CLEAN AIR TASK FORCE

October 7, 2022

Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street NW
Washington, DC 20581

Submitted via the CFTC's Public Comments submission portal

Re: CATF and NCX's response to Request for Information on Climate-Related Financial Risk, 87 Fed. Reg. 43,501 (June 8, 2022).

I. Introduction

The Clean Air Task Force ("CATF") and NCX wholeheartedly support the Commodity Futures Trading Commission's ("CFTC" or "Commission") efforts to gather valuable information on best practices for fostering healthy and well-regulated carbon markets. Without substantial oversight, the derivatives market has the potential to incur a large amount of risk, misinform or defraud investors, and ultimately create a net negative impact on the climate. We are grateful for the opportunity to submit information on this topic and look forward to ongoing engagement with the Commission on these efforts.

CATF is a non-profit environmental organization dedicated to meeting the climate crisis with effective, financially sustainable solutions. With 25 years of internationally recognized expertise on climate policy and a fierce commitment to exploring all potential solutions, CATF is a pragmatic, non-ideological advocacy group with the bold ideas needed to address climate change. CATF has offices in Boston, Washington D.C., and Brussels, with staff working remotely around the world.

NCX (the Natural Capital Exchange) is a data-driven marketplace for nature-positive forest carbon offsets. It works with U.S. landowners of all sizes to generate high-integrity carbon credits and connects those landowners with corporate net-zero leaders to help address the climate emergency. NCX has worked with over 3,800 public and private landowners on more than 4.6 million acres in 39 U.S. states, with carbon credit sales to companies like Microsoft, Rubicon, Cargill, and Pledge. NCX is a leader in expanding access to carbon markets, designing cutting-edge remote sensing technology, and developing innovative methodologies to quantify the value of carbon storage taking place across variable time horizons.

CATF and NCX operate with the understanding that creating an environmentally and socially sustainable future requires thoughtful and precise solutions to inhibitors of climate stability. It is our position that the current unregulated nature of voluntary carbon credit markets has created the potential for irresponsible actors to deal in greenwashed commodities – specifically, faulty, or misrepresented carbon credits. The voluntary carbon market currently suffers from widespread problems with non-additionality, risks of non-delivery, and a lack of

verifiable carbon reductions and removals.[1] This situation threatens the integrity of the derivatives market, distorts prices, and discourages innovation, all while jeopardizing the efficacy of an important climate-management tool. Without greater insight into the real level of risk inherent in transacted carbon credits, any derivatives products based on those carbon credits will be vulnerable to fraud and manipulation, and the market – as well as the climate – is likely to suffer.

Carbon credits fall within the definition of commodities under the Commodities Exchange Act ("CEA").[2] Unregulated, low-quality carbon credits currently pose a risk to both derivatives markets and derivatives purchasers, as well as to markets for the underlying commodity. There is currently no centralized entity to oversee the veracity of carbon credits. Specifically, no centralized institution currently certifies the carbon credits' additionality, duration, or risk of non-delivery – three essential metrics for assessing asset value. If a carbon credit does not represent the storage of additional carbon beyond what would have occurred absent the sale of the credit, then that carbon credit is merely dollars spent in exchange for no additional environmental benefit and is thus nonfunctional, or even counterproductive, as a carbon sequestration tool. Nature-based carbon credits, for example, may be based on the planting of trees for which there is no proof that the trees would not have been planted anyway or there is no regulatory oversight to ensure that they continue to grow and store carbon at the level needed to sequester the tons of carbon for which credit was sold. To our knowledge, there is presently no federal or state enforcement of the quality of credits sold in voluntary carbon markets.

The underlying commodity markets' vulnerability to misrepresentation reverberates directly into the derivatives market, as derivatives based on standardless commodities may lack the carbon-sequestration qualities for which carbon credits are awarded value. In fact, the purchase of derivatives based on misrepresented commodities can inflict serious losses on a purchaser and can cause miscalculations in risk hedging and management. Moreover, the lack of oversight in carbon credit derivatives and spot markets discourages innovation and creates a strong potential for price distortion and fraud. A strong underlying framework for carbon credit commodities is needed to support a strong regulated framework for the existing derivatives market. Providing guidance on the underlying commodity would serve financial actors well by providing a reliable, standardized method for managing financial risk. Additionally, a strong and well-regulated carbon credit derivatives market would allow businesses to invest in legitimate carbon sequestration projects without worrying about acquiring potentially fraudulent assets.

