiary A has revenues of \$200 million attributable to operations in California. California subsidiary B has revenues of \$700 million attributable to operations in California. California subsidiary C has

revenues of \$2 billion attributable to operations in California. For purposes of “doing business in California,” subsidiary A is not subject to the 200s because it does not meet the necessary revenue thresholds, subsidiary B is subject to S.B. 261, subsidiary C is subject to both S.B. 253 and S.B. 261, and the parent is not subject to the 200s as it does not do business in California.

Extending this scenario, the parent does not produce consolidated GHG reports or climate-related risk reports. Subsidiary B, being subject to S.B. 261, must produce a report of its material climate-related financial risks covering only its operations. Subsidiary C, being in-scope for both S.B. 253 and S.B. 261, must produce GHG and material climate-related financial risk reports covering its operations. The parent entity, along with any other subsidiaries in the corporate group, as entities that do not do business in California (for the purposes of the 200s), have no reporting obligations and are properly excluded from the reports of Subsidiaries B and C.

- A U.S. corporation with total revenues of \$5 billion is not registered with the California Secretary of State and has no California registered subsidiary entities. In its last fiscal year, it completed a single transaction in California that generated \$750 million in revenue and sold goods in the state valued at \$300 million through independent contractors. Since the entity is not a California-based corporation and the entity has not registered with the California Secretary of State because its activities do not constitute transacting business in California under California Corporations Code §191(c), it is not subject to the 200s.
- A U.S. non-California corporation has qualified to do business with the Secretary of State. The entity is a holding company of a diverse array of businesses and has no operations of its own in California other than activities concerning its internal affairs. Of its subsidiary entities, several are operating companies that are doing business in California; however, each entity, individually, has California revenues of less than \$500 million. The parent, based on consolidated financial reporting, has revenues in excess of \$1 billion from its California and non-California subsidiary entities, although the parent itself does not carry on operations or generate revenues for the enterprise. The parent is not subject to the 200s because under the California Corporations Code it does not transact intrastate business in California.
- A California corporation has total revenues of \$600 million. Of these total revenues, only \$200 million is attributable to operations in California. Only the \$200 million in revenue attributable to California operations would count as “revenue” for purposes of determining whether the entity is in scope for S.B. 261.

## **5. Materiality should be defined in accord with established legal principles.**

To ensure legal clarity and enforceability, CARB must establish precise and transparent rules—particularly regarding the definition and application of materiality under S.B. 261.

Materiality is a cornerstone of both financial and environmental disclosure frameworks, including the SEC's Regulation S-K and the Task Force on Climate-Related Financial Disclosures, which S.B. 261 explicitly references. Without a clearly articulated materiality standard, companies face significant uncertainty in determining which climate-related risks or emissions data must be disclosed under S.B. 261, increasing the risk of inconsistent reporting and potential enforcement disputes.

CARB should define materiality in alignment with established legal principles—such as whether a reasonable investor would consider the information important in making investment decisions based on the information's ability to alter the total mix of information considered—and provide guidance on how it will assess and enforce this standard. This includes specifying how materiality determinations must be made at the entity level, how third-party verification will interact with materiality judgments, and what documentation companies must retain to demonstrate compliance. Clear rules will not only support consistent and meaningful disclosures but also ensure that enforcement actions are grounded in objective, legally defensible criteria.

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Thank you for considering these comments as part of CARB's rulemaking process. We look forward to a collaborative rulemaking process that ensures California can achieve its legislative goals in a fair and legal manner.

TROUTMAN PEPPER LOCKE LLP

Very truly yours,



Shawn J. Zovod

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