



February 16, 2024

Commodity Futures and Exchange Commission
Office of the Secretary
1155 21st St NW
Washington, DC 20036

RE: Guidance Regarding Listing of Voluntary Carbon Credit Derivative Contracts; RIN
3038–AF40

Dear Commissioners,

Thank you for this opportunity to comment on the Commodity Futures and Exchange Commission’s proposed guidance on listing standards for carbon offset derivatives products. Public Citizen commends the Commission for its due diligence in exploring its role and authority vis-a-vis the voluntary carbon market (VCM) over the past several years, and thanks commissioners and their staff for the two expert workshops to date, as well as the myriad hearings and committee meetings on this topic. We especially commend Commissioner Goldsmith Romero for her clear-eyed approach to the fundamental challenges inherent in the VCM, namely decades of misrepresentation, mismanagement, and fraud, as well as her commitment to probe the underlying spot market consistent with statutory authority. We thank her and Chair Benham for launching the CFTC’s Environmental Fraud Task Force to “pursue individual cases of fraud related to carbon credits, [thus] weeding out bad actors, and promoting market integrity.”¹

Nevertheless, Public Citizen believes the CFTC’s proposal fundamentally sidesteps an essential threshold question: Are offsets and their derivatives legitimate financial instruments that “promote resilience to climate risk?”² Decades of fraud and failed projects provide a clear answer, yet there remains hope that “integrity” might somehow be restored to the market. Moreover, this hope presupposes that key attributes of integrity, such as transparency and efficacy, ever existed in the carbon market in the first place.

¹ Statement of Commissioner Christy Goldsmith Romero on Exchange Listing Standards for Voluntary Carbon Credit Derivative Contracts, Dec. 4, 2023:

<https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement120423>

² *Id.*

CFTC-regulated exchanges have two key obligations under the Commodity Exchange Act, namely to “list only contracts that are not readily susceptible to manipulation,” and “to have the capacity and responsibility to prevent manipulation, price distortion and other market disruptions, and other requirements aimed at market integrity.” Unfortunately, exchanges will be unable to comply with these basic principles in the case of VCM derivative contracts. Before answering the Commission’s list of questions on the draft proposed guidance, Public Citizen believes that some broader framing is necessary.

I. Carbon ‘credits’ and carbon ‘offsets’ are functionally the same.

As a threshold matter, we would like to address the shift in terminology now underway between carbon “offsets” and carbon “credits.” Certain market players, such as Gold Standard and the Voluntary Carbon Markets Initiative (VCMI), maintain that carbon credits should not be used as a mechanism to “offset” a company’s own emissions, presumably because offsetting has been exposed as a tactic that promotes greenwashing and thwarts decarbonization.³ While laudable, it is more likely that the intent is to deflect attention from the persistent integrity crisis in the voluntary carbon markets.

The Integrity Council on Voluntary Carbon Markets (ICVCM) has not grappled with the offset v. credit issue on a substantive level, although it has changed former references to “offsets” on its website to “credits.” It continues to maintain that “credits can unlock urgently needed finance to reduce and remove billions of tonnes of emissions,” confirming that the underlying rationale of voluntary carbon markets has not changed—it remains an offsetting regime, irrespective of whether the term “credits” or “offsets” is used. Further, the Council is clear that carbon credits “must be compatible with a transition to net zero.”⁴ The ICVCM Assessment Framework also makes frequent reference to the standards of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), specifically designed to allow airlines to offset carbon emissions from their flights:

To minimize the burden on carbon-crediting programs operating in the VCM, the ICVCM has determined that programs already eligible under CORSIA are also eligible under this version of the Assessment Framework ...⁵

Therefore, it is clear that the ICVCM framework sanctions the use of carbon credits for the purpose of offsetting emissions, the shift in terminology notwithstanding. Indeed, if carbon credits are not a legitimate means to offset emissions, the very rationale for carbon markets falls

³ Thomas Cox, “VCMI carbon credit claims 'cannot be used for offsetting,’” Environmental Finance, June 30, 2023: <https://www.environmental-finance.com/content/news/vcmi-carbon-credit-claims-cannot-be-used-for-offsetting.html>

⁴ <https://icvcm.org/wp-content/uploads/2024/02/CCP-Foreword-V2-FINAL-6Feb24.pdf>

⁵ <https://icvcm.org/wp-content/uploads/2024/02/CCP-Section-3-V2-FINAL-6Feb24.pdf>

away: The point is that high-cost emissions in one geography can be traded for lower-cost emissions elsewhere. If carbon credits can't be used for offsetting purposes, they become philanthropic donations and the incentive for corporations to purchase them diminishes accordingly.

