

## **Chapter 3.1.A: Disclosure of Corporate Associations, Consultants or Advisors, and Knowledgeable Employees**

### **3.1.A.1 Background**

The Cap-and-Trade Regulation (Regulation) requires participating entities to disclose certain information related to their corporate associations, Cap-and-Trade Consultants and Advisors, and employees who have access to the entities' market positions. At its April 2014 and September 2014 Board Hearings, the California Air Resources Board (ARB) adopted amendments to the regulations related to these disclosures. The amendments were approved by the Office of Administrative Law and became effective on July 1, 2014 and January 1, 2015, respectively. This document provides guidance on the scope and scale of information required to be submitted to ARB pursuant to the amended Regulation for the following regulatory requirements:

- (1) Determination and disclosure of corporate associations between entities (sections 95830 and 95833);
- (2) Disclosures related to Cap-and-Trade Consultants or Advisors (section 95923);
- (3) Disclosures related to employees with knowledge of employer's market position (section 95830).

Information on corporate associations, Cap-and-Trade Consultants and Advisors, and employees with knowledge of market position is first submitted to ARB during the initial application to register with ARB for an account in the Compliance Instrument Tracking System Service (CITSS) by submitting the information contained in the CITSS Corporate Associations and Structure Form (Form #3). Updates to submitted information may also be completed using Form #3, which is available at: <http://www.arb.ca.gov/cc/capandtrade/markettrackingsystem/markettrackingsystem.htm#forms>.

Form #3 includes instructions for completing the necessary information fields. Section 3.1.A.2 of this document describes how other documents may be used to disclose corporate associations. These may be appended to Form #3.

The rest of this chapter describes the timing of the required disclosures, including deadlines related to the amendments that became effective January 1, 2015, and is also presented in the following table:

**Timing of Disclosure Update Requirements**

<p>Within 30 days of a change to previously submitted information</p>	<ul style="list-style-type: none"> <li>- Submit changes to direct or indirect corporate associations with registered entities.</li> <li>- Submit changes to direct corporate associations with unregistered entities involved in a line of direct or indirect corporate associations between two registered entities.</li> <li>- Submit all changes in Cap-and-Trade Consultants and Advisors.</li> </ul>
<p>Within one year of a change to previously submitted information</p>	<ul style="list-style-type: none"> <li>- Submit changes related to employees with knowledge of the entity’s market position.</li> <li>- Submit changes to direct corporate associations that are not registered and which are not involved in the line of direct or indirect corporate associations between two registered entities.</li> </ul>
<p>By the auction application deadline (<i>for entities intending to apply for participation in an auction</i>)</p>	<ul style="list-style-type: none"> <li>- Submit all changes related to previous disclosures of direct and indirect corporate associations.</li> <li>- Submit all changes in Cap-and-Trade Consultants and Advisors.</li> </ul>

**3.1.A.2 Information Disclosure Related to Corporate Associations**

A corporate association exists when one entity has a degree of ownership or control over another entity. When this degree of ownership or control gives the first entity effective control over the second entity, the regulation considers the two entities to have a “direct” corporate association. At this level of control, ARB assumes the two entities will operate in the market in a coordinated fashion. This is why entities with a direct corporate association share a single holding and purchase limit, but face looser restrictions on sharing information.

When the first entity does not have a controlling interest in a second entity, but has a significant level of control, the regulation considers the two entities to have an “indirect” corporate association. While ARB does not presume that entities with this level of control necessarily coordinate market activities, the level of control is sufficient for ARB to be concerned about potential coordination and requires disclosure of these relationships.

**How does an entity determine whether it has any corporate associates?**

The level of disclosure of direct or indirect corporate associations required depends on whether the associated entity is registered in the California Cap-and-Trade Program or another linked program.

The following lists provide thresholds specified in the regulation that determine if an entity has a direct corporate association or an indirect corporate association with another entity. (The regulation refers to these measures as “indicia.”)

