

Chapter 3.1.A: Disclosure of Corporate Associations, Consultants or Advisors, and Knowledgeable Employees**UPDATE – July 29, 2014**

ARB staff is providing this update to the Cap-and-Trade Instructional Guidance previously issued on July 10, 2014 to further clarify which information must be submitted to ARB by July 31, 2014. The July 10, 2014 Guidance is still in effect and begins on the next page.

With the exception of the clarifications reflected on this cover sheet, this guidance has not changed since it was originally posted on July 10, 2014.

As described in the Guidance document, and pursuant to section 95833 of the Cap-and-Trade Regulation (Regulation), entities registered in the Cap-and-Trade Program who have not submitted updates to their registered direct and indirect corporate associations as part of the August auction application period (which closed July 18, 2014) must submit any updates to information on their registered direct and indirect corporate associations by July 31, 2014. **In addition, to satisfy the July 31, 2014 disclosure requirement for non-registered direct corporate associations, registered entities may submit the best available information they have in their possession by the July 31, 2014 deadline.**

Information submitted for non-registered direct corporate associations may focus on those affiliates associated with carbon, energy, and/or fuels markets. To the extent it is more efficient to do so, submitted information could rely on existing documentation such as Securities and Exchange Commission filings (i.e., Form 10-K and subsidiary attachments), public filings that include corporate association information to other governmental agencies (i.e., the California Public Utilities Commission), and other already-compiled corporate association information. For entities utilizing CITSS Form #3 to submit the required information, these filings may be included as attachments to the form. If ARB staff finds that additional information is required to satisfy the requirements of section 95833, staff will contact you directly and work with you to ensure such information is submitted in a timely manner.

In addition to corporate disclosures, pursuant to sections 95923 and 95830(c)(1)(I) of the Regulation, registered entities must submit information on their Cap-and-Trade Consultants and Advisors, and their employees with knowledge of the entity's market position, by July 31, 2014.

For purposes of the required attestation, which is shown in section 6 of CITSS Form #3, registered entities may submit an attachment to the form indicating that the attestation is applicable to information disclosures regarding direct and indirect registered entities, Cap-and-Trade Consultants and Advisors, and Employees with Knowledge of Market Position, and that additional information may be required for completing the required disclosure of unregistered direct corporate associations.

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 or Advisors, and employees who have access to the entities' market position. At its April 2014 Board Hearing, 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 went into effect on July 1, 2014. 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 (section 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 and other disclosures is submitted to ARB through the Compliance Instrument Tracking System Service (CITSS) account application process and in the CITSS Corporate Associations and Structure Form (Form #3). ARB is providing an updated, electronically fillable version of Form #3 which can be used to disclose the required corporate association, Cap-and-Trade Consultants and Advisors, and knowledgeable employee information. Updates to submitted information may also be completed using the updated 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.

The timing for the required disclosures, including deadlines related to the amendments that went into effect July 1, 2014, is described in sections I – III below, and is also presented in the following table:

Timing of Disclosure Requirements

July 18, 2014	- Submit any changes or updates related to registered entities
July 31, 2014	- Submit any changes or updates related to unregistered corporate associates - Submit changes related to employees with knowledge of the entity’s market position - Submit changes related to Cap-and-Trade Consultants and Advisors
Within 30 days of a change to previously submitted information	- All registration information in section 95830(c) except (c)(1)(I), which concerns knowledgeable employees
At least quarterly	- Any changes related to information on knowledgeable employees
By the auction application deadline	- Submit all changes related to registered entities

3.1.A.2 Information Disclosure Related to Corporate Associations

Section 95833 of the Regulation requires participating entities to disclose specific corporate associations. ARB needs this information to consolidate accounts and monitor the market when multiple entities in the program share financial interests.

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

The following list provides the general regulatory criteria on how to determine if an entity has a corporate association, including the criteria to identify a direct corporate association and an indirect corporate association. The Regulation requires a participating entity to provide the details of all entities with which it has a direct corporate association, regardless of whether or not those entities are subject to the Regulation. These are not new requirements, but have existed in the Regulation since 2012. The Regulation also requires an entity to disclose information pertaining to any indirect corporate association only when the other entity is subject to the Regulation.¹

Criteria to Identify a Corporate Association

1. One entity holds more than 20% of any class of listed shares, the right to acquire such shares, or any option to purchase such shares

¹ This requirement was clarified through the regulatory amendments approved by the Board in April 2014, and explained in the Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms: Final Statement of Reasons (May 2014) at pp. 441-442, available at: <http://www.arb.ca.gov/regact/2013/capandtrade13/ctfsor.pdf>.

- of the other entity;
- 2. One entity holds or can appoint more than 20% of common directors of the other entity; or
- 3. One entity holds more than 20% of the voting power of the other entity; or
- 4. In the case of a limited partnership, the entity controls the general partner; or
- 5. In the case of a limited liability corporation, one entity owns more than 20 percent of the other entity regardless of how the interest is held.

