



1 Thomas Circle NW Suite 1050  
Washington DC 20005  
United States of America  
[www.verra.org](http://www.verra.org)

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Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> St., NW  
Washington, DC 20581

**Re: Comment on Proposed Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment, 88 Fed. Reg. 89410**

**1. Overview**

This letter responds to the Commodity Futures Trading Commission’s (“CFTC”) request for comment on its proposed guidance regarding the listing of Voluntary Carbon Credit Derivative Contracts (“Proposed Guidance”). Verra appreciates the opportunity to comment on the Proposed Guidance and to help inform the CFTC’s approach to voluntary carbon markets (“VCMs”).

Verra strongly welcomes greater regulatory interest in VCMs. These markets are not immune to concerns relating to fraud and market manipulation, and Verra encourages the CFTC to exercise its statutory authority and adopt a more assertive approach in tackling such concerns. Verra will fully cooperate with the CFTC in this regard.

Notwithstanding the above, and as this comment letter explains, Verra believes that the Proposed Guidance, as currently drafted, may have the unintended effect of impeding the ongoing development of VCMs and, by extension, obstructing the flows of finance, technology and capacity that are needed to scale up greenhouse gas emission reductions and removals and to solve the climate emergency.

In the second section of this letter, we observe that the Proposed Guidance does not sufficiently align with the best practices and continual improvement efforts to advance quality in VCMs, including those of Verra’s Verified Carbon Standard (VCS) Program as well as sectoral efforts such as the Integrity Council for the Voluntary Carbon Market (“ICVCM”), the Voluntary Carbon Markets Integrity Initiative (“VCMI”) and emerging disclosure frameworks like California Assembly Bill 1305 (“AB 1305”) and the Federal Trade Commission’s (“FTC”) Green Guides.

In the third section of this letter, we observe that the Proposed Guidance would place designated contract markets (“DCMs”) in the position of performing their own evaluation of voluntary carbon credit (“VCC”) quality. This activity requires substantial specialized technical expertise that DCMs may not adequately possess or be reasonably expected to acquire, given their specific roles within the market ecosystem. As a result, the Proposed Guidance may chill the development of VCMs, as DCMs may be incentivized to take an unnecessarily cautious approach to listing VCC contracts.

In the fourth and final section of this letter, we respectfully request the CFTC to modify its Proposed Guidance. Specifically, we argue that the CFTC should permit DCMs to rely on the work of relevant non-governmental and governmental initiatives. Such an approach, we believe, would better complement efforts to safeguard the integrity of VCMs and more efficiently distribute responsibilities across entities in these markets. If reliance on existing initiatives is already part of the underlying rationale for the Proposed Guidance, then we would just ask that this motivation is set out more clearly in the Proposed Guidance.

## **2. Efforts by Verra and others are advancing quality in VCMs**

Verra operates the VCS Program and is committed to its continual improvement, as demonstrated in regular program updates that improve program requirements and methodologies to ensure that VCS projects are creating real, accurately and conservatively quantified, transparent and verified benefits for the climate. For example, version 4.5 of the VCS Program, which was released in August 2023, included:

- Updates to more transparently assess, report and mitigate risks to local communities and ecosystems;
- Clarification of the requirements to avoid double counting and double claiming of emission reductions and removals;
- Guidance and labels to identify credits that are authorized for use under Article 6.2 of the Paris Agreement;
- Clarification of the requirements for monitoring, reporting and compensation of potential reversals;
- Updates to the non-permanence risk tool to incorporate climate-change-related permanence risk assessments and to calibrate required contributions to the non-permanence buffer pool;
- Clarification of baseline reassessment requirements and processes; and
- Updated methodology requirements to account for policies in baselines and to align with net zero policies.

There are also multiple collaborative sectoral efforts that are advancing quality in VCMs, and in Verra’s view the maturation of these markets is best served by a unified regulatory approach that takes these efforts into account and supports the continued existence of a robust public dialogue about how best to evaluate VCCs and structure VCMs in support of their critical climate goals.

One such collaborative initiative is the ICVCM. The goal of the ICVCM and its participants is to set a global threshold for VCCs that will ensure their high quality and

underpin VCMs' growing importance in the climate transition. Verra supports the work of the ICVCM.<sup>1</sup> In November 2023, Verra submitted an application to the ICVCM to have the VCS Program<sup>2</sup> assessed against the ICVCM's Core Carbon Principles ("CCPs").<sup>3</sup>

Another important nonprofit effort to enhance VCMs is the VCMI, which, after years of development, published its Claims Code of Practice in June 2023 to guide corporations in making credible claims about their use of VCCs certified by high-quality crediting programs.<sup>4</sup>

Together, efforts pursued through entities like the ICVCM and VCMI are making significant contributions to the development of VCMs by drawing on the considerable scientific and technical resources that the sector has developed since the inception of these markets.