Direct Corporate Associations

A registered entity has a direct corporate association with another entity whenever:

1. One entity holds more than 50% of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity; or
2. One entity holds or can appoint more than 50% of common directors of the other entity; or
3. One entity holds more than 50% of the voting power of the other entity; or
4. In the case of a partnership other than a limited partnership, holds more than 50 percent of the interests of the partnership; or
5. In the case of a limited partnership, the entity controls the general partner; or
6. In the case of a limited liability corporation, one entity owns more than 50 percent of the other entity regardless of how the interest is held; or
7. The two entities share a common parent that is not registered with the California Cap-and-Trade Program and the parent has a direct corporate association with both entities. For the purposes of satisfying disclosure requirements, two entities have a common parent when there is a common entity of which the two entities are subsidiaries. There does not need to be an immediate relationship between the common parent and the registered entities (i.e., the common parent may be several levels up from the subsidiaries); or
8. A publicly-owned electric utility or joint powers agency that is the operator of an electricity generating facility in California has a direct corporate association with:
  - a. The operator of another electricity generating facility in California if the same entity operates both facilities; or
  - b. An electricity importer if the same entity operates the generating facility in California and is the entity importing electricity.; or,
9. The two entities are connected through a line of more than one direct corporate association, even if the second entity is not registered. An entity with a direct corporate association with a second entity will have a direct corporate association with any entity with whom the second entity has a direct corporate association.

### Indirect Corporate Associations

In general, a registered entity has an indirect corporate association with another entity if:

1. Both entities are registered in the Cap-and-Trade Program; and
2. No direct corporate association exists; and
3. The controlling entity's percentage of ownership is more than 20% but less than or equal to 50% (after multiplying the percentages at each link in the chain of corporate associations). For the purposes of this calculation, if one entity controls the general partner of a limited partnership, then the measure of control for that relationship will be set to 100%.

There are instances in which entities may have an indirect corporate association with entities that are not registered in the Cap-and-Trade Program. Section 95830(c)(1)(H) requires disclosure of unregistered entities with whom a registered entity has an indirect corporate association if the unregistered entity is part of a chain of control between two registered entities.

### **How Are the Measures of Control Applied?**

The measures of control ("indicia" in the Regulation) are used to evaluate the degree of control along a chain of multiple associated entities. The calculation stops when (1) the last entity in the chain does not have any control over another entity, or (2) an entity in the chain does not have a level of control above 20% over the next entity in the chain. The calculation applies to control going in one direction. For example, Entity A controls Entity B which controls Entity C. Suppose instead Entity A has some control over Entity B, and Entity C does as well. Then the calculation goes from Entity A to Entity B and from Entity C to Entity B, not from Entity A to Entity B to Entity C.

#### Example 1: Indirect Corporate Association with Registered Entity

Entity A, which is registered in the Cap-and-Trade Program, owns 21 percent of the listed shares of Entity B, a food processing facility that is a covered entity in the Cap-and-Trade Program. This association between Entity A and Entity B is an indirect corporate association because both entities are registered in the Cap-and-Trade Program and the ownership interest is more than 20 percent but does not exceed 50 percent. Accordingly, Entity A must disclose this relationship with Entity B and, likewise, Entity B must also disclose its association with Entity A.

#### Example 2: Corporate Association with a Non-Registered Entity

Entity A owns 50 percent of the listed shares of Entity C, which is not registered under the Cap-and-Trade Program. Entity A does not need to disclose the association with Entity C because Entity C is not registered and does not fit the

criteria for a disclosable indirect corporate association.

However, if Entity C has 50 percent control over Entity D, which is registered in the Cap-and-Trade Program, then Entity A must disclose Entity C and Entity D. Under this scenario, disclosure is required as long as Entity A has more than 20 percent control of Entity D through its control of Entity C.

Example 3: Direct Corporate Association with a Non-Registered Entity

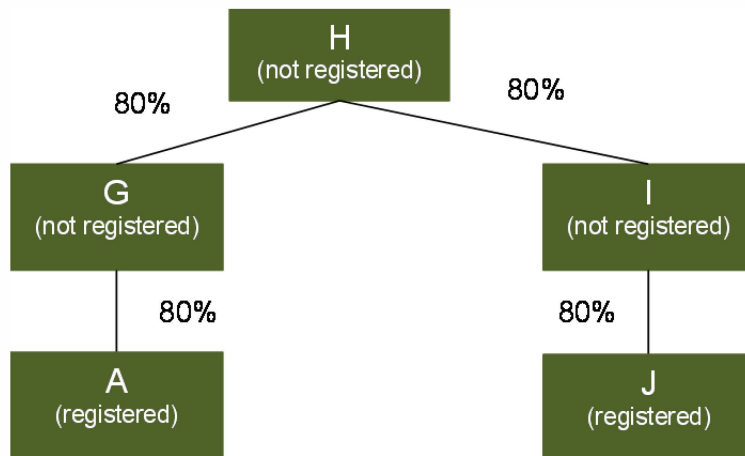
Entity A has 51 percent of the voting rights to Entity D, a dairy farm in Vermont that is not subject to the Regulation. Entity A has a direct corporate association with Entity D. However, if Entity A opts to disclose unregistered direct corporate associations pursuant to section 95830(c)(1)(H) (as described later in this section) Entity A would not be required to disclose the relationship because Entity D is (1) not registered, and (2) not a participant in a related market.

