CARBON MARKETS & INVESTOR ASSOCIATION

December 17, 2010

VIA E-MAIL - - SECRETARY @CFTC.GOV

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Response of the Carbon Markets Investors Association ("CMIA") to Commodity Futures Trading Commission ("CFTC") Request for Information ("RFI") for Public Input for the Study Regarding the Oversight of Existing and Prospective Carbon Markets pursuant to Section 750 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")

Ladies and Gentlemen:

Pursuant to Section 750 of Dodd-Frank the CFTC seeks public comment on a series of questions set forth in section II of the RFI to assist the interagency study and production of recommendations for regulatory oversight of existing and prospective carbon markets. The CMIA respectfully thanks the CFTC for this opportunity to respond. In addition to the comments provided below, CMIA supports similar comments submitted in response to the RFI by the Environmental Markets Association ("EMA") and the International Emissions Trading Association ("IETA").

Background

CMIA is an international trade association representing firms that finance, invest in, and provide enabling support to activities that reduce emissions across five continents. CMIA's international membership accounts for an estimated seventy-five percent (75%) of the global carbon market, and is composed of businesses at the cutting edge of carbon finance and related services sector(s).[1]

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1 CMIA's membership comprises close to 50 companies including financial institutions, asset managers, investment and carbon funds, project developers, lawyers, accountants, verifiers, emissions brokers, and information technology firms.

A primary mission of CMIA is to promote efficient, market-friendly climate change policies and solutions. The association distinguishes itself from other trade associations by solely focusing on representing the interests of organizations providing services to and investing in the environmental sector. Our membership does not include any entities with compliance obligations under cap-and-trade schemes.

Responses to RFI Questions

As the association representing the core of the global carbon market, as a general matter we strongly recommend that any future oversight mechanisms emerging from this study ensure that the benefits and efficiencies of nascent carbon and other environmental markets be allowed to develop and mature. In response to the questions, the CMIA respond as follows:

1. ***Section 750 of the Dodd-Frank indicates that the goals of regulatory oversight should be to ensure that carbon markets are efficient, secure and transparent. What other regulatory objectives, if any, should guide the oversight of such markets?***

CMIA concurs that the central goals of regulatory oversight should be to ensure and maximize efficiency, security, integrity and transparency. But the underlying purpose and benefits achieve by the existence and development of carbon and environmental markets should not be lost in the process of achieving those goals. In fact, the CFTC should actively seek through that process to protect the other objectives and factors inherent in these markets that make them necessary, useful and effective. Other regulatory objectives should therefore include the following:

- Markets Must be Liquid. Rules and regulation that in any way inhibit or restrict the ability of market participants should be minimized.
- Regulatory Certainty Must be Assured. Markets work best when built upon a foundation of known, predictable and consistent rules of the road. Uncertain and confusing rules are counter-productive, and artificially obstruct market and transactional efficiencies, increase costs, and thwart broader participation. Moreover, as EMA states in its submitted comments, Dodd-Frank should not be applied in a manner that makes it more difficult for other federal regulators (e.g. EPA) to implement and carry out the market-based environmental programs.
- Innovation Should Be Encouraged and Preserved. Regulations should not restrict or constrict market participants from developing innovative approaches to transaction types to meet specific transactional or environmental objectives.
- Carbon Market Oversight Should Not Be Myopic. Carbon and other environmental markets should not be regulated in a manner that segregates such products or transactions from other interdependent markets (e.g. energy).

2. ***What are the basic economic features that might be incorporated in a carbon market that would have an effect on market oversight provisions—e.g., the basic characteristics of allowances, frequency of allocations and compliance obligations, banking of allowances, borrowing of allowances, cost containment mechanisms, etc.?***

CMIA supports the comments made by IETA and EMA in response to this question explaining the basic economic and policy features of environmental markets. Market-based programs for greenhouse gases or other environmental attributes intend to accomplish clear environmental policy objectives by utilizing and relying on rational economic behavior to appropriately allocate capital.

