

**Exhibit 1**

**Joint Industry Proposal**

**Coordinated by the California Manufacturers & Technology Association**

**Proposed Amendments to the Corporate Association Disclosure  
Requirements in the Cap-and-Trade Regulations  
September 15, 2014**

**Joint Industry Proposal****Proposed Amendments to the Corporate Association Disclosure Requirements in the Cap-and-Trade Regulations****August 22, 2014****§ 95833. Affiliate Disclosure Requirements. [All text in this section is new. Changes to effective Regulations not shown.]**

- (a) Disclosure Obligation. To the extent that such disclosure would not violate applicable rules promulgated by a governmental agency or the decision of a court with competent jurisdiction, a registrant must disclose to ARB the following entities:
- (1) Affiliation with Entities that are also Registrants. All entities (i) that are subject to the requirements of this article or registered with a GHG ETS to which California has linked pursuant to subarticle 12 and (ii) that the registrant majority or minority controls, that majority or minority control the registrant, or that are under common majority or minority control by a third party with the registrant, of which, in the case of minority control relationships only, the registrant has knowledge based on information in its possession or readily available to it; and
  - (2) Affiliation with Entities that Trade U.S. Carbon Credits. All entities (i) that trade any carbon dioxide equivalent emission commodity issued by a United States federal, regional or state agency or program, such as regional greenhouse gas initiative allowances and offsets, as merchants and not as end-users and (ii) that the registrant majority controls, that majority control the registrant, or that are under common majority control by a third party with the registrant; and
  - (3) Additional Entity-Specific Disclosures. Any one of the following:
    - (A) Private Companies. All entities (i) that trade any natural gas, oil, or electricity commodity, or natural gas, oil, or electricity commodity derivative or swap on exchanges in the Western United States as a merchant and not as an end-user and (ii) that the registrant majority controls, that majority control the registrant, or are under common majority control by a third party with the registrant, of which the registrant has knowledge based on information in its possession or readily available to it; or
    - (B) SEC Registrants. All entities disclosed by the registrant or its parent to the Securities and Exchange Commission on Exhibit 21 of its most recent Form 10-K; or
    - (C) FERC Registrants. All entities disclosed by the registrant or its parent or any affiliate to the Federal Energy Regulatory Commission pursuant to

such agency's market-based rate regulations, under 18 CFR Part 35 and its Order 697, as amended or modified from time to time; or

- (D) CFTC Registrants. All affiliates disclosed by the registrant in compliance with applicable registration requirements under the Commodity Exchange Act or National Futures Association Rules or the Commodity Futures Trading Commission's reporting rules; or
- (E) Registered Investment Advisers. For a registrant that is or is majority controlled by a private investment fund managed by a Securities and Exchange Commission registered investment advisor, all entities disclosed by such advisor on Part 1A of its Form ADV filed with the Securities and Exchange Commission.

(b) Contents of Disclosure. For each entity disclosed pursuant to section 95833(a), the registrant must disclose the following information:

- (1) For entities disclosed pursuant to sections 95833(a)(1), (a)(2), or (a)(3)(A):
  - (A) Name;
  - (B) CITSS account number, if applicable; and
  - (C) The degree (direct or indirect), the type (parent, subsidiary or affiliate) and the level of control (majority or minority) of the affiliation being disclosed; and
- (2) For entities disclosed pursuant to section 95833(a)(3)(B)-(E), the information disclosed with respect to such entity or a reference to the information and documentation referenced in those sections.

(c) Additional Information. If the Executive Officer has obtained information providing a reasonable basis to believe that a violation of this Article by a registrant may have occurred, the Executive Officer may, to the extent necessary to investigate the potential violation, request that the registrant provide additional information regarding its parents, subsidiaries or affiliates that participate actively in the relevant commodity markets.

(d) Timing. An entity must make the disclosures contemplated in sections 95833(a) and (b) to the Executive Officer:

- (1) When registering pursuant to section 95830;
- (2) For a change to any information disclosed pursuant to section 95833(a)(1), by the earlier of (i) 30 days from the date of the change or, in the case of minority control relationships, from the date the registrant becomes aware of the change; or (ii) for the entity to be eligible to participate in an auction, the auction registration deadline established in section 95912; and

- (3) On May 1 of every calendar year for any changes to the information disclosed pursuant to sections 95833(a)(2) and (a)(3) provided that, if the change takes place after April 1, the registrant shall make the disclosure on April 1 of the following year.

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**§ 95802. Definitions [All text is new. Changes to effective Regulations not shown.]**

- (a) Definitions. For the purposes of this article, the following definitions shall apply:
- (1) “Affiliate”<sup>1</sup> (including the term affiliation) means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
  - (2) “Consolidateable Relationship” means [placeholder for definition to capture relationships that may be consolidated and must share an auction purchase limit and holding limit as used in the remainder of the Cap-and-Trade Regulations].
  - (3) “End-User”<sup>2</sup> means an any entity, including a commercial user or processor, that is purchasing a commodity or a commodity derivate or swap predominantly to meet a compliance obligation, to consume or utilize as an input or feedstock in the ordinary course of its business or to hedge or mitigate a commercial risk.
  - (4) “Majority Control”<sup>3</sup> (including the terms majority controlling, majority controlled by and under common majority control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, through any of the following means:
    - (A) In the case of a corporation:
      1. Holding the right to appoint more than 50 percent of the members of the board of directors of the other entity; or
      2. Holding more than 50 percent of the voting power of the corporation;
    - (B) In the case of a partnership other than a limited partnership, holding more than 50 percent of the interests of the partnership;

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<sup>1</sup> This definition tracks the SEC’s defined term “Affiliate” under the Securities Act of 1933, codified at 17 CFR 230.405, available at <http://www.law.cornell.edu/cfr/text/17/230.405>.