Example 4: Direct Corporate Association with a Non-Registered Entity through a One-Level Common Parent

Entity E is unregistered and owns 75 percent of Entity A which is registered. Entity E also owns 51 percent of the listed shares of Entity F which is registered. Under section 95833(a)(3)(A), Entities A and F have a direct corporate association that must be disclosed because they have a common parent – Entity E – and both Entity A and Entity F are registered (regardless of the fact that Entity E is not registered). Both entities A and F have the responsibility to disclose their relationship with Entity E (and each other) when disclosing their direct corporate associations.

Example 5: Two-Level Common Parent

Entity A is registered and is owned 80 percent by Entity G, which is not registered. Entity G is owned 80 percent by Entity H, which is not registered. Entity H owns 80 percent of Entity I, which is not registered and which owns 80 percent of Entity J, which is registered. Entities A and J have a common parent under Section 95833(a)(3)(A) because Entity H has a direct corporate association with both Entities A and J. Section 95833(a)(3)(B) states that an entity with a direct corporate association with a second entity has a direct corporate association with any third entity with whom the second entity has a direct corporate association. As such, Entities A and J must disclose each other, as well as Entity H. In addition, Entities A and J must disclose Entity G and Entity I since these entities are involved in the line of corporate association between two registered entities. See section 95833(c)(1)(H).



Example 6: Indirect Corporate Association for Multiple Level Relationships

Entity A owns 70 percent of the stock of Entity O. Entity O owns 40 percent of the stock of Entity P. All three of the entities are registered. Under section 95833(a)(2), Entity A has a direct corporate association with Entity O. Under section 95833(a)(4), Entity A has an indirect corporate association with entity P because the indicia of control is greater than 20 percent ( $0.7 \times 0.4 = 0.28$ ). Entity A must disclose its corporate associations with both Entity O and Entity P. Entities O and P must also disclose their corporate associations with Entity A and each other.

Example 7: Direct and Indirect Corporate Associations for Multiple Level Relationships

Entity A has 60 percent control over Entity B. Entity B has 60 percent control over Entity C. Entity C has 55 percent control over Entity D. Entity D has 30 percent control over Entity E. Entity E has 100 percent control over Entity F. Entities A, B, C, D, and F are registered. Entity E is not registered. Section 95833(a)(3) of the California Cap-and-Trade regulation states that an entity has a direct corporate association with a second entity, regardless of registration status, if the two entities are connected through a line of more than one direct corporate association. This indicates, in the above example, that the relationship between A and D is established through a series of bilateral calculations of control, not a continuous calculation along several links. As such, entities A, B, C, and D must all report each other as direct corporate associations.

Section 95833(a)(4) states that indirect corporate associations can exist only between registered entities. Thus, Entity D would not have to report a relationship with Entity E under this provision, unless Entity E is involved in a line of direct or indirect corporate associations between registered entities. Section 95830(c)(1)(H)

requires a registered entity to disclose all entities involved in a line of direct or indirect corporate associations between registered entities, even if some of the entities in the chain are not registered. As such, this provision requires Entity D to report its relationship with Entity E (indirect), as well as Entity F (also indirect), because Entity F is registered.

The relationship between Entities A, B, C, D, and E with Entity F must be evaluated by multiplying the indicia of control at each link of the chain of control between each of these entities and Entity F. This is because the provision contained in section 95833(a)(3) is not contained within section 95833(a)(4), which governs the calculations of indirect corporate associations. For example, when assessing the relationship between Entity A and Entity F under section 95833(a)(4), the calculation would be:

$$60\% * 60\% * 55\% * 30\% * 100\% = 5.94\%.$$

This does not yield a reportable relationship between Entity A and Entity F. Therefore, Entities A, B, and C will not need to report a relationship with Entity F. However, Entity D must report its relationship with Entity F as well as with Entity A (and Entities B, C, and E). The calculation for indirect corporate associations between Entity D and Entity F under section 95833(a)(4) would be:

$$30\% \times 100\% = 30\%$$

### **How does an entity disclose a corporate association?**

Information on corporate associations is submitted to ARB during the initial application to register with ARB for an account in CITSS by submitting the information requested in Form #3. The form is available through the ARB website at:

<http://www.arb.ca.gov/cc/capandtrade/markettrackingsystem/markettrackingsystem.htm#forms>

This version of the form may be filled out and submitted electronically as indicated in the form. A wet signature must be mailed to ARB with the information contained in the form. The form may also be printed, signed, and mailed to ARB. Form #3 would be submitted upon registration in CITSS and updated if the submitted information changes. (See the timeline provided above for which updates are required when.) Failure to disclose corporate associations or any changes to corporate associations may negatively impact an entity's auction participation.

