

February 14, 2024


Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: RIN 3038–AF40: Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment

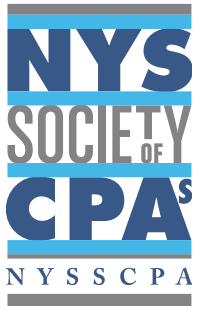
By website: <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 19,000 CPAs in public practice, industry, government and education, welcomes the opportunity to respond to the above-captioned proposed guidance.

The NYSSCPA's Sustainability Accounting and Reporting Committee deliberated the document and prepared the attached comments. If you would like additional discussion with us, please contact Sustainability Accounting and Reporting Committee Chair Timothy Coville at (516) 650-6028, or Keith Lazarus, NYSSCPA staff, at (212) 719-8378.

Sincerely,
N Y S C P A

N Y S C P A
Liren Wei
President

Attachment



**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

**RIN 3038–AF40: COMMISSION GUIDANCE REGARDING THE LISTING OF
VOLUNTARY CARBON CREDIT DERIVATIVE CONTRACTS; REQUEST FOR
COMMENT**

February 14, 2024

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New York State Society of Certified Public Accountants

Comments on

RIN 3038–AF40: Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment

Executive Summary

We support the CFTC’s efforts to expand the voluntary carbon credit market in the U.S., and we would welcome federal regulations to require mandatory carbon markets, such as cap-and-trade programs or emission trading systems. A voluntary carbon market can help finance renewable energy projects, deforestation projects and other carbon removal and reduction projects that will reduce or remove carbon and other greenhouse gases from the atmosphere. We support the concept that the carbon credits will be verified, not double counted nor subject to manipulation and can be easily traced to their source project. Below are our responses to select questions.

General

Question 1 (a): In addition to the VCC commodity characteristics identified in this Proposed Guidance, are there other characteristics informing the integrity of carbon credits that are relevant to the listing of VCC derivative contracts?

Response: The term “VCCs” refers to “voluntary carbon credits” as pointed out in the Proposed Guidance. While we appreciate the CFTC’s decision to permit the broad range of voluntary carbon credits to be considered as underlying assets for the traded derivatives contracts, we believe the underlying asset must be limited to only “Verified Carbon Credits”¹ (VCC) as defined by the International Swaps and Derivatives Association (“ISDA”). The Proposed Guidance discusses this in footnote 31, but we do not agree with the proposal’s rationale for using “Voluntary,” as it suggests a non-verified carbon credit to a reasonable investor. We agree with the ISDA’s rationale for using the term Verified Carbon Credits, i.e., 1) verified “reflects the fact that the project generating the relevant reduction, removal, sequestration or avoidance of Greenhouse Gas (GHG) emissions from the atmosphere must be *verified* by a Carbon Standard before a VCC is issued”², and 2) it reflects a “growing preference in the market for the term.”³

Rather than repeating our strongly held recommendation that the Proposed Guidance redefine VCC as Verified Carbon Credits, each time we quote the Proposed Guidance use of “VCC,” we

¹ 2022-ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf. Accessed on December 28, 2023, at <https://www.isda.org/a/jBXqE/2022-ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf>, page 5.

² Ibid.

³ Ibid.

instead request that change to be understood, as a given, throughout the remainder of this comment letter.

Question 2: Are there standards for VCCs recognized by private sector or multilateral initiatives that a DCM should incorporate into the terms and conditions of a VCC derivative contract, to ensure the underlying VCCs meet or exceed certain attributes expected for a high-integrity carbon credit?

Response: Yes, the ISDA has prepared the “2022 ISDA Verified Carbon Credit Transactions Definitions”⁴ (“VCC Definitions”). We strongly recommend that VCC definitions be incorporated into the Proposed Guidance. The VCC Definitions are a “definitional booklet that provides a set of standardized terms for the trading and retirement of VCCs in the secondary market,”⁵ and “allow parties to document customer transactions as required.”⁶ The ISDA has published template confirmations for completed customer transactions and we recommend they be adopted. Specifically, we believe the carbon credits that underly the derivative contracts must be approved, verified and registered by a Carbon Standard program with characteristics as defined in these VCC Definitions.

Question 3: In addition to the criteria and factors discussed in this Proposed Guidance, are there particular criteria or factors that a DCM should consider in connection with monitoring the continual appropriateness of the terms and conditions of a VCC derivative contract?

Response: We believe the factors suggested in the Proposed Guidance, if adopted by a DCM and fully disclosed in the documentation for VCC derivative contracts, would be effective for ensuring the quality of the carbon credit programs underlying the VCC derivative contracts, particularly if the carbon credits are verified, as suggested in our response to Question 1.

