September 29, 2023

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: **VETO REQUEST: Senate Bill 253 (Wiener): Climate Corporate Data Accountability Act**

Dear Governor Newsom,

The above-noted organizations are writing to respectfully request your veto on SB 253, for which we have maintained an Oppose Unless Amended position, and to express specific concerns regarding the inclusion of Scope 3 Category 15 "financed emissions" in the disclosure requirements, as well as to highlight the high potential for conflict between the bill and climate disclosure regimes currently pending at the federal and international level. Per your comments to press on September 17, 2023, we understand that it is your intention to sign this measure into law. While our preference would be to veto legislation that continues to mandate directives that contain serious compliance-related concerns, we understand that in those same statements, you also stated an intention to "clean up" the mandate after signing it into law; in the spirit of establishing a productive dialog with business community stakeholders who will be impacted by the measure's provisions, we share with you the below financial services industry-specific information and urge you to consider, at a minimum, eliminating or nuancing Scope 3 reporting in a way that addresses our concerns. Our organizations remain committed to being a resource to your team and to continue a dialog on alternative or subsequent legislation.

In an attempt to help shape sound policy that will also result in reliable data and to address our concerns about Scope 3 Category 15 financed emissions while acknowledging proponents' desire to include some aspect of Scope 3 reporting, the above noted organizations proposed draft amendments that would remove our opposition. In addition to several important technical changes, we propose tying Scope 3 reporting to an entity's publicly stated targets and goals. This solution threads the needle between addressing our concerns as it relates to reporting of Scope 3 Category 15 data – as outlined below – without eliminating the entirety of Scope 3 data, and helping protect against corporate greenwashing – which the proponents have indicated is a primary driver for the broad inclusion of Scope 3 reporting without traditional standards of materiality or scalability. Even with this change, SB 253 would mandate climate-related reporting from a significant number of entities that are not already covered by the California Global Warming Solutions Act of 2006 and that are not anticipated to be covered by the SEC's rulemaking, which is limited to publicly traded companies.

While we appreciate California's interest in being a leader in climate policy, we also believe that transformative policy of this nature must be nuanced in a way that acknowledges very real compliance obligations. Those nuances help ensure greater and better compliance by reporting entities and therefore better data, which will be then used to fuel both further conversations on climate policy as well as public discourse. Accuracy is paramount. Because SB 253 lacks nuance, will result in inaccurate data and presents conflict with other disclosure regimes, we must urge your veto on SB 253, however we remain committed to being a resource on this topic and to continue a dialog on alternative or subsequent legislation that eliminates Scope 3 Category 15 reporting until agreed-upon methodologies for calculating Scope 3 emissions are established.

As drafted, SB 253 creates a corporate disclosure regime designed to provide emissions information to the general public. The bill would require U.S. companies doing business in California to disclose annually audited amounts of Scope 1, 2, and 3 greenhouse gas emissions (GHGs) in accordance with the Greenhouse Gas Protocol (GHG Protocol). We are concerned that the inclusion of financed emissions data within Scope 3 requirements is counterproductive to the stated goals of the legislation. For emissions information to be useful to the public and actionable to policymakers, it must be clear, consistent, and easy to interpret. The information reported from the disclosure of Scope 3 financed emissions will not meet that standard without agreed-upon methodologies for calculating emissions.

Under SB 253, companies would be required to measure not only the GHGs of their own operations (included within classifications known as “Scope 1” and “Scope 2”) but also GHGs that result from the “value chains” of their products and services (“Scope 3”). Scope 3 GHGs measure emissions from suppliers and customers, including those emissions generated by how individual consumers obtain, use, and dispose of their products. Scope 3 guidance also measures “financed emissions” of certain companies through their investment and lending activities. Reported GHGs of banking institutions would therefore include not only the Scope 1, 2, and 3 GHGs of their own operations but also a portion of Scope 1, 2, and 3 emissions of each borrower or company in their loan portfolios.

Banks currently estimate that it may take a minimum of twelve to as many as 24 months for updated and reliable measurements of Scope 3 GHGs to be estimated across their borrower value chains. In addition to significantly complicating a bank’s process to assess the reasonableness of estimates received by other individual companies in the related value chain, use of such stale data will normally not be considered by auditing firms to be a “reasonable basis” upon which estimates can be made at a specific point in time. For all practical purposes, existing auditing standards will largely render the safe harbor included within SB 253 to be irrelevant. Considering this, a final law must expand or otherwise clarify the proposed safe harbor so companies that do not have effective internal controls over GHG accounting systems may, nevertheless, be considered to have made estimates in good faith. This must be coordinated with the Securities and Exchange Commission and the auditing industry.