### **How will information related to Corporate Associations be treated if it is not currently in the public domain and considered confidential and proprietary?**

ARB recognizes that corporate association information may contain confidential, proprietary information, and protects confidential information to the extent permitted by

law. Entities submitting information related to corporate associations which is not publicly available at the time of submittal may request confidential treatment in accordance with Title 17, California Code of Regulations (CCR), sections 91000 to 91022 and the California Public Records Act (Government Code Section 6250 et seq.), which define the types of information that are trade secret.

### **What are the disclosure requirements for Direct Corporate Associations with registered entities?**

The level of disclosure of direct corporate associations depends on whether the associated entity is registered in the California Cap-and-Trade Program or another linked program.

An entity that has a direct corporate association with a registered entity must disclose the type of relationship; that is, whether the second entity is a parent or subsidiary. This must be accompanied by a brief description of the association and an explanation of how the entity evaluated the measures of control (see section 95833(a)) to determine the result. Finally, the entity must provide all the information contained in section 95833(d)(1), including:

- Name, contact information, and physical address of the entity
- Whether the entity is parent or subsidiary
- Holding account number
- Primary account representative
- Data Universal Numbering System number, if assigned
- Place and date of incorporation, if applicable.

### **What are the disclosure requirements for Direct Corporate Associations with unregistered entities?**

When disclosing unregistered direct corporate associates, the entity will have the option of either the full disclosure described above for registered direct corporate associations, or a disclosure limited to unregistered entities operating in markets related to the Cap-and-Trade Program. These related markets are specified in section 95830(c)(1)(H)(1) and include entities that trade, sell, or purchase for resale:

- Natural gas, derivative or swap on an exchange;
- Oil, derivative or swap on an exchange;
- Electricity; derivative or swap on an exchange
- Greenhouse gas emission instrument, derivative or swap on an exchange.

As defined by the U.S. Commodity Futures Trading Commission (CFTC), a derivative is a

“financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., derived from) the value of one or more underlying securities,



equity indices, debt instruments, commodities, other derivative instruments, or any agreed upon pricing index or arrangement... They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return. Derivatives include futures, options, and swaps.”

Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. See CFTC Glossary, [www.cftc.gov/consumerprotection/educationcenter/cftcglossary](http://www.cftc.gov/consumerprotection/educationcenter/cftcglossary).

A swap, which has a detailed and lengthy statutory definition (see 7 U.S.C. §1a(47)), is generally defined as an agreement, contract, or transaction for the exchange of one asset or liability for a similar asset or liability for the purpose of lengthening or shortening maturities, or raising or lowering coupon rates, to maximize revenue or minimize financing costs. Swaps are generally traded over-the-counter, instead of on exchanges

In addition, the disclosing entity has the option of meeting the disclosure requirements by either complying with section 95833(a) as listed above or by providing one or more of the following documents that disclose the relationship(s):

- Exhibit 21 of the Form 10-K submitted to the Securities and Exchange Commission by the entity or its corporate associate.
- The application or update to the application for market-based rate authority submitted by the registrant or its corporate associate to the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 and Order 697.
- The application or update for registration with the National Futures Association submitted by the entity or a corporate associate as required by the CFTC pursuant to the Commodity Exchange Act.
- Form 40 or Form 40S filed by the entity or a corporate associate in accordance with the CFTC’s reporting rules.
- Part 1A of a Form ADV filed with the Securities and Exchange Commission by a registered investment advisor responsible for managing the entity.

As a reminder, even if an entity opts for the section 95830(c)(1)(H) alternative for disclosing unregistered direct corporate associations, a registered entity that has a direct or indirect corporate association with another registered entity must always disclose the identity of all entities involved in the line of direct or indirect corporate associations between the two registered entities, even if such entities are not registered. See Example 5 above.

### **What are the disclosure requirements for Indirect Corporate Associations with registered entities?**

The disclosure requirements are the same as for direct corporate associations between registered entities.