Further, we believe that the quality of the DCM could be enhanced if, rather than “suggesting” that DCM’s “should consider” the criteria and factors for the DCM that are listed in the CFTC Proposal, the final regulations mandate such criteria. Therefore, we support stronger language mandating the criteria which must be adopted by a DCM.

Lastly, we believe that the “mandated” criteria address monitoring the “continual appropriateness of the terms and conditions of a VCC derivative contract,” the status and effectiveness of the credit program associated with the derivative contract, and the on-going viability and status of the underlying VCC.

⁴ Published by the ISDA in December 2022 and accessed on January 12, 2023, at:

<https://www.isda.org/a/uTxgE/ISDA-Launches-Standard-Definitions-for-the-Voluntary-Carbon-Market.pdf>

⁵ 2022-ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf. Accessed on December 28, 2023, at <https://www.isda.org/a/BXgE/2022-ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf>, page 4.

⁶ Ibid.

Question 4: In addition to the criteria and factors discussed in this Proposed Guidance, are there particular criteria or factors that a DCM should consider, which may inform its analysis of whether or not a VCC derivative contract would be readily susceptible to manipulation?

Response: We agree that the factors identified by the CFTC in the proposal, that if properly disclosed in the VCC derivative contract, would inform an analysis of whether or not the derivative contract would be readily susceptible to manipulation.

Further, we believe that the final guidance must require disclosures in the VCC derivatives contract of the specific measurement, monitoring, verification and reporting policies and procedures of the VCC crediting provider pertaining to the VCC program underlying the contract, including disclosure of the measurement, monitoring, verification and reporting policies and procedures about the continuing status and effectiveness of the VCC program underlying the derivatives contract.

Question 5: Should the VCC commodity characteristics that are identified in this Proposed Guidance as being relevant to the listing by a DCM of VCC derivative contracts, also be recognized as being relevant to submissions with respect to VCC derivative contracts made by a registered foreign board of trade under CFTC regulation 48.10?

Response: Yes. We believe the characteristics and disclosures in the Proposed Guidance for listing by a DCM of VCC derivative contracts are relevant to VCC derivative contracts made by a registered foreign board of trade.

Transparency

Question 6: Is there particular information that DCMs should take into account when considering, and/or addressing in a VCC derivative contract's terms and conditions, whether a crediting program is providing sufficient access to information about the projects or activities that it credits? Are there particular criteria or factors that a DCM should take into account when considering, and/or addressing in a contract's terms and conditions, whether there is sufficient transparency about credited projects or activities?

Response: We believe the proposal sufficiently identifies the issues a DCM should consider and disclose in a VCC derivative contract about the terms and conditions regarding the access to information defined by the underlying crediting program, provided the information disclosed is specific to the emissions reductions or removals project underlying the derivative contract. And, as discussed in our response to Question 4, we believe the VCC derivative contract must disclose the crediting programs policies and procedures for continued measurement, monitoring, verification and reporting about the specific VCC program underlying the derivative contract.

Additionality

Question 7: Are there particular criteria or factors that DCMs should take into account when considering, and/or addressing in a VCC derivative contract’s terms and conditions, whether the procedures that a crediting program has in place to assess or test for additionality provide a reasonable assurance that GHG emission reductions or removals will be credited only if they are additional?

Response: We believe the proposal sufficiently identifies the issues a DCM should consider and disclose in a VCC derivative contract regarding the procedures the crediting program has in place to assess or test for additionality and to provide reasonable assurance that GHG emission reductions or removals will be credited only if they are additional, provided the procedures disclosed are specific to the underlying GHG emissions reductions or removals program underlying the VCC derivative contract.

Question 8: In this Proposed Guidance, the Commission recognizes VCCs as additional where they are credited for projects or activities that would not have been developed and implemented in the absence of the added monetary incentive created by the revenue from carbon credits. Is this the appropriate way to characterize additionality for purposes of this guidance, or would another characterization be more appropriate? For example, should additionality be recognized as the reduction or removal of GHG emissions resulting from projects or activities that are not already required by law, regulation, or any other legally binding mandate applicable in the project’s or activity’s jurisdiction?

Response: We support the more restrictive definition of “Additionality” discussed in Question 8, which includes a reference to reductions or removal of GHG emissions from projects or activities that are not already required by law...” Thus, we recommend defining additionality as follows:

The emissions program underlying the VCC derivative contract is defined as additional when “they are credited for:

- a. projects or activities that would not have been developed and implemented in the absence of the added monetary incentive created by the revenue from carbon credits, and
- b. the reduction or removal of GHG emissions resulting from projects or activities that are not already required by law, regulation, or any other legally binding mandate applicable in the project’s or activity’s jurisdiction.”

