December 8, 2023

California Climate Accountability Package & Anti-Greenwashing Measure

This client memorandum is a newly revised version of an alert that was published on December 4, 2023, reflecting important updates to the required disclosure deadline under California's Voluntary Carbon Market Disclosures Act.

On October 7, 2023, Governor Newsom signed into law three climate bills, the *Climate Corporate Data Accountability Act* (CCDAA) (SB 253), the *Climate-Related Financial Risk Act* (CRFRA) (SB 261, together with SB 253, are known as the California Climate Accountability Package (CCAP)) and the *Voluntary Carbon Market Disclosures Act* (VCMDA) (AB 1305). Under the CCAP, U.S. companies that satisfy monetary thresholds and do business in California will be required to publicly disclose their direct and indirect greenhouse gas (GHG) emissions and climate-related financial risks, and in an effort to combat greenwashing, the VCMDA requires all companies operating in California that make claims about net zero, carbon neutrality, significant GHG reductions or the purchase or use of carbon offsets to publicly disclose substantiation for any such claims. **These laws require significantly expanded public disclosure regarding GHG emissions (in particular, mandating Scope 3), climate-related physical and transition risks and carbon offsets, and given applicability to qualifying public *and* private companies, these laws will extend beyond what is contemplated by the U.S. Securities and Exchange Commission's climate disclosure rules**.

This summary provides a high-level overview of the scope of the CCDAA, CRFRA and VCMDA laws, what each require, when relevant reporting obligations will commence and penalties for non-compliance.

	CCDAA	CRFRA	VCMDA
Who must report?	Any "reporting entity," meaning a U.S.-organized entity that does business in California and has total annual revenues (based on the prior fiscal year) greater than $1B.	Any "covered entity," meaning a U.S.-organized entity that does business in California and has total annual revenues (based on the prior fiscal year) greater than $500M, excluding entities in the insurance market.	(1) Entities that operate within California and make climate-related claims (e.g., regarding net zero, carbon neutrality or emissions reductions) within California.[1] (2) Entities that operate within California, purchase/use voluntary carbon offsets (VCOs)[2] sold within

[1] The law is vague as to many key terms/phrases that affect the scope of applicability, including what it is to operate within California, what constitutes making a claim within California or what buying VCOs sold within California means. If interpreted conservatively, a broad construction would reasonably include any "statements" accessible to anyone in California through any medium (e.g., information on a website accessible in California) and VCOs available to anyone in California (even if purchased through a different market).

[2] VCOs are defined broadly as "any product sold or marketed in the state that claims to be a 'greenhouse gas emissions offset,' a 'voluntary emissions reduction,' a 'retail offset,' or any like term, that connotes that the product represents or corresponds to a reduction in the amount of

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	CCDAA	CRFRA	VCMDA
			California, and make climate-related claims within California. (3) Business entities marketing or selling VCOs within California.
What must be reported?	Scope 1, Scope 2 and Scope 3 GHG emissions, defined as follows: ▪ ***Scope 1***: all direct GHG emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities. ▪ ***Scope 2***: indirect GHG emissions from consumed electricity, steam, heating or cooling purchased or acquired by a reporting entity, regardless of location. ▪ ***Scope 3***: indirect upstream and downstream GHG emissions, other than Scope 2 emissions, from sources that the reporting entity does not own or directly control, which may include, but are not limited to, purchased goods and services, business travel, employee commutes and processing and use of sold products.	Companies must disclose in a climate-related financial risk report (which may be consolidated at the parent company level): ▪ ***Climate-related financial risks***, in accordance with the Recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) or any subsequent framework that succeeds the TCFD (or equivalent framework); and ▪ measures adopted to reduce and adapt to any identified climate-related financial risks. "***Climate-related financial risk***" means "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."	(1) Entities that operate within California and make climate-related claims within California are required to provide "proof" to substantiate any such claims, including how interim progress towards any goals/targets described in these claims is measured and whether there is independent third-party verification of these claims or related data. (2) Entities that operate within California and purchase/use VCOs sold within California are required to provide factual information on the offset itself, including information identifying the seller and registry/program, project ID number and name, offset project type and site location and what protocol was used to estimate emissions reduction or benefits. (3) Business entities marketing or selling VCOs within California must provide specific details on the carbon offset project, including on the protocols, location, timelines, project type, conformance to existing standards, durability, existence of verification and annual emissions reduced or carbon removed.
When do the reporting	Initial reports covering Scope 1 and Scope 2 are due in 2026 for the prior fiscal year (specific	By January 1, 2026, and biennially (i.e., every two years) thereafter.	Is effective beginning January 1, 2024, however, required disclosures **appear not to be due until January 1, 2025**, with

greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted."

