Comments of the Western Power Trading Forum on Proposed Changes 45-day Rule-making Packages for Cap and Trade Regulation

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Clare Breidenich
WPTF GHG Committee Director
Email: cbreidenich@aciem.us

The Western Power Trading Forum[1] (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) on the Proposed Amendments to the California Cap and Trade Regulation.

WPTF provides substantive comments on the following topics in the order they appear in the regulation:

- Information requirements for employees and contractors involved with the cap and trade program;
- Consistency in Deadline References;
- The expanded scope of "Corporate Associations";
- Resubmission of Know Your Customer information;
- Procedures for retirement of compliance instruments;
- Resource-shuffling;
- Direct delivery of renewable electricity
- The Renewable Portfolio Standard (RPS) adjustment
- Possible pass-through of carbon costs by natural gas suppliers to natural gas generators;
- Auction participation requirements
- Limited Exemption from holding limits;
- Timing requirements for transfer request; and
- Information required for compliance instrument transfers.

Information Requirements for Employees and Contractors

In our August 13th comments submitted on CARB's informal discussion draft, WPTF raised concerns about proposed new requirements for entities to provide information on employees or contractors involved with compliance with the cap and trade regulation in sections 95830(c)(1)(i) and (j) and 95923. Although CAR has modified these provisions slightly, we remained concerned that the language is overly broad and would inappropriately require firms to identify employees and contractors that do not play a substantive role in company compliance decisions.

As currently drafted, the regulatory text refers to both to employees involved in "decisions on compliance instrument transactions or holdings" as well as those who have "access to information on compliance instrument transactions or holdings". As WPTF has argued previously, the phrase "access to information" is particularly problematic, as it would cover administrative staff whose access to information may consist of nothing more than printing out documents for a meeting. CARB's right to apply penalties for failure to comply with any requirement under the regulation

[1] WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

means that there is a real financial risk, particularly for large corporations, if an entity fails to fully account for and identify every single employee with knowledge of, access to, or input to information or decisions regarding these issues. Thus, it is critical that the language be specific so that it does not create the potential for significant inadvertent non-compliance.

To address this risk, WPTF urges CARB to revise section 95830(i) to apply only to employees that actually make decisions about holding and transferring compliance instruments. We understand from the explanation given in the Initial Statement of Reasons, that staff is concerned about the possibility of two different registered entities coordinating their actions by actions of individuals participating in the decision making of both entities. To address this concern, CARB should require individual registering in CITSS to submit an attestation that neither the individual nor a member of the individual's family is an employee of any other registered entity under the cap and trade program.

Similarly, the language of Sections 95830(j) and 95923 (Disclosure of Cap-and-Trade Contractors) should be modified so that the disclosures apply only to consultants who provide advice on transactions of compliance instruments.

WPTF accordingly suggests the following changes to the language in Sections 95830(i) and (j) and Section 95923:

§95830
…

(I) Names and contact information for all persons employed by the entity in a capacity giving them ~~access to information on~~ authority to transact compliance instruments ~~transactions or holdings~~, or access to the entity's Compliance Instrument Tracking System Service accoun~~t. involving them in decisions on compliance instrument transactions or holdings.~~

(J) Information required under section 95923 for individuals serving as Cap-and-Trade Consultants and Advisors for entities participating in the Cap-and-Trade Program.

§95923

(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, but is paid for information or advice related to the entity's transactions of compliance instruments under the Cap-and-Trade Program ~~specifically for the entity registered in the Cap-and-Trade Program.~~

Consistency in Deadline References

In multiple places, the regulation inconsistently refers to both 'calendar days' and 'working days' in setting deadlines for entity registration requirements. For instance, section 95830(d) sets a registration deadline of 30 calendar days of the date the regulation becomes effective for an entity. In contrast, section 95830(f)(1) refers to simply 'days' and 'working days'. Given the potential financial penalties to an entity for violation of these deadlines, we urge CARB to review and revise the regulation so that all deadlines refer to 'working days.'

