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March 9, 2026

Dr. Steven Cliff
Executive Officer
California Air Resources Board

Ms. Rajinder Sahota
Deputy Executive Officer
California Air Resources Board

Re: Comments on Potential Amendments to the Cap-and-Invest Regulation

Dear Dr. Cliff and Ms. Sahota,

Thank you for the opportunity to submit comments to the California Air Resources Board ("**CARB**") regarding the proposed 2026 amendments (the "**Proposal**") to the Cap-and-Invest Regulation (the "**Regulation**"). These comments are submitted on behalf of our client the Coalition for California Climate Ambition (the "**CCCA**") and should be read together with the previous CCCA Comment Letters submitted on July 7, 2023, October 13, 2023, December 15, 2023, May 8, 2024, July 31, 2024, and November 12, 2025 (the "**CCCA Comment Letters**")[1].

The CCCA is an informal, unincorporated association of stakeholders supporting a continued role for the cap-and-invest program (the "**Program**") as the most efficient mechanism to achieve California's climate goals, including achieving carbon neutrality by 2045. The CCCA is comprised of compliance entities, project developers, and entities that participate in the Program as voluntarily associated entities, each of which have made long-term commitments to reduce emissions within California. The comments from the CCCA are as follows.

I. The CCCA Generally Supports the Proposal to the Regulation

We thank CARB staff for their continuous efforts to refine the Program, and we commend CARB for promulgating the Proposal which provides increased clarity and certainty to the Program going

[1] CCCA Comment Letters on CARB's previous workshops dated 7/7/2023 (link), 10/13/2023 (link), 12/15/2023 (link), 5/8/2024 (link), 7/31/2024 (link), and 11/12/2025 (link).

forward. The CCCA supports CARB and the adoption of the Proposal by the May 28 Board Meeting without delay.

II. The CCCA Requests CARB Refine the Proposal's Updates to Corporate Association Group Triggers

The CCCA supports CARB's efforts to clarify, and in some cases, expand, the rules governing Corporate Association Groups ("**CAGs**"). However, we believe further modifications are necessary to avoid overly broad restrictions that could significantly impact Voluntarily Associated Entities ("**VAEs**") and the consultants, advisors and other entities who provide valuable services that support Program participation and integrity. VAEs are essential to the Program, contributing liquidity and stimulating demand, both of which are beneficial for the overall health and effectiveness of the market. VAEs typically rely on a wide range of consultants and advisors to access the Program given the highly technical rules and requirements. In the absence of sophisticated advisors, we anticipate VAE participation in the Program may decrease, which would directly impact cornerstone aspects of the Program. The CCCA appreciates CARB's efforts to refine its market monitoring toolset, but CARB should not take actions that inadvertently result in decreased Program participation. This is particularly significant given that the Program is functioning well and CARB has not identified any specific compliance concerns.

CARB creates CAGs to treat affiliated entities as a single participant for purposes of applying the holding limit. But overly broad CAG rules do not materially support that purpose, and will create unintended and problematic effects. If implemented, the Proposal may inadvertently and unintentionally create CAGs between market participants who have no direct affiliation. In addition, creating unnecessary CAGs (from a market conduct perspective) will have broader market-wide impacts. According to CARB's own estimates, the Proposal could force entities to divest 23 million allowances, which has the potential to create Program shocks and impact Program stability and allowance pricing. The CCCA strongly supports the Proposal's extended grace period through January 1, 2030 for entities placed in CAGs to reallocate a single holding limit, but CARB should take steps to fully mitigate any unnecessary, forced divestiture of allowances. Again, this is especially pressing given the lack of evidence or data indicating that such changes are necessary or that market coordination issues actually exist.

With the following changes, we believe CARB can strike the right balance by providing clearer CAG rules without being so restrictive that it negatively impacts VAEs and the overall market. In particular, the CCCA's recommendations adhere to the principle that only individuals who have the bona fide ability to direct, authorize and control (with limited restriction) multiple registrants should trigger the creation of CAGs. Rules in the Proposal that are broader than this principle should be narrowed to avoid capturing individuals or entities that do not present coordination risks.

A. Direct Access to multiple CITSS accounts should not automatically trigger a Corporate Association Group

The Proposal updates the Regulation's "Shared Roles" test such that if an individual has direct access to two or more registrants' CITSS account, the individual will trigger a CAG between the applicable registrants. The CAG is triggered without regard to the individuals' role which means any commonality of "Primary Account Representatives," ("**PAR**"), Alternate Account Representatives ("**AAR**") or Account Viewing Agents ("**AVA**") between two registrants trigger a CAG. The Initial Statement of Reasons explains CARB's concern that individuals with direct access to CITSS accounts possess unique information which may allow them to facilitate impermissible coordinated market behavior. Respectfully, that rationale is overbroad.