II. Carbon offsets or credits are incapable of accomplishing their purpose.

The challenges with carbon offsets as a climate risk mitigation tool are manifold: The most relevant is that they do not mitigate climate change—at best, their use slows the rate at which climate change intensifies and incrementally delays tipping points; at worst, they invite fraud and prevent decarbonization of our most polluting industries, guaranteeing we will never achieve net-zero, much less “real-zero.” With the prospect of reaching peak emissions receding into the background as war and other geopolitical forces drive increased appetite for fossil fuels, carbon credits/ offsets appear much more like a dangerous distraction than a solution.

Increasingly, fossil fuel companies are relying on carbon offsets to justify their transition to clean energy without making material emissions reductions. In November 2021, the Financial Times reported “a surge in the use of carbon credits for hydrocarbon products” often marketed as “carbon neutral.”⁶ New climate marketing schemes are at an all-time high as the world approaches key targets set by the Paris Agreement,⁷ which requires emissions to be “net zero” by 2050. Over the past two years, the share of large publicly-listed companies with net zero targets has more than doubled, from 417 to 929 as of 2023.⁸ Net Zero Tracker, a non-profit that tracks these figures also concluded in its latest report, that “there are very limited signs of improvement in the robustness of subnational and corporate net zero targets and strategies.”⁹

A. Decades of fraud and misconduct

The VCM has defied decades of failed attempts at reform and rehabilitation. An avalanche of investigative reporting, academic analyses, and governmental inquiries have exposed carbon credit schemes as fundamentally unfit for the purpose they were intended to serve, namely to sequester—permanently and verifiably—one ton of carbon per credit.¹⁰ As a result, the European

⁶ Camilla Hodgsen, “Use of carbon credits for fossil fuel shipments surges, Nov. 3, 2021: <https://www.ft.com/content/a6c1ab7d-5edc-4cff-bcbf-71ebe7f48f82>

⁷ Catherine Boudreau, “Companies are selling us more stuff by telling us it's 'sustainable,’” Business Insider, April 21, 2023: <https://www.businessinsider.com/green-shopping-products-government-green-guides-marketing-sustainable-2023-4>

⁸ Net Zero Tracker, “Net Zero Stocktake 2023,” June 11, 2023: <https://zerotracker.net/analysis/net-zero-stocktake-2023>

⁹ *Id.*

¹⁰ Cases of fraud and manipulation in the VCM are manifold and mounting. and there's no need to rehash them here. Can refer you to public citizens FTC comment on the green guides here with numerous examples and Ashens of fraud and manipulation in the spot market for carbon credits and offsets. The challenge is simply that the offsets that most corporate and financial institutions are buying are not credible, while the very very few that are capable of sequestering carbon permanently in rock, for example, are prohibitively expensive, and no one is buying them.

Union just issued a complete and total ban on the use of carbon offsets to substantiate green marketing claims.¹¹ The EU and allies foreshadowed similar restrictions at COP28 last year, when they cut off negotiations on the compliance carbon market over integrity concerns, rejecting the “light touch” trading rules proposed by the U.S.¹²

Fraud and allegations of fraud have rocked the VCM in recent years: A January 2023 investigation by the *Guardian* found that more than 90% of the Verra registry’s tropical forest offset credits were likely “phantom credits” that “do not represent genuine carbon reductions.”¹³ Peer-reviewed literature concerning forest offset programs operating in North America arrived at similar conclusions.¹⁴ *Bloomberg* and others have probed questionable accounting and other abuses by carbon project developers, verifying bodies, and registries. One of the world’s largest carbon offsets developers and traders, South Pole, has been mired in controversy relating to its now discredited Kariba forest offset project in Zimbabwe, which overcredited more than 25 million carbon credits. The Nature Conservancy was forced to undertake an audit of its own carbon credit scheme after an investigation found that it was taking credit for saving trees in no danger of destruction.¹⁵

A 2022 Bloomberg Green analysis of 215,000 offset transactions revealed that “airlines, online retailers, industrial firms and energy producers now rely heavily on the cheapest and most suspect type of offset—those tied to renewable-energy projects.”¹⁶ However, solar and wind are now the cheapest sources of energy in much of the world. A basic principle of carbon offsetting is that the emissions cuts would not have happened without the project; reductions have to be “additional” to any that would have taken place anyway.