Expansion of Scope of Corporate Associations

WPTF continues to oppose Staff's proposed changes to Section 95833 that would significantly broaden the umbrella of corporate associations to include affiliated entities "regardless of whether the second entity is subject to the requirements of this article". As we noted in our August comments on the Discussion Draft, many registered entities under the cap and trade program are large corporations with many affiliated companies, and a multi-national presence. In many cases, a regulated entity is a subsidiary of a large corporation, and the subsidiary does not have complete information about all of its corporate associations. This is particularly true of "disclosable" corporate associations (as distinguished from direct corporate associations). Compliance with the existing disclosure requirements under Section 95833 has already proved very challenging and delayed many entities' participation in quarterly auctions. Expanding the definition of corporate associations to include entities that are not subject to the cap and trade program would create additional administrative burden for these companies.

Further, WPTF does not see the benefit of including entities that are subject to neither the California cap and trade program nor linked programs under the umbrella of corporate associations. The proposed changes merely increases administrative costs to entities to comply with the program, and for CARB to implement. WPTF therefore opposes the proposed addition to Section 95833.

Resubmittal of Know-Your-Customer Documentation

WPTF is also extremely concerned about staff's proposed addition to Section 95834(c)(2) requiring individual's registered in the CITSS to re-submit registration information every two years to enable re-verification of this documentation.

WPTF understands that the intent of the know-your-customer requirements is to enable verification of the *identity* of individuals registered in CITSS. CARB does not have a valid interest in the information required (i.e. bank account, address, photo identification) except to the extent that it helps to establish the identity of the individual registering. Once the individual's identify has been verified, there should be no need for resubmittal of this information, since an individual's identity will rarely change. In the event that an individual's identity does change, then provisions for changing account representatives under section 958532(f) would apply.

Thus, WPTF sees absolutely no need for resubmittal of the know-your-customer documentation. The Know-Your-Customer provisions and documentation requirements are already burdensome and far beyond those required under the European Emission Trading Program. To require further that individuals must re-submit information every two years is excessive and unnecessary. We urge CARB to delete

Resource-shuffling:

WPTF appreciates CARB's efforts to further clarify the regulatory prohibition against resource shuffling through the codification of the 'safe harbor' exclusions and the elimination of the

attestation. While the elimination of the attestation is helpful, if CARB intends to enforce the prohibition, then it is critical to provide further clarity about what does and does not constitute resource-shuffling. In particular, we do not believe that the proposed definition of resource shuffling, or the proposed provisions in Section 95852(b)(2) provide sufficient clarity regarding imports of low-emission power when the import is not a substitute for power previously provided by a high-emission resource under long-term contract.

We have several reasons for this concern. First, while both the definition of resource shuffling and the provisions of Section 95852(b)(2) suggest that CARB is most concerned about scenarios under which a high emission resource under long-term contract to a California utility, or owned by a first deliverer, is inappropriately substituted, use of the word "include" in the main paragraph of 95852(b)(2)(B) and the staff explanation provided during the July 18th workshop indicates that other scenarios could constitute resource-shuffling. Yet the proposed language provides no indication of what these scenarios would be. Based on earlier comments and discussion, we understand that CARB staff remains concerned regarding the possibility of 'facility-swapping' and 'cherry picking' by a first deliverer with a portfolio of resources. If this is true, then these scenarios should be explicitly identified and defined in the regulation.

Second, section 95852(b)(2) makes a partial distinction between long-term and short-term contract arrangements. Imports pursuant to short-term contracts or via the CAISO markets are a clear safe-harbor, provided that the import is not associated with the inappropriate diversion of electricity from a high-emission resource under contract to a California utility. Similarly, 95852(b)(2)(B)(1) and (2) refer to high emission resources under long-term contract. However, no guidance is provided on imports from low-emission resources. Safe harbor 10 would appear to apply if electricity from low-emission resources is imported via short term contracts, but the regulation is silent on whether imports from low-emission resources pursuant to new long-term contracts are acceptable.