Fortunately, the CFTC can institute simple measures to minimize some of the risks currently associated with the derivatives market based on carbon credits. Ultimately, the risk and volatility associated with derivatives based on carbon credits is borne out of the transactions' intense vulnerability to fraud and misrepresentation. This vulnerability, exacerbated by a lack of

[1] Grayson Badgley et al., *Systematic over-crediting in California's forest carbon offsets program*, 28 Glob. Change Biol. 1433–45 (2022), https://onlinelibrary.wiley.com/doi/10.1111/gcb.15943.
[2] 7 U.S.C. §1a(9) ("The term 'commodity' means wheat, cotton, rice… and all other goods and articles, except…, and all services, rights, and interests (except…) in which contracts for future delivery are presently or in the future dealt in.").

oversight, can be mitigated through targeted regulation, enforcement, and reporting requirements – all actions squarely within the scope of the CFTC's authority. Action by the CFTC on this matter does not trigger review under the major questions doctrine because the statutory language granting the CFTC authority to regulate against market fraud and misrepresentation is exceedingly clear.[3]

The CFTC has successfully addressed issues of fraud and manipulation in similarly complex markets, such as those for cryptocurrency. Cryptocurrencies are similar to carbon credits in that, (1) derivatives markets have been set up around both classes of commodities, (2) neither commodity adheres to any national quality standard, and (3) neither commodity can be readily linked to any tangible asset. Despite these complexities, the CFTC has successfully exercised jurisdiction over cryptocurrency markets.[4] The CFTC has clear authority to address the issue of greenwashing in the carbon credit derivatives market. Further, it is particularly necessary for the CFTC to address this issue in order to adequately prevent fraud and manipulation in transactions related to derivatives based on carbon credits.

We are pleased that the CFTC has sought information about how the Commission should engage with climate-related financial risk. These comments will offer suggestions for reporting requirements, enforcement, guidance, regulations, registries, and other guideposts the Commission can create to better enhance consumer protection, promote the integrity of voluntary carbon markets, and foster transparency, fairness, and liquidity in those markets.

II. Legal Authority

CFTC has broad authority to safeguard the functionality, integrity, and liquidity of derivatives markets.[5] In fact, the Commodity Exchange Act ("CEA") requires such safeguarding.[6] The CEA specifically states that the purpose of the statute in authorizing the Commission is:

> [T]o deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to

[3] *See generally*, Daniel T. Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 V.A. L. Rev. (forthcoming 2023), *available at* https://ssrn.com/abstract=4165724.
[4] *See, e.g.*, CFTC v. McDonnell, 287 F. Supp. 3d 213 (E.D.N.Y. 2018); CFTC v. My Big Coin Pay, Inc., 334 F. Supp. 3d 492 (D. Mass. 2018).
[5] *See*, *e.g.*, Belom v. Nat'l Futures Ass'n, 284 F.3d 795, 797 (7th Cir. 2002) ("To implement this structure, Congress created the CFTC as an independent agency vested with broad authority to adopt rules that, in its judgment, are necessary to carry out the purposes of the CEA."); City of Arlington v. FCC, 569 U.S. 290, 301–02, 133 S. Ct. 1863, 1871 (2013) (referencing the CFTC's "broad rulemaking authority" under §12a(5)).
[6] 7 U.S.C. §5(b). 7 USC 4a(j) (It is the purpose of this chapter… [t]o foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among of trade, other markets and market participants.").

> promote responsible innovation and fair competition among boards of trade, other markets and market participants.[7]

Additionally, the CEA clearly prohibits fraud and manipulation stemming from various actors in multiple sections of the statute. 7 U.S.C. §9 outlines the prohibition with clarity.