Beyond these sectoral efforts, other regulators are issuing or developing mandatory disclosure and marketing rules. These requirements sit alongside privately driven initiatives to create a regulatory environment that demands quality from both suppliers and users of VCCs.

In California, AB 1305 became effective on January 1, 2024. It requires companies that market or sell VCCs within California to provide a significant level of information about VCC quality by publishing ten data points about each underlying project on their website.<sup>5</sup> AB 1305 further requires in-scope companies to report on the accountability

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<sup>1</sup> *Statement on Verra's Application for ICVCM Assessment*, Verra (Nov. 21, 2023), available at <https://verra.org/statement-verra-submission-icvcm/>.

<sup>2</sup> For a more detailed discussion of the VCS Program, see Verra's prior comment letter of January 5, 2023, submitted in response to the CFTC's Request for Information on Climate-Related Financial Risk. See also *VCS Program Details*, available at <https://verra.org/programs/verified-carbon-standard/vcs-program-details/>.

<sup>3</sup> *Core Carbon Principles Assessment Framework*, ICVCM, available at <https://icvcm.org/assessment-framework/>.

<sup>4</sup> *VCMI Claims Code of Practice*, VCMI, available at <https://vcmintegrity.org/vcmi-claims-code-of-practice/>.

<sup>5</sup> Cal. Health & Saf. Code § 44475(a). The ten data points are: (1) the specific protocol used to estimate emissions reductions or removal benefits; (2) the location of the offset project site; (3) the project timeline; (4) the date when the project started or will start; (5) the dates and quantities when a specified quantity of emissions reductions or removals started or will start, or was modified or reversed; (6) the type of project, including whether the offsets from the project are derived from a carbon removal, an avoided emission, or, in the case of a project with both carbon removals and avoided emissions, the breakdown of offsets from each; (7) whether the project meets any standards established by law or by a nonprofit entity; (8) the durability period for any project that the seller knows or should know that the durability of the project's greenhouse gas reductions or greenhouse gas removal enhancements is less than the atmospheric lifetime of carbon dioxide emissions; (9) whether there is independent expert or third-party validation or verification of the project attributes; and (10) emissions reduced or carbon removed on an annual basis. *Id.*

mechanisms that the company has at its disposal if carbon storage is reversed or future emission reductions do not materialize.<sup>6</sup> Disclosures must be updated no less than annually.<sup>7</sup> In the event of noncompliance, the law provides for significant penalties that can be enforced by a California Attorney General, district attorney, county counsel, or city attorney.<sup>8</sup> AB 1305’s mandates—and the enforcement actions likely to arise in the near future—will further push robust information about VCCs into the market. As an example of how Verra supports regulatory developments, and although Verra is of the view that it is not subject to the disclosure requirements under AB 1305, Verra recently reviewed samples of the publicly available project information on its registry website in order to check alignment with requirements relating to marketing and to ensure that Verra facilitates the availability of information required by these legislative provisions for entities who are subject to these disclosure requirements.

In addition, the FTC’s Green Guides, revised in 2012, contain restrictions on the marketing of VCCs. Sellers should “properly quantify claimed emission reductions” and sellers and end users cannot represent that a carbon offset “represents emission reductions that have already occurred or will occur in the immediate future” if the reductions will take two years or longer to materialize.<sup>9</sup> The FTC is currently in the process of updating the Green Guides. The revisions are expected to include guidance on how companies can avoid deception in VCMs and use VCCs to support corporate “climate change-related claims such as ‘net zero,’ ‘carbon neutral,’ ‘low carbon,’ or ‘carbon negative.’”<sup>10</sup> To comply with the updated Green Guides, VCM participants are strongly incentivized to scrutinize their VCC-related claims and perform diligence on underlying projects for quality.

It may also be instructive to consider initiatives in other jurisdictions. For example, in the European Union, the Corporate Sustainability Reporting Directive (“CSRD”) and its accompanying European Sustainability Reporting Standards (“ESRS”) will require VCC-related disclosures and enhance the dissemination of robust, externally assured information.<sup>11</sup> The CSRD will require the more than 50,000 companies in its scope to report on their use of VCCs if it is material to the company’s impacts on people and the planet. In their annual CSRD disclosures, companies must disclose the total amount of

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<sup>6</sup> *Id.* § 44475(b).

