American Petroleum Institute

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Robert Sidman

Deputy Secretary of the Commission

Commodity Futures Trading Commission (CFTC)

Three Lafayette Center, 1155 21st Street NW

Washington, DC 20581

RE: Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivatives Contracts (RIN 3038-AF40)

Dear Deputy Secretary Sidman,

API appreciates the opportunity to comment on the proposed Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivatives Contracts ("Guidance").

API represents all segments of America's oil and natural gas industry. Its approximately 600 members produce, process, and distribute the majority of the nation's energy. API and its members are committed to delivering solutions that reduce greenhouse gas (GHG) emissions while meeting society's growing energy needs. To that end, we have laid out a Climate Action Framework that presents actions we are taking to accelerate technology and innovation, further mitigate GHG emissions from operations, advance cleaner fuels, drive comparable and reliable climate reporting, and endorse a carbon pricing policy.

Well-designed, transparent and functioning carbon markets, whether voluntary or mandatory, can be important tools in reducing and avoiding GHG emissions across a large set of market participants. For the voluntary carbon market (VCM) to play an impactful role in addressing climate change, it is necessary to ensure that the VCM is transparent, liquid, global, and represents high-integrity voluntary carbon credits (VCCs).

CFTC can play an important role in ensuring growth of a credible, transparent VCM by focusing on identifying and pursuing potential fraud or other abusive practices in VCC derivatives. API supports CFTC's goals to promote market integrity and advance the standardization of VCC derivatives contracts in a manner that promotes transparency and liquidity. However, API also recognizes CFTC's authority is limited to anti-fraud and manipulation enforcement and does not extend to the generation or integrity of VCCs. In light of CFTC's limited authority, API provides general comments highlighting how CFTC can best support market development.

API supports CFTC in its narrow, targeted authority to pursue claims of fraud and manipulation in derivatives markets.

CFTC can play a key role in ensuring the growth of a credible, transparent VCM by focusing efforts on its narrow authority to regulate designated contract markets (DCMs) and identify and pursue potential fraud or other abusive practices in VCC derivatives. This focus would promote fair competition and advance market manipulation prevention, which falls squarely under CFTC's authority. API appreciates CFTC's guidance on complying with the *Commodity Exchange Act*, as well as the development of an *Environmental Fraud Task Force*[1] and the issuance of a *Whistleblower Alert*.[2] API is eager to receive updates on these two initiatives and encourages CFTC to focus its efforts and resources on fraud and manipulation in VCMs.

API's position is that CFTC does not have authority over the generation or quality of VCCs (outside of its anti-fraud and manipulation enforcement authority), climate target setting, or reporting related to the use of VCCs, but believes that CFTC can seek to reduce barriers to market entry related to these areas in its engagement with other regulators and private organizations.[3] We recommend that CFTC works to ensure that its policies allow for broad market participation and do not result in overly burdensome requirements, such as overly stringent requirements for VCC generation, VCC use in meeting climate targets, VCC reporting requirements, or any other regulations that would result in significant cost burdens for market participants.

API recognizes that high-quality VCMs can play a critical role in meeting climate goals and supports efforts to enhance market integrity.

As recognized by CFTC in the Guidance, high-quality VCCs are a key element to meeting corporate, state, and national climate goals. For many companies, VCCs are an essential part of their emissions reduction strategy.[4] VCCs provide a valuable tool for energy-intensive, hard-to-abate industries for which technologies to reduce emissions in line with climate goals may not be available, economically viable, or supported by policy today. API supports a mitigation hierarchy[5] for operational emissions recognizing the importance of value chain emissions reductions and believes that companies should be able to use high-quality VCCs to progress towards their emissions reduction goals or targets. In using its anti-fraud and anti-manipulation authority to promote the development of credible markets, CFTC can ensure that the use of VCCs to achieve voluntary goals remains a credible approach to reducing GHG emissions.

The oil and natural gas industry supports CFTC in promoting the use of high-integrity VCCs as a durable, effective climate solution.

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[1] "CFTC Creates Two New Task Forces", CFTC, (June 29, 2023), https://www.cftc.gov/PressRoom/PressReleases/8736-23.