**What are the disclosure requirements for Indirect Corporate Associations with unregistered entities?**

In most instances, indirect corporate associations with unregistered entities do not need to be disclosed, pursuant to section 95833(a)(4). However, section 95830(c)(1)(H) requires the disclosure of indirect corporate associations with unregistered entities when these entities are in the line of direct or indirect corporate associations between two registered entities.

**When must disclosures of Direct Corporate Associations with registered entities be completed and updated?**

Entities must initially complete the disclosure of existing direct corporate associations when they first register with ARB pursuant to section 95830. Updates disclosing changes in information involving direct corporate associations with registered entities must be completed within 30 days of a change to previously disclosed information (section 95830(f)(1)).

**When must disclosures of Direct Corporate Associations with unregistered entities be completed and updated?**

Entities must initially complete the disclosure of existing direct corporate associations when they first register with ARB pursuant to section 95830. Updates disclosing changes in information involving direct corporate associations with unregistered entities must be completed within one year of a change to previously disclosed information (section 95830(f)(1)).

**When must disclosures of Indirect Corporate Associations with registered entities be completed and updated?**

Entities must initially complete the disclosure of existing indirect corporate associations when they first register with ARB pursuant to section 95830. Updates disclosing changes in information involving indirect corporate associations with registered entities must be completed within 30 days of a change to previously disclosed information (section 95830(f)(1)).

**When must disclosures of Indirect Corporate Associations with unregistered entities be completed and updated?**

When section 95830(c)(1)(H) requires the disclosure of indirect corporate associations with unregistered entities, then the entity must complete the disclosure at the time it registers with ARB and update the disclosure within 30 days of any changes. This would only be the case where the unregistered indirect corporate associate is involved in the line of direct or indirect corporate associations between two registered entities.

**What is a consolidated account?**

Under the Regulation (section 95830), an entity must complete an application to register with ARB for an account in CITSS. Each entity that is covered by the Regulation is considered a separate entity requiring a separate CITSS account. Under section 95833, the Executive Officer will consolidate the accounts held by entities registered in the California Cap-and-Trade Program that are part of a direct corporate association, allowing one CITSS account to cover multiple entities or facilities. In CITSS, all accounts for Covered Entities will have at least one entity-facility relationship. For a consolidated account, multiple entity-facility relationships will be identified. Section 95833 also contains an option for entities to formally opt-out of a consolidated set of CITSS accounts.

**How can an entity consolidate an account?**

Under the Regulation (section 95830), an entity must complete an application to register with ARB for an account in CITSS. In the initial account application process, consolidation is accomplished by identifying multiple entity-facility relationships. If there are two separate CITSS accounts that must be consolidated, the separate accounts would be identified by a prior decision to opt-out of consolidation and receive separate accounts. If an entity that previously opted out chooses to keep separate accounts for any direct corporate associates, then the entity that is opting out must apply for an account in CITSS and submit the necessary account application information. Regardless of whether entities' accounts are consolidated, the disclosure requirements are the same. Form #3 includes instructions regarding consolidated accounts and opting out.

**3.1.A.3 Other Information Disclosure Requirements****Is an entity required to provide an overview of the company's corporate associations?**

Entities are required to report if they have direct or indirect corporate associations that must be disclosed to ARB. This includes all direct corporate associations (regardless of whether the associated entity is subject to the Regulation), and all indirect corporate associations in which the associated entity is subject to the Regulation.

Instructions for completing Form #3 are available on the form. An entity may also provide the overview of the nature of corporate associations requested in Section 3.1 of Form #3, which helps in ARB's review and approval of CITSS accounts and account consolidations.

**For additional information**

Form #3, along with instructions for filling out the form and designating or opting out of consolidated accounts, is available at:

<http://www.arb.ca.gov/cc/capandtrade/markettrackingsystem/markettrackingsystem.htm#forms>.

**3.1.A.4 Information Disclosure Related to Cap-and-Trade Consultants or Advisors**

Section 95923 of the Regulation requires entities employing Cap-and-Trade Consultants or Advisors to disclose information for each Cap-and-Trade Consultant or Advisor. Section 95914(c)(3) requires Cap-and-Trade Consultants or Advisors to self-disclose information related specifically to auction bidding strategy services. Information disclosure ensures effective monitoring and oversight of entities that have access to information from multiple entities participating in the Cap-and-Trade Program.

