March 21, 2025

Chair Liane M. Randolph
California Air Resources Board
1001 I Street, Sacramento, CA 95814

Re: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219

Dear Chair Randolph,

On behalf of US SIF: The Sustainable Investment Forum, I welcome the opportunity to provide this comment letter in response to the "Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219." The California climate disclosure legislation creates an important regime that will provide investors in California and the broader capital markets with the comparable and reliable information they need to assess public and private companies' climate-related financial risks.

These comments include two thematic issues for the California Air Resources Board (CARB) to consider and responses to specific questions in the solicitation.

US SIF is a membership organization representing 180 investors and trillions of dollars of assets under management. Our members represent investors throughout the capital markets value chain - from asset managers, managing billions in retirement dollars for average Americans, to data providers, financial advisors, and community development financial institutions, supporting local economies.

Climate Risk Is Financial Risk

It is essential that the rules adopted by CARB include reporting from companies on the corporate value at risk from the physical impacts of climate change and on what companies are doing to build resilience to these risks.

The National Centers for Environmental Information (NCEI) catalogued 27 individual climate and weather disasters costing over $1 billion each in 2024. The total cost of these 27 events is estimated to be $187.2 billion, making 2024 the fourth costliest year on record. Of course, this calculation does not include the recent devastating wildfires in Los Angeles, which, as of January, are predicted to generate between $250 and $275 billion in economic loss.

Investors have been calling for increased disclosure around climate-related risks and other long-term systemic risks for decades because they recognize the impact these factors have on their financial returns.

Both investors and companies acknowledge that climate change has a material impact on business. The *US SIF Sustainable Investing Trends 2024/2025 Report* found that climate change is the most frequently considered environmental factor by investors (80%). The report also found that companies reporting headline climate-related risk to the Securities and Exchange Commission (SEC) have grown threefold since 2018. In particular, the LA wildfires and other natural disasters emphasize the need for increased information about the financial impacts of physical climate risks.

Long-Term Fiduciary Duty

The California climate disclosure rules are being developed against a backdrop of long-term vs. short-termism in capital markets. Without adequate climate risk disclosures, investment fiduciaries will not have the information they need to implement their fiduciary duties toward the assets of long-term American savers.

Opponents of climate change reporting often misstate both investor and corporate fiduciary duties. They typically refer to only some of the applicable investor and corporate legal duties, focusing exclusively on short-term issues. Both investor fiduciaries and corporate directors have long-term legal obligations that make climate change highly financially relevant. This myopic fixation on only short-term risks and opportunities will likely undermine American companies' long-term competitive position and, therefore, impact domestic investor returns. According to McKinsey & Company, companies managed with a long-term view substantially outperform their short-term peers over time.

The investor fiduciary duty of loyalty includes the Duty of Impartiality, which requires fiduciaries to balance the conflicting interests of different beneficiary groups in good faith. For instance, 25-year-old and 75-year-old beneficiaries have inherently different risk tolerances and investment time horizons, and fiduciaries cannot prioritize one group's interests over the other. This duty has significant implications for climate-related long-term risks and performance considerations that fiduciaries must address. The U.S. Supreme Court affirmed this principle in the 1996 case *Varity v. Howe*, stating that the common law of trusts mandates preserving assets for both present and future claims while impartially considering the interests of all beneficiaries. Similarly, California's Uniform Prudent Investor Act explicitly requires trustees to act impartially when investing and managing trust property, ensuring that the differing interests of multiple beneficiaries are fairly considered.

Nonprofit institutional investors and trust fiduciaries – like foundations and endowments—also have what is called a Duty of Obedience to their charitable purpose. For these entities with a perpetual or long-term horizon, climate change impacts are likely to be very relevant to their long- and short-term mission goals. For example, California's Uniform Prudent Management of

Institutional Funds Act (section 18503) requires that "an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund." For many foundations and endowments with inter-generational or perpetual existence goals, climate change will present material considerations for management of long-term risks to achieve those goals.

In Delaware, where 66% of Fortune 500 companies are incorporated, corporate law requires boards to manage companies with a long-term perspective. The Delaware courts reinforce this obligation, as seen in the 2024 *McRitchie v. Zuckerberg* opinion. On page 73, the ruling states, "The fiduciary duties owed by directors of a Delaware corporation require the directors to seek to maximize the value of the corporation over the long term for the benefit of the stockholders as residual claimants to the value created by the specific firm that the directors serve."

Standardizing Corporate Reporting – Specific Responses

In response to question 3 about external standards and question 13 about what climate risk disclosures companies are already reporting, we recommend that CARB explore transitioning to the International Sustainability Standards Board (ISSB) framework over time. As of November 2024, over 1,000 companies and 30 jurisdictions are using this framework. Therefore, streamlining the California requirements with what a significant number of companies and jurisdictions are already using would be beneficial to investors, companies, and regulators.

As of October 2023, the Task Force on Climate-related Financial Disclosures (TCFD) disbanded because the ISSB standards represent the "culmination of the work on the TCFD." While the law currently gives companies the option to report against the ISSB standards, moving exclusively to those standards over time would align California with a standard that is already being used by a significant segment of the market.

In response to questions 1 and 2 about which companies should report under the rules, here are a few items to consider:

- The ISSB Standards mandate that sustainability-related financial disclosures align with the reporting entity used for the corresponding financial statements. If CARB's implementing guidance or regulations permit the use of existing consolidated disclosures, it could help lower compliance costs.
- At a minimum, any subsidiary in which the parent holds at least a 20% ownership stake should be included in reporting requirements. This aligns with the SEC's standards for S-X 3-05 and S-X 8-04, as outlined in the SEC's Financial Reporting Manual.
- It is critical that the thresholds determining which companies are required to report are clear so that the market can respond appropriately.

Additionally, questions 10 and 11 ask about the timing of companies' biennial reports on climate-related risks and opportunities. The ISSB standards require companies to submit their ISSB reports at the same time as their related financial statements. To reduce compliance costs and

challenges, CARB could consider aligning with this timing requirement, especially if CARB moves to standardize ISSB reporting over time.

Conclusion

When developing the California climate risk disclosure rules, CARB should consider the physical risks associated with climate change, the fiduciary duties that investors have to long-term savers, transitioning to ISSB reporting over time and establishing thresholds that provide clarity as to who must report.

Thank you for considering our comments. Do not hesitate to let us know if we can be of further assistance. Our Director of Policy, Rachel Curley (rcurley@ussif.org), would be happy to answer any questions.

Sincerely,

Maria Lettini
CEO, US SIF