3. ***Do the regulatory objectives differ with respect to the oversight of spot market trading of carbon allowances compared to the oversight of derivatives market trading in these instruments? If so, explain further.***

The short answer is no. Spot and derivative market transactions are equally essential to carbon market price discovery and risk management, and share the same need for regulatory oversight to limit bad behavior in a manner promoting efficiency, security and transparency. There is nothing unique about carbon commodities (including emission offset credits) that suggest any need for regulatory oversight above and beyond (or distinct from) mechanisms for other similarly-situated spot and derivative products.

4. ***Are additional statutory provisions necessary to achieve the desired regulatory objectives for carbon markets beyond those provided in the Commodity Exchange Act, as amended by the Dodd-Frank Act, or other federal acts that may be applicable to the trading of carbon allowances?***

No. There is nothing different about carbon commodities or carbon markets that warrant a different regulatory oversight structure. If anything, the unique government-created nature of carbon and similar environmental commodities (e.g. NOx and SOx allowance markets) naturally limits the potential for fraud and manipulation. CFTC should endeavor to focus on approaching carbon markets with and under the same authorities and mechanisms applicable to all other markets it oversees.

5. ***What regulatory methods or tools would be appropriate to achieve the desired regulatory objectives?***

The methods and tools that CFTC and other regulators already possess to prevent fraud and manipulation, which should be applied to meet the specific characteristics, goals and objectives of the market (see comments to Question 1 above).

6. ***What types of data or information should be required of market participants in order to allow adequate oversight of a carbon market? Should reporting requirements differ for separate types of market participants?***

There is no evidence to suggest that special reporting requirements are necessary for carbon market participants to ensure lawful market participation. The foregoing sentence notwithstanding, CMIA supports comprehensive disclosure and reporting mechanisms, including: oversight of dealers and major swap participants; daily reporting for regulated transactions to the CFTC (reporting should include time, product and term, price, counterparty, and position reporting); and public release and disclosure of aggregated price and volume information for certain OTC and exchange-traded derivatives.

7. To what extent is it desirable or not desirable to have a unified regulatory oversight program that would oversee activity in both the secondary carbon market and in the derivatives markets?

Unified regulatory oversight is encouraged if that means comprehensive regulatory oversight over all components of a *future federal carbon market* would be under the sole jurisdictional authority of one federal agency, implementing one oversight regime/program.

8. To what extent, if any, and how should a U.S. regulatory program interact with the regulatory programs of carbon markets in foreign jurisdictions?

CMIA strongly supports coordination of a U.S. regulatory oversight program for carbon markets with regulatory programs in foreign jurisdictions. There should be information exchange programs established among regulators and harmonization of programs as appropriate and in accordance with the overall policy objectives of the U.S. program.

9. What has been the experience of state regulators in overseeing trading in the regional carbon markets and how would that instruct the design of a federal oversight program?

CMIA defers to applicable state regulators.

10. Based on trading experiences in SO2 and NOx emission allowances what regulatory oversight would market participants and market operators, respectively, recommend?

Based on the successful history and experience of the U.S. SO2 and NOx markets as example, carbon markets in the U.S. will be less susceptible to potential fraud and manipulation than markets in other commodities. The regulatory oversight regime currently applied to SO2 and NOx markets provide an excellent and appropriate model going-forward for carbon markets.

11. Who are the primary participants in the current primary environmental markets? Who are the primary participants in the current secondary allowance and derivatives environmental markets?"

CMIA supports the more in-depth comments made by IETA and EMA in response to this question. Current primary participants include: emitters (for compliance and trading purposes), intermediaries (i.e. financial institutions, marketers, brokers), investors, and primary offset developers/aggregators. Participants in the current secondary allowance and derivatives markets are similar, but with different roles, including: emitters (e.g. risk management activities), intermediaries (providing liquidity and price transparency), and to a lesser extent, offset developers/aggregators.

Conclusion

CMIA supports the CFTC and interagency study process as well as efficient and effective regulation of existing and prospective carbon markets. At this stage when "prospective" is the operative term, while also recognizing the range of different environmental products and transaction types being contemplated by this study, we encourage CFTC to proceed appropriately. The foregoing represents a submission by the CMIA, and does not represent the opinion or views of any particular member thereof.

Kindest regards,

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