¹¹ Patrick Greenfield, “EU bans ‘misleading’ environmental claims that rely on offsetting,” *The Guardian*, January 18, 2024: <https://www.theguardian.com/environment/2024/jan/17/eu-bans-misleading-environmental-claims-that-rely-on-offsetting>

¹² Climate Home News, “Carbon credits talks collapse at Cop28 over integrity concerns,” December 13, 2023: <https://www.climatechangenews.com/2023/12/13/carbon-credits-talks-collapse-at-cop28-over-integrity-concerns/>

¹³ Patrick Greenfield, “Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows,” *The Guardian*, Jan. 18, 2023: <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>. The Guardian’s reporting was based on two published academic studies and a scientific preprint: West et al., [Overstated carbon emission reductions from voluntary REDD+ projects in the Brazilian Amazon](#), Proceedings of the National Academy of Sciences (Sept. 14, 2020); Guizar-Coutiño et al., [A global evaluation of the effectiveness of voluntary REDD+ projects at reducing deforestation and degradation in the moist tropics](#), *Conservation Biology* (Sept. 8, 2022); West et al., [Action needed to make carbon offsets from tropical forest conservation work for climate change mitigation](#) (Jan. 2023).

¹⁴ See, e.g., Badgley et al., [Systematic over-crediting in California's forest carbon offsets program](#), *Global Change Biology* (Oct. 20, 2022).

¹⁵ Ben Elgin, “These Trees are Not What They Seem,” *Bloomberg Green*, Dec. 9, 2020: <https://www.bloomberg.com/features/2020-nature-conservancy-carbon-offsets-trees/>

¹⁶ Akshat Rathi et al., “Junk Carbon Offsets Are What Make These Big Companies ‘Carbon Neutral,’” *Bloomberg*, November 21, 2022: <https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/?embedded-checkout=true>

Yet fraud or misrepresentation are not necessary for carbon credits to fail the test of the Core Carbon Principles touted by the VCM. Guaranteeing “permanence,” for example, is simply a structural and physical impossibility for all nature-based credits. The very few offset categories that might one day promise permanence, such as direct carbon capture, or carbon capture and sequestration – remain unproven at scale and cost prohibitive. When it comes to “additionality,” the problem is no less daunting: To establish a project would not have been undertaken but for the pecuniary incentives from the carbon offsetting scheme requires proving a counterfactual. Even assuming good faith on the part of parties in the carbon offsets value chain, the physics of climate change and the current state of sequestration technology combine to create an unworkable situation.

III. VCM Derivatives contracts are inherently susceptible to manipulation.

Market players and standard setters, such as the Integrity Council on Voluntary Carbon Markets (ICVCM) and the International Organization of Securities Commissions (IOSCO) remain on a quest to bring “integrity” back to the carbon markets. As Vice Chair of IOSCO, Chair Benham has a vested interest in achieving this goal. However, the premise of a “high-integrity” credit rests on at least two criteria that will almost never be provable by credit purveyors, namely permanence and additionality. The Commission has recognized that these criteria, themselves adopted by the ICVCM, are integral. These criteria, along with other Core Carbon Principles of the ICVCM, are not novel: they have always been the defining characteristics of a carbon credit or offset program.

A. The vast majority of existing carbon credits fail quality standards set by ICVCM, adopted by the CFTC, and delegated to the DCMs.

The Commission’s draft guidance “adapts terminology, concepts and standards from the ICVCM’s Core Carbon Principles and its recently issued Assessment Framework.” Further, while not entirely explicit, the CFTC now urges the regulated exchanges to make listing decisions of VCM derivatives contracts based on whether those contracts, their terms and conditions, are consistent with the Core Carbon Principles.¹⁷

The ICVCM announced its Core Carbon Principles in March 2023 with exuberance: “The Core Carbon Principles (CCPs) set a global benchmark for high-integrity. They are ten fundamental principles for high-quality carbon credits that create real, verifiable climate impact, based on the latest science and best practice. The CCP label is designed to build trust and unlock investment by making it easy for buyers to identify a high-integrity credit no matter which carbon-crediting