Further, the explanation provided in the staff Initial Statement of Reasons regarding section 95852(b)(2)(A)(10) seems to contradict the regulatory language. Whereas the regulation provides a safe harbor for imports of electricity pursuant to short term transactions or contract <u>or</u> imports resulting from bids that clear the CAISO, the language of the ISOR suggest that the import must be pursuant to a short-term transaction or contract <u>and</u> result from a bid that clears the markets run by the California Independent System Operator (CAISO). This explanation changes the meaning of safe-harbor 10 and increases uncertainty.

Finally, we would like to draw staff's attention to the fact that the approach by the CAISO to determine the optimal dispatch of generation from resources participating in the Energy Imbalance Market results in electricity from resources with lower emissions being assigned to California load and electricity from higher emitting resources being assigned outside California. We understand from both the CAISO EIM stakeholder process, as well as CARB's tacit approval of that approach as demonstrated by inclusion of new provisions to address the EIM in the cap and trade regulation, that imports of low-emission power via the EIM would not be considered resource-shuffling. WPTF stipulates that it would be unfair and discriminatory for CARB to consider import of low-emission resources and displacement of high emission resources to be acceptable (not resource shuffling)

when it occurs via the EIM, but unacceptable and resource shuffling if it occurs through other markets.

For these reasons, WPTF considers it imperative that CARB provide more clarity around the resource shuffling provisions. We recommend the following:

- If CARB is solely concerned with inappropriate diversion of high-emission resources that are owned by or under long-term contract by the first deliverer or a California utility, then the definition of resource shuffling should be revised to explicitly state this, similar to the language used in 95852(b)(2)(B). We would suggest something along the lines of the following:

  "Resource Shuffling" means any plan, scheme, or artifice undertaken by a First Deliverer of Electricity to substitute delivery of electricity ~~deliveries~~ from a power plant that does not meet the California EPS and that is owned by or under long-term contract to the First Deliverer or to a California Electrical Distribution Utility with delivery of electricity ~~from sources~~ with relatively lower emissions ~~for electricity deliveries from sources with relatively higher emissions resources to reduce its emissions compliance obligation~~. Resource shuffling does not include substitution of electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources when the substitution occurs pursuant to the conditions listed in section 95852(b)(2)(A)."

- If CARB is not solely concerned with the with inappropriate diversion of high-emission resources that are owned by or under long-term contract by the first deliverer or a California utility, then
  - Expand Section 95852(b)(2)(B) to explicitly define the other scenarios, such as facility-swapping or cherry-picking, that would be considered resource-shuffling.
  - Provide an additional safe-harbor in section 95852(b)(2)(A) to exempt delivery of electricity under long-term contract provided that the activity is not linked to diversion of a high emission resource:

    "Long-term transactions and contracts for delivery of electricity with terms of greater than 12 months, unless such activity is linked to the selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a contract, or in which a California Electricity Distribution Utility has an ownership share, that is not covered under paragraphs 11, 12 or 13 below."

Additionally, WPTF requests that CARB clarify several aspects of the proposed language and staff comments made during the July 18 workshop and in the ISOR:

  - In response to a question regarding safe harbor 9 (i.e., proposed Section 95852(b)(2)(A)(9), as well as discussion of 95852 (b)(2)(B), CARB staff indicated that they would consider historic procurement patterns in determining whether an entity has engaged in resource-shuffling. We ask staff to provide additional explanation regarding how this would work. If CARB intends to use some sort of procurement 'baseline' as a standard against which future procurement would be

compared, then this should also be stated clearly in the regulation.