It is also important to note that financed emissions requirements will additionally scope in the various state and local municipalities of California that issue municipal bonds. We do not believe that SB 253 intends to force such onerous and costly processes on its local governments. However, this is what would be required, as banks and other financial institutions are significant holders of such debt.

Banks and other financial services institutions are uniquely positioned as intermediaries in our economy – financing everything from the corner store to the city government to the multi-national corporation. Consequently, requiring banks to calculate and report their “financed emissions” would sweep in a tremendous amount of duplicative information. The GHG Protocol acknowledges that significant double counting will occur based on where the borrower exists within a value chain – be it a supplier, a customer, or the ultimate consumer. While SB 253 proposes to limit the disclosure requirement to reporting entities with more than $1 billion in annual revenue, bank customers could find it costly and challenging to supply detailed and reliable value chain information to their lenders, especially without an accepted standardized calculation methodology. In addition to large corporations, information from consumers, small businesses, municipal entities, and federal agencies will be needed. Without a standardized calculation methodology, reporting will depend primarily on untimely, inconsistent, and unreliable practices and estimates from this diverse set of entities.

Further, the financed emissions reported by banks and other financial services institutions are likely to reflect little other than the asset size of the entity. Larger entities will appear to have greater emissions because they report the entire value chain information from more or larger customers. Smaller entities will appear to have lower GHG emissions only because they serve fewer customers. If the goal of the legislation is to identify high GHG emitters, including financed emissions will only muddy the water. Indeed, many banks and financial services institutions are working with their customers to assist in climate transition efforts, and aggregated financed emissions amounts may distort that positive work.

Certain stakeholders believe that the Scope 3 estimation process can quickly be performed by using public databases of emission factors often used by companies in estimating GHGs. This is false. There are hundreds of possible data sources for GHG emissions, which vary by industry sector and all with different starting points and levels of granularity and accuracy. Methodologies for these emission factor estimates are only just being developed for limited sectors and even where methodologies have been developed, they are not universally accepted by all banks or other businesses. Further, sustainability-related auditing standards have yet to be proposed, putting into question the extent of detailed documentation needed to develop and support this information. Therefore, it will take several years before reliance on such factors can be achieved, and due to expected improvements in energy technologies, some question whether such factors will ever provide reliable information on a timely basis. As a result, at this stage, financed emission disclosures could be subject to incomplete reporting and inconsistent application, yielding inaccurate and potentially misleading results. Relying on those results could produce ineffective or even counterproductive policy decisions, undermining the stated purpose of SB 253 to create a comprehensive and actionable view of corporate pollution in California.

That outcome is made more likely given that SB 253 differs from but is being considered at the same time as the Security Exchange Commission (SEC) proposal to require GHG disclosures to help investors assess climate-related risk. In addition, significant efforts are underway internationally through the International Sustainability Standards Board (ISSB) of the International Financial Reporting Standards Foundation (IFRS) – to which the SEC is contributing – to create detailed, global climate disclosure requirements that are consistent and interoperable for public companies. The initial ISSB standards are scheduled to take effect in January 2024, and the SEC standards could be effective shortly thereafter. It remains unclear how the SEC and ISSB standards will or will not conflict with or duplicate requirements. We strongly recommend that any California requirements align with, or be compatible with, federal standards or other international standards incorporated by U.S. authorities.

The GHG Protocol can potentially be a useful tool for companies to aid their work toward specific targets related to their climate footprints. Because agreed-upon methodologies do not yet exist, accurate and actionable public reporting will be difficult and expensive, and the inclusion of financed emissions in the reporting requirements will make it difficult for consumers and policymakers to identify more useful and actionable data.

Consequently, because SB 253 lacks compliance-necessary nuance to Scope 3 reporting and specifically continues to mandate reporting of Scope 3 Category 15 financed emissions, we must respectfully urge your veto on the measure. Should you sign the measure and pursue subsequent clean up legislation, our organizations stand by as a resource and look forward to working with you to resolve our above-stated concerns.

Sincerely,

California Bankers Association
American Bankers Association
California Credit Union League

Cc: The Honorable Scott Wiener, Member, California State Senate
Grant Mack, Deputy Legislative Secretary, Office of the Governor

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