> It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the commission shall promulgate[.][8]

This section of the statute also clearly defines manipulation and prohibits reporting false information. Section Nine further grants the commission the authority to enforce these prohibitions.[9] This plain language makes apparent that the CFTC has the authority to promulgate regulations, rules, and procedures specifically to promote the eradication of fraud and manipulation within derivative markets, particularly where such fraud or manipulation has the potential to pose risks to market integrity and liquidity. Notably, Section Nine's prohibition and the Commission's corresponding authority extend to fraud and manipulation in transactions for the underlying commodity.[10]

As noted above, the CEA specifically prohibits derivative market actors from employing "any device, scheme, or artifice to defraud" or engaging "in any transaction, practice, or course of business which operates as a fraud or deceit."[11] CFTC enforcement actions initiated in order to "prevent…disruptions to market integrity" have been tested and exercised in court. Where the CFTC seeks to prove liability for fraud on the part of a market actor, the Commission must prove, "(1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality."[12]

The specificity and clarity of the statutory mandate prohibiting fraud provides a safeguard for the CFTC against application of the Major Questions Doctrine in response to any new regulatory action on this topic. While developments in the Major Question Doctrine's jurisprudence have reshaped part of the legal landscape for administrative agencies, it need not be limiting here because the CFTC's authority to require reporting, issue guidance, or take other regulatory action to prevent fraudulent derivatives transactions is not a major question. While there is no bright line rule for what constitutes a "major question," the Supreme Court, in recent

[7] 7 U.S.C. §6b(a).
[8] 7 U.S.C. §9(1).
[9] *Id.*, at §9(1)(A), §9(4)(A).
[10] *Id.*
[11] 7 U.S.C. § 6o(1)(A)–(B).
[12] CFTC enforcement action does not require the elements (including reliance) necessary for a common law fraud action. *CFTC v. R.J. Fitzgerald & Co*., 310 F.3d 1321, 1328 n.6 (11th Cir. 2002) ("Unlike a cause of action for fraud under the common law of Torts, "reliance" on the representations is not a requisite element in an enforcement action.").

cases, has weighed several factors in making that determination: (1) the economic significance of the rule, (2) the political significance of the issue, (3) the age of the statute relied upon, (4) whether the statute has previously been used to govern a similar situation, and (5) congressional silence on the issue.[13] While questions of derivative market regulation do carry undeniable economic significance, the robust history of similar agency action makes clear CFTC's authority in this space. Since the Commission was established, Congress has affirmatively expanded the CFTC's oversight authority in response to the market impacts of analogous, poorly regulated commodities that were susceptible to price manipulation.[14] Additionally, the fact that the statutory language in question here provides "clear congressional authorization" confirms CFTC's authority.[15] To limit the CFTC's authority to regulate derivatives markets based on carbon credits would be to treat carbon credits differently—without any statutory basis—from all other commodities.

Indeed, meeting its obligations to enforce and implement the CEA's antifraud and antimanipulation provisions in the context of the derivatives markets based on carbon credits *requires* the CFTC to generate more guidance and operate with a heightened awareness of the weaknesses in the voluntary carbon market as it exists today. The following sections contain CATF and NCX's recommendations for the CFTC on how to generate the conditions necessary for a flourishing, reliable derivatives market based on carbon credits.

III. Enhancing the integrity of voluntary carbon markets to foster transparency, fairness, and liquidity in those markets (Question 22):

Enhanced Reporting Requirements for Registered Entities

The CFTC has long implemented robust and comprehensive reporting requirements for transactions and market participants covered under the CEA. To further aid the Commission in maintaining the integrity of carbon credit derivatives markets, the CFTC should set reporting standards for registered entities to foster greater transparency between buyers and sellers of climate-related derivative products generated from carbon credits. 7 U.S.C. §12a(5) contains broad language allowing the CFTC to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this chapter." 7 U.S.C. §5(b) lists purposes of the chapter, including to "deter and prevent any disruptions in market integrity[,]" "protect participants from fraudulent sales[,]" "ensure financial integrity of all transactions[,]" and "promote responsible innovation." The CEA does define certain specific requirements for reporting by registered entities, but it is careful to explicitly note that the existence of those requirements should not be construed as any constraint on the authority of the CFTC to make "separate determinations" as to reporting requirements for registered entities.[16] Derivatives clearing organizations are also

[13] West Virginia v. EPA, 142 S. Ct. 2587, 2595 (2022).
[14] 7 U.S.C. §12(a)(5); 12 U.S.C. §5301–5641.
[15] *Id.*
[16] 7 U.S.C. §6g.

required by statute to provide the CFTC with any information deemed necessary under the purpose of the CEA.[17]

We suggest that new reporting standards require parties to transactions in derivatives based on carbon credits (including but not limited to sellers, registered brokers, and derivative clearing organizations) to report information about the carbon credits on which the derivatives are based as needed to assess the following attributes in carbon credits:

1. Additionality – how much greenhouse gas was sequestered or avoided above the alternative scenario in which the credit had not been sold? Additionally, how has the additionality of the carbon credit been determined and how was the counterfactual baseline established?
2. Timescale – for how long is the carbon securely stored or for how long are the emissions being reduced or avoided?
3. Measurement – how is the volume of carbon stored, measured, and accounted for? What methods are used for measurement?
4. Risk – how has the risk of loss or failure of the carbon storage been accounted for and mitigated? Has the potential for the carbon credit to result in increased emissions elsewhere been accounted for?
5. Verification – are the attributes above verified by an independent, qualified, third-party verifier? What is the verification protocol?
6. Tracking – has the offset been given a serial number? Is the offset tracked? Has it been retired so that it is no longer tradeable and cannot be claimed by more than one entity?

IV. Aspects of the voluntary carbon markets that are susceptible to fraud and manipulation and/or merit enhanced Commission oversight (Question 23):

The use of carbon credits to offset emissions, particularly in the context of net-zero claims, is susceptible to fraud. Especially vulnerable are sectors in which greenhouse gas emissions are hard or expensive to abate and in which buyers may seek lower cost options for meeting their targets. This demand, together with a lack of regulatory oversight and shortcomings in the current approach to certification, can fuel a market for tranches of low-cost, low-quality, or fraudulent carbon credits with impacts on consumers, prices, and liquidity.

For example, carbon sequestration projects often claim to preserve parcels of forest sufficient to sequester certain amounts of carbon dioxide and sell the credit to a company seeking to offset its emissions. In some instances, however, the parcels may have already been preserved prior to the sale of the credits.[18] In other cases, credits for the same offsets might be sold to multiple purchasers. And in others still, the preserved forest might burn down and lack a sufficiently capitalized pool of buffer credits to make up for the lost carbon.[19] To offer just one

[17] 7 U.S.C. §7a-1; U.S.C. § 7a-1(c)(2)(J); 7 U.S.C. § 7a-1(k)(1).
[18] *See generally,* Kenneth R. Richards & Grant Eric Huebner, *Evaluating protocols and standards for forest carbon-offset programs, part A: additionality, baselines and permanence*, 3 Carbon Mgmt. 393 (2012).
[19] Grayson Badgley et al., *California's forest carbon offsets buffer pool is severely undercapitalized*, 5 Frontiers for Glob. Change (Aug. 2022), https://www.frontiersin.org/articles/10.3389/ffgc.2022.930426/full.

more example, one carbon offset project provided higher efficiency stoves to households in regions of the developing world where inefficient, wood-burning stoves were common. However, studies have found that the higher efficiency stoves may not be adopted by users and therefore the carbon emissions reductions do not materialize.[20]

In each of these cases, the purchasers' net emissions claims do not reflect actual reductions in global greenhouse gas emissions. In addition to masking actual greenhouse gas emissions, these low-quality credits have the effect of pricing higher-quality credits out of the market, since the low-quality alternatives can offer inflated sequestration claims and do not bear the costs associated with robust verification mechanisms. A 2012 academic report found that carbon credits are particularly vulnerable to fraud because many sequestration projects take place in geographically remote areas with weak governing institutions and low levels of economic development.[21] The consequence is that the markets for carbon credits and derivatives thereof often reflect distorted prices and discourage innovation and responsible accounting.

Therefore, the CFTC should pursue aggressive enforcement of fraudulent derivative transactions based on carbon credits, issue guidance on what information would be needed pursue or resolve enforcement actions, bolster whistleblower regulations, and publish an annual review of enforcement actions.

Aggressive Enforcement of Fraudulent Carbon Derivative Transactions

Maintaining market integrity requires strict enforcement of prohibitions against fraudulent activities and direct or indirect attempts at market manipulation. The CFTC has the authority, and indeed the mandate from Congress, to pursue aggressive investigation of potentially fraudulent transactions.[22] Given the unregulated nature of the underlying carbon commodity market, derivatives based on these carbon projects have a higher risk of fraud since the underlying quality and veracity of the commodity cannot be compared to a centralized benchmark and often cannot be verified. As such, carbon commodity derivative transactions ought to be prioritized by the CFTC's Division of Enforcement. CFTC implementing regulations currently allocate broad authority to the Director of the Division Enforcement and to Commission staff to conduct such investigations as are necessary to prevent or enforce against violations.[23] This regulatory authority is supported by the CEA and was further bolstered by the passage of the Dodd-Frank Act in 2010.[24]

