

February 16, 2024

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

Electronic submittal via CFTC Comments Portal: <https://comments.cftc.gov>

Anew Climate (“Anew”) appreciates the opportunity to provide formal comments on the Commodity Futures Trading Commission's proposed *Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts*, as published at 88 Fed. Reg. 89419 on December 27, 2024 (“Guidance”).

Anew is one of the largest climate solutions companies in North America and, through its legacy companies, Bluesource and Element Markets, has a twenty-year track record of success within the markets for voluntary carbon credits, renewable natural gas, low carbon fuels, emissions credits, and renewable energy certificates. We respectfully submit general comments on multiple aspects of the proposed guidance regarding the listing of voluntary carbon credit (“VCC”) derivative contracts, as well as answers to some of the specific questions posed by the Commission (specifically, questions 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, and 14).

General Comments

We support the Commission’s desire to ensure appropriate oversight of the voluntary carbon market (VCM) and to use its statutory authority to prevent fraud and manipulation in the VCM. We have long advocated for and supported measures that improve the transparency, integrity, and quality of the VCM. In this regard, we have often stated our position that all VCCs created and traded in the VCM should be of the highest quality - reflecting reductions, avoidance or removals that are additional to those that would occur in the absence of demand for the credits. The VCCs must be measurable and verified by a third party and must be generated from activities and programs with measures in place to address risks of non-permanence and leakage. In addition, VCCs should be associated with a credible standard-setting body that provides transparent processes for registration, validation, monitoring, verification, methodology assessment and revision over time, and retirement tracking.

We commend the Commission for its work on the VCM over the past several years, including two full day convenings with VCM stakeholders in 2022 and 2023, and now publication of the Guidance. The Guidance represents a significant step for the Commission in its efforts to support scaling of liquid and transparent markets for high-integrity VCCs that may serve as a tool to facilitate emissions reduction efforts. We appreciate the thoughtful approach taken by the Commission in its first step to regulate aspects of futures and derivatives markets that are related to VCCs and the VCM.

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More specifically, we support the Commission’s decision to issue non-binding Guidance and to focus this Guidance on VCC derivative contracts that are listed on designated contracts markets (“DCMs”), thereby anchoring the Guidance squarely within the Commission’s authority under the Commodity and Exchange Act (“CEA”) to “*promote market integrity, prevent price manipulation and other market disruptions, protect customer funds, and avoid systemic risk, while fostering responsible innovation and fair competition in the derivatives markets*” (7 U.S.C. § 5(b)). Adoption of this Guidance directed at DCMs can be completed within a few months, allowing the Commission to act expeditiously to address known and alleged integrity concerns in the VCM without risking any delays resulting from congressional approvals or lengthy regulatory review processes. We agree with Commissioner Kristin Johnson’s view that the Guidance should usher in a discussion around the potential development of a comprehensive regulatory initiative focused on the VCM. However, we urge the Commission to finalize this proposed Guidance first and take any subsequent regulatory steps carefully, intentionally, and with continued substantial stakeholder engagement.

We support the Commission basing its Guidance on the terminology, concepts and standards embedded in the Core Carbon Principles (“CCPs”) as set forth by the Integrity Council for the Voluntary Carbon Market (“ICVCM”) in 2023. The CCPs set a global benchmark for high-integrity VCCs and provide governance criteria for carbon crediting programs and registries. The Commission proposes that DCMs should apply the concepts and standards of the CCPs to assess carbon crediting programs and registry policies in order to ensure that only derivatives of high-quality VCCs are listed for trading. This fulfils the DCMs’ obligation to promote the integrity of derivatives markets and to comply with the “Core Principles” for DCMs that are set forth in the CEA.

We specifically agree with the Commission’s decision to focus the Guidance on three key criteria - quality standards, delivery points, and inspection provisions in the design of VCC derivative contracts - and aligning these three categories with important CCPs. The quality standards for listed VCC contracts are aligned with CCPs #3 (transparency), #5 (additionality), #6 (permanence), and #7 (robust quantification). The expectations for delivery points, or registries, align with DCM Core Principles 1 (effective governance), 2 (tracking) and 8 (no double counting). Lastly, the inspection provisions in VCC futures contracts align with principle 4 (robust independent third-party validation and verification).

In previous comments, we urged the Commission to leverage the work of the ICVCM that has resulted in the CCPs. We commend the Commission for doing just that in its proposed Guidance. It is our view that aligning evolving guidance from the CFTC as well as other financial regulators around the world with the significant progress that has been made by initiatives like the ICVCM is critical for standardizing the understanding of “high quality” and “high integrity”, and therefore scaling transparent and high-integrity carbon markets. We agree with the Commission that the Guidance as proposed furthers the agency’s mission and may help to advance the standardization of VCC derivative contracts in a manner that fosters transparency and liquidity, accurate pricing, and market integrity.

Anew does not believe that the Commission should include principles or criteria in its Guidance that are more stringent or go beyond those currently included in the ICVCM CCPs. However, we recommend that the Commission continue to track and monitor the ongoing evolution of the ICVCM's work and implementation of the CCPs. This includes, for example, additional ICVCM guidance on certain VCC categories and specific questions, e.g. around permanence, that are being addressed in ongoing ICVCM working groups. Overall, we recommend that the Commission continue to strive for maximum leverage of and alignment with global VCM integrity initiatives.

Specific Questions

General

1. 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? Are there VCC commodity characteristics identified in this proposed guidance that are not relevant to the listing of VCC derivative contracts, and if so, why not?

