

CLIENT ALERT

CFTC Takes Center Stage in Addressing Climate-Related Financial Risk

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On June 2, 2022, following its Voluntary Carbon Markets Convening, the Commodity Futures Trading Commission (“CFTC”) voted to issue a request for information (“RFI”) to better inform its understanding and oversight of climate-related financial risk as it relates to derivatives and underlying commodities markets. The RFI includes 34 questions ranging from how to enhance the integrity of voluntary carbon markets to areas of more traditional CFTC focus (e.g., registrant risk management), with a specific focus on how existing tools such as margin models and scenario analysis may be adapted to address climate risk. Comments are due on August 8, 2022.¹

Context of the Commission’s Request

Many of the themes addressed in the RFI expand upon those presented in the September 2020 report of the CFTC’s Climate-Related Market Risk Subcommittee (the “Climate Subcommittee”) of the Market Risk Advisory Committee (“MRAC”).² That report, entitled *Managing Climate Risk in the U.S. Financial System* (the “Climate Risk Report”), urged U.S. financial regulators, including the CFTC, to “move urgently and decisively to measure, understand, and address [climate-related] risks,” warning that the myriad risks may “interact in complex ways” with the potential to result in

¹ Request for Information on Climate-Related Financial Risk. 87 Fed. Reg. 35,856 (June 8, 2022).

² Willkie previously summarized the Climate Risk Report in a client alert available [here](#). The Climate Risk Report is available [here](#); *Managing Climate Risk in the U.S. Financial System*, U.S. Commodity Futures Trading Commission, Market Risk Advisory Committee (Sept. 9, 2020).

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“systemic shocks.”³ The sponsor of the Climate Subcommittee, Commissioner Rostin Behnam, now serves as the CFTC Chairman, further underscoring the agency’s focus on climate-related issues.

The RFI responds to several of the recommendations set forth in the Climate Risk Report. For example:

- The Climate Risk Report encouraged regulators to incorporate climate-related risks into their mandates, including leveraging existing monitoring and oversight functions.⁴ The RFI poses a number of questions regarding how the CFTC might use its existing oversight authority with respect to registered entity risk management requirements to address climate risk.⁵
- The Climate Risk Report urged regulators to support development of innovative climate risk tools and financial products, a recommendation that the CFTC first addressed in 2021 through the formation of its Climate Risk Unit and emphasizes again in the RFI through a series of questions ranging from the role that technology may play in new product development to the effectiveness of climate-related derivatives as hedges of climate risk.⁶
- The Climate Risk Report warned about the potential negative impact of “greenwashing” (*i.e.*, unverified claims made about a product’s environmental attributes) on carbon markets, a concern the CFTC also addresses in the RFI through a series of questions regarding what role the Commission might play to combat fraud and foster transparency and liquidity in the voluntary carbon markets.⁷

Purpose of the Commission’s Request

The CFTC has stated that it intends to use the information provided by market participants to “promote responsible innovation, ensure the financial integrity of all transactions subject to the Commodity Exchange Act, and avoid systemic risk.”⁸ Moreover, the CFTC has indicated its willingness to issue guidance reinterpreting existing regulations in a manner

³ Climate Risk Report at ii, 22.

⁴ Climate Risk Report at 49.

⁵ RFI at 34,858–59.

⁶ Climate Risk Report at 116; RFI at 34,859. The Climate Risk Unit (“CRU”) is a cross-divisional unit established in March 2021 with the mission of assessing the role of derivatives in “understanding, pricing, and addressing climate-related risk.” U.S. Commodity Futures Trading Commission. *CFTC Acting Chairman Behnam Establishes New Climate Risk Unit* (Mar. 17, 2021), available [here](#).

⁷ Climate Risk Report at 106, 107; RFI at 34,860.

⁸ RFI at 34,856.

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designed to address climate risk. Chairman Behnam further emphasized that the Commission may seek “to issue new or amend existing guidance, interpretations, policy statements, and regulations, or take other potential Commission action.”⁹

Additionally, the RFI will inform the CFTC’s response to the Financial Stability Oversight Council (“FSOC”) 2021 Report on Climate-Related Financial Risk. One of the FSOC’s key recommendations is that the CFTC expand its capacity to “define, identify, measure, monitor, assess, and report on climate-related financial risks and their effects on financial stability.”¹⁰ We expect the CFTC to be especially receptive to comments that address these aspects of its regulatory purview.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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⁹ *Opening Statement of Chairman Rostin Behnam at the CFTC Voluntary Carbon Markets Convening, Washington, DC* (June 2, 2022), available [here](#).

¹⁰ RFI at 34,858.