¹⁷ Public Citizen requests clarification on this chain of delegation. Is the practical effect that CFTC is delegating its regulatory authority over VCM derivatives to the ICVCM?

program issued it, what kind of credit it is, or where it is generated.”¹⁸ It is notable that these principles have been the defining criteria of carbon offsetting schemes since their inception more than a half century ago.¹⁹

Shortly after the Core Carbon Principles were released, *The Wall Street Journal* reported that carbon market analyst Trove Research (now a subsidiary of MSCI) concluded that less than 2% of projects issuing credits would comply with new standards for sellers.”²⁰

B. Permanence and additionality are insurmountable barriers to integrity for the vast majority of carbon offsets.

The Commission’s guidance presupposes two things on which its relevance hinges, namely, that permanence and additionality can be achieved for a robust marketplace of carbon offsets. Permanence and additionality are two fundamental criteria on which the concept of carbon offsets or carbon credits is based. The voluntary carbon market has been unable to evidence offsets that meet these criteria for more than thirty-five years.²¹ For the CFTC to give its imprimatur to this market by supporting the fiction that “high integrity” credits will suddenly emerge at scale is not recommended. The carbon credit business is declining and its predicted rapid growth has not materialized. The Commission should not incentivize growth of this fundamentally flawed market with new guidance for VCM derivatives that will create a financial spur for more gamesmanship and volatility.

Significant concerns exist about purported nature-based offsets, where, for example, forests and wetlands are used as greenhouse gas sinks. The concerns include the exaggeration of the level of additional carbon emissions actually avoided,²² the limits on the level of emissions that can

¹⁸ ICVCM, Core Carbon Principles. Assessment Framework and Assessment Procedure, July 2023: <https://icvcm.org/wp-content/uploads/2023/07/CCP-Book-R2-FINAL-26Jul23.pdf>

¹⁹ It is also striking how many times the Commission’s draft guidance refers to VCM standards as “still developing” or “still being developed” in light of the fact that VCM quality criteria like permanence and additionality have always been core to their definition. See, e.g., Aruna Chandrasekhar, “Timeline: The 60-year history of carbon offsets,” Sept. 24, 2023: <https://interactive.carbonbrief.org/carbon-offsets-2023/timeline.html>

²⁰ Dieter Holger, “Rebuilding Trust in Carbon Offsets Faces Uphill Battle,” *Wall Street Journal*, July 12, 2023: <https://www.wsj.com/articles/rebuilding-trust-in-carbon-offsets-faces-uphill-battle-d7811603>. Public Citizen has been unable to find the original analysis citing the 2% figure on Trove’s website. However, a subsequent Trove analysis from Sept. 2023 ratchets the number of potentially CCP-eligible projects on the market to 20%, while also admitting that the [ICVCM] Assessment Framework *only offers clues* as to which projects may already be CCP compliant.” MSCI, “Potential Impact of the Core Carbon Principles on the Global Carbon Credit Market,” Sept. 20, 2023 <https://trove-research.com/report/potential-impact-of-the-core-carbon-principles-on-the-global-carbon-credit-market-20-sep-2023>

²¹ The World Resources Institute hired Dr Mark Trexler to oversee the first land-based carbon-offset scheme in 1988. Aruna Chandrasekhar, “Timeline: The 60-year history of carbon offsets,” Sept. 24, 2023: <https://interactive.carbonbrief.org/carbon-offsets-2023/timeline.html>

²² Dr. Charles D. Canham, Rethinking forest carbon offsets, Cary Institute of Ecosystem Studies, May 19, 2021: <https://www.caryinstitute.org/news-insights/feature/rethinking-forest-carbon-offsets>

reasonably be sequestered,²³ and the challenges of preventing emissions from being returned to the atmosphere at a later date.²⁴ Once emitted, carbon dioxide lives in the air for hundreds of years, exerting its heating effect for the duration. Any release of the stored carbon back into the atmosphere—say because a forest fire wipes out a forestry offset project—nullifies the benefit and no “offset” has taken place.

C. Underlying carbon credits defy price discovery and promote price distortion.

Carbon offsets provide an escape hatch for companies (and countries, in the case of compliance markets) to avoid reducing their own emissions, and they do so at bargain-basement prices. On February 10, 2024, the cost of a nature-based offset, the most popular class, was \$1.42 per metric ton of carbon dioxide.²⁵



Meanwhile, economists variously price the current social cost of carbon at well over \$100. Just like a weak carbon tax, cheap carbon credits cannot motivate the requisite decarbonization. The myth is that companies (and countries) will only use credits to achieve the last mile of their emissions reductions commitments, or that offsetting will only be used for “hard-to-abate” sectors. However, offsets are so cheap that companies cannot be faulted for choosing them over the hard work of reducing their own emissions.