Risk of Reversal

Question 9: Are there particular criteria or factors that DCMs should take into account when considering, and/or addressing in a VCC derivative contract’s terms and conditions, a crediting program’s measures to avoid or mitigate the risk of reversal, particularly where the underlying VCC is sourced from nature-based projects or activities such as agriculture, forestry or other land use initiatives?

Response: In its framework for assessing carbon markets, The Integrity Council for the Voluntary Carbon Market’ (“ICVCM”) identified ten principles for high-quality “carbon credits that create real, additional and verifiable climate impact . . . based on the sound science and

evolving best-practice.”⁷ In their discussion of their principle of “Permanence” they state that: “...GHG emission reductions or removals from the mitigation activity shall be permanent or, where there is a risk of reversal, there shall be measures in place to address those risks and compensate for reversals.”⁸

We believe that, for investors, the concern will be the "permanence" of the emissions project underlying the related derivative contract (or longevity of the emissions project vs the term of the derivative contract) and recommend defining the issue of risk reversal and permanence consistent with the ICVCM's principle of "Permanence" rather than in terms of "risk reversal."

Question 10: How should DCMs treat contracts where the underlying VCC relates to a project or activity whose underlying GHG emission reductions or removals are subject to reversal? Are there terms, conditions or other rules that a DCM should consider including in a VCC derivative contract in order to account for the risk of reversal?

Response: This question is very similar to question 9 and we refer to our response to question 9.

Robust Quantification

Question 11: Are there particular criteria or factors that a DCM should take into account when considering, and/or addressing in a contract’s terms and conditions, whether a crediting program applies a quantification methodology or protocol for calculating the level of GHG reductions or removals associated with credited projects or activities that is robust, conservative and transparent?

Response: We propose that the DCM follow the measurement standards recognized by other environmental regulatory authorities, such as the GHG Protocol.

Governance

Question 12: In addition to a crediting program’s decision-making, reporting, disclosure, public and stakeholder engagement, and risk management policies, are there other criteria or factors that a DCM should take into account when considering, and/or addressing in a VCC derivative contract’s terms and conditions, whether the crediting program can demonstrate that it has a governance framework that effectively supports the program’s transparency and accountability?

Response: As mentioned above, in our response to Question 9, we support the recommendations contained in the ICVCM publication, “Core Carbon Principles, Assessment Framework and Assessment Procedures,” regarding the governance of a carbon credit program, the ICVCM principles call for policies and procedures to ensure:

⁷ Ibid., p. 10.

⁸ “Core Carbon Principles, Assessment Framework and Assessment Procedure, by the Integrity Council for Voluntary Carbon Market, March 2023, accessed on the internet on January 26, 2024 at: <https://icvcm.org/wp-content/uploads/2023/03/CCP-Book-FINAL-27Mar23.pdf>, p. 16.

- **Effective governance:** the carbon-crediting program shall have effective program governance to ensure transparency, accountability, continuous improvement, and the overall quality of carbon credits.
- **Tracking:** The carbon-crediting program shall operate or make use of a registry to uniquely identify, record and track mitigation activities and carbon credits issued to ensure credits can be identified securely and unambiguously.
- **Transparency:** The carbon-crediting program shall provide comprehensive and transparent information on all credited mitigation activities. The information shall be publicly available in electronic format and shall be accessible to nonspecialized audiences, to enable scrutiny of mitigation activities.
- **Robust third-party verification and validation:** The carbon-crediting program shall have program-level requirements for robust independent third-party validation and verification of mitigation activities.

Tracking and No Double Counting

Question 13: In addition to the factors identified in this Proposed Guidance, are there other factors that should be taken into account by a DCM when considering, and/or addressing in a VCC derivative contract’s terms and conditions, whether the registry operated or utilized by a crediting program has processes and procedures in place to help ensure clarity and certainty with respect to the issuance, transfer, and retirement of VCCs?

Response: Yes. As previously stated, we support use of ISDA’s definitions of a VCC, including the requirement that each VCC be assigned a “unique serial number” and the crediting program or registry must “track the VCC throughout its life cycle, such as any change in ownership of the VCC following delivery . . . and the retirement of the VCC.”⁹ As technology allows for use of even more sophisticated means to provide unique and secure identification of each VCC, i.e., unique blockchain IDs, then yes, those should be encouraged. We appreciate that the Proposed Guidance speaks to this issue, generally, under its item 2.b. “Tracking” and are simply concerned that this should be more prescriptive. In addition, the underlying project or asset must comply with the required inspection provisions and third-party validation and verification provisions.

⁹ 2022-ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf. Accessed on December 28, 2023, at <https://www.isda.org/a/jBXgE/2022-ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf>, page 4.