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IOSCO Launches a Consultation on Compliance and Voluntary Carbon Markets Design

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In November 2022, the International Organization of Securities Commissions ("IOSCO") published two reports – one on Compliance Carbon Markets ("CCMs") and one on Voluntary Carbon Markets ("VCMs"). IOSCO continues to seek comments from market participants on key structural considerations for these markets, such as optimal design, efficient regulation, and improved integrity of the carbon credits. Comments are due by February 10, 2023. It is expected that several industry groups will be providing comments as part of their overall Environmental, Social and Governance ("ESG") work.

In the CCM report, IOSCO discussed generally the "cap-and-trade" markets and "emission trading schemes" ("ETS") that have been established by several national governments and governmental organizations in the EU, Asia and in the U.S. At this time, there are only two CCMs in the U.S.: the State of California's Air Resources Board ("ARB")-administered "cap and trade" market that has been linked with Canada through the Western Climate Initiative ("WCI"), as well as the Regional Greenhouse Gas Initiative ("RGGI") in the northeastern U.S. These ETS generally mandate the maximum amount of carbon that covered entities are allowed to emit (the "cap") and where the excess credits can be traded and purchased by those that have a compliance shortage (the "trade").

In the VCM report, IOSCO discussed the markets that are not mandated by a government authority but where "entities buy credits generated from emission-reduction projects to offset some or all of their own carbon emissions." These offset credits are generated by projects that either avoid carbon emissions (*e.g.*, by generating energy through wind or solar) or remove carbon or greenhouse gasses ("GHG") from the atmosphere (*e.g.*, by planting trees). To ensure reliability, these projects are generally certified by a standard-setting body that also acts as a registry, such as Gold Standard or Verra.

The CCM and VCM reports provide several recommendations designed to address identified vulnerabilities in these markets, such as integrity, lack of transparency, reliability, lack of standardization, fragmentation, lack of legal certainty, greenwashing, and conflicts of interest, among others. IOSCO's effort provides a much-needed analysis of VCM and CCM markets from the spot, commodity, derivatives and securities markets' perspectives and calls for existing regulatory schemes to apply to VCM and CCM markets.

In the U.S., this effort follows on multiple climate initiatives in 2021 and 2022, such as White House executive orders on clean energy and tackling the climate crisis, efforts by the Commodity Futures Trading Commission ("CFTC") to address issues arising out of VCMs and the impact of climate risk on US financial markets, the rule proposed by the Securities and Exchange Commission ("SEC") regarding climate-related disclosure, climate risk initiatives from the Office of the Comptroller of the Currency ("OCC"), and the Inflation Reduction Act of 2022.

We are currently providing guidance and assistance in preparing comments to these IOSCO reports.