²³ Doreen Stabinsky, Chasing Carbon Unicorns: The Deception of Carbon Markets and Net Zero, Friends of the Earth International (Feb. 2021).

²⁴ 9 Debra Kahn, Wildfires rage and a tool to combat climate change goes up in smoke, POLITICO (July 27, 2021).

²⁵ Carbon Credits.com, Carbon Prices Today, Feb. 10, 2024: <https://carboncredits.com/carbon-prices-today/>

There is an expectation that the price of high-quality offsets may ultimately rise and start to nudge closer to the social cost of carbon or, better yet, to the actual cost of removing carbon from the air. Indeed, a small number of offsets based on carbon sequestration technologies are already valued in the hundreds of dollars. However, the market remains flooded by cheap, low-quality offsets that suffer from the fundamental technical problem: With rare exception, they cannot and never will “offset” carbon emissions with the permanence and additionality they promise. Until technology can *reliably and cost-effectively* draw carbon from the air and sequester it securely and permanently, carbon offsets will never have integrity.

D. Non-removal credit derivatives should not be listed.

Carbon offsets come from projects that promise to avoid, remove, or reduce carbon dioxide from the atmosphere.

- Remove: Common carbon-removing projects include planting trees, reforestation of previously logged areas, and protecting or restoring land from development. They also include the new generation of direct air capture and sequestration technologies.
- Reduce: An example of a carbon-reducing offset would be a project to replace old equipment for energy-efficient options, such as helping a village in the Global South introduce low-carbon cookstoves.
- Avoid: Offsets to avoid emissions are almost always based on renewable energy projects, the idea being you are avoiding emissions that would have come from a dirtier option like coal or gas plants.

As a threshold matter, regulators should not recognize the “reduce” and “avoid” categories of offsets as a pure matter of carbon accounting. We have a finite carbon budget tied to the internationally agreed target of limiting global warming to below 1.5°C. Exceeding that budget guarantees catastrophic outcomes for the world’s most vulnerable communities, such as island nations. The latest estimates predict we will surpass the 1.5°C budget before 2030.²⁶ Science requires that we need to stop emissions and remove those we can’t from the atmosphere permanently. Slowing them down won’t do the trick. The analogy is a bathtub that can only fit so much carbon before it overflows. Humanity and all its activity – industry, deforestation, transportation, buildings and infrastructure, fossil fuel exploration and burning, keep the carbon faucet running. A project aiming to offset corporate emissions by reducing or avoiding emissions somewhere else only turns down the faucet; it doesn’t stop the flow or open the stopper to let carbon out. Experts are finally [registering this fact](#).

²⁶ Sam Ezra Fraser-Baxter and Hayley Dunning, “Window to avoid 1.5°C of warming will close before 2030 if emissions not reduced,” Imperial College London, Oct. 30, 2023: <https://www.imperial.ac.uk/news/248913/window-avoid-15c-warming-will-close/>

E. DAC Removal credits meet the technical specifications of an “offset” yet remain cost-prohibitive.

If permanence is a core principle of a quality carbon offset, as all market actors agree, then only a tiny fraction of offsets could meet that bar. These are removal credits based on carbon capture and sequestration technologies such as direct air capture, or DAC, which uses machines to pull carbon dioxide out of the air and store it underground.²⁷ Unfortunately, these projects remain cost-prohibitive. Bloomberg reports the cost per credit for DAC projects exceeded \$1,000 per ton in 2023.²⁸ The benefit of such high costs is that market players can be sure that the projects are additional: they would not occur but for the payments.²⁹ The challenge is how niche this market remains.

DAC removal projects would meet the technical promise of a carbon credit, namely to sequester a ton of carbon. Scaling this very small market is the challenge now. If companies are willing to pay the high prices for these credits, they should be encouraged to do so. Nevertheless, these credits should not be used to help meet companies’ emissions-reduction targets in keeping with the approach of the Science-Based Targets Initiative: “Carbon credits do not count as reductions toward meeting science-based targets. Companies should only account for reductions that occur within their operations and value chain.”³⁰

IV. Conclusion

The Commission’s mandate is to ensure the transparent operation of derivatives markets, foster price discovery, and ensure that contracts listed on its regulated exchanges are not subject to manipulation. Carbon credit or offset derivatives contracts are inherently subject to manipulation and defy price discovery because the underlying “commodity” is foundationally compromised.