**What is a Cap-and-Trade Consultant or Advisor?**

A Cap-and-Trade Consultant or Advisor is a person or entity (excluding employees of the registered entity) that provides the services listed in section 95979(b)(2) of the Regulation and section 95133(b)(2) of the Mandatory Greenhouse Gas Reporting Regulation. The services include:

<b>Cap-and-Trade Regulation: Section 95979(b)(2)</b>	<b>Mandatory Reporting Regulation: Section 95133(b)(2)</b>
(A) Designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions, unless the review was part of providing GHG offset verification services;	(A) Designing, developing, implementing, reviewing, or maintaining an inventory or information or data management system for facility air emissions, or, where applicable, electricity or fuel transactions, unless the review was part of providing greenhouse gas verification services;
(B) Developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a California Environmental Quality Act (CEQA) GHG analysis that includes offset project specific information;	(B) Developing greenhouse gas emission factors or other greenhouse gas-related engineering analysis, including developing or reviewing a California Environmental Quality Act (CEQA) greenhouse gas analysis that includes facility specific information;
(C) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG reductions and GHG removal enhancements as a benefit;	(C) Designing energy efficiency, renewable power, or other projects which explicitly identify greenhouse gas reductions as a benefit;
(D) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;	(D) Designing, developing, implementing, conducting an internal audit, consulting, or maintaining a GHG emissions reduction or GHG removal offset project as defined in the cap-and-trade regulation;
(E) Owning, buying, selling, trading, or retiring shares, stocks, or ARB offset	(E) Owning, buying, selling, trading, or retiring shares, stocks, or emissions

<p align="center"><b>Cap-and-Trade Regulation: Section 95979(b)(2)</b></p>	<p align="center"><b>Mandatory Reporting Regulation: Section 95133(b)(2)</b></p>
<p>credits or registry offset credits from the offset project;</p> <p>(F) Dealing in or being a promoter of ARB offset credits or registry offset credits on behalf of an Offset Project Operator or Authorized Project Designee;</p> <p>(G) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for the Offset Project Operator or Authorized Project Designee;</p> <p>(H) Appraisal services of carbon or GHG liabilities or assets;</p> <p>(I) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;</p> <p>(J) Directly managing any health, environment or safety functions for the Offset Project Operator or Authorized Project Designee;</p> <p>(K) Bookkeeping or other services related to the accounting records or financial statements;</p> <p>(L) Any service related to information systems, including 14001 certification, unless those systems will not be reviewed as part of the offset verification process;</p> <p>(M) Appraisal and valuation services, both tangible and intangible;</p>	<p>reduction credits from an offset project that was developed by or resulting reduction credits are owned by the reporting entity;</p> <p>(F) Dealing in or being a promoter of credits on behalf of an offset project operator or authorized project designee where the credits are owned by or the offset project was developed by the reporting entity;</p> <p>(G) Preparing or producing greenhouse gas-related manuals, handbooks, or procedures specifically for the reporting entity;</p> <p>(H) Appraisal services of carbon or greenhouse gas liabilities or assets;</p> <p>(I) Brokering in, advising on, or assisting in any way in carbon or greenhouse gas-related markets;</p> <p>(J) Directly managing any health, environment or safety functions for the reporting entity;</p> <p>(K) Bookkeeping or other services related to accounting records or financial statements;</p> <p>(L) Any service related to development of information systems, including consulting on the development of environmental management systems, such as those conforming to ISO 14001 or energy management systems such as those conforming to ISO 50001, unless those systems will not be part of the verification process;</p> <p>(M) Appraisal and valuation services, both tangible and intangible;</p>

<p align="center"><b>Cap-and-Trade Regulation: Section 95979(b)(2)</b></p>	<p align="center"><b>Mandatory Reporting Regulation: Section 95133(b)(2)</b></p>
<p>(N) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the information reviewed in formulating the Offset Verification Statement will not be reviewed as part of the offset verification services;</p> <p>(O) Any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;</p> <p>(P) Any internal audit service that has been outsourced by the Offset Project Operator or Authorized Project Designee that relates to the Offset Project Operator's or Authorized Project Designee's internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;</p> <p>(Q) Acting as a broker-dealer (registered or unregistered), promoter, or underwriter on behalf of the Offset Project Operator or Authorized Project Designee;</p> <p>(R) Any legal services; and</p> <p>(S) Expert services to the Offset Project Operator or Authorized Project Designee or a legal representative for the purpose of advocating the Offset Project Operator's or Authorized Project Designee's interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.</p>	<p>(N) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the verification process;</p> <p>(O) Any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;</p> <p>(P) Any internal audit service that has been outsourced by the reporting entity or offset project operator that relates to the reporting entity's internal accounting controls, financial systems or financial statements, unless the result of those services will not be part of the verification process;</p> <p>(Q) Acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of the reporting entity;</p> <p>(R) Any legal services;</p> <p>(S) Expert services to the reporting entity or a legal representative for the purpose of advocating the reporting entity's interests in litigation or in a regulatory or administrative proceeding or investigation; and,</p> <p>(T) Verification services that are not conducted in accordance with, or equivalent to, section 95133 requirements, unless the systems and data reviewed</p>

