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California Bill on Climate-Related Disclosure

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California Senate Bill 253, the **Climate Corporate Data Accountability Act**, if passed, will require all companies that do business in California and report over $1 billion in annual revenue to report on the full range of their emissions. Additionally, the disclosure would be subject to third-party review. The bill, which if enacted would become part of California's Health and Safety Code, was introduced on January 30, 2023 and is based on legislation that failed to advance in the previous session. The bill would require the California State Air Resources Board to adopt regulations, on or before January 1, 2025, requiring companies to publicly disclose their Scope 1, Scope 2, and Scope 3 emissions to an emissions registry. The reporting requirement would commence in 2026. This bill forms part of a broader climate accountability package that was introduced in the California Senate comprising three bills: the Climate Corporate Data Accountability Act (SB 253), the Climate-Related Financial Risk Act (SB 261), and the Fossil Fuel Divestment Act (SB 252).

This development is of particular interest given that the SEC is **expected** to issue its final climate-related disclosure rule in April 2023. The California bill differs in certain respects from the proposed SEC rule. Among other things, the California bill would apply to all "partnerships, corporations, limited liability companies, and other business entities" with over $1 billion in annual revenue, not just publicly traded companies. The California bill would require third-party audits of all emissions data, including for Scope 3 emissions, whereas the SEC rule is expected to only require third-party audits for Scope 1 and 2 emissions data. And while the SEC proposal is national in scope, the California bill has geographic limitations, applying only to entities "that do business in California."

There has been speculation that the SEC may eliminate or otherwise reduce the disclosure requirements regarding **Scope 3 emissions**. In its currently proposed from, the SEC rule would require issuers to disclose Scope 3 greenhouse gas emissions metrics only if deemed material, or if the registrant has set a greenhouse gas emissions reduction target or goal that includes its Scope 3 emissions. Those disclosures, if made, would not be subject to third-party attestation.

The California bill proposes the same treatment for Scope 1, 2 and 3 emissions, including mandatory disclosure and attestation.

Taking The Temperature: The not-quite-overlapping California and SEC climate-disclosure proposals highlight the challenges companies face due to the lack of consensus on appropriate sustainability reporting. Reporting on Scope 3 emissions is particularly difficult because, among other things, by definition the relevant information is in the possession of entities in the company's value chain, not with the issuer itself, raising questions about the reliability and accessibility of that information as well as the quality of the data on which it is based. Requiring third-party attestation of Scope 3 emissions reporting, as California proposes, only heightens the risk and uncertainty around this disclosure item. On the other hand, California is not an outlier on Scope 3: the International Sustainability Standards Board, for instance, recommends that companies disclose information on Scopes 1, 2 and 3 greenhouse gas emissions. But more fundamentally, the existence of divergent disclosure regimes governing the same company is not tenable over the long term. Globally and nationally, regulators and regulated entities are seeking greater consensus on climate reporting requirements. We believe that is the direction of travel, but companies will need to wade through a thicket of guidance that at times is inconsistent before there is something resembling agreement globally on appropriate climate disclosure.