Legitimizing and encouraging growth of derivatives built on sand does not make sense and is exceedingly harmful. Offsetting has emerged as the number one greenwashing tool by high-emitting corporations that are using it to avoid their own transition and decarbonization. Meanwhile, emissions continue to grow apace and may have already locked in irreversible

²⁷ Nature-based offsets, which have historically been classed in the “removal” category of offsets, are not credible for all the reasons discussed in this comment. Therefore, they should also be excluded from CFTC-regulated exchanges.

²⁸ Ben Elgin & Akshat Rathi, “What Are Carbon Offsets? Are They a Credible Climate Solution?,” Bloomberg, Oct. 31, 2023: <https://www.bloomberg.com/news/articles/2023-10-31/are-carbon-offsets-a-good-solution-to-the-climate-change-crisis>

²⁹ One example of this technology is produced by Swiss company Climeworks; *see* “Remove to Zero: Remove to zero: High-quality carbon removal for your climate strategy via Climeworks’ direct air capture and storage (DAC+S) technology.” <https://climeworks.com/>

³⁰ “SBTi Corporate Net-Zero Standard, April 2023: <https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>

changes that will defy human adaptation in our lifetime: This month, scientists published a devastating analysis that the Atlantic Ocean circulation currents, which drive climate around the globe, are on track for an abrupt collapse this century (possibly within decades).³¹ The researchers conclude that “no realistic adaptation measures can deal with such rapid temperature changes under an AMOC collapse.”³²

Commissioner Goldsmith Romero is right to speak early and often about the systemic risks and impacts of climate change on the financial system. She, as well as Chair Benham, stress the vital role of derivatives trading to promote price discovery and allow participants to hedge risk. Climate risk is financial risk and its temblors are already shaking many economies like coastal states here in the United States where insurers are picking up stakes and exiting whole markets. With the price of carbon derivatives well under \$3 per ton today, it is clear that both the price discovery function and risk hedging goals are compromised. Indeed, risk hedging itself becomes a farce after a certain point as climate impacts become discontinuous and unpredictable. Supporting carbon credits and their derivatives as a climate risk mitigation tool only makes this future more likely.

The Commission should not underestimate its power to legitimize the market, and therefore promote its growth and expansion, at a time when the vast majority of the market needs the exact opposite: it should be shut down.

³¹ Jonathan Watts, “Atlantic Ocean circulation nearing ‘devastating’ tipping point, study finds,” The Guardian, February 9, 2024: <https://www.theguardian.com/environment/2024/feb/09/atlantic-ocean-circulation-nearing-devastating-tipping-point-study-finds>

³² Rene van Westen et al., “Physics-based early warning signal shows that AMOC is on tipping course,” Science Advances, February 9, 2024 <https://www.science.org/doi/10.1126/sciadv.adk1189>

Appendix: Public Citizen’s Responses to Specific Questions in CFTC Request For Comment

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?

Permanence and additionality are the most relevant VCC commodity characteristics that will determine the susceptibility of the VCC derivative contracts to fraud and manipulation. Foundationally, neither one can ever be guaranteed, as elaborated above and summarized below.

Permanence: With the exception of a minute market of very expensive Direct Air Capture + Sequestration technologies (*see, e.g.,* Climeworks³³), no carbon offset can be fairly described as permanent. Nature-based offsets, the most popular and common, are inherently impermanent, subject to reversals in the form of fire, extreme weather, and natural disasters – all of which are becoming more frequent and severe because of climate change. Further, the time scales of offsets are fundamentally mismatched with time scales of carbon dioxide: Forest offsets have a “permanence” threshold – on the very highest end – of 100 years. Meanwhile carbon dioxide persists in the atmosphere for millennia.³⁴ The carbon offset is not fit for the purpose for which it was intended.