Direct access to a CITSS account does not automatically confer authority or practical ability to influence market behavior.

- **PARs and AARs:** While it is true that PARs and AARs ultimately facilitate transactions by processing and confirming requests in CITSS, a PAR or AAR may be required to follow the express orders of the CITSS account owner or controlling entity. In other words, if the PAR and AAR are acting in an administrative capacity, rather than a decision-making capacity, their direct access should not trigger a CAG.

- **AVAs:** Similarly, the role of an AVA, by its nature, does not provide any authority or control. Often AVAs have direct access to CITSS account solely for purposes of financial auditing, reconciling or asset security. Only a limited number of sophisticated financial services firms act as AVAs (such as Deloitte or PWC) and the Proposal may inadvertently force these types of institutions to limit their services. This would not be a good outcome for the Program, as the Program should be encouraging, rather than limiting, highly sophisticated advisors from expanding their market services.

We propose CARB adopt a functional test that evaluates an individual's actual capacity to influence or execute transactions, focusing regulatory concern on decision-making authority rather than visibility into account data. While direct CITSS account access may be a factor CARB evaluates to create a CAG, it should not be dispositive.

B. Support Expansion of the Shared Role Exemption

The CCCA supports expanding the shared role exemption to cover PARs, AARs and AVAs, in each case where the individual lacks trading discretion or pricing authority and performs only administrative, compliance, or ministerial functions.

The shared role exemption is an appropriate mechanism for accommodating advisors that provide Program related services to multiple registrants and do not present coordination risks. Extending the exemption to PARs, AARs and AVAs would preserve necessary operational support for VAEs, while also preserving CARB's ability to monitor market coordination, since CARB must verify and approve applications for the exemption.

CARB should also specify in the Proposal, or subsequently provide guidance, on how CARB determines whether an individual has any "decision-making authority over the market positions of any of the entities that they serve." An individual advisor may provide services that could influence an entity's transaction strategy for instance, but as long as the entity still retains the ability to overrule the advisor's recommendation, CARB should not consider the advisor as having "decision-making authority." To make the application of the shared role exemption consistent, fair and predictable, CARB should provide more specific language as to how it will evaluate and determine the shared role exemption.

C. Commodity Pool Operator and Commodity Trading Advisor

Instituting CAGs for all registrants with shared commodity pool operators ("**CPO**s") and commodity trading advisors ("**CTAs**"), even those without control or management over registrants, is overbroad and duplicative of the CFTC's robust anti-fraud/manipulation rules and compliance regime. As written, the Amendment will likely chill participation in the Program and force entities to decide if they want to participate, and invest, in the Program or rather focus on derivative activities (futures trading, etc.) in markets where CARB has no significant jurisdiction or authority. Moreover, CARB should be encouraging registrants to operate within a framework of enhanced oversight and transparency, rather than discouraging registration by treating such oversight as a trigger for CAG status. CPOs and CTAs are not unique in this context and should be treated the same as other service providers or advisors; a CAG should only be triggered when they possess actual knowledge of market position, not merely by virtue of their role or registration status.

Instead of this broad provision, CARB should institute a CAG for registrants with shared CPOs and CTAs if those CPOs and CTAs have actual trading authority.

III. The CCCA Requests Regulatory Clarification on "Knowledge of Market Position"

The term "knowledge of market position" is critical to multiple aspects of the Regulation, including the expanded CAG triggers, yet it remains undefined in the Regulation. The absence of a clear definition of "knowledge" creates administrative challenges, increases compliance costs, and generates ambiguity for due diligence and CAG determinations. The CCCA proposes CARB adopt a specific definition of "Knowledge of Market Position" as follows, which would provide a brightline rule for registrants, their employees and their advisors and help make Program structuring and Program compliance more efficient.

"Knowledge of Market Position means knowledge of a registered entity's specific position information or compliance information (e.g., current or expected holdings or covered emissions) that is less than thirty (30) days old."

Alternatively, CARB could issue regulatory guidance to clarify the term "knowledge of market position."

IV. The CCCA Suggests Alterations to Prohibitions on Trading (Section 95921(f))

The Proposal contains a number of changes to the Section 95921 ("**Conduct of Trade**").

