

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814, and ACT Commodities, Inc. (ACT), with its principal location at 437 Madison Ave, Suite 17A, New York, NY 10022 (collectively, the "Parties").

LEGAL BACKGROUND

- (1) **Purpose.** The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580.)
- (2) **Regulation.** CARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (the Regulation), which created the Cap-and-Trade Program. (Cal. Code Regs., tit.17, § 95801 *et seq.*) The Regulation establishes yearly caps, called "budgets," for the total greenhouse gas emissions of all regulated sources (called "covered entities"). These emission budgets decline each year in order to require emission reductions from covered entities. CARB issues allowances—"authorization[s] to emit up to one metric ton of carbon dioxide equivalent" greenhouse gases—in quantities equal to the emissions budget for a given year. Cal. Code Regs., tit. 17, §§ 95802(a), 95820(a)(1). Covered entities may trade allowances and other compliance instruments and are required to acquire and surrender eligible compliance instruments equivalent to the metric tons of greenhouse gases they emit.
- (3) **Relevant Regulatory Provisions.** The Regulation allows non-covered entities to participate in the Cap-and-Trade Program. These entities—called Voluntarily Associated Entities or General Market Participants—are not subject to the requirement to surrender compliance instruments, but otherwise choose to participate in the Cap-and-Trade Program. See Cal. Code Regs., tit. 17, § 95802(a). General Market Participants are subject to, among other things, the Regulation's provisions regarding registration and maintaining the security of Compliance Instrument Tracking System Service (CITSS) login information. See *id.* § 95830; *id.* Appendix B.
- (4) **Penalty Provisions.** Failure to comply with applicable requirements of the Regulation is a violation of state law that may result in penalties of up to five thousand dollars (\$5,000) (or ten thousand dollars (\$10,000) in some cases) for strict liability violations for each day in which the violation occurs. (Cal. Code Regs., tit. 17, § 96014; Health & Saf. Code §§ 38580, 42400 *et seq.*, 42402 *et seq.*)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, ACT was organized under the laws of the State of Delaware and conducted business in the State of California. At all relevant times, ACT was a General Market Participant in the Cap-and-Trade Program.
- (6) Allegations. CARB alleges that ACT failed to comply with the Regulation during periods of 2019 and 2020. Specifically, CARB alleges that ACT failed (1) to maintain the security of its CITSS login information and (2) to revise its account representative information within 30 calendar days of a change to registrant information. See Cal. Code Regs., tit. 17, App. B; *id.* § 95830.
- (7) Acknowledgment. ACT admits to the facts in Paragraphs 5 and 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, ACT has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against ACT for the alleged violations referred to above in the Legal Background and Case Background and removing the suspension on ACT's CITSS account, and ACT's agreement to complete all terms and conditions set forth below, CARB and ACT agree as follows:

- (9) Settlement Amount. ACT shall pay a civil penalty of one hundred and seventy thousand dollars (\$170,000.00 USD). ACT shall pay the civil penalty amount in-full within 30 calendar days from the date CARB notifies ACT of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. ACT shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. ACT is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs.

- (11) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties.
- (12) Binding Effect. This Settlement Agreement binds ACT (and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations) and CARB (and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement).
- (13) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (14) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by both Parties to this Settlement Agreement.
- (15) Severability. Each provision of this Settlement Agreement is severable and, in the event that any provision of this Settlement Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (16) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (17) Non-Discharge. The penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (18) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (19) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (20) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered valid and binding signatures.

- (21) Release. In consideration of the full payment of the civil penalty, CARB hereby releases ACT and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described above.
- (22) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.
- (23) Confidential Business Information. CARB based this penalty in part on confidential business information provided by ACT and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

PENALTY BASIS

- (24) Per Unit Penalty. The penalty in this case is a maximum of five thousand dollars (\$5,000) per day under Health and Safety Code sections 38580 and 42402 for violations of the Regulation. (Cal. Code Regs., tit.17, § 96013.) The penalty of \$170,000 relates to two separate alleged violations, which collectively spanned over 297 days. The per-unit penalty in this case is approximately \$572 per noncompliant day.
- (25) Emissions. The provisions cited above do not prohibit emissions above a specified level.
- (26) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including the statutory factors specified in Health & Safety Code section 42403. CARB considered whether ACT cooperated with the investigation; the extent of harm caused by the violation; the nature and persistence of the violation; the length of time over which the violation occurred; action taken to mitigate the violation; and, the financial burden to the violator. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and to account for the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Name: Richard W. Corey _____

Title: Executive Officer _____

Date: 4/2/2021 _____

ACT Commodities, Inc.

Signature: _____ /S/ _____

Name: Michael Vigario _____

Title: Chief Financial Officer _____

Date: 3/26/2021 _____