<sup>2</sup> “End-user” is a defined term under CFTC regulations. See [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/eue\\_factsheet\\_final.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/eue_factsheet_final.pdf). The context here is different so the definition had to be adapted but industry participants thought that the concepts were similar and that, accordingly, using the same defined terms is helpful.

<sup>3</sup> This definition is based on the SEC’s defined term “Control” under the Securities Act of 1933, codified at 17 CFR 230.405, available at <http://www.law.cornell.edu/cfr/text/17/230.405>, and the criteria for direct corporate associations developed by ARB under the currently effective regulations.

- (C) In the case of a limited partnership, being a general partner that owns more than 20 percent of the invested capital interests in the partnership; and
- (D) In the case of a limited liability company, holding more than 50 percent of the limited liability company interests in the limited liability company;
- (5) “Merchant”<sup>4</sup> means any entity, including a trader and a dealer, that actively engages in the trading, market making, selling, and purchasing of commodities or commodity derivatives or swaps not primarily as an end-user.
- (6) “Minority Control” means either:
  - (A) In a direct relationship, the presence of any of the indicia set forth in section 95802(d)(1)-(4) in an amount greater than 20 percent but less than or equal to 50 percent of the relevant indicia; or
  - (B) In an indirect relationship, the presence of any of the indicia set forth in section 95802(d)(1)-(4) in an amount greater than 20 percent but less than or equal to 50 percent of the relevant indicia, when multiplying the indicia of control present at each link in the chain of affiliates between the entities in the indirect relationship.
  - (C) For the purposes of calculating the level of control in 95802(f)(1) and (2), the indicia of control set forth in section 95802(d)(3) above 20% shall be deemed to constitute 100% control.
- (7) “Parent”<sup>5</sup> means, with respect to a specified entity, an affiliate controlling such entity directly, or indirectly through one or more intermediaries.
- (8) “Subsidiary”<sup>6</sup> means, with respect to a specified entity, an affiliate controlled by such entity directly, or indirectly through one or more intermediaries.

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**§ 95923. Disclosure of Cap-and-Trade Consultants and Advisors. [Manual blackline showing changes to effective Regulations.]**

- (a) A “Cap-and-Trade Consultant or Advisor” is a person or entity that is not an employee of an entity registered in the Cap-and-Trade Program, but is providing the services

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<sup>4</sup> “Futures Commission Merchant” is a defined term under CFTC regulations. See <http://www.cftc.gov/IndustryOversight/Intermediaries/FCMs/fcmib>. The context here is different so the definition had to be adapted but industry participants thought that the concepts were similar and that, accordingly, using the same defined terms is helpful.

<sup>5</sup> This definition tracks the SEC’s defined term “Parent” under the Securities Act of 1933, codified at 17 CFR 230.405, available at <http://www.law.cornell.edu/cfr/text/17/230.405>.

<sup>6</sup> This definition tracks the SEC’s defined term “Subsidiary” under the Securities Act of 1933, codified at 17 CFR 230.405, available at <http://www.law.cornell.edu/cfr/text/17/230.405>.

listed in section 95979(b)(2) of the Cap-and-Trade Regulation or section 95133(b)(2) of the Mandatory Reporting Regulation in relation to the Cap-and-Trade Program or MRR and specifically for the entity registered in the Cap-and-Trade Program, regardless if the Consultant or Advisor is acting in the capacity of an offset or MRR verifier. A person or entity providing only legal services as listed in Section 95979(b)(2)(R) of the Cap-and-Trade Regulation and Section 95133(b)(2)(R) of the Mandatory Reporting Regulation is not a Cap-and-Trade Consultant or Advisor.

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**§ 95830. Registration with ARB. [Manual blackline showing changes to effective Regulations.]**

(c) Requirements for Registration

- (1) An entity must complete an application to register with ARB for an account in the tracking system that contains the following information:

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- (H) ~~Identification of all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833, and a brief description of the association. An entity completing an application to register with ARB and for an account in the tracking system must provide all applicable information required by section 95833. The information required by section 95833:~~

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**§ 95912. Auction Administration and Participant Application. [Manual blackline showing changes to effective Regulations.]**

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(d) Auction Participation Application Requirements.

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- (4) An entity will be required to complete an auction participant application at least 30 days prior to an auction in which it intends to participate. The entity must provide information and documentation including:

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- (B) The existence of any direct ~~or indirect corporate associations pursuant to sections 95833 and 95914(d)~~consolidateable relationships;

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- (E) An attestation disclosing the existence and status of any final, formal proceeding initiated by a regulatory authority (e.g. a state securities agency, self-regulatory organization, federal regulator such as the U.S. Securities and Exchange Commission, or foreign regulatory

~~body)<sup>7</sup>ongoing investigation or an investigation that has occurred~~ within the last ~~five~~<sup>ten</sup> years with respect to any ~~alleged~~ violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market ~~for~~<sup>by</sup> the entity participating in the auction, ~~and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833 that participate in a carbon, fuel, or electricity market.~~ The attestation must be updated to reflect any change in the status of an investigation that has occurred since the most recent auction application attestation was submitted;

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<sup>7</sup> This change tracks the disclosure required for “Regulatory: Final” Disclosure Events by FINRA Rule 8312: FINRA BrokerCheck Disclosure. This disclosure is well understood by the market and systems already exist at a number of companies to track this type of information. BrokerCheck disclosure forms can be reviewed at the SEC’s search directory at [http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd\\_Search.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx).