



CRS

center for
resource
solutions

December 17, 2010

Mr. David Stawick
Secretary, Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581

Re: Comments of the Center for Resource Solutions (CRS) to the Commodity Futures Trading Commission (CFTC) Request for Information (RFI) for Public Input for the Study Regarding the Oversight of Existing and Prospective Carbon Markets pursuant to Section 750 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Dear Commissioners:

The intent of these comments is to introduce CRS as an interested party; to describe the services that we provide for the voluntary over-the-counter (OTC) carbon offset market through our Green-e® Climate certification and consumer-protection program; to briefly explain our position that the current structure and existing oversight mechanisms in the voluntary carbon offset market are, at this stage, appropriate and adequate to ensure protection of market participants and the public; and finally to offer ourselves and our organization as a valuable resource for the interagency working group and its member agencies in matters regarding carbon and other environmental commodity markets.

Background on CRS and Green-e

Center for Resource Solutions (CRS) is a nonprofit organization that creates policy and market solutions to advance sustainable energy and mitigate climate change. Our leadership through collaboration and environmental innovation builds policies and consumer-protection mechanisms in renewable energy, greenhouse gas (GHG) reductions, and energy efficiency that foster healthy and sustained growth in national and international markets.

CRS administers the three Green-e programs. Green-e Energy is the nation's leading independent consumer protection program providing certification and verification for renewable electricity and renewable energy certificates (RECs). Green-e Climate is a certification program that sets consumer protection and environmental-integrity standards for carbon offsets sold in the voluntary market. Green-e Marketplace recognizes companies that make meaningful commitments to use renewable energy by allowing them to display the Green-e logo when they have purchased a qualifying amount of renewable energy and passed the program's verification standards.

Stakeholder-driven standards supported by rigorous verification audits are a cornerstone of Green-e and enable CRS to provide independent third-party certification of environmental commodity transactions. The Green-e environmental and consumer standards are overseen by an independent governance board of industry experts, including representatives from environmental nonprofits, consumer advocates, and purchasers. Our standards have been developed and are periodically revised through an open

stakeholder process. Green-e program documents, including the standards, contract templates, and the annual verification report, are available at www.green-e.org.

CRS is an Associate Member of the International Social and Environmental Accreditation and Labeling Alliance (ISEAL, www.isealliance.org), which sets best-practice standards for independent certification programs worldwide.

Green-e Climate Offset Certification

Green-e Climate was launched in February 2008 by CRS as a consumer-protection program for carbon offsets sold to individuals and businesses in the United States and internationally. It ensures that certified offsets meet the highest standards for environmental quality and are as advertised.

Green-e Climate supplements other voluntary standards organizations – including The Voluntary Carbon Standard (VCS), The Gold Standard, and The Climate Action Reserve (CAR), among others – which serve the market as project certification programs aimed at ensuring valid, verified supply of real emissions reductions to the market. These organizations assess, register, and monitor offset projects on the basis of internationally accepted offset quality criteria, including proper GHG accounting, additionality, verification and monitoring, permanence of emissions reductions, etc. Credits are issued by these organizations to registered projects for verified emissions reductions, in units of metric tons of carbon dioxide-equivalent (CO₂e). The credits of each organization – Voluntary Carbon Units, Verified Emissions Reductions, and Climate Reserve Tonnes respectively – are assigned unique serial numbers and tracked, transferred, and retired in electronic registry systems maintained by the project certifiers in cooperation with registry development and administration organizations, including APX and Markit.

Green-e Climate certifies retail offset products being offered by offset sellers in the market. The project portfolios of these offset sellers often include various different project types, locations, and certification programs, and their offset products often include emissions reductions from multiple and different projects. Green-e Climate certification provides the following assurances to consumers:

- 1) Assurance that emissions reductions come from verified and certified supply, and from projects certified under project standards that meet a certain standard of quality
- 2) Assurance that emissions reductions are not being double-sold
- 3) Assurance that customers are being given complete and accurate information about what they are buying

On the first assurance, Green-e Climate certification limits the supply of emissions reductions only to projects certified under robust and transparent project certification programs, which must demonstrate that their program requirements and project protocols/methodologies meet the principles and criteria laid out in the *Green-e Climate Standard*, and subsequently receive endorsement by the Green-e Governance Board. One of these requirements is that endorsed project certification programs utilize an electronic registry to track credits issued.

On the second assurance, Green-e Climate certification requires verification of ownership—sales must match supply in terms of quality and quantity. Our annual verification process protects against double-selling by verifying that offset sellers purchase and retire correct volumes and types of emissions reductions on behalf of customers—ensuring that what is sold in the market is legitimate and correct. The process consists of a verification audit performed by an independent certified public accountant or

certified internal auditor in accordance with the procedures set forth in the *Green-e Climate Verification Process Audit Protocol*.

In this way, Green-e Climate certification covers the entire chain of custody of the emissions reduction, from verified project to end-use consumer, and connects that consumer to the project.

On the third assurance, sellers of Green-e Climate certified offset products must agree to a marketing compliance review process, which includes a twice-annual review of all marketing and web-based materials associated with a certified offset product against the customer disclosure requirements in the *Green-e Climate Code of Conduct*. One such required element is the Product Content Label, which must be presented customers upon purchase of the certified product, and must contain minimum information on the project types, location and certification program included in the product by percentage.

Offset sellers offering a Green-e Climate certified offset product contractually agree to abide by the program's standards and the *Green-e Climate Code of Conduct*.

Through these assurances, Green-e Climate streamlines all of the vital elements of a credible offset into a single, consumer-facing certification mark.