Criteria to Identify a Direct Corporate Association

- 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 limited partnership, the entity controls the general partner; or
- 5. 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
- 6. Entity A and entity B have a direct corporate association if A and B 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 A and B. For the purposes of satisfying disclosure requirements, a common parent means there is a common entity from which the registered entity descends. There does not need to be an immediate relationship between the common parent and registered entities; or
- 7. 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.

Criteria to Identify an Indirect Corporate Association

1. Both entities are subject to the Regulation; and
2. No direct corporate association exists; and
3. Connection through a line of more than one corporate association; and
4. 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).

Does a corporate association exist if one entity does not have a CITSS account or is not subject to the Regulation?

A corporate association can exist between one entity and a second entity, even if one of the entities is not registered in CITSS or is not subject to the Regulation. Under section 95833, however, only corporate associations that meet the ARB definition of direct and indirect corporate associations must be *disclosed*.

A direct corporate association exists between two entities that meet the criteria defined in section 95833(a)(2), section 95833(a)(3), or section 95833(a)(5) regardless of whether the second entity is subject to the Regulation. An indirect corporate association exists between two entities that meet the criteria defined in section 95833(a)(4). For an indirect corporate association, both entities must be subject to the Regulation.

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 the ownership interest is more than 20 percent but does not exceed 50 percent and Entity B is registered. 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 25 percent of the listed shares of Entity C, a dairy farm in Wisconsin, that 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 accordingly does not fit the criteria for an indirect corporate association.

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 and is therefore required to disclose the relationship even though Entity D is not subject to the Regulation.

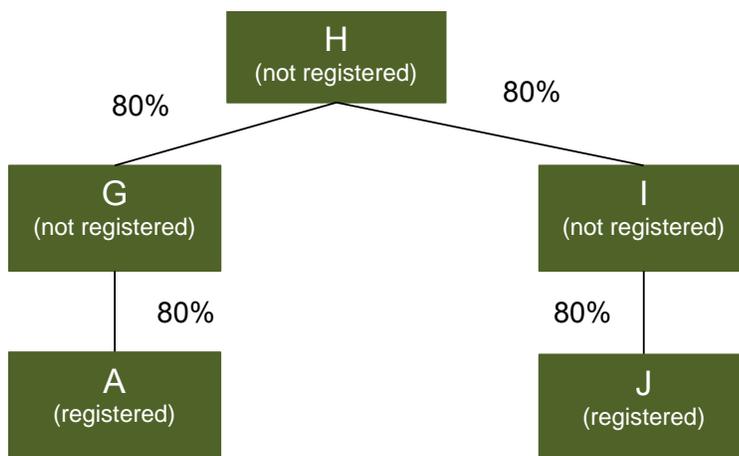
Example 4: Direct Corporate Association with a Non-Registered Entity through a One-Level Common Parent

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).

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, which owns 80 percent of Entity J which is registered. Entities A and J do not have a common parent under Section 95833(a)(3)(A). Entity A and Entity J, however, have an indirect corporate association under Section 95833(a)(4) because the level of control exceeds 20 percent.

The level of control is determined by multiplying the indicia of control ($0.8 \times 0.8 \times 0.8 \times 0.8 = 0.41$). Therefore A and J have an indirect corporate association. Entity A must also disclose Entity G as a direct corporate associations as they meet the criteria under Section 95833(a)(2). Entity J must disclose Entity I as they also are direct corporate associates. The figure below presents the graphic representation of this direct corporate association.



Example 6: Two-Level Direct Corporate Association with Non-Registered Entities

Entity A is registered and owns 51 percent of the voting rights of Entity M, a dairy farm in Mozambique that is not subject to the Regulation. Entity M owns 51 percent of dairy farm N located in Nauru which is not registered. Under Section 95833(a)(2), Entity A has a direct corporate association and must disclose its association with Entity M. Under Section 95833(a)(3)(B), however, Entity A does not have a direct corporate association with Entity N because the indicia of control is not greater than 50percent ($0.51 \times 0.51 = 0.26$). Entity A does not have an indirect corporate association with Entity N despite the indicia of control being greater than 20 percent because Entity N is unregistered.

Example 7: 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 95833(a)(2), Entity A has a direct corporate association with Entity O. Under 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.

How does an entity disclose a corporate association?

Information on corporate associations is submitted to ARB through the CITSS account application process and through the information contained in Form #3. The form is available directly through CITSS during the account application process, where it can be downloaded, filled out manually, and mailed to ARB. An

electronic version of the form is also available through the ARB website at: <http://www.arb.ca.gov/cc/capandtrade/markettrackingsystem/markettrackingsystem.htm#forms>. This version of the form can be filled out and submitted electronically as indicated in the form. A wet signature must be mailed to ARB, so the form may also be printed, signed, and mailed to ARB. Form #3 would be submitted upon registration in CITSS and updated at least quarterly if the submitted information changes. Failure to disclose 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.

When must corporate associations be disclosed?

Newly adopted section 95830(f)(1) requires updates to registration information, including corporate associations, to be submitted within 30 calendar days of the effective date the regulatory amendments. The regulatory amendments went into effect on July 1, 2014, so updates must be submitted by July 31, 2014. However, changes to an entity's registration information that relate to another registered entity must be made by the applicable auction application deadline. For the August 2014 auction, this means changes to corporate association information that specifically relate to another registered entity must be updated and submitted by July 18, 2014.

