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**TO**: Christopher Kirkpatrick

Secretary of the Commission

Commodity Futures Trading Commission

Three Lafayette Centre

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**SUBJECT**: *Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment (RIN: 3038-AF40)*

ESMC appreciates the opportunity to comment on the Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment (RIN: 3038-AF40).

The Ecosystem Services Market Consortium (ESMC) is a member-based, not-for-profit organization operating a national-scale voluntary ecosystem services market for agriculture to recognize and pay farmers and ranchers for their environmental services to society. Over 60 members, funders, and additional stakeholder organizations participate and contribute to ESMC’s public-private partnership, including a wide range of agricultural businesses, farmer-led organizations, farmer check-offs, farmer cooperatives, conservation organizations, foundations, land-grant universities and research institutes, as well as the U.S. Department of Agriculture (USDA), U.S. Department of Energy (U.S. DOE) and the Environmental Protection Agency (EPA).

Our non-profit organization includes a market program, Eco-Harvest, and a research and innovation program, the Ecosystem Services Research Consortium (ESMRC), in which we invest to continually improve and expand our market program into new regions, new production systems, new producer populations, and to improve and bolster ESMC’s digitized measuring, monitoring, reporting, and verification (MMRV) platform.

ESMC’s Eco-Harvest market program earned program validation and verification from 3rd party auditor SustainCERT in 2022 and is one of only two agricultural carbon programs to achieve SustainCERT validation and verification for project Impact Units. This shows ESMC’s Eco-Harvest market program adheres to market standards and rules, while meeting the accounting and reporting requirements of organizations in the agricultural supply chain seeking to show quantified, verified GHG emissions reductions or increased soil carbon removals from scope 3 interventions. Verified outcomes from our program (also known as Impact Units) that are sold to buyers with supply chain commitments allow us to pay farmers and ranchers who voluntarily adjust crop and livestock production systems in ways that increase soil carbon sequestration and retention, reduce GHG emissions, improve water quality, conserve water, and provide additional ecosystem service outcomes, such as enhanced biodiversity and habitat conservation.

Together with our members and funders across the agricultural supply and value chain, we have pilot tested the Eco-Harvest program and invested in critical RDD&D to create a national-scale, digitized ecosystem services market program and infrastructure for the agricultural sector. Our market infrastructure supports buyers with needs in scope 3 supply chain reporting, and agricultural producers who act as sellers. Our public-private partnership provides a national scale collective engagement platform, educational materials, and training programs to create opportunities to engage in markets using advanced and user-friendly tools and technologies.

ESMC applauds the Commission for its work to promote the fundamental standards for high integrity voluntary carbon credits (VCCs) and resilient, transparent voluntary carbon markets (VCMs) to provide the maximum benefit to U.S. farmers and ranchers. ESMC has significant and unique expertise in the agricultural-, scope 3-, and carbon-market development process, and is pleased to provide comment to the Commission on this issue. While ESMC has first-hand experience across the market development continuum, we have chosen to focus our comments on those points where our scope 3 market presents the greatest, unique value-add: assessing a broader definition of additionality; and, addressing the risk or reversal of credits derived from nature-based (i.e., agricultural) systems.

The following comments reflect the official thoughts and positions of ESMC and do not necessarily represent the positions of ESMC’s entire membership.

**ADDITIONALITY**

*CFTC Request for Comment:*

*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?*

*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?*

*ESMC Comment:*

Additionality is central to the concept of deriving credits from agriculture and other land use industries and guidance from the CFTC on this matter can help strengthen and provide clarity around those agricultural VCCs and VCMs.

To directly address the request for comment noted above (No. 8), ESMC agrees with the Commission’s current definition, that:

“...*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.”*

ESMC believes additionality projects in a marketplace should be characterized as implemented in response to market incentives, and the definition should not extend beyond this market-incentives framework to incorporate emission reductions resulting from projects or activities that go above-and-beyond the letter of the law, regulation, or other legally binding mandate outside of the scope of the market-incentives framework.