- We are also concerned about a statement made by CARB staff that indicated that incorrect reporting of electricity under the Mandatory Reporting Regulation could be considered resource shuffling. This statement appears to be inconsistent with staff explanations provided to-date indicating that resource-shuffling is a cap and trade violation and involves the delivery of electricity – not the reporting of those deliveries. WPTF considers that a reporting error should be considered a reporting violation only – not resource shuffling. We believe that staff misspoke on this issue and request clarification.

- Modify the explanation of safe harbor 10 provided in Final Statement of Reasons to be consistent with the regulation.

- Finally, we again ask CARB to provide an explanation to electricity deliverers as to how resource-shuffling will be identified, as CARB has stated that this would not be a task of verifiers. In particular, we would like to understand how CARB will determine whether an electricity delivery is linked to the selling off or assigning of a contract from a high emission resource under contract to a California utility. We are concerned about the possibility that a first deliverer of power could be considered to have resource shuffled due to a procuring utility's sell-off of high emission power, without the importing entity's knowledge of the sell-off.

Requirements for direct delivery of renewable electricity

WPTF appreciates the modification to section 95852(b)(3)(D) to require reporting of the serial numbers of associated Renewable Energy Credits (RECS) in conjunction with direct delivery of renewable energy instead of retirement of those REC. We understand from guidance issued in relation to the Mandatory Reporting Regulation in February of this year[2] as well as revised definition of renewable energy credit (311), the term REC when used in this regulation refers only to renewable energy credits generated from eligible renewable resources under the California RPS program. Thus, in the case that when electricity is delivered from a resource that is eligible under in other state renewable energy programs or in the voluntary market but that is not a California RPS-eligible renewable resource, it is not necessary for the importer of that electricity to report the associated RECS in order to claim the specified emission factor for that resource. WPTF supports this approach, but requests that staff confirm whether our interpretation is correct.

RPS Adjustment:

WPTF remains concerned that the provisions related to the RPS adjustment are not consistent with RPS program requirements. We have three concerns. First, while we appreciate CARBs attempt to address RPS program inconsistency through the modification of Section 95852(b)(4)(B) to allow RECs to be retired during the same year for which the RPS adjustment is claimed, this is still problematic for many importers. As proposed, it would force an importer of firming and shaping electricity to carry a carbon obligation until such a time as the REC is retired in accordance with

[2] http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/specified_source_guidance.pdf

RPS program rules.[3] To avoid carrying this carbon obligation, the RPS obligated entity would be forced to retire the REC early. This inconsistency is discriminatory and eliminates the flexibility provided under California statute to support short-term REC procurement contracts to meet RPS compliance targets. Under RPS program rules, once retired, RECs acquired pursuant to short-term RPS contracts cannot be carried over for future compliance.

Rather than require retirement of associated RECS, the regulation should instead require that the RECs have been appropriately matched to the imported substitute power. The RPS program requires that, for both portfolio content category one and category two, RECs generated by the eligible renewable resource must be matched to specific NERC e-tags to demonstrate either direct delivery in the former case, or delivery of substitute power in the latter.[2] The Western Renewable Energy Generation Information System (WREGIS) provides a function that allows users to match specific RECs to specific NERC e-tags for scheduling of power. This matching can only be done by the entity with title to the REC as it is imported into California, and cannot be changed. LSEs must then provide this information in the form a "WREGIS NERC e-tag Summary Report" to the California Public Utilities Commission or the California Energy Commission to demonstrate that delivery requirements for procurement categories one and two have been met. This same report can be used by CARB to ensure that claims to renewable energy and the RPS adjustment are valid. If staff remains concerned about the unlikely possibility that RECs associated with the RPS adjustment will be resold, we would suggest that CARB also require that the procuring RPS-obligated entity to submit an attestation that the associated RECs will be used for category 2 RPS compliance.

