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December 15, 2023

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-Trade Regulation

Dear Dr. Cliff and Ms. Sahota,

Thank you for the opportunity to submit comments pursuant to the joint California-Québec public workshop held on November 16, 2023 (the "**Workshop**") on potential amendments to the Cap-and-Trade 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 CCCA previous Comment Letters submitted on July 7, 2023 and October 13, 2023 (the "**CCCA Comment Letters**")[1].

The CCCA is an informal, unincorporated association of stakeholders supporting a continued role for the Cap-and-Trade Program (the "**Program**") as the most efficient mechanism to achieve California's 2045 climate goals. The CCCA has members from key stakeholder groups, including industry participants, investors, and project developers. Members of the CCCA have made long-term investments worth hundreds of millions of dollars in multiple areas of the California economy, including in renewable power, energy transition, and infrastructure. CCCA members participate actively in the Program, including through participation in the California allowance auctions.

We would like to thank the California Air Resources Board ("**CARB**") staff for hosting the Workshop and for their continuous efforts to refine the Program and consider various modeling scenarios. The comments of the CCCA are as follows:

1. The CCCA Supports Providing Clarity with Respect to the Extension of the Program Beyond 2030.

As demonstrated in the UC Davis modeling work and in the supporting evidence provided in the CCCA Comment Letters, the Program's extension is necessary to continue to incentivize CCCA members and other Program stakeholders to make investments in the

[1] CCCA Comment Letters on CARB's previous workshops dated 7.7.2023 (link) and 10.13.2023 (link).

near-term as well as long-term investments in emission reduction infrastructure projects. The current uncertainty regarding the Program's continuation beyond 2030 is already affecting investment decisions and could discourage certain investors if left unaddressed. The extension should be confirmed directly through amendments to the Regulation that would provide future allowance budgets between 2031 and 2045 and may also require specific future legislation to reinforce CARB's authority.

2. The CCCA Supports Adopting the Proposed Scenario of 48% Reduction Below 1990 Levels by 2030.

Out of the allowance budget scenarios presented in the Workshop, the 48% reduction scenario is best suited to achieve the state's greenhouse gas ("**GHG**") reduction targets laid out in the 2022 Scoping Plan. To facilitate that, the CCCA believes that the Program should play a workhorse role in California's climate policy. In other words, the Program should be used as the main driver for GHG emission reductions in order to meet the state's ambitious 2023 climate target and 2045 carbon neutrality target.

3. The CCCA Supports Removing Allowances from the Auction and Allocation Budget.

In deciding how to implement the 48% reduction scenario through cap adjustments in its upcoming rulemaking, CARB may consider the following factors: i) maintaining strong auction revenues, ii) promoting liquidity in the market, iii) incentivizing emissions reductions across the state, and iv) preserving the efficacy of the Allowance Price Containment Reserve (APCR) tiers 1 and 2 as speed bumps, by not reducing their allowances volumes and potentially exposing the Program to higher prices in the future. The UC Davis modeling demonstrates that scenarios that remove allowances primarily from the price ceiling and APCR pool result in the least emissions reductions attributable to the Program. This suggests that these scenarios could lead to high prices with limited overall benefits to the state, potentially raising concerns about the Program's effectiveness. The modeling strongly suggests that the most optimal scenario for supply revisions is to focus on the auction and allocation pool, which would drive more emissions reductions across the California economy. Therefore, the CCCA supports removing allowances from the auction and allocation budget rather than from the price ceiling and APCR budgets (in accordance with scenario 3(a) presented in the Workshop).

4. The CCCA Supports Retaining the Current Banking Rules.

The CCCA does not support a revision to the banking and trading requirements. The existing banking rules do not impose limitations on allowance holdings and as such reduce compliance costs, provide compliance flexibility and incentivize early emissions reductions as well as long-term commitments from market participants. In addition, the banking rules enhance liquidity on the secondary market and encourages competitiveness of regulated entities, which may in turn reduce costs to end consumers. Modifying the banking and trading requirements to set minimum trade activity requirements and duration limits on allowance holdings could (i) reduce such liquidity and competitiveness, (ii) potentially increase costs to end consumers and discourage market participants to invest in

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early emissions reductions, and (iii) potentially risk trading certain allowances at a discount to other vintages. Such disparities would severely disrupt the ICE futures market – where most of the allowances trading occurs – because each vintage would require a separate contract for delivery, compared to the current banking rules where "California Carbon Allowances acceptable for delivery are those...having a vintage corresponding to the calendar year of the expiring contract and allowances having a vintage of *any year prior* to the calendar year of the expiring contract." (emphasis added). Separating each vintage year into a separate contract could severely hamper liquidity.