Additionality: No carbon offset, again with exception of costly and unproven at scale carbon capture and sequestration technologies, can further be characterized as additional. Proving additionality requires proving a counterfactual. Consider, for example, the Kariba forest-sequestration project developed in Zimbabwe by South Pole: The forests surrounding the project area, which were marketed as being subject to rapid deforestation, were largely untouched, with the consequence that the project was vastly over-credited and the promised additionality never realized.³⁵ Some analysts concluded the project sold – and developers pocketed – up to thirty times more credits than was legitimate.³⁶

³³ Remove to Zero: Remove to zero: High-quality carbon removal for your climate strategy via Climeworks' direct air capture and storage (DAC+S) technology.” <https://climeworks.com/>

³⁴ Matthews et al. (2009), The proportionality of global warming to cumulative carbon emissions, *Nature* 549: 829-832; Archer et al. (2009), Atmospheric Lifetime of Fossil Fuel Carbon Dioxide, *Annual Review of Earth and Planetary Sciences* 37: 117-134; Pierrehumbert (2014), Short-Lived Climate Pollution, *Annual Review of Earth and Planetary Sciences* 42: 341-379.

³⁵ Heidi Blake, “The Great Cash-For-Carbon Hustle,” *The New Yorker*, Oct. 23, 2023: <https://www.newyorker.com/magazine/2023/10/23/the-great-cash-for-carbon-hustle>.

³⁶ Transparency International, “South Pole Under Fire for ‘Faulty Credits’ Claims,” <https://www.transparency.org/en/projects/climate-governance-integrity-programme/climate-corruption-atlas/south-pole-under-fire-for-faulty-credits-claims>

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?

It is possible to imagine an alternative approach that builds on the current system, but does so by eliminating the fraud, gamesmanship, and greenwashing. This would involve a narrative reorientation that has already begun, away from carbon “offsets” used *in place of* reducing one’s own emissions, to carbon “credits” used *on top and apart from* reducing one’s own emissions. These carbon credits could be made as a charitable donation, for example, but they **would not be permitted to evidence a company’s march to net-zero or carbon-neutrality**. VCM and Gold Standards are champions of this approach but it is evident that bigger and more influential standard-setters such as ICAO and the ICVCM are dodging the issue and perpetuating the dangerous myth that offsets are legitimate climate mitigation tools.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

3. In addition to the criteria and factors discussed in this proposed guidance, are there particular criteria or factors that a DCM should consider in connection with monitoring the continual appropriateness of the terms and conditions of a VCC derivative contract?

CFTC-regulated exchanges should monitor the steady flow of studies, analyses and news reports cataloging continued misrepresentation, mismanagement, and fraud in the offsets market and decide whether the potential upside of engaging in this market is worth the amply-evidenced downside.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

All VCC derivative contracts are susceptible to manipulation and price distortion because carbon credits are unable to meet the criteria used to define them – namely additionality and permanence. VCM standard-setters must either remove these criteria as defining characteristics

of “high-integrity” carbon credits, or they will simply keep perpetuating a fiction that has already wasted time and money that could have been put towards actual decarbonization.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

5. Should the VCC commodity characteristics that are identified in this proposed guidance as being relevant to the listing by a DCM of VCC derivative contracts, also be recognized as being relevant to submissions with respect to VCC derivative contracts made by a registered foreign board of trade under CFTC regulation 48.10?

The arguments submitted above should apply to any derivatives exchange, foreign or domestic, subject to CFTC jurisdiction.

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?

As a general matter, the CFTC seems to be delegating significant oversight responsibilities to DCMs via this proposed guidance. It is unclear how DCMs would have the requisite expertise to assess and monitor the quality and integrity of offset programs that have stymied experts in the field for three decades. Given the few number of VCM derivative contracts before the Commission (less than 20) and the fewer still with active interest and trading volumes (three, as of November 2023), this may be a moot point. However, it seems ill-advised to task DCMs with so much responsibility over a market that has defied order and results from its inception.

Of course, the implication of the guidance is that a DCM may be insulated from critique so long as it only approves and lists VCC derivatives based on credits that have received ICVCM’s “Core Carbon Principles” label (CCP label).³⁷ This would have the practical effect of the CFTC delegating its regulatory authority over VCM derivatives to the ICVCM. Public Citizen strongly opposes this outcome, which would cede important oversight powers to private businesses that are not accountable to the public.