Changes to previously submitted information regarding direct corporate associations that are not subject to the Regulation must currently be submitted at least quarterly, whereas changes to information regarding indirect and direct corporate associations that are subject to the Regulation must be submitted within 30 calendar days of the change. ARB is considering extending the amount of time for submitting updates related to direct corporate associations in which the second entity is not subject to the Regulation. Such an extension would need to occur through a regulatory amendment process.

What is a consolidated account?

Under the Regulation, each facility that is covered by the Regulation is considered a separate entity requiring a separate CITSS account. Under section 95833, accounts related through a direct corporate association will be automatically consolidated, allowing one CITSS account to cover multiple entities or facilities. 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?

ARB will automatically consolidate CITSS accounts for entities that are part of a direct corporate association. Entities that have direct corporate associations may also choose to opt-out of consolidation and receive separate accounts, or consolidate a portion of direct corporate associates and opt-out one or more direct corporate associates. If an entity chooses to keep separate accounts for any direct corporate associates, then each 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 Information Disclosure Requirements

What information must an entity submit to identify other entities with which it has a corporate association?

Section 95833(d)(1) states the information that a registrant must disclose in connection with registered entities with which it has a direct or indirect corporate association and with unregistered entities with which it has direct corporate associations or that are involved in determinations made under section 95833. This information is as follows:

1. Name, contact information, and physical address of the entity;
2. Whether the entity is parent or subsidiary;
3. Holding account number, if applicable;
4. Primary Account Representative, if applicable;
5. Data Universal Numbering System number, if applicable;
6. A U.S. federal tax Employer Identification Number, if assigned;
7. Place and date of incorporation, if applicable;
8. The measure of control among entities (ownership of listed shares, etc.);
9. Percentage of ownership of a parent entity to a subsidiary entity.

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.

Does an entity need to report every entity with which it has a corporate association even if the other entity is not going to participate in the California Cap-and-Trade Program?

The Regulation requires identification of direct corporate associations (as defined per the regulatory criteria in sections 95833(a)(2), (3), and (5)) with entities which are not subject to the Regulation and do not have CITSS accounts.

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 Cap-and-Trade 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 is necessary to ensure 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) who 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:

Cap-and-Trade Regulation: Section 95979(b)(2)	Mandatory Reporting Regulation: Section 95133(b)(2)
<p>(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;</p> <p>(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;</p> <p>(C) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG reductions and GHG removal enhancements as a benefit;</p> <p>(D) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;</p> <p>(E) Owning, buying, selling, trading, or retiring shares, stocks, or ARB offset</p>	<p>(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;</p> <p>(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;</p> <p>(C) Designing energy efficiency, renewable power, or other projects which explicitly identify greenhouse gas reductions as a benefit;</p> <p>(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;</p>

<p align="center">Cap-and-Trade Regulation: Section 95979(b)(2)</p>	<p align="center">Mandatory Reporting Regulation: Section 95133(b)(2)</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>(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>(E) Owning, buying, selling, trading, or retiring shares, stocks, or emissions 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">Cap-and-Trade Regulation: Section 95979(b)(2)</p>	<p align="center">Mandatory Reporting Regulation: Section 95133(b)(2)</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 during those services, as well as the result of those services, will not be part of the verification process.</p>

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 Cap-and-Trade Regulation, a verification body may not conduct verification services if it has a high conflict of interest with 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 would 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. Entities also do not have 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 registration in CITSS. Registered entities, however, would have 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 would not constitute legal services. The attorney would be operating in a non-lawyer capacity in giving this advice. In these cases, where an attorney provided non-legal services listed in table above to the registered entity, the registered entity would have to disclose the Consultant or Advisor information as required under section 95923. If such non-legal service related specifically to auction bidding strategy, the attorney would be 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. As such, publication services available to subscribers would not be considered consulting or advisory services. Likewise, seminars, symposiums, and other speaking events which are

not provided specifically (e.g., solely) for registered entities, would not be 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 Cap-and-Trade Regulation specifically for a registered entity, the trade association or lobbying firm would need 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 would 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 would not be 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 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 would 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 complete 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 would include those acting as bid advisors. There is also a new requirement on Cap-and-Trade Consultants or Advisors who provide bidding strategy advice to disclose that their services have been retained related to providing auction bidding strategy. The entity discloses 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 entities 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 for 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 the Compliance Instrument Tracking Service System (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, or account representatives, individuals who gain knowledge of a registered entity's transaction strategy through their work as employees of the entities, and any individual who requires access to the tracking system, including the primary account representative, alternate account representatives, or account viewing agents.

The intent of this disclosure requirement is not to require disclosure of individuals only casually aware of or associated with issues related to compliance instruments or reported emissions, but to identify employees that are responsible for compliance strategies by knowing information on both an entity's holdings and 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 registered entity is required to disclose the names and contact information for 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 are newly effective and do not require entities to disclose past information.

When must information be disclosed?

The disclosure of information occurs as an update to registered entities' registration information. This update must occur quarterly, 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.