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CFTC Considers Greater Regulation of Carbon Offset Markets



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On June 2, 2022, the Commodity Futures Trading Commission (“CFTC”) [convened](#) for the first time market participants to discuss the state and the challenges of the U.S. voluntary carbon credit (“VCC”) markets and, at the end of the meeting, [published](#) a Request for Information (“RFI”) on Climate-Related Financial Risk. This convening was an important step in CFTC’s broader initiative to conceptualize its jurisdictional reach over environmental, social and governance (“ESG”) commodity markets generally.

From the outset, CFTC leadership and participants recognized that the CFTC has only a limited enforcement jurisdiction over ESG commodities and specifically carbon credits, allowing the CFTC to prosecute for fraud and manipulation. Even though ESG commodities are generally considered “commodities” under the Commodity Exchange Act of 1936 (“CEA”), CFTC’s exclusive (or regulatory) jurisdiction is triggered only when derivatives or “commodity interests” are involved, which are swaps, options and futures. Given that most of the VCC markets, as well as ESG commodity markets, are spot or forward markets, CFTC’s regulatory reach is limited, as it is not a general consumer protection agency.

Nevertheless, the CFTC chose to hold the convening to address the increasing use of sustainability-linked derivatives (“SLDs”) both in the OTC and regulated exchange markets that are being used by market participants to mitigate climate risks, as well as secure financing of ESG projects.

At the conclusion of the VCC convening, the CFTC published the RFI, seeking “public comment on climate-related financial risk to better inform its understanding and oversight of climate-related financial risk as pertinent to the derivatives markets and underlying commodities markets.” Information obtained from the RFI will assist further work of CFTC’s [Climate Risk Unit](#), as well in formulating CFTC’s future policies addressing climate risks and the developing spot and derivative markets in ESG commodities.