[2] "CFTC Whistleblower Alert: Blow the Whistle on Fraud and Manipulation in the Carbon Markets", CFTC, (June 6, 2023), https://www.whistleblower.gov/system/files/2023/06/1687294118/06.20.23%20Carbon%20Markets%20WBO%20Alert.pdf.

[3] This list is not exhaustive nor is it intended to imply that CFTC has authority over any non-listed areas, but references areas of member interest and areas which may be the focus of other initiatives.

[4] "A blueprint for scaling voluntary carbon markets to meet the climate challenge", Christopher Blaufelder et al., (January 29, 2021), (https://www.mckinsey.com/capabilities/sustainability/our-insights/a-blueprint-for-scaling-voluntary-carbon-markets-to-meet-the-climate-challenge.

[5] The mitigation hierarchy states that in meeting their climate targets companies should prioritize value chain GHG emissions avoidance and reductions before investing in voluntary carbon credits to offset their emissions.

The oil and natural gas industry is actively investing in VCC projects and setting voluntary climate goals and/or targets incorporating high-integrity VCCs. API recognizes that generation of VCCs must adhere to robust, widely recognized quantification methodologies to ensure their integrity, credibility, and permanence. API supports CFTC's reference to the broad core principles of additionality, permanence, robust quantification of emissions reductions and removals, no double counting, effective governance, tracking, transparency, and robust independent third-party validation and verification in the Guidance. We understand that all DCMs, including those active in the VCM, must follow existing CFTC requirements for listing VCC contracts. The oil and natural gas industry has supported and will continue to support the development of credible VCMs and the use of high-quality VCCs as an essential tool in meeting climate targets and/or goals.

CFTC should avoid duplication of efforts, overburdensome regulation, and promote global harmonization of market function and regulation.

The VCM is an international market and thus CFTC has the unique opportunity to engage globally with its counterpart commodities markets regulators in other major economies and with the private sector to advance high-integrity VCMs. API urges CFTC to continue its engagement with global initiatives and emphasizes the importance of facilitating broad global market participation to support the growth of VCMs. In these dialogues with both private initiatives and regulators, CFTC should promote best practices, avoid overly burdensome regulations that create barriers to market entry, and support broad market participation.

In the US, state and federal governments are pursuing multiple separate efforts to promote the integrity of the VCM, however it is unclear whether agencies are coordinating on these efforts to ensure consistency, efficiency and clarity. For example, on December 14, 2022, the Federal Trade Commission (FTC) launched a request for public comment on a potential update to their Green Guides regarding the use of environmental claims. The request for comment asks whether existing guidance on carbon offsets and climate change needs to be revised or whether any additional guidance is needed.[6] The Securities Exchange Commission (SEC) has proposed disclosure requirements related to a company's purchase and use of VCCs.[7] California recently passed *AB1305* establishing new disclosures regarding an entity's VCM activity and related claims.[8] The law applies to entities operating in California and marketing or selling voluntary VCCs, purchasing VCCs, and making climate-related claims.[9] Without adequate coordination and alignment among these regulators, such disparate efforts may lead to additional confusion and inefficiencies and limit the growth of high-integrity VCC markets.

Globally, many initiatives are developing frameworks and standards to promote the integrity of VCMs. API appreciates CFTC's efforts to promote harmonization within the markets and build on existing experience and expertise. It is critical that VCMs allow for broad participation and that overly restrictive requirements are not implemented, as that will limit market development. API urges CFTC to continue to monitor these efforts to prevent duplication and to promote broad alignment within the VCM.

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[6] 87 Federal Register 77766

[7] 87 Federal Register 21334

[8] Voluntary carbon market disclosures, AB 1305, Chapter 365, (Cal. Stat. 2023).

[9] AB1305 appears to have an overly broad scope and lacks clear definitions and implementation directions – API is concerned that the bill may negatively impact the growth of the market.

Conclusion

API appreciates CFTC's targeted efforts to promote the integrity of the VCM through the regulation of DCMs and is eager to continue monitoring CFTC's efforts to combat manipulation and fraud. Transparent, liquid, carbon markets that represent high-integrity VCCs can be a durable, effective climate solution. It is critical that we continue to support the development of global, high-integrity VCMs to meet global climate goals while avoiding duplicative efforts that do not promote efficient markets.

Sincerely,

Jennifer Stewart

Director, Climate & ESG Policy