<b>Cap-and-Trade Regulation: Section 95979(b)(2)</b>	<b>Mandatory Reporting Regulation: Section 95133(b)(2)</b>
	during those services, as well as the result of those services, will not be part of the verification process.

**Is an Offset Project Verification Body or a Verification Body under MRR providing verification services considered a Cap-and-Trade Consultant or Advisor?**

No. Under the strict conflict of interest verification provisions of MRR and the Regulation, a verification body may not conduct verification services if it has a high conflict of interest with an entity for whom verification services are being performed. The services listed in sections 95133(b)(2) of MRR and 95979(b)(2) of the Cap-and-Trade Regulation are expressly listed as high conflict of interest services; any verification body performing those services for an entity would not be able to perform verification services. As such, an entity’s verification body, by definition and as approved by ARB, would not be performing these services and would not need to be disclosed as a Cap-and-Trade Consultant or Advisor.

**How do these provisions apply to legal services?**

The lists of services apply to outside counsel hired by a registered entity, to the extent that outside counsel is providing any of the defined services. Disclosure of confidential, privileged attorney-client communications is not required nor requested. Entities also do not need to disclose relationships with attorneys to the extent those attorneys are providing legal advice specifically related to enforcement-related matters initiated by ARB or another regulatory body, white collar criminal proceedings, or the preparation of individual and entity registrations in CITSS. Registered entities, however, need to disclose the nature and status of investigations (ongoing and for the previous 10 years) associated with any commodity, securities, environmental, or financial market pursuant to section 95912(d)(4)(C).

Not all services provided by an attorney are considered “legal services.” If an attorney is providing non-legal services, such as brokering, auditing, financial advice, bid strategy, or other business advice, these do not constitute legal services. The attorney is operating in a non-lawyer capacity in giving this advice. In these cases, where an attorney provided non-legal services listed in the table above to the registered entity, the registered entity would need to disclose the Consultant or Advisor information as required under section 95923. If such non- legal service relates specifically to auction bidding strategy, the attorney is required to self-disclose as a Consultant or Advisor under section 95914(c)(3).

**How do these provisions apply to entity's providing publications or educational seminars?**

It is important to clarify that consulting or advisory services are specific services for an entity(ies) registered in the Cap-and-Trade Program. Publication services available to subscribers are not considered consulting or advisory services. Likewise, seminars, symposiums, and other speaking events which are not provided specifically (e.g., solely) for registered entities, are not considered consulting or advisory services. Speakers at such events would therefore not need to be disclosed, at least in their capacity as a speaker.

**How do these provisions apply to trade associations and lobbying firms?**

If a trade association or lobbying firm provides the services listed in sections 95133(b)(2) of MRR and 95979(b)(2) of the Regulation specifically for a registered entity, the trade association or lobbying firm needs to be disclosed as a Cap-and-Trade Consultant or Advisor. If a trade association is instead providing general services or a discussion forum for its members, the trade association does not qualify as a Cap-and-Trade Consultant or Advisor. Similarly, if a lobbying firm or lobbyist provides other types of services than those listed in sections 95133(b)(2) of MRR and 95979(b)(2) of the Cap-and-Trade Regulation, the lobbying firm and lobbyist is not considered a Cap-and-Trade Consultant or Advisor.

**Who must disclose and what must be disclosed?**

The registered entity is required to disclose the names, contact information, physical work address, and employer (if applicable) of any retained Cap-and-Trade Consultants or Advisors.

If the Cap-and-Trade Consultant or Advisor is providing auction bidding strategy consulting or advisory services to an entity, then the Cap-and-Trade Consultant or Advisor is also required under section 95914(c)(3) of the Regulation to disclose the names of the entity/entities being advised, a description of advisory services being performed, and provide assurance under penalty of perjury that the advisor is not transferring to or otherwise sharing information with other auction participants.