³⁷ ICVCM, Core Carbon Principles. Assessment Framework and Assessment Procedure, July 2023: <https://icvcm.org/wp-content/uploads/2023/07/CCP-Book-R2-FINAL-26Jul23.pdf>

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 CFTC must grapple with the abundant evidence that “additionality” is simply not possible to guarantee, ensure, or measure. Carbon crediting bodies purports to guarantee outcomes, such as permanence and additionality, while the evidence continues to expose these efforts as deeply flawed. Indeed, three of the most widely used greenhouse gas crediting programs in the world—Verra’s Verified Carbon Standard, Winrock International’s American Carbon Registry, and the Climate Action Reserve—have each been exposed as profiting off of “bogus credits.”³⁸

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

If the CFTC plans to support the VCM through approving the listing of carbon credits derivatives on its regulated exchanges, then it should include both of these standards for ensuring additionality. In the case of a renewable energy project for example, basic economics are driving their development at this time in many jurisdictions where they are simply cheaper to build than fossil fuel infrastructure. However, there may be a project in a jurisdiction where that is not the case,, and the project could then meet the additionality bar based on monetary incentives alone. Yet what if that same project is based in a jurisdiction that has adopted renewable energy targets by law or regulation? In that case, the project would fail the test for additionality under the Commission’s second scenario above, but not the first.

³⁸ Natasha White, “Bogus Carbon Credits are a ‘Pervasive’ Problem, Scientists Warn,” Bloomberg (March 21, 2023): <https://time.com/6264772/study-most-carbon-credits-are-bogus/>. See also Alejandra Padin-Dujon, “The Verra scandal explained: Why ‘avoided deforestation’ credits are hazardous,” LSE Blog (Jan. 23, 2023): <https://blogs.lse.ac.uk/internationaldevelopment/2023/01/26/the-verra-scandal-explained-why-avoided-deforestation-credits-are-hazardous/>

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?

Due to significant risk of reversal in the case of nature-based projects or activities, the DCM should either prohibit the listing of derivative contracts based on the same, or only list those whose underlying projects maintain a buffer pool equal to 100% of the carbon credit value.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

In any case involving a project or activity whose underlying GHG emission reductions or removals are subject to reversal, the DCM should either prohibit the listing of derivative contracts based on the same, or only list those whose underlying projects maintain a buffer pool equal to 100% of the carbon credit value.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

The quantification methodologies and protocols for calculating the level of GHG reductions or removals associated with VCCs have stymied the field for decades.³⁹ In any offset class other than, potentially, direct air capture and sequestration, ensuring a ton of carbon is sequestered per

³⁹ Gautam Naik & Esther Whieldon, “Carbon offsets prove risky business for net zero targets,” MSCI Global, May 12, 2021: <https://www.spglobal.com/esg/insights/carbon-offsets-prove-risky-business-for-net-zero-targets>

credit is likely impossible. DCMs should simply not list VCC derivatives in order to avoid challenge and controversy.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

Governance frameworks that effectively support a VCC program's transparency and accountability have eluded the market for decades. DCMs should simply not list VCC derivatives in order to avoid challenge and controversy.

In addition, delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

Delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

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?

Delegating the authority to make these decisions to the ICVCM, and, in turn, to CFTC-regulated exchanges—which is the implication of this guidance—is not appropriate without a change in the laws or regulations governing the Commission.

15. Should the delivery procedures for a physically-settled VCC derivative contract describe the responsibilities of registries, crediting programs, or any other third-parties required to carry out the delivery process?

Yes, of course.

16. Certain private sector and multilateral initiatives recognize the implementation by a crediting program of measures to help ensure that credited mitigation projects or activities meet or exceed best practices on social and environmental safeguards, as a characteristic that helps to inform the integrity of VCCs issued by the crediting program. When designing a VCC derivative contract, should a DCM consider whether a crediting program has implemented such measures?

Yes. In particular, the DCM should consider whether the crediting program requires robust engagement with local communities affected by VCC projects, as well as civil society opposition to these projects.

17. Certain private sector and multilateral initiatives recognize the implementation by a crediting program of measures to help ensure that credited mitigation projects or activities would avoid locking in levels of GHG emissions, technologies or carbon intensive practices that are incompatible with the objective of achieving net zero GHG emissions by 2050, as a characteristic that helps to inform the integrity of VCCs issued by the crediting program. When designing a VCC derivative contract, should a DCM consider whether a crediting program has implemented such measures?

Yes, of course. However, it is essential for parties in the offset ecosystem to begin to reckon with the fact that the VCM is undercutting our ability to achieve net zero emissions by 2050, as explained at length in Public Citizen's comment.