KEY TAKEAWAYS

The Current State of Play of Carbon Credit Markets

John Pierce and Siegmar Pohl of Kilpatrick recently presented a portion of ***"The Current State of Play of Carbon Credit Markets"*** hosted online by the Federal Bar Association and myLawCLE. They focused on the associated risks and liabilities of carbon credits and trading, what the future holds for regulations, impacts of cross-border trade (using CBAM and other mechanisms), and association and treaty obligations (such as Article 6 of the Paris Agreement obligations).

Key takeaways from their presentation include:

1. Buying carbon offset credits in the voluntary carbon markets requires careful diligence to avoid buying "junk" credits that are no longer considered valid for offsetting, and that are otherwise high quality and worth the price. In August 2024, the USDA established an Advisory Council ("Growing Climate Solutions Act Advisory Council") that, after completing the rulemaking process, would establish a third-party verifier program for such credits.

2. Risks can be mitigated by buying credits from trusted industry registries, such as Gold Standard, American Carbon Registry, Climate Action Reserve or others. Buyers can also issue RFP's for credits that fulfil certain standards, or stem from selected sources, such as NCS, REED+, agriculture, reforestation, or renewable energy projects. Most buyers conduct due diligence on the credits they want to buy inhouse and supplement their findings by comparing with rating agencies and consultants. The diligence, at a minimum, focuses on technical, political, counter party/integrity and reputational risks. In addition, the projects generating the credits need to comply with all applicable laws, treaties and international standards. In the US, the 2024 Core Carbon Principles of the Integrity Council for Voluntary Carbon Markets (IC-VCM) and the 2023 Voluntary Carbon Markets Initiative's (VCMI) Claims of Code Practice, among other requirements, are worth noting.

3. Scrutiny related to fraud and misrepresentation, or non-performance of carbon credits has been increasing through 2024. The Commodity Futures Trading Commission (CFTC) with its 2023 Environmental Fraud Task Force, the Securities and Exchange Commission (SEC), Federal Trade Commission (FTC) and the Department of Justice (DOJ) stepped up enforcement actions. A recent example are the October 2024 complaints of the *CFTC vs. Newcombe* and *CFTC vs. CQC Impact Investors* in connection with reporting false information to carbon credit registries and third-party reviewers.

4. COP 29 is underway with a formal effort to create consensus on standards for the creation of carbon credits pursuant to Section 6.4 of the Paris Agreement with a view to increase demand and promote integrity.

5. Present-elect Trump is expected to pull the United States out the Paris Agreement again after January 20, 2025.

6. Article 6 is important inasmuch as it promotes countries taking account of their national CO2 emissions through the implementation of Nationally Determined Contributions (NDCs).

7. Article 6.1 promotes voluntary cooperation to promote NDC goals to reduce overall emissions.

8. Article 6.2 promotes Internationally Transferred Mitigation Outcomes (ITMOs) through transparent systems to track emissions while maintaining environmental integrity.

9. Article 6.4 promotes the Sustainable Development Mechanism (SDM) which, like ITMOs, seek to ensure that reductions are real and additional. These projects must contribute to sustainable development, not just emission reductions.

10. Article 6.8 promotes non-market approaches to implementing NDCs by encouraging cooperation in financing, technology transfer, and capacity building in developing countries.

11. Article 6 and its components may play out in US markets, particularly the regional and state-specific cap and trade and mandate markets (California and Quebec and RGGI in New England).

12. These markets will promote, among other things, credit quality and integrity, linking markets and investment in related technologies.

13. Internationally, various countries have recognized and have taken steps to promote carbon credit markets, particularly in Brazil and Indonesia.

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