Pre-Enforcement Guidance Regarding Fraudulent Carbon Derivative Transactions

The CFTC should strongly consider issuing pre-enforcement guidance for actors trading in derivatives based on carbon credits. The current lack of oversight in the underlying carbon

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[20] *See generally*, Yiting Wang & Catherine Corson, *The making of a 'charismatic' carbon credit: clean cookstoves and 'uncooperative' women in western Kenya*, 47 Env't Planning A: Econ. & Space 2064 (2015).
[21] Reece Walters & Peter Martin, *Risks of Carbon Fraud*, Centre for Crime and Justice, Queensland University of Technology, Australia (2012), https://eprints.qut.edu.au/56096/1/Carbon_Fraud_Risk_PWC_Accepted.pdf.
[22] 7 U.S.C. §9(4).
[23] 17 C.F.R. §11.2(a).
[24] 7 U.S.C. §12(a)(5); 12 U.S.C. §5301–5641.

market is a threat to the integrity of carbon credit derivatives markets. The sale of derivatives based on an underlying commodity not subject to a centralized definition and that cannot be physically inspected is inherently vulnerable to fraudulent and fictitious sales.[25] Without intervention, this reality could have the unintended adverse effect of pricing out and chilling the market for legitimate derivatives supported by robust verification, quantification, and risk assessment mechanisms. Naturally, it should follow that the CFTC's investigation and enforcement burden regarding the carbon credit derivatives market will be quite high in order to maintain market integrity.[26]

To protect consumers and avert the large administrative burden that lies in properly investigating discrepancies in the carbon credit-based derivatives market, the CFTC should issue guidance – which could perhaps take the form of an enforcement advisory – to market participants, clarifying what information is needed to verify the integrity of the underlying commodity and therefore absolve a derivative transaction from suspicion of misconduct or manipulation.

Mortgage-backed securities provide an apt example that demonstrates the importance of information regarding the underlying commodity for a derivative product that is otherwise intangible. Indeed, the vulnerability of these commodities was the impetus behind Congress's augmentation of the CFTC's oversight through the Dodd-Frank Act. Just as the ability to examine the quality of the underlying mortgages is important to the integrity of mortgage-backed securities, the information about the veracity and quality of carbon credits is central to the integrity of climate-related derivatives that are made up of unregulated carbon credits.

We suggest that the CFTC's pre-enforcement guidance indicate what information is needed to assess whether a derivative is based on carbon credits that are real, additional, and verifiable as described in response to Question 22 above.

Whistleblower Regulations

Whistleblowers play an important role in efficient and accurate agency investigation and enforcement. Specifically established by the Dodd-Frank Act's amendments to the CEA, the CFTC's whistleblower program now gives rise to a significant portion of the Commission's enforcement actions.[27] The CFTC's statutory mandate includes certain requirements for incentivizing whistleblower activity while reserving discretion for the CFTC to create specific regulatory contours to maximize the whistleblower program's efficacy.[28] Whistleblower incentives may prove especially important in the regulation of carbon credit derivatives markets,

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[25] Fictitious sales are prohibited under 7 U.S.C. §6c(2)(ii).
[26] The CFTC has the exclusive authority to enforce the prohibition against fraud and manipulation within derivatives markets. 7 U.S.C. § 6b-1(a).
[27] According to the CFTC, enforcement actions initiated by whistleblowers have led to the collection of more than 3 billion dollars by the government, with roughly 330 million dollars given as awards since the program was established. CFTC, *CFTC's Whistleblower Program*, https://www.whistleblower.gov/ (last visited Oct. 6, 2022). According to a former a CFTC Division of Enforcement officer, 30-40% of investigations now involve a whistleblower. Phillips & Cohen LLP, YouTube, *The SEC and SFTC whistleblower reward programs –their impact and success* at 17:30, https://www.youtube.com/watch?v=j2GyHTrfNTE (last visited Oct. 6, 2022).
[28] 7 U.S.C. §26, 17 C.F.R. §165.

because unlike with most other commodities such as metals and interest rates, purchasers of carbon credits have substantially less incentive to verify the commodities' authenticity. If anything, they have an incentive not to investigate whether carbon was actually sequestered, so long as they can claim the credit. Given the gravity of the threats to market liquidity and stability posed by derivatives transactions based on faulty or fictitious carbon credits, the CFTC has the prerogative to bolster whistleblower regulations to facilitate swift and accurate investigations of misconduct. For example, the CFTC could consider updating the Form TCR to include questions or answer options specifically for whistleblowers ringing the alarm on fraudulent derivatives based on carbon credits.[29]

