Morgan Stanley

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***Via Electronic Submission***

California Air Resources Board
1001 I Street
Sacramento, CA 95814

Dear Sir/Madam,

RE: December 14, 2015 workshop to discuss CA Plan for Compliance with the Clean Power Plan and Potential 2016 Amendments to the Cap-and-Trade Program (the "Workshop")

Morgan Stanley Capital Group Inc. (MSCG) appreciates the opportunity to give feedback on the potential amendments to the Mandatory Reporting Regulation (MRR) and the Cap-and-Trade Regulation (CTR), (collectively, the "Rules"), especially the future of RPS Adjustments. MSCG agrees with many of the points made in the RPS Adjustment: Past and Future presentation given by the Air Resources Board (ARB) at the December 14, 2015 workshop.

The Workshop identified how the current Rules are being interpreted differently by the market which is causing reporting errors in the RPS Adjustment. Directly Delivered energy is being claimed as zero emission resource by the first jurisdictional deliverer and then a RPS adjustment is also being claimed by a different market participant. This results in double counting of zero emission power. ARB also indicated that it is difficult to properly verify RPS Adjustment claims because of lack of available data.

We understand the issues that ARB raised in the Workshop and would like to offer suggestions on how to adjust the Rules as part of the regulatory amendment process to help alleviate these reporting conflicts.

1) Clarify the language in the regulations for Direct Delivery of Energy from an out of state renewable resource that does not own the RECs

The Rules for claiming an out-of-state renewable resource as "specified" are clear and specific. An RPS adjustment cannot be claimed for energy that is directly delivered to California. However, there appears to be a gap in the regulation when the Direct Deliverer of such zero emission energy does not also own the associated Renewable Energy Certificates (RECs).

2) Meter and Schedule data required to properly report RPS Adjustments

ARB indicated that it is difficult to properly verify through the MRR reports whether a RPS adjustment claim is valid. MSCG recommends that ARB requires meter and schedule data to be submitted through the verification process to resolve the issues of RPS adjustment accounting.

Listed below is a more detailed discussion of each of these issues and our recommendations for the regulatory amendment process.

**Clarify Regulation Language for Direct Deliveries from Out-of-State Renewable Resources**

MSCG believes that the Rules for reporting direct delivery of power from out-of-state renewable resources are ambiguous and need to be clarified. ARB is on record numerous times as, conceptually, intending to develop the Rules such that out-of-state resources are treated equivalently with comparable in-state resources, for purposes of calculating the associated emissions obligation. At a high level, the core problem with this set of Rules is the assumption that the importer of power is also the owner of any associated RECs. This overlooks the category of transactions where ownership is split.

The MRR makes it very clear that energy which is directly delivered to California from a Specified Source must be claimed as Specified. The issue is that the CPT regulation says that, "If RECs were created for the electricity generated and reported pursuant to MRR, the then the REC serial numbers **must be** reported and verified pursuant to MRR."[1] (emphasis added) MSCG's opinion is that the CPT should be changed to say that REC serial numbers should be reported *if available.*

With reference to pages 2109, 2110 of the 2011 Reasons[2], it appears ARB is supportive of this approach. Specifically, ARB states therein:

> ...[W]e require that, if RECs were created for the electricity generated and reported pursuant to the MRR, then the RECs must be retired and verified pursuant to the MRR. ... If the electricity importer's verifier cannot confirm that the RECs are retired, the reporting entity will be in non-conformance**, but the claim to the zero GHG emission factor (0 MT of CO2e/MWh) remains valid**. (emphasis added)
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> A REC is not a compliance instrument and it does not contain a right to claim avoided emissions to comply with any GHG regulatory program.
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> It is not necessary for this regulation, which regulates metric tons of GHG emissions, to be completely coordinated with the RPS, which is a program that tracks megawatt-hours of electricity generated represented by RECs.