<sup>7</sup> *Id.* § 44475.3(b).

<sup>8</sup> *Id.* § 44475.3(a).

<sup>9</sup> 16 C.F.R. § 260.5.

<sup>10</sup> *Guides for the Use of Environmental Marketing Claims*, FTC, 87 Fed. Reg. 77766, 77768 (Dec. 20, 2022).

<sup>11</sup> Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as amended by Directive 2022/2464 as regards corporate sustainability reporting. OJ L 322, 16.12.2022, p. 15-80, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013L0034-20230105>; Commission Delegated Regulation 2023/2772 as regards sustainability reporting standards. OJ L 2023/2772, 22.12.2023, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202302772](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302772) (“ESRS”).

VCCs (in metric tonnes of carbon dioxide equivalent) that are verified against “recognized quality standards” and canceled in the reporting period.<sup>12</sup> In its VCC-related reporting under CSRD, a company must disclose, among other data, (1) the recognized quality standard on which the VCC is based and (2) whether the VCC qualifies as a corresponding adjustment under Article 6 of the Paris Agreement.<sup>13</sup> Companies’ CSRD disclosures will be subject to limited assurance from external auditors and be open to regulatory, and potentially also private, enforcement action. This provides yet another incentive for actors in VCMs to verify the quality of the VCCs they purchase and to support the ongoing collaborative efforts described above.

In sum, a suite of ongoing voluntary and regulatory standard setting and disclosure requirements are creating a “race to the top” for quality in VCMs. The CFTC’s Proposed Guidance may not adequately address the intersection between these new requirements and ongoing sectoral efforts, both voluntary and regulatory. There is a risk, therefore, of a regulatory patchwork of confusion among multiple standard-setting and disclosure requirements.

### **3. Requiring DCMs to evaluate VCC quality may unduly chill the development of VCMs**

The Proposed Guidance requires DCMs—whose expertise is in futures and derivatives markets, not greenhouse gas emissions or VCCs—to scrutinize crediting programs in order to determine whether VCCs from those programs would be eligible for delivery under DCM-listed contracts. In particular, the Proposed Guidance would require DCMs to evaluate the transparency, additionality, permanence, and quantification methods of various carbon crediting programs to determine if VCCs issued by those programs should be eligible for delivery on a VCC derivative contract, and, moreover, to ensure that those aspects of the VCCs are accurately described in the contract’s terms and conditions.

DCMs may not be adequately equipped for this task. The VCC metrics identified by the Proposed Guidance cut to the core of what makes a robust crediting standard that serves to reduce or remove greenhouse gas emissions and to foster climate action and sustainable development. Other organizations have dedicated years to developing, refining, and implementing crediting standards designed to result in high-quality VCCs across the metrics identified by the Proposed Guidance. As discussed in section 2 above, there is robust dialogue among market participants and nongovernmental entities on how to consider and promote VCC quality across these metrics. It is not realistic to expect that DCMs gain the same level of expertise in the complexities of VCC issuance and certification, and accurately determine and describe the quality of VCCs from different sources. For example, the Proposed Guidance states that:

A DCM should consider the methodology or protocol used by a crediting program to calculate the level of GHG emission reductions or removals

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<sup>12</sup> ESRS E1-7, para. 59(a); AR para. 61.

<sup>13</sup> ESRS E1-7, AR para. 62.

associated with credited projects or activities. Given the current absence of a standardized methodology or protocol to quantify GHG emission reduction or removal levels—not only across crediting programs, but even by a particular crediting program, with respect to different types of projects or activities—the Commission believes that a DCM that lists a VCC derivative contract should consider whether the crediting program for the underlying VCCs can demonstrate that the quantification methodology or protocol that it uses to calculate emission reductions or removals for the underlying VCCs is robust, conservative, and transparent.<sup>14</sup>

For a DCM to carry out this obligation, it would need to obtain substantial specialized technical expertise about topics that are beyond a DCM’s core competency in overseeing derivative markets, including: the biological, physical and chemical processes that result in greenhouse gas emissions, avoid such emissions or improve the storage of carbon in ecosystems, products and geologic formations; the resulting quantification of emissions from various sources; and the methods that researchers and organizations have developed to accurately quantify and track the greenhouse gas emission reductions or removals associated with different interventions.

