

Emissions Experts Inc (Mike Taylor)

Numerous smaller California covered entities in the Cap and Invest Program rely on cap and trade consultants to understand the program and assist them in complying. Under the current program structure, consultants/advisors are listed separately, and not defined as employees of regulated entities, and disclosed on the Corporate Form 3 through the existing registration process. By definition, and per industry standard, consultants do not act as decision makers for regulated entities, do not execute transactions on behalf of their clients, and operate in an advisory capacity.

We provide following comments for ARB consideration:

- 1.) Make clear in Section 95979(b)(2) that Cap and Trade Consultants are not "providing services" if they only broker one off transactions for an entity. In this scenario, they do not know entity's position nor provide any strategy nor do they have authority to transact on behalf of client.
- 2.) RE: 95866(c)(3)(A) "Applying for the Shared Role Exemption. If an entity is subject to a direct corporate association due to an individual with shared roles, and that individual is accurately disclosed as a Cap-and-Invest Consultant or Advisor pursuant to section 95923, then that entity is eligible to apply for the Shared Role Exemption from a direct corporate association pursuant to section 95833(a)(6). To apply for this Shared Role Exemption from a direct corporate association, an entity must identify the name of the Cap-and-Invest Consultant or Advisor and the exemption qualification in section 95833(c)(3)(B)1. or 2. that is met by that individual, submit to CARB a contractual agreement or the employment terms and conditions that describe the individual's roles and responsibilities and a signed and dated Conflict-of-Interest and Confidentiality Attestation. At any time, the Executive Officer maintains the authority to request a copy of the registered entity's conflict-of-interest and confidentiality policies and procedures, which must be provided within 10 days of such request pursuant to section 95803." Requiring small covered entities to establish conflict of interest and confidentiality policies and procedures and keep them updated to provide within 10 days of request by Executive Officer, will result in many of covered entities to incur cost of hiring an attorney to develop this policies and procedures, as well as ongoing costs, with minimal direction from ARB as of what is an acceptable policy. The attorney costs may be too burdensome and result in entities terminating contracts with Cap and Invest Consultants, and hoping they know enough to comply with Cap and Invest Program. ARB should consider providing a standard conflict of interest and confidentiality policy for entities to adopt that they know will be acceptable or consider removing this altogether for small to midsize entities.
- 3.) To not add to the costs and additional administration work to covered entities, especially the smaller ones that benefit from having a Cap and Invest Consultant, ARB should consider adding a "Box" to check on Corporate Form 3 on same page they disclose a Cap and Invest Consultant that their Consultant meets the Shared Role Exemption. And then another "Box" to check to accept ARB provided language on Conflict of Interest and Confidentiality Policy. This would go a long way of not adding additional costs and giving clarity to small and midsize covered entities that their policy is acceptable and will not receive an unexpected request with only 10 days to respond with a policy they do not know if is acceptable. This burden should not be added to the California small and midsize firms in the program especially as prices are expected to rise and free allowances are being reduced. Please help keep the administrative portion of this program affordable to comply with.