5. The CCCA Does Not Support Lowering the Holding Limit Beyond the Allowance Budget Decline Rate and Suggests CARB to Consider Adjusting the Holding Limit Equation to Provide a Gradual Decline of the Holding Limit.

According to the holding limit equation set out in the Regulation, reducing the annual allowance budget will lower the holding limit. The CCCA does not support lowering the holding limit beyond the allowance budget decline rate and suggests CARB to consider changing the holding limit equation to allow a more gradual decline of the holding limit. This adjustment would enable market participants to retain more allowances in their accounts, serving as a buffer against possible future price increases. Additionally, CARB may contemplate setting a phase-in period for this change, as there could be a brief period between the final approval and actual implementation of the new rulemaking.

6. The CCCA Recommends a Further Examination of the Implications and Benefits of an Automatic Auction Supply Mechanism.

CARB and Québec indicated in the Workshop that they are considering the implementation of a new mechanism that allows auction supply to automatically reflect recent auction settlement prices. The CCCA believes that a further examination of the risks and benefits arising out of such mechanism is warranted and that CARB should publish the outcome of such examination for public comment.

7. The CCCA Supports Maintaining Clear and Consistent Rules and Regulations.

CARB's Rules and Regulations Must be Transparent and Applied Consistently. As the Program continues to generate significant interest from "Voluntarily Associated Entities" such as financial market participants and long-term institutional investors, it becomes increasingly important for CARB to maintain a consistent and transparent application of agency rules and regulations. Financial market participants have invested significant resources, capital and time into structuring registrants consistent with the Regulation and long-standing agency practice. Slide 69 of the Workshop presentation indicates that CARB may seek to reexamine corporate association indicators of control and/or ownership. The CCCA believes the current requirements under the Regulation regarding ownership and control disclosures are robust and sufficient for CARB to determine corporate associations between Program participants and that any significant changes to these rules may create unnecessary disruptions as to ongoing and future financial market participation in the Program, to the detriment of the Program's goals.

CARB's Rules Are the Most Stringent. As an initial matter, it is important to note that the disclosure requirements and related prohibitions in the Regulation are materially more extensive and stringent than the equivalent rules existing in other cap-and trade programs, including those of the United Kingdom, the European Union and the Regional Greenhouse Gas Initiative (but except naturally those of Québec and Washington who copied the California rules). In addition, the CCCA wishes to acknowledge that the CARB staff has done an excellent job running the Program as is evidenced by the absence of any significant market disruption since the creation of the Program (except for the exit of Ontario which was beyond CARB's control). The Regulation's extensive disclosure requirements and related prohibitions are supplemented by CARB's broad authority to request supplemental information from any Program applicant or participant which reinforces CARB's ability to fulfill its market monitoring responsibilities. Thus, the CCCA encourages CARB to maintain its current approach for evaluating control and ownership indicators, rather than potentially setting overbroad requirements that do not necessarily apply to all applicants and Program participants and that may force CARB to expend time, energy and resources on unnecessarily complex reviews.

CARB Should Strive to Maintain Agency Practice. As CARB is aware, the Program has achieved its goal in that it is bringing additional private capital to the state to support California's climate ambitions. In order to maintain investor interest and continue to bring in extensive capital commitments to the Program, CARB should interpret and apply the Regulation in a consistent manner across all Program participants. The private investment community relies on regulatory certainty and agency practice certainty and if CARB were to act contrarily to past practice, it will have a chilling effect on private investor interest in the Program. This not to say that CARB may never revise the Regulation or change its practice, but rather that any regulatory revisions or shifts in policy practice should be considered in the context of the extensive body of agency practice pursuant to which the financial community has decided to invest in the Program. In addition, CARB should take all steps necessary to avoid practices or procedures that are not support by the clear text of the Regulation, as such practices by their nature cannot be consistently or transparently applied to Program participants. Should CARB wish to change its agency practice, CARB should solicit input from the affected stakeholders and understand the broader impacts that its decisions will have on the market as whole.

