Paul | Weiss

CLIENT MEMORANDUM

October 23, 2024

Updates to California Climate Accountability Package & Anti-Greenwashing Measure

On September 27, 2024, Governor Newsom signed into law Senate Bill 219 (SB 219), which amends the *Climate Corporate Data Accountability Act* (CCDAA) (SB 253) and *Climate-Related Financial Risk Act* (CRFRA) (SB 261, together with SB 253, are known as the California Climate Accountability Package). Under the California Climate Accountability Package, 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. Importantly, SB 219 gives the California state board an additional six months to pass implementing regulations required under the CCDAA, but does not delay the reporting deadlines subject companies must meet.

In October 2023, in addition to the California Climate Accountability Package, and in an effort to combat greenwashing, California also passed the *Voluntary Carbon Market Disclosures Act* (VCMDA) (AB 1305). 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 apply to qualifying public *and* private companies. In various significant respects, these laws extend well beyond the scope of the SEC climate disclosure rules, which currently are stayed pending the outcome of litigation**.

This summary provides a high-level overview of the scope of the CCDAA and CRFRA (as amended by SB 219), as well as the VCMDA, what each require, when relevant reporting obligations 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. SB 219 allows emissions reporting to be consolidated at the parent company level.	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.

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
When do the reporting obligations commence?[3]	Initial reports covering Scope 1 and Scope 2 are due in 2026 for the prior fiscal year (specific due date TBD) and annually thereafter. Beginning in 2027, reporting entities must include Scope 3 emissions, on a schedule to be specified by CARB (initially within 180 days after Scope 1 and Scope 2 disclosures were made).	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 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.

[3] The California Climate Accountability Package is currently being challenged in litigation in *Chamber of Commerce of the United States of America et al. v. CARB*. The plaintiffs allege that SB 253 and SB 261 violate the First Amendment and other constitutional limitations. The litigation remains ongoing, and the outcome of the litigation will ultimately impact the substance and timing of the reporting obligations.

[4] On January 3, 2024, a statement of legislative intent by Assembly Member Jesse Gabriel, author of the VCMDA, was published in California's Assembly Daily Journal. The statement clarifies that, although the VCMDA does not specify the date on which the first set of disclosures must be posted to a company's website, it was the author's intent that the first annual disclosure be posted by January 1, 2025. Assembly Bill 2331 (AB 2331), introduced by Assembly Member Gabriel in February 2024, proposed, among other things, to delay initial disclosures under the VCMDA by six months, until July 1, 2025. AB 2331 failed to pass the California legislature before the close of the California legislative session. Without further legislative action, an initial disclosure deadline of January 1, 2025 remains in place.

	CCDAA	CRFRA	VCMDA
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 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.	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. 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.	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.
What are the next steps?	By July 1, 2025 (initially 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	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.

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	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 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:

Mark S. Bergman
+1-202-223-7300
mbergman@paulweiss.com

Melinda Haag
+1-628-432-5110
mhaag@paulweiss.com

Christodoulos Kaoutzanis
+1 212 373 3445
ckaoutzanis@paulweiss.com

Randy Luskey
+1-628-432-5112
rluskey@paulweiss.com

Raphael M. Russo
+1-212-373-3309
rrusso@paulweiss.com

Daniel J. Toal
+1-212-373-3869
dtoal@paulweiss.com

David Curran
+1-212-373-2558
dcurran@paulweiss.com

Director of Sustainability & ESG Advisory Practice Madhuri Pavamani, ESG associate Amber Kennedy and Practice Management Consultant Jane Danek contributed to this client memorandum.