Second, the language of the main paragraph of 95852(b)(4) assumes that the entity claiming the RPS adjustment will either be importing or procuring renewable energy. The first case will never occur, as that would be considered a direct delivery of renewable energy and ineligible for the RPS adjustment. The second case would occur if the importer is the entity subject to the RPS. However, in many cases the entity that needs to claim the RPS Adjustment will only be importing substitute power on behalf of an entity subject to the RPS. Under RPS program rules, the importing entity is not required to have any contract to procure the renewable electricity or associated RECs. In addition, there are instances where the importing entity has a "Corporate Association" with the RPS obligated entity, but there is no contract in place for the transfer of power.

Finally, the current language is not sufficiently clear with respect to whether the various references to 'electricity' refer to the imported substitute electricity (i.e. the firming and shaping power) for which the RPS adjustment is needed, or to the electricity generated by the eligible renewable resource. Because of this ambiguity, the language suggests that the contract for substitute electricity must be the same contract as the contract for procurement of the RECs. This is not the case – RPS program rules only require that the contract for substitute electricity be entered into no earlier than the time the renewable electricity is purchased and prior to the initial date of generation of the renewable electricity. We believe the intent of and requirements for claiming the RPS adjustment would be clearer if the regulation were to explicitly and correctly characterize the link between the importation of 'substitute energy' in association with renewable electricity that is procured by an entity subject to the RPS, but is not directly delivered.

[3] The RPS program requires RECs be retired within 36 months of generation.

WPTF recommends the addition of a new definition of the RPS adjustment, and modifications to section 95852(b)(4) to address these concerns:

(NEW) “RPS Adjustment” means a deduction from the compliance obligation of an electricity importer that is an entity subject to the RPS or its designated counter-party, associated with the procurement pursuant to California Public Utilities Code 399.16 (b)(2) by the entity subject to the RPS program of electricity that is generated by an eligible renewable resource, but not directly delivered to California.

(4) RPS adjustment. Delivery of e~~E~~lectricity associated with the procurement by an entity subject to the RPS of electricity ~~imported or procured by an electricity importer~~ from an eligible renewable energy resource reported pursuant to MRR must meet the following conditions to be included in the calculation of the RPS adjustment:

(A) The electricity importer must ~~have~~ either:

1. Be an entity subject to the California RPS with o~~O~~wnership or contract rights to ~~procure the electricity and~~ the RECs associated with the electricity generated by the eligible renewable energy resource, or have a corporate association with that entity, as verified pursuant to the MRR; or

2. Have a contract to import ~~procure~~ electricity on behalf of ~~and the associated RECs on behalf of~~ an California entity subject to the California RPS that has ownership or contract rights to the ~~electricity and associated~~ RECs associated with the electricity generated by the eligible renewable energy resource, as verified pursuant to MRR.

(B) Within 36 months of creation, t~~T~~he RECs associated with the electricity generated by the eligible renewable resource and claimed for the RPS adjustment must be placed in the retirement subaccount of the entity subject to the RPS ~~party to the contract~~ in 95852(b)(4)(A) or (B), in the accounting system established by the CEC pursuant to PUC 399.13 and designated as retired for the purpose of compliance with the California RPS program ~~during the same year in for which the RPS adjustment is claimed.~~ RECs claimed for the RPS Adjustment must not be resold by the entity subject to the RPS, or used for a purpose other than that entity’s compliance with the RPS.

(B bis) The electricity importer must be able to provide evidence that the electricity delivered was matched with the eligible renewable resource.

(C) The quantity of emissions included in the RPS adjustment is calculated as the product of the default emission factor for unspecified sources, pursuant to MRR, and the quantity (MWh) of ~~reported~~ electricity generated by the eligible renewable resource ~~(MWh)~~ and procured by the entity subject to the RPS. ~~that meets the requirements of this section, 95852(b)(4).~~

(D) No RPS adjustment may be claimed for an eligible renewable energy resource when its electricity is directly delivered.

(E) No RPS adjustment may be claimed for electricity generated by an eligible renewable energy resource in a jurisdiction where a GHG emissions trading system has been approved for linkage by the Board pursuant to subarticle 12.