Annual Review of Enforcement Actions regarding Fraudulent Carbon Derivative Transactions

In the past, the CFTC has released annual reviews of enforcement proceedings.[30] While no report has been issued for 2021, the CFTC should resume annual publication of such reports. Publishing an annual review of enforcement proceedings springs from the CFTC's statutory mandate to protect the integrity of the derivatives market through discretionary means. Accordingly, the CFTC should use its discretionary authority to include within each annual review a report on carbon credit-based derivative enforcement actions specifically. Reporting the frequency and efficacy of such enforcement actions will serve as valuable information for market participants as well as a deterrent for potential future bad actors.

V. The Commission should consider creating some form of registration framework for any market participants within the voluntary carbon markets to enhance the integrity of the voluntary carbon markets (Question 24):

We recommend that the CFTC create a voluntary registration framework for carbon credit derivatives and related derivatives to enable buyers to access and evaluate the attributes of the financial products they are purchasing. The registry could draw from the information required by existing frameworks such as the Gold Standard and should include the following information:

1. Project/carbon credit type and sector – (e.g., emissions reduction, avoided emissions, or carbon removal) and sector (e.g., improved forest management, direct air capture).
2. Name of carbon credit developer.
3. Volume – annual as well as total amounts of carbon removed or emissions avoided by the credits, in carbon dioxide equivalents (CO2e).
4. Additionality – protocols used and method for determining baseline against which the carbon credits are measured/estimated.
5. Timescale – expected duration of any carbon storage (in years).[31]

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[29] Current Form TCR found at https://www.whistleblower.gov/sites/whistleblower/files/cftc_form_tcr.pdf.

[30] *See, e.g.*, Commodity Futures Trading Commission, FY 2020 Division of Enforcement Annual Report (2020), https://www.cftc.gov/PressRoom/PressReleases/8323-20.

[31] It is important to note that the timescale of storage does not necessarily correspond to the climate benefit of a credit that depends, in part, on the time value of credit and the climate discount rate used for greenhouse gas accounting. Liz Marshall & Alexia Kelly, *The Time Value of Carbon and Carbon Storage*, World Resources Inst. (October 2010), https://www.wri.org/research/time-value-carbon-and-carbon-storage.

6. Measurement, Reporting, and Verification Protocols (MRV) – if the carbon removals or avoided emissions are measured, describe the methods that were used (e.g., VM0003) and where that information is made publicly available, if any; and in the description of any estimation methodology include whether the potential for leakage was accounted for. For any verification or authentication, include the name of the third-party verifier, or authenticator, and the status of the verification or authentication process, and whether additionality of the offset has been verified.
7. Risk – describe whether and how a project has quantified the risk of reversal, such as how the risk of the rerelease of carbon to the atmosphere (for example, due to disturbances such as wildfire) has been assessed, and whether governance measures, such as a buffer pool, have been established to mitigate any potential risk as well as how such assets have been capitalized.
8. Stakeholder engagement – disclose whether any steps were taken by the project developer to identify potential land rights and environmental justice issues.
9. Tracking – provide the name of any registries and tracking systems used to ensure that credits are not double-counted and provide information about where the information is made publicly available if at all.

VI. Conclusion

CATF and NCX commend the CFTC for taking steps to actively examine the Commission's role in mitigating climate-related risk and specifically risks associated with the Voluntary Carbon Market. Given the rising utilization of carbon-associated financial tools to hedge risk and mitigate negative climate externalities, we hope the CFTC will employ its clear statutory mandate to regulate with an eye towards fraud and misrepresentation in carbon credit derivatives markets.

A regulatory scheme that adequately addresses the risk of manipulation in carbon credit derivatives markets would include required reporting on the underlying veracity of carbon credit derivatives, a strong antifraud investigation and enforcement division, pre-enforcement guidance for market participants trading in carbon credit derivatives, updated whistleblower regulations for easier tip collection, and a registration framework for carbon credit derivatives. Each of these measures would increase the integrity of the carbon credit derivatives market, lower risk for market participants, and strengthen public confidence in the carbon credit market as a whole.

Respectfully submitted,

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