Ownership and Control Tests can be Revised to Provide Regulatory Clarity. As noted above, the CCCA believes the current ownership and/or control indicators that CARB reviews pursuant to the Regulation are sufficient for CARB to maintain its market monitoring obligations. However, CARB could seek to clarify on a limited basis its criteria for determining corporation associations under Section 95833(a)(1) of the Regulation. Specifically, while Section 95833(a)(1) of the Regulation sets forth clear criteria for an ownership analysis (which makes sense given "ownership" of an entity can be determined by certain objective measures), the agency's "control" analysis has trended towards a more subjective determination in some cases. This in turn may lead to an inconsistent application of the Regulation on case-by-case basis, whereby CARB ultimately determines certain registrants are "controlled" by more than one entity. Thus, the CCCA encourages CARB to reconsider how it treats the control requirements such that CARB can more readily determine who, or what, is the ultimate "controlling" authority over a registrant, whether that is a single parent entity, a board of directors or a collective group of investors for example.

8. The CCCA Suggests Reevaluating CAG Exemptions and Market Access Definition.

The Regulation Should Clarify Disclosure in the Context of the Shared Roles Test and Market Access Definitions. Slide 67 of the Workshop presentation states "Entities must disclose Cap-and-Trade consultants/advisors. Also, in CA, individuals with access to market position, which includes knowledge of covered emissions and account holdings." The statement on Slide 67, as well as recent CARB agency practice, suggests confusion with the actual requirements under the Regulation. Section 95830(c)(1)(J) of the Regulation requires disclosure of the "Names and contract information for all *employees* [emphasis added] of the entity with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions)." This requirement is consistent with Section 5.0 of a registrant's Form 3 whereby the registrant discloses "Employees with Knowledge of the Entity's Market Position."

However, Section 95833(a)(6) of the Regulation defines any "*individual* [emphasis added] who has access to the market positions (current and/or expected holdings of compliance instruments and/or expected covered emissions) of two more or entities…" as an individual with a "shared role" for the entities. In turn, an individual with a shared role may create a corporate association group (CAG) between entities if the individual is an employee of any of the entities (per Section 95833(a)(6)(A) of the Regulation) or if the individual with a shared role is a Cap-and-Trade Consultant or Advisor for the entities and the individual can use market position information obtained through their shared role without restriction (per Section 95833(a)(6)(B) of the Regulation.). The Regulation is not entirely clear as to the disclosure requirements and ramifications for an individual who is not an employee of a registrant, nor provides any of the defined services of a Cap-and-Trade Consultant or Advisor. Section 95833(a)(6)(B) as well does not provide clear indication as to what constitutes unrestricted use of market position information. In addition, recent agency practice and requests have asked certain Program participants to expand the scope of disclosure to individuals with limited or restricted access to the market position and who are not otherwise employees or Cap-and-Trade Consultants or Advisors. The CCCA recommends that (i) CARB revisit and revise these disclosure requirements under the Regulation so Program participants and applicants clearly understand who must be disclosed and when, and (ii) CARB to provide clearer guidance as to what constitutes

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unrestricted market position access for an individual such that Program participants can ensure all the necessary safeguards are in place.

CAG Exemptions for Account Representatives and Viewing Agents are Beneficial to the Program. The CCCA understands CARB is considering creating CAG exemptions for account representatives or viewing agents on multiple CITSS accounts. Under the Regulation, an account representative is defined as having access to the market positions of the entities they serve. This means that if an individual who is an account representative for a registrant is employed by the registrant or an affiliate of the registrant, the individual cannot act as an account representative, viewing agent or Cap-and-Trade Consultant or Advisor for any other registrant unless the two registrants declare a CAG on the basis of this individual's "shared role." This requirement creates a rigid framework which limits an individual's ability to provide their expertise and services to multiple accounts. As the Program continues to grow, the demand for these types of services will continue to grow as well and the CCCA strongly supports CARB creating exemptions for certain account representatives and viewing agents in order to create more opportunities for an individual to leverage their expertise for the benefit of multiple registrants, and in turn, for the benefit of the Program broadly. Additionally, the current requirements under the Regulation impact smaller covered entities and financial investors disproportionately, as such registrants often have a limited number, if any, employees to act as account representatives and it forces the registrant/the individuals to choose if they want to run their own account at the expense of providing advisory or administrative services to other registrants.

We appreciate 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

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