**When must information be disclosed?**

Entities disclosing Cap-and-Trade Consultants or Advisors must disclose the information when registering with ARB, within 30 days of entering into a contract with a Cap-and-Trade Consultant or Advisor, or within 30 days of a change to the information disclosed on Consultants or Advisors. Cap-and-Trade Consultants or Advisors providing auction bidding strategy consulting or advisory services to an entity must disclose the information at least 15 days prior to an auction.



**Do the disclosure requirements for Cap-and-Trade Consultants or Advisors apply retroactively, or have a look-back period?**

Registered entities are required to disclose their current Cap-and-Trade Consultants and Advisors, and to update their disclosures as necessary on the timeline required by the Regulation. The disclosure requirements apply to any current Cap-and-Trade Consultant or Advisor, regardless of when the registered entity entered into contract with the Cap-and-Trade Consultant or Advisor. However, the disclosure requirements are newly effective and do not require entities to disclose past information.

**How are Cap-and-Trade Consultants or Advisors disclosed?**

Form #3 provides fields through which an entity may disclose the retention of any Cap-and-Trade Consultants or Advisors in accordance with the Regulation. In addition, pursuant to revised section 95914(c)(3), a Cap-and-Trade Consultant or Advisor who is retained for services related to auction bidding strategy must also submit the information contained in the Notification of Retention of Consultant or Advisor for Auction Bidding Strategy Form (Auction Bid Advisor Form) available at:

<http://www.arb.ca.gov/cc/capandtrade/auction/auction.htm#auction>.

**How are Bid Advisors disclosed?**

As described above, an entity must disclose all Cap-and-Trade Consultants and Advisors, which includes those acting as bid advisors. There is also a new requirement that Cap-and-Trade Consultants or Advisors who provide bidding strategy advice disclose that their services have been retained related to providing auction bidding strategy. The entity may disclose the name and contact information of all Cap-and-Trade Consultants or Advisors on Form #3, and the individual Cap-and-Trade Consultant or Advisor must also disclose the entity(ies) for which it is providing bidding strategy advice as well as a description of the services performed. This information can be submitted through the Auction Bid Advisor Form, available at:

<http://www.arb.ca.gov/cc/capandtrade/auction/auction.htm#auction>, and must be received by ARB at least 15 days prior to any applicable auction for which the Cap-and-Trade Consultant or Advisor is providing auction bidding strategy-related advice.

### **3.1.A.5 Information Disclosure Related to Personnel who have Knowledge of an Entity's Market Position**

Sections 95830(c) and 95830(f) of the Cap-and-Trade Regulation require entities to disclose the names and contact information of all persons employed by the entity who have knowledge of the entity's market position. Information disclosure is necessary to allow ARB to determine whether two different registered entities are coordinating their actions through individuals privy to market-sensitive information from both entities.

#### **What does it mean to be a person who has knowledge of an entity's market position?**

A person with knowledge of an entity's market position is an employee of the entity who is privy to specific information about the entity's decisions on compliance instrument transactions or holdings in CITSS. Specifically, this disclosure requirement applies to employees who know both of the following pieces of information: the entity's entire current and/or expected holdings of compliance instruments and the entity's current and/or expected covered emissions.

The requirements cover those individuals in a decision-making capacity, either as officers, owners, individuals who gain knowledge of a registered entity's transaction strategy through their work as employees of the entities, and/or any individual with access to the tracking system, including the primary account representative, alternate account representatives, or account viewing agents.

The intent of this disclosure requirement is to identify employees that are responsible for compliance strategies by knowing information on both an entity's holdings and emissions. The disclosure requirement does not require disclosure of individuals only casually aware of or associated with issues related to compliance instruments or reported emissions. Disclosing individuals, including contract, temporary, or rotational employees, with knowledge of both an entity's compliance instrument holdings and reported emissions is therefore required.

#### **Who must disclose and what must be disclosed?**

The Regulation requires the registered entity to disclose the names and contact information of all persons employed by the entity with knowledge of the entity's market position.

#### **Do the disclosure requirements for personnel who have knowledge of market position apply retroactively, or have a look-back period?**

The disclosure requirements came into effect on July 1, 2014. They do not require entities to disclose information prior to July 1, 2014.

**When must information be disclosed?**

The disclosure of information occurs as an update to registered entities' registration information. This update must occur within one year of the change, as specified in section 95830(f)(1) of the Regulation. For new entrants to the Cap-and-Trade Program, the information disclosure would occur as part of the initial registration process.

**How do registered entities disclose their knowledgeable employees?**

Form #3 provides fields through which knowledgeable employees may be disclosed to conform to the requirements of the Regulation.