In effect, the difficulties of compliance and the risk of enforcement may simply be too high to justify DCMs’ interest in listing new contracts in a sector that is growing and innovating, while being critical to catalyzing climate action and realizing the science-based targets and net-zero commitments of corporate actors across economic sectors.

One would hope that the opportunity for economic gain that can follow a successful listing would incentivize a DCM to evaluate a proposed VCC contract thoroughly. However, if a given contract does not perform to expectations, it seems likely that the risk of enforcement or other action by the CFTC against the DCM could tip the balance toward risk-averse behavior by the DCM (including disregarding productive sectoral efforts and analysis) and thus against approving a proposed contract. This outcome would be to the detriment of the development of this important market. It would, almost certainly, reduce incentives for new VCC-generating projects, given the uncertainty of the impact, potentially reducing the number of projects designed to promote climate action. In addition, a reduced supply of VCC futures and derivatives may make it difficult for entities to explore climate solutions that involve the use of these products, thus slowing their adoption and discouraging the use of VCCs in innovative climate strategies.

#### **4. The CFTC has more effective and economically efficient regulatory means of achieving its policy goals**

Verra believes that the CFTC has a clear and compelling policy goal in ensuring that DCM-listed contracts are backed only by high-quality VCCs. Verra also believes that the achievement of this policy goal is best achieved in a way that elevates existing efforts

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<sup>14</sup> Proposed Guidance, 88 Fed. Reg. 89410, 89418.

to set and enhance VCC quality standards and allocates responsibilities across the market ecosystem in a more economically efficient manner.

Accordingly, Verra respectfully requests that the CFTC modify the Proposed Guidance. Specifically, rather than requiring DCMs to become independent experts in the science of greenhouse gas emissions reductions and removals, the CFTC should instead permit DCMs to rely on VCC certification and compliance set forth under relevant nongovernmental and governmental initiatives. For example, DCMs could rely upon VCCs that leading sectoral initiatives such as the ICVCM have approved under their program-level and category-level guidance. In addition, DCMs could also rely upon VCCs that are issued by crediting programs that operate transparently and have a demonstrated track record of continual improvement and that belong to new or emerging categories. Under such an approach, DCMs would still play a crucial role in ensuring that listed contracts are not subject to manipulation and that they accurately “describe or define all of the economically significant characteristics or attributes of the commodity underlying the contract” in connection with any listed contract.<sup>15</sup>

This approach would still require that DCM-listed contracts be backed by high-quality VCCs, but it would also recognize the years of collaboration and work that have gone into developing comprehensive standards, methodologies and protocols for VCC certification, as well as the innovative and emerging nature of this sector. In addition, this approach would leverage the extensive scientific and market research into—and knowledge about—emission reductions and removals that underlies these programs and informs the debates in sectoral initiatives.

Although the intention of the CFTC may be to have DCMs rely on the expertise provided by sectoral initiatives and crediting programs, this intention has not yet been made sufficiently clear in the Proposed Guidance. The CFTC has a valuable opportunity at this stage to harness the extensive and deep knowledge of existing entities who support and participate in initiatives that promote quality in VCMs to achieve the CFTC’s aims even more effectively.

Verra looks forward to the opportunity to work with the CFTC, as well as other entities, on the continued development of VCMs. Such collaboration would align with our charitable mission to develop and manage standards programs that enable countries, the private sector, and civil society to achieve their sustainable development and climate change goals, and to protect and conserve the environment for the benefit of the general public. Ensuring high quality VCCs and the integrity of VCMs requires ongoing review, development and willingness to set and comply with robust standards, as demonstrated by Verra’s own continual improvements and support of, and participation in, sectoral initiatives.

Verra believes that, through the targeted exercise of the CFTC’s enforcement authority and a regulatory approach that considers and incorporates the ongoing efforts to continually enhance the quality of VCCs, the CFTC will further advance the continued

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<sup>15</sup> 17 C.F.R. Part 38, Appendix C(b)(2)(i)(A).

growth and development of VCMs. Such an exercise will enable these markets to achieve their overarching purpose of unlocking and scaling the levels of climate finance, technology, and capacity that the world requires to reduce and remove greenhouse gas emissions and avoid disastrous levels of global warming.

Thank you once again for the opportunity to comment.

Best Regards,

/s/ Robin Rix

Robin Rix  
Chief Legal, Policy, and Markets Officer

Verra  
1 Thomas Circle NW, Suite 1050  
Washington, DC 20005  
[www.verra.org](http://www.verra.org)