As ARB identified in the Workshop, the purpose of the RPS program is to encourage the development of eligible renewable energy; distinct from Cap-and-Trade Program's focus on direct, source-based emissions associated with electricity that is directly delivered. Thus, the

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[1] §95852(b)(3)(D)

[2] Final Statement of Reasons for Rulemaking: Public Hearing to Consider Adoption of Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, pp. 2109, 2110 (California Air Resources Board, October 28, 2011)

criteria for claiming a resource as specified should be separate and distinct from claims related to RECs. Indeed, the criteria for claiming a resource as "specified" should not differ depending upon the emissions rate of the resource in question, or its "renewable" status. For example, whether a market participant purchases energy from a wind farm or a coal plant, if the criteria for a specified source are met under the MRR, then the market participant must claim it as specified, with a beneficial emission factor if it is a wind farm and a detrimental emission factor if it is a coal plant. The integrity of the Cap-and-Trade Program is predicated on the accurate reporting of the emissions associated with the source of the energy. REC management and other issues related to status and treatment under state Renewables Portfolio Standard (RPS) requirements are a separate program. Administrative needs under the RPS program should not disrupt the logical and equitable functioning of the Cap-and-Trade Program.

In MSCG's opinion, the above statements from ARB suggest that ARB is well aware of the distinct roles that the GHG and RPS regimes play in the over-arching objective of incenting greener sources of electricity. While the programs may interact at certain levels, the mandate of each is fundamentally different, as already highlighted herein. The inability for a reporting entity to provide certain information that is not a requirement of the GHG program but rather a requirement under the separate and distinct RPS program should not detrimentally affect such reporting entity with respect to its obligations under the GHG program.

**Meter and Schedule data required to properly report RPS Adjustments**

ARB made it clear at the Workshop that lack of available data hinders accurate RPS adjustment reporting. Notwithstanding the challenges associated with accurate RPS adjustment reporting, MSCG does not support removal of the RPS adjustment from the Rules which was one of the options ARB suggested in the "Next Steps" slides of the Workshop. Instead, MSCG recommends taking an approach of putting the onus on the RPS adjustment applicant to prove that the RPS adjustment is legitimate.

In order to properly track whether an RPS Adjustment is valid, meter data needs to be reconciled with schedule (tag data) from eligible renewable sources. MSCG recommends that the MRR be updated to state that the entity that is claiming a RPS adjustment is responsible for proving to its verifier that the energy from the renewable source was not direct delivered to California. The RPS adjustment claimant would need to show exactly how many MWh were directly delivered to California so that it could properly verify the amount that could be claimed for an RPS adjustment (metered output less directly delivered energy). In order to do this, the RPS adjustment claimant has to have access to the meter data and all schedule (tag data) from the renewable resource.

MSCG recognizes that in the case where the RECS and energy output are not owned by the same entity, acquiring the entirety of this information may be difficult, even impossible. This is because market participants could withhold meter or tag data from each other. This problem currently occurs in the market with respect to the "Lesser-of Analysis". The Rules require that a market participant have meter data for any specified source claim where the emission factor is zero. If a counterparty sells specified power in the Real-time market (energy is purchased from a

particular source and there is a verbal agreement on the phone to buy energy from that source) and the buyer delivers this energy directly to California it cannot be claimed as specified with the proper emission factor in the event the seller will not share the meter data with the buyer. MSCG has experienced issues with counterparties withholding meter data which is required to make a Specified Source claim for zero emission power. In that situation, MSCG has claimed the source as unspecified as it was not possible to properly conduct the lesser-of analysis.

In order for the RPS Adjustment program to work, meter and tag data will need to be accessible for Verifiers. ARB has made it clear that the ability to obtain meter data for the Lesser of Analysis is an industry practice and not addressed by the MRR.[3] If ARB is willing to take the same position with respect to meter and tag data required for RPS adjustment claims it would result in less misreporting but it may result in some power not being eligible for the RPS adjustment..

Thank you for considering these comments.

Yours truly,

Deborah L. Hart, Vice President

[3] http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/epe-faqs.pdf pp 10 section 2.1.4