A. Prohibition on In-Kind Trading (Section 95921(f)(1)

The Proposal outright prohibits in-kind trades without identifying any market harm or compliance concern, even though in-kind trades are a long-standing and legitimate commercial practice. The CCCA recommends that CARB remove this prohibition because it is not substantially supported.

B. More Specific Definitions Related to Control in Section 95921(f)(1)(B)

The Proposal contains changes to the prohibition on third-party contractual control in Section 95921(f)(1)(B) as follows:

> "A registrant may not hold allowances pursuant to an agreement or contract that gives a second entity *any degree of control over* the transaction decisions and the trading of allowances…" (emphasis added).

This language could sweep in routine commercial, advisory, and financing arrangements that pose no coordination or manipulation risk. We recommend CARB adopt a more precise phrase, such as "authority to direct."

The CCCA also urges CARB to expand Section 95921(f)(1)(B)(1), which clarifies what lender and secured-party actions are impermissible, to affirmatively state that standard remedies in events of default do not constitute prohibited control. Financing arrangements are essential for ensuring market liquidity, and if the Regulations do not provide clear expectations around permissible arrangements, it may unintentionally discourage a well-established and standard commercial practice that poses absolutely no risk to Program integrity.

Finally, the CCCA recommends CARB revisit and revise the revisions to Section 95921(f)(1)(B)(2), which provide:

> "Agreements that grant legally binding authority to a second entity to represent or manage the tracking system account of a registered entity are prohibited."

This language is overly broad and not clear. CARB should indicate whether the provision covers third-party PARs, AARs and AVAs (such as professional accounting firms or investment advisors) and which contractual arrangements, if any, remain permissible for account-management services.

C. Holding Limit Allocations Should be Considered Effective Upon Submission 95920(f)(3)(B)

The Proposal changes existing procedures by mandating that the Executive Officer must approve changes to the holding limit allocation before they become effective. This approval may expose registered entities to potential compliance issues because of regulatory delays. The Proposal is expected to increase the number of CAGs, leading more entities to review and adjust holding limits. This could lengthen Form 3 processing times, making approval dates unpredictable and hindering market planning. In some cases, entities may need to pause market activities late in the year to allow CARB sufficient time to process allocations in advance of the annual decrease of the holding limit.

To preserve oversight while enabling operational efficiency, CARB could adopt one or more alternatives: (i) expedited approval for routine or ministerial changes; (ii) provisional allocation changes pending CARB review with safeguards; and/or (iii) categorical de minimis exemptions. These adjustments would maintain Program integrity without imposing avoidable timing risks.

V. The CCCA Recommends Removing the Requirement for VAEs to Have Two U.S. Account Representatives (Section 95814(a)(5)(A))

The requirement that, effective January 1, 2028, all VAEs maintain at least two account representatives with a primary residence in the United States is overly restrictive and risks discouraging participation by international entities, thereby reducing market diversity and liquidity. CARB will retain sufficient jurisdiction and oversight so long as each entity has at least one U.S.-based director and/or one U.S.-based account representative. We do not see a compelling need to mandate two U.S.-based representatives. The proposal imposes administrative obstacles on current, and potential future, VAEs, without a corresponding compliance or enforcement benefit.

VI. The CCCA Urges Removing the Requirement to Provide Financing Documents for VAE Registration (Section 95830(c)(1)(N))

Under the Proposal, new applicants seeking to register as a VAE would be required to submit a comprehensive set of documents, including loan or financing documents. This request represents significant regulatory overreach and offers no meaningful benefit to CARB. If CARB intends this request to cover all loan and financing documents that are currently in place for the prospective applicant, then it essentially compels applicants to disclose sensitive financial information that has no connection to the applicant's Program activities. If this is the case, then CARB will only be expending valuable time and resources to review hundreds of pages of financing documents for no particular benefit. It will also likely discourage financial participants from registering in the Program as we anticipate the majority of financial institution's chief executives, risk management and compliance teams will not view this as a reasonable requirement and thus abandon participation. The Proposal and prior CARB guidance provide a framework for permissible financing arrangements that market participants should be expected to follow. If in the course of its routine market monitoring authority, CARB feels the need to request information regarding financing arrangements, CARB already has the power to do so.

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The CCCA appreciates the opportunity to provide comments following the Workshop. We remain available to discuss these matters further at your convenience.

Sincerely,

/s/ Michael Romey

Michael Romey

of LATHAM & WATKINS LLP

/s/ Jean-Philippe Brisson

Jean-Philippe Brisson

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