(F) Only RECs representing electricity generated after 12/31/2012 are eligible to be used towards the RPS adjustment.

Compliance instrument retirement

WPTF appreciates staff modification of the regulatory provisions regarding retirement of compliance instruments in section 95856. In particular, we support the proposal to eliminate the annual retirement of compliance instruments and instead provide for annual evaluation of whether each covered entity has sufficient instruments in its compliance account. However, we remain concerned about the staff proposal to establish a regulatory requirement for the order of retirement of compliance instruments for the triennial compliance obligation.

As we have noted previously, there may be financial accounting implications (and possibly corporate tax implications) for companies if CARB imposes a predefined retirement order. For example, most companies recognize their free allocations at $0 on their balance sheet, but purchased allowances at cost. In order to optimize its balance sheet, a company may wish to retire all of its freely allocated allowances of one vintage before it retires their purchased allowances of other vintages. Regulated entities are in the best position to determine the most cost effective means of compliance (a fundamental tenant of the cap-and-trade design) and should be provided with the flexibility to determine the most appropriate retirement order.

For these reasons, WPTF opposes the proposed changes in Section 95856 regulation that would proscribe the order in which CARB would move compliance instruments from a covered entity's Compliance account to the centralized Retirement Account for the triennial surrender obligation. We recommend instead that CARB build functionality into CITSS that would enable individual account holders to designate compliance instruments, by type and vintage, for retirement. In the event that an entity fails to indicate sufficient compliance instruments for movement to the Retirement account by the relevant surrender date, then CARB should manually pull instruments from compliance accounts in the order proposed.

Pass through of Carbon Costs by Natural Gas Suppliers to Gas Generators

WPTF remains concerned that generators using natural gas could potentially be subject to double carbon costs – once for the direct compliance obligation resulting from GHG emissions associated with their generation and again via pass through of carbon costs in natural gas prices once natural gas suppliers become covered entities under the program in 2015.

CARB's approach of notifying gas suppliers of the GHG emissions of their customers who are also covered entities presumes that the natural gas suppliers will thus ensure that carbon costs are not included in the prices charged to those customers. Yet, there is nothing in the regulation that explicitly prohibits natural gas suppliers from including carbon costs in those prices. Further, in response to stakeholder questions about monitoring and enforcing the 'expectation' that natural gas suppliers will not include carbon costs in natural gas prices to covered entity consumers, staff have suggested that this would be the responsibility of the CPUC. Again, we do not consider this response sufficient, since operators of interstate pipelines are subject to the jurisdiction of the Federal Energy Regulatory Commission --not the CPUC.

To address these concerns, WPTF recommends that CARB include an explicit provision in section 95893 that prohibits natural gas suppliers from including carbon charges in their gas charges to

customers that are covered entities under the cap and trade regulation. Additionally, CARB should require that each natural gas supplier include information in its annual report on the "Use of Auction Proceeds and Allowance Value" on how it has ensured that it excluded customers that are covered entities from any natural gas related price increase due to carbon costs incurred under this program.

Auction Application Requirements

WPTF is also concerned with the new language in Section 95912(4)(E)that would greatly expand existing requirement for an entity registering for an auction disclose any previous or pending investigations regarding the entity's violation of commodity, security or financial market rules. The new language would instead require an attestation that has not only the entity not been subject to investigation, but in addition, no entity with which it has a corporate association has been subject to investigation.

WPTF considers this revision to be completely inappropriate for two reasons. First, we object to the requirement of disclosure of investigations of entities with which the registering entity has a corporate association. Registering entities are not likely to have knowledge of the investigations of any corporate associates, particularly with staff's proposed expansion of the scope of corporate association.   Second, the language is problematic because it would essentially prevent any entity that has been subject to investigation at any point in time from participating in auctions.

WPTF therefore opposes the proposed changes to Section 95912(4)(E).