More broadly on the issue of additionality, ESMC encourages the Commission to provide guidance on VCCs only inasmuch as necessary to provide clarity to DCM operations. Additionality as it applies to agriculture derived VCCs remains a topic under intense research, and we feel strongly that the private markets should be allowed to find working solutions with limited interference. ESMC supports additionality and its role as a key requirement in all markets. Additionality ensures that the markets are producing, and buyers are paying for, new products, but it is important to remember that the way additionality applies to agriculture is very different than in other sectors such as energy. Each year, everything a producer does is new and is done in response to external market forces. Cover crops, for example, should be viewed as new and additional on an annual basis because a producer must purchase seeds and plant them every year, the result of a new decision by the producer based on market signals at that time. Other additionality interventions, such as no-till, require a multiyear onramp before producers begin to see benefits—however, this simply underscores our point that additionally in agriculture must (a) be measured in a nuanced manner, and (b) is an area under intense research and will take market innovation to appropriately address. This is why ESMC is concerned that over-prescriptive guidance or regulation at this early stage could inadvertently limit markets’ ability to innovate a solution to this and other related challenges, and ultimately harm producers in the long run.

**RISK OF REVERSAL**

*CFTC Request for Comment:*

*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?*

*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?*

*ESMC Comment:*

The potential of reversal is possible whenever agricultural or working lands projects are used for soil carbon sequestration. However, as the Commission considers its recommendations, ESMC stresses that the underlying principle of those recommendations should avoid adversely impacting private activities and private markets advancing agricultural sector participation in, and payment for, soil carbon sequestration. Significant efforts are underway by ESMC and the private sector to further develop private markets focusing on providing soil carbon sequestration

credits that recognize and reward farmers and ranchers for their services. Private markets operating at scale can do so in a manner that produces the highest carbon sequestration in a cost effective, efficient manner. Any guidance or regulation on VCCs or VCMs must allow for and recognize the existing private markets and their efforts to address this intrinsic issue concerning land use derived VCCs, and not adversely interfere or duplicate private sector efforts.

We encourage the Commission to focus its guidance on providing science-based data and criteria to ensure private markets are based on the best scientific and sectoral data available. In the case of the agricultural and forestry sectors it is worth noting that reversals from sequestration can and are being handled with appropriate policies on how to account for, monitor, and manage reversals. Reversals will happen in these biological systems; policies on how to address reversals in the marketplace are what is needed—arguably in the form of criteria to meet, rather than strict rules that do not acknowledge the realities of farming and ranching. Criteria for how to ensure science-based data and accuracy, certainty, and conservativeness of assumptions is preferable to hard-and-fast rules that do not have equal application across the many sectors that are engaged in markets.

ESMC encourages the Commission to consider the opportunities for interagency cooperation to help address this issue and ensure that federal agency mandates in support of this work are consistent with guidance from your agency, and vices versa, and that agencies are acting in concert across sectoral and jurisdictional authorities that may not be aligned.

Lastly, we want to stress to the Commission that the issue of reversibility is best viewed at the ecosystem level. The net impacts of VCMs on the environment should not be conflated with the risk of reversibility of any one project or field—rather, it is the net impact on carbon, soil health, and GHG reductions on the ecosystem scale that drive the environmental impact VCMs seek to make through incentives.

*ESMC Concluding Remarks:*

Voluntary carbon markets are an important, highly evolving mechanism to help achieve environmental outcomes at lowest possible costs and highest possible impacts. Carbon markets can incentivize U.S. farmers and ranchers to adopt conservation and climate-smart practices that improve the resilience and sustainability of U.S. agriculture from both a financial and environmental perspective. Guidance from this Commission that helps to provide clarity and consistency around the terms and definitions of voluntary carbon credits can provide greater certainty in these markets. However, every sector is different, so blanket rules must not restrict

the nature of various sectors. Additionally, the rules should encourage, not stifle, private-sector innovation that supports high-quality market activities and outcomes. We look forward to working with the Commission as a partner supporting private sector environmental market advances that can scale beneficial impacts to society.