Support for Others' Comments

CRS would like to express its support of comments submitted to the CFTC, under this and previous comment periods, by the Environmental Markets Association (EMA)¹ with regard to the following:

We echo the EMA's comments that the correct categorization of carbon offsets (referred to as verified emission reductions [VERs] by EMA) and renewable energy certificates (RECs) within the new regulatory framework of the Dodd-Frank Act, is essential to the continued functioning of these markets. Carbon offsets and RECs are not themselves "swaps" within the meaning of the Commodities Exchange Act (CEA). Nor are they "securities" or "investment contracts." They are not a form of currency and are not akin to commodities that are typically regarded as financial in nature, such as stock indices, interest rates, or exchange rates. Rather, they are "commodities" or "nonfinancial commodities" the spot or forward delivery of which is "physically settled," even though they are predominately intangible and do not necessarily possess corporeal, "physical" existence.

Additionally, we echo many of their comments regarding the current request for public input on the study of existing and prospective carbon markets conducted under the Dodd-Frank Act below.

¹ See Huettemann, T., J.C. Fort and J.D. Weinstein. (2010). *Letter from Environmental Markets Association (EMA) to the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) dated September 20, 2010 regarding Comments of the EMA to CFTC and SEC Advance Notice of Proposed Rulemaking; Request for Comments (ANOPR) respecting certain definitions subject to CFTC and SEC rulemaking pursuant to the authority in The Dodd-Frank Wall Street Reform and Consumer Protection Act*. 17pp.

And also Huettemann, T., J.C. Fort and J.D. Weinstein. (2010). *Letter from EMA to the CFTC dated December 17, 2010 regarding Response of the EMA to CFTC Request for Information (RFI) for Public Input for the Study Regarding the Oversight of Existing and Prospective Carbon Markets pursuant to Section 750 of the Dodd-Frank Wall Street Reform and Consumer Protection Act*.

The OTC Market for Carbon Offsets – Oversight

While Green-e Climate and the other voluntary standards and certification programs mentioned above do not yet cover the entire voluntary carbon offset market, they provide protection of market participants and the public. These standards have evolved to ensure the legal and scientific legitimacy and robustness of the offsets they represent, and customers may easily obtain information about offset quality criteria and how such criteria are met in order to differentiate between “good” (certified) and “bad” products in the market. These programs help to mitigate many of the potential negative features of OTC markets, including inadequate disclosure of information between the parties and counter-party risk. Furthermore, the most robust of these programs, including Green-e Climate, are fully transparent and stakeholder-driven, and collaborate closely with various regulatory agencies, other voluntary standards, and industry thought leaders for standard development and program governance.

Apart from the “private authority” oversight and consumer protection provided by voluntary standards and certifiers, unlawful activities associated with carbon products are subject to actions by the Federal Trade Commission (FTC) and criminal/civil law enforcement agencies such as the Department of Justice (DOJ) and state authority.² The Federal Trade Commission (FTC) has oversight authority over environmental marketing claims, including those surrounding carbon offsets. The FTC has proposed new guidance on the sale of carbon offsets for inclusion in the next revision of its *Guides for the Use of Environmental Marketing Claims* (“Green Guides”). Recent FTC proposals in the areas of the timing, tracking, and regulatory additionality of emissions reductions reinforce the activities and assurances of Green-e Climate and other voluntary certifications for offset quality and consumer protection.

Other than these governmental and private authority mechanisms already present and active in the market, normal operation of existing principles of contract and fraud apply. There is nothing inherent to carbon products, participants, or markets, as opposed to all others, that necessarily demands more or special oversight or additional statutory provisions to ensure consumer protection and transparency. Trading of these products poses various risks and challenges, but they are similar to those found in other commodity markets.³

The OTC Market for Carbon Offsets – Structure

The voluntary market for carbon offsets in the United States remains relatively small – certainly not of a size to represent any systemic risk to the financial systems, or to the compliance activities of the regulated entities. The market is also currently comprised of participants with specific and varied needs, and so it does not consist of, nor is it suited to, standardized transactions. Rather, it consists of mostly unique transactions⁴; it is not a one-size-fits-all market. As a result, there is not a great deal of exchange infrastructure, and the majority of transactions occur over the counter. Migrating these transactions to exchanges could therefore be expected to be extremely problematic, given the early phase of market development, and may endanger the market, as goods could be expected to become much more expensive to trade.

² Brown, O.W. (2010). *Letter from the Governmental Accountability Office (GAO) to Congressman Darrell Issa of the House of Representatives dated August 19, 2010 regarding Carbon Trading: Current Situation and Oversight Considerations for Policymakers with Carbon Trading: Current Situation and Oversight Considerations for Policymakers* briefing slides. GAO-10-851R Carbon Trading. p.33.

³ *Ibid.* p.2.

⁴ *Ibid.* p.17.

Needs of the OTC Market for Carbon Offsets

Though the voluntary offsets market would certainly benefit by increased efficiency, security, transparency, liquidity, and regulatory certainty, we agree with the EMA's comments that further and new sources of oversight, restrictions, or control over this market could be detrimental.

Like EMA, CRS supports well-regulated markets for environmental commodities. At this stage in their development, and in light of the wide range of types and sizes of environmental markets we would urge the Commissions to proceed with caution.

CRS as a Valuable Resource for the Interagency Working Group and its Member Agencies

CRS has been heavily involved—and in cases instrumental—through its certification programs and as a part of its other policy work, in the development of both voluntary and compliance markets for renewable energy and GHG emissions reductions. We hope that the study and the member agencies of the Interagency Working Group will avail themselves of CRS's experience and expertise in this area. We are happy to be of assistance in any way that we can.

With sincere thanks,

A handwritten signature in black ink, appearing to read "Jennifer Martin". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jennifer Martin
Executive Director
Center for Resource Solutions