Limited Exemption to Holding Limits

CARB has substantially revised the provisions in section 95920 for limited exemptions to the holding limits. The revisions seem to be intended to increase the limited exemption, so that allowances up to the level of an entity's emissions to date for a compliance period would not be included in the holding limit. However, CARB's revisions to 95920(d)(2(B) would have the unintentional consequence of eliminating the holding limit exemption between January and October, 2014. To address this, we recommend that CARB add language to provide for a limited exemption for the January – October period.

Timing requirement for transfers

CARB has clarified the existing requirement in section 95921(a)(3) that transfer of compliance instruments in CITSS be completed within three days of the settlement date of the transaction. A transfer would now be considered deficient if it is not concluded within three days of a) submission of the transfer request, b) the execution date or termination date of the transaction agreement, c)"transfer of consideration from the purchaser of the compliance instrument to the seller as provided by the transaction agreement" or d) "the execution of the underlying trade on an exchange or other trading platform."

We understand that from a house-keeping perspective, it is necessary for CARB to impose a deadline on completion of transfer in CITSS to prevent initiated transfers to remain in an

incomplete status indefinitely and to ensure that the transaction is completed within 3 days of the transfer of compliances as set out in the underlying transaction agreement. We therefore do no object to the proposed changes to sub–paragraphs a, b and the addition of new sub-paragraph d.

However, we are concerned by CARB's addition of sub-paragraph c. Staff further explains in the Initial Statement of Reasons that the 'transfer of consideration' refers to the time at which payment by the purchaser gives it a financial interest in the allowances, and that the requirement is necessary to prevent the seller from holding the allowances on behalf of the buyer. WPTF objects to this addition for two reasons. First, the transfer of financial consideration, as staff have phrased it, is not coincident with the transfer of title to compliance instruments. Rather, title transfer is usually dictated by the terms of the contract. Until transfer of title, the compliance instruments belong to the seller – thus there can be no holding on behalf of the buyer.

Second, the requirement would appear to prohibit buyers with poor credit to pre-pay or post collateral for allowances to be received at a later date. This would harm smaller players and reduce liquidity in the secondary market.

WPTF recommends that CARB delete section 95921(a)(3)(c). The 3 day timeframe for transfer should be linked to the date of title transfer in the transaction agreement, as set out in (b) and (d).

Information Required for Compliance Instrument Transfer Requests

WPTF remains concerned about the proposed expanded information requirement for compliance instrument transfers in the CITSS proposed in section 95921(b)(2). These new information requirements would impose significant burdens on entities to have to unwind many complex and varied compliance instrument transactions in order to accurately provide price and transaction type information. The additional requirements also increase the risk of an entity inadvertently entering inaccurate information, which could result in rejection of a transfer request and/or the imposition of financial penalties by CARB. These additional administrative burdens and increased risks are not insignificant, and will ultimately raise program compliance costs for covered entities.

CARB's regulations also lack clarity as to how CARB intends to use information that it collects on price and transaction type. One explanation provided at the July 18th workshop was that CARB only wants to be able to understand the secondary market. However, CARB's proposed regulation would allow it to audit these transactions, which raises concern that CARB may also claim the right to opine on the appropriateness of individual compliance instrument transactions and associated price . This concern could drive many market intermediaries (voluntary entities) out of the market and reduce liquidity, if there is an indication that such prices could be subject to review and/or disallowance of some sort.

WPTF is also concerned that the ARB has begun to systematically collect contracts for allowance transactions. It is unclear why the ARB is collecting this information, what the ARB is doing to protect the information in these contracts, or how it furthers the ARB's role as a market monitor. Nor is it clear that collecting these contracts is permitted under the ARB's statutory or regulatory authority under AB 32.

WPTF's strong preference is to retain the existing transaction information requirements rather than the proposed amendments. If CARB retains the expanded information requirements, we request that staff provide a clear explanation of how information collected will be utilized, why the collection of this information is necessary and how confidentiality will be maintained.