	CCDAA	CRFRA	VCMDA
obligations commence?[3]	due date TBD) and annually thereafter. Beginning in 2027, reporting entities must include Scope 3 emissions, which must be filed no later than 180 days after public disclosure of Scope 1 and Scope 2 emissions.		updates due at least annually thereafter.[4]
Is assurance required?	Reporting entities are required to obtain an "assurance engagement" by an independent, third-party assurance provider to "limited assurance" levels of Scope 1 and Scope 2 disclosures for 2026, and a heightened "reasonable assurance" level from 2030. Assurance requirements for Scope 3 disclosures may be required (subject to further regulation to be passed by January 2027). If so, assurance will be performed at a "limited assurance" level beginning in 2030.	In order for the California Air Resources Board (CARB) to consider descriptions of GHG emissions (or voluntary mitigation thereof) disclosed in the report, such claims must be verified by a third-party, independent provider.	Not mandatory, but any third-party verification voluntarily used must be disclosed.
What are the consequences for non-compliance?	An administrative penalty (of up to $500,000 in a reporting year) for non-filing, late filing or other non-compliance, with a carve-out for misstatements of Scope 3 emissions made with a reasonable basis and disclosed in good faith. The only penalties that may be assessed with respect to Scope 3 reporting	An administrative penalty (of up to $50,000 in a reporting year) for non-disclosure or publication of an inadequate or insufficient report. In imposing penalties, CARB will consider all relevant circumstances, including the reporting entity's past and present compliance and whether, and if so, when, good-faith measures were taken to comply.	Violations of the law are subject to a civil penalty up to $2,500 per day per violation, for every day that information on the entity's website is inaccurate or unavailable, not to exceed $500,000.

[3] Upon signing the CCDAA and CRFRA into law, Governor Newsom stated that he believed the existing timelines for these two laws were unrealistic, and suggested that revised timelines would be announced sometime in 2024. *See* https://www.gov.ca.gov/wp-content/uploads/2023/10/SB-253-Signing.pdf and https://www.gov.ca.gov/wp-content/uploads/2023/10/SB-261-Signing.pdf.

[4] On November 30, 2023, Assemblymember Jesse Gabriel, author of the California Voluntary Carbon Market Disclosures Act (VCMDA), sent a letter of intent to the California State Assembly. The purpose of this letter was to clarify that, although the VCMDA goes into effect on January 1, 2024, the required disclosures under the law are not due until January 1, 2025. Assemblymember Gabriel also stated that he plans to formalize this intent once the California Assembly reconvenes on January 3, 2024. We will continue monitoring developments as this moves forward.

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	between years 2027 to 2030 are for non-filing. In imposing penalties, CARB will consider all relevant circumstances, including the reporting entity's past and present compliance and whether, and if so, when, good-faith measures were taken to comply.	If an entity fails to complete a compliant report, it must provide the recommended disclosures to the best of its ability, justify any gaps in such disclosures and describe steps it will take to complete the reporting requirements.	
What are the next steps?	By January 1, 2025, CARB must adopt specific regulations around the annual reporting and assurance engagements, which shall include the following: ▪ disclosures must take into account information about acquisitions, divestments, mergers and other structural changes that can affect GHG emissions; ▪ disclosures must conform to specified standards, frameworks and guidance from the GHG Protocol (including corporate accounting and reporting and corporate value chain (Scope 3) standards); and ▪ regulations must specify, among other specifics: the date by which reports are due in 2026; future changes to public disclosure requirements (not before 2029); and changes to appropriate GHG accounting and reporting standards (not before 2033).	CARB will adopt regulations authorizing it to seek an administrative penalty. CARB will contract a climate reporting organization to review a subset of publicly disclosed climate-related financial risk reports (by industry) and publish a report with its findings biennially. Such report will include an analysis of climate-related financial risks facing California and its economically vulnerable communities and identify non-compliant reports.	No additional regulations or other administrative action is required before the law goes into effect.

	CCDAA	CRFRA	VCMDA
	CARB must also adopt regulations authorizing it to seek administrative penalties.		

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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