All commodity characteristics identified in the proposed guidance are relevant to ensuring the DCM has a high-integrity source of VCCs. The provisions on governance could be bolstered if the DCM is asked to consider whether the crediting program has procedures in place to identify and manage conflicts of interest, as well as robust grievance and redress mechanisms.

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?

Yes, we believe derivative contracts should incorporate standards for VCCs such as those endorsed and/or approved by the ICVCM and the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) into the terms and conditions of a VCC derivative contract, as such standards align with benchmarks of carbon credit quality. Other quality standards may emerge in an evolving landscape, and DCMs should be transparent in how they evaluate crediting programs.

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?

A DCM is responsible for ensuring there is no manipulation in its own market, but it is not responsible for overseeing all activities in the physical market. Anew would like to reinforce

that it is not appropriate for a DCM to be involved in voluntary carbon credit development. It is the responsibility of the crediting programs and standard setters to ensure there is no manipulation or fraudulent activity associated with the creation of VCCs that may be included in a derivative contract.

Transparency

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?

We believe that a crucial component of high-quality VCCs is that the crediting program that issues those VCCs be transparent and make sufficient information about its projects and project activities publicly available. DCMs should consider whether the crediting program is transparent about its program governance, e.g. making documentation on program governance publicly available. DCMs should consider whether a crediting program makes project documents such as project design documents, monitoring reports, and verification reports available on its public registry, as well as consider whether the crediting program requires third-party verification, in alignment with the ICVCM and CORSIA.

Additionality

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?

The Commission should allow DCMs to rely on industry standard definitions of additionality and should not assess this themselves. We encourage the Commission to update the guidance and refer to the CORSIA definition of additionality that includes the following different ways that project additionality can be assessed:

- Legal or regulatory additionality analysis
- Barrier analysis
- Common practice / market penetration analysis
- Investment, cost, or other financial analysis
- Performance standards or benchmarks

Further, the DCMs should follow the guidance provided by each of the respective carbon credit registries for assessing additionality. For example, some crediting programs pre-define certain

projects as automatically additional (i.e., positive list). When this method is used, the DCM should consider whether the crediting program has provided clear evidence on how the activity was determined to be 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?

Please see our response to Question 7. The Commission should allow DCMs to rely on industry-standard definitions of additionality.

Risk of Reversal

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?

We believe that it is crucial for crediting programs to have robust procedures in place to mitigate the risk of reversal and in turn ensure permanence of the emission reduction or removal. DCMs should ensure VCCs are sourced only from crediting programs that have such procedures in place, both at the program-level and at the methodology-level. DCMs should not use VCCs from crediting programs that do not adequately address both permanence and risk of reversal in the underlying methodology, regardless of whether the project type is nature based or technology based. We encourage the Commission to aim for continued alignment with the ICVCM on the topic of permanence, where additional guidance is forthcoming, pending work of a Continuous Improvement Working Group.

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?

We believe that DCMs should again rely on the robust requirements and procedures of the respective crediting program to address reversals of GHG emission reductions or removals, when they do occur. The DCM should consider how the crediting program addresses avoidable

and unavoidable reversals when they do occur and requirements related to buffer pool contributions. Again, we encourage the Commission to align with the ICVCM on this topic to the extent possible.

Robust Quantification

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?

We believe it is important that VCCs used by DCMs are generated from robust, conservative and transparent quantification methodologies. We believe DCMs should consider whether the crediting program has established policies and procedures that ensure that its methodologies include the following criteria:

- Leverages the most up-to-date science and scientific procedures
- Requires periodic yet regular updates/recalculation of the project baseline, while also leveraging safeguards to prevent baseline manipulation
- Has mechanisms to assess and quantify potential leakage emissions
- Has mechanisms to account for reversals (i.e. buffer pool)
- Underwent a stakeholder public comment period
- Requires independent third-party verification

Governance

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?

We believe it is important for the DCMs to evaluate and consider the governance of the crediting programs of VCCs it utilizes. The DCM should consider whether policies are in place to ensure that all potential conflicts of interest between various stakeholders (staff, board, projects, project developers, VVBs, and contractors) are identified and mitigated. DCM's should also consider whether a grievance process and procedures by which to address those grievances are in place. Finally, we recommend that DCMs assess whether the crediting program has mechanisms by robust risk management policies in place, as well as mechanisms to ensure no social and/or environmental harm comes from VCC projects.

Tracking and No Double Counting

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?

We believe that DCMs should assess whether the crediting program has published transparent operating procedures for its registry activities, explaining how these processes work, as well as terms of use that govern participation in the program. The DCM should consider whether the registry is publicly accessible, whether unique serial numbers are used to distinguish between credits, whether the registry provides sufficient transparency and clarity on project details, and whether details related to issuance/transfer/retirement of credits are able to be reviewed regularly.

14. Are there particular 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 it can be demonstrated that the registry operated or utilized by a crediting program has in place measures that provide reasonable assurance that credited emission reductions or removals are not double-counted?

Yes, we believe the DCM should evaluate the procedures a crediting program or registry has in place to ensure no double counting of VCCs. Such procedures should include unique serial numbers for each individual VCC issued, as well as an ability to track and/or confirm the current status of each VCC, publicly accessible reports or information on issuance, transfers, and retirements, and procedures in place to ensure that once a VCC is retired it can no longer be transferred or used in any way.

We thank the Commission for its important work and would like to reiterate our offer of continued engagement with the Commission and its staff on topics related to the VCM. Should you have any questions, please contact me at jpeace@anewclimate.com.

Sincerely,

Janet Peace, Head of Advisory