

CFTC Wades Into Climate Regulation

Article By:

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On June 2, 2022, the Commodities Futures Trading Commission (CFTC) issued a Request for Information ("RFI") for "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." According to the RFI, the CFTC is contemplating "potential future actions including, but not limited to, issuing new or amended guidance, interpretations, policy statements, regulations, or other potential Commission action within its authority under the Commodity Exchange Act as well as its participation in any domestic or international fora."

Specifically, the RFI issued by the CFTC is quite wide-ranging, and engages with numerous aspects of the CFTC's authority, focusing on both systemic and narrow issues. For example, the CFTC has, among other things, issued a broad request for comment on how "its existing regulatory framework and market oversight . . . may be affected by climate-related financial risk" and "how climate-related financial risk may affect any of its registered entities, registrants, or other market participants, and the soundness of the derivatives markets." It is hard to imagine a broader request by the CFTC--it is effectively asking for input on how "climate-related financial risk" may impact any portion of its regulatory purview. Conversely, the CFTC has also posed very specific questions, including as to how the CFTC "could enhance the integrity of voluntary carbon markets and foster transparency, fairness, and liquidity in those markets," and how it could "adapt its oversight of the derivatives markets, including any new or amended derivative products created to hedge-climate-related financial risk." In short, based upon the RFI, the CFTC could conceivably adopt a narrow or broad view of how it should adjust its regulations to account for climate-related financial risk. Notably, however, the CFTC also asked if there were "ways in which updated disclosure requirements could aid market participants in better assessing climate-related risks," which suggests that the CFTC may echo the SEC's recent proposed rule for mandatory climate disclosures.

Most significantly, the fact that yet another financial regulatory agency is focused on "climate-related financial risk" suggests that the Biden Administration is willing to expend significant resources and energy in engaging in this type of regulation to advance its climate agenda. When considered in tandem with the SEC's recent proposed rules for mandatory climate disclosures and to combat greenwashing, it is apparent that there is a significant regulatory focus on climate issues and the financial markets. This move by the CFTC also suggests that the Biden Administration will fully support the SEC's proposed rules against the inevitable legal challenge. (And, based upon the concurrences of the Republican CFTC commissioners to this RFI, it is likely that any climate-related regulation proposed by the CFTC will also be subject to legal challenge, likely on the grounds that

such a regulation exceeded the CFTC's authority.) Most importantly, this move by the CFTC--that seeks to "understand how market participants use the derivative markets to hedge and speculate on various aspects of physical and transition [climate] risk"--demonstrates that the regulatory focus on climate and the financial markets will remain a top priority for the foreseeable future.

The [Commodity Futures Trading Commission](#) today unanimously voted to release a Request for Information (RFI) to seek 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.

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