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DRAFT UNIDROIT PRINCIPLES ON THE LEGAL NATURE OF VERIFIED CARBON CREDITS

CONSULTATION FEEDBACK – ADDENDUM

(prepared by the UNIDROIT Secretariat)

1. The present document includes the submissions made by: (i) International Centre for Settlement of Investment Disputes (ICSID); (ii) the Islamic Development Bank (IsDB); (iii) Emergent Forest Finance Accelerator, Inc.; and (iv) the World Federation of Exchanges.
2. Excerpts of these submissions were included in the table of categorised comments in document 3. For completeness, the full submissions are included herein.

ICSID’S COMMENTS ON THE DRAFT UNIDROIT PRINCIPLES ON THE LEGAL NATURE OF VERIFIED CARBON CREDITS

1. BACKGROUND

The International Institute for the Unification of Private Law (“UNIDROIT”) has developed draft principles addressing the legal nature of verified carbon credits (the “Draft Principles on the Legal Nature of Verified Carbon Credits” or “Draft Principles”).

In July 2026, UNIDROIT launched a public consultation on the Draft Principles with a view to, among other things, encouraging the participation of a wide range of public and private stakeholders in the final stage of the drafting process, raising awareness of the instrument, and ensuring its suitability for application in different contexts.¹

The International Centre for Settlement of Investment Disputes (“ICSID”) welcomes the opportunity to contribute to this initiative and is pleased to submit its comments.

ICSID is the world’s leading institution devoted to the resolution of international investment disputes between investors and States, having administered the majority of all international investment cases. ICSID was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”). The ICSID Convention is a multilateral treaty concluded by States to further the World Bank’s objective of promoting international investment. ICSID provides for the settlement of disputes by arbitration, conciliation, mediation or fact-finding.

Through these comments, ICSID seeks to highlight how the legal characterization of verified carbon credits (“VCCs”) bears on international investment law, and to illustrate how the clarity provided by the Draft Principles may inform investor-State tribunals when addressing disputes involving VCCs.

ICSID does not express any view on the legal nature of these carbon market instruments, whether they should be the subject of proprietary rights or other rights, or whether ICSID jurisdiction would extend to legal disputes arising directly out of such instruments.

2. INTRODUCTION

The Draft Principles note that carbon markets are “increasingly being recognised as a pivotal mechanism to channel financial resources into initiatives combating climate change”² and

¹ See: <https://www.unidroit.org/work-in-progress/verified-carbon-credits/2026-wg-pc/>.

² Draft Principles, Introduction, p. 4.

that they “play a crucial role in reducing and removing greenhouse gases (GHGs) cost-effectively, mobilising all important carbon finance, and promoting the adoption of low-carbon technologies and solutions.”³

The Draft Principles observe that “[t]he market in VCCs is at a pivotal point in its development, transitioning from the niche voluntary market that has been supply-side focused and governed largely by NGO crediting bodies, to a more uniformly regulated demand-side market driven by both compliance and voluntary obligations and financed, like conventional global markets, by regulated entities, financiers and investors.”⁴ For this transition, “clarity on the legal nature of the VCC under private law is fundamental to building a market-based model with adequate governance and legal certainty in private transactions.”⁵ Accordingly, the Draft Principles have been designed with a view to “provid[e] legal certainty in relation to key issues of private law.”⁶

The Draft Principles’ objective of providing legal certainty for private transactions in VCCs is designed to “facilitate the scaling of the market in VCCs” and to support the participation of the regulated entities, financiers and investors whose engagement is seen as critical to that transition. International investment law is a complementary dimension of that same legal environment, as it provides an additional layer of protection for cross-border investors. Where the legal nature of VCCs is clear under private law, that clarity will also inform the analysis of investment tribunals called upon to determine whether VCCs qualify as protected investments, contributing to the broader legal certainty that is essential for scaling carbon markets and attracting the international investment they require.

A particularly relevant dimension of that relationship concerns whether VCCs are treated as the subject of proprietary rights under the applicable private law. In some cases, whether an asset carries proprietary rights can be a relevant (and potentially determinative) factor in establishing whether it qualifies as an “investment” and therefore whether an investor has access to investor-State dispute settlement. Clarity on this point would not in itself guarantee access to investor-State dispute settlement, as other jurisdictional requirements must independently be satisfied. It would, however, remove one source of uncertainty that can be dispositive.

This is illustrated by *Koch Industries, Inc. and Koch Supply & Trading, LP v. Canada* (ICSID Case No. ARB/20/52) (“*Koch v. Canada*”), the only ICSID case to date arising from a carbon market dispute. In that case, the tribunal dismissed the claim for lack of jurisdiction, having determined that the emission allowances at issue did not meet the definition of “investment” under the relevant applicable instrument of consent.⁷ Among the factors considered by the tribunal was

³ *Id.*

⁴ Draft Principles, Introduction, p. 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Koch Industries, Inc. and Koch Supply & Trading, LP v. Canada*, ICSID Case No. ARB/20/52, Award (13 March 2024) (“*Koch v. Canada Award*”).

whether the allowances amounted to “property” under the law of Ontario, a question it resolved in the negative.

The following section first provides an overview of the jurisdictional requirements under the ICSID Convention, then turns to *Koch v. Canada* to examine the tribunal’s jurisdictional analysis and its relevance to the issues raised in these comments.

3. JURISDICTIONAL REQUIREMENTS UNDER THE ICSID CONVENTION

Article 25 of the ICSID Convention establishes the requirements that must be satisfied to submit a dispute to arbitration under the ICSID Convention. It requires that the dispute be a “legal dispute” arising “directly out of an investment” between a Contracting State and a national of another Contracting State, and that the parties have consented in writing to submit the dispute to ICSID. This section focuses solely on the requirement that an “investment” exists for purposes of Article 25, as this is the requirement most directly connected to the subject matter of the Draft Principles – the legal characterization of VCCs under private law.

The ICSID Convention does not define the term “investment.” During the negotiations of the Convention several attempts were made to include a definition, but none proved acceptable. The negotiators ultimately decided to leave the matter to the consent of the parties⁸ though it was understood that purely commercial transactions — such as an ordinary sale of goods — would not qualify under Article 25.⁹

In the absence of a definition in the Convention, tribunals turn to the instrument of consent to determine whether a given activity or transaction qualifies as an investment. Instruments of consent take three main forms: investment treaties between States, domestic investment laws enacted by host States, and contracts between investors and States or government entities. Investment treaties are the most prevalent form, and the majority of them include a definition of the term “investment.” Investment treaties concluded in the 1990s typically adopt a broad, general formulation – often referring to “every kind of asset” – followed by a non-exhaustive illustrative list of qualifying assets.¹⁰ Some more recent investment treaties have tended toward narrower definitions of “investment” by, for instance, requiring that a transaction or activity satisfy

⁸ ICSID Convention, Article 25 [Jurisdiction], in Stephan W. Schill, Loretta Malintoppi, et al. (eds), Schreuer’s Commentary on the ICSID Convention (Third Edition), pp. 80 – 538 (“*Schreuer, Article 25*”), para. 174.

⁹ Schreuer, Article 25, paras. 292-297.

¹⁰ E.g., 1991 United Kingdom Model BIT: “‘Investment’ Means Every Kind of Asset and In Particular, Though Not Exclusively, includes: (i) movable and immovable property and any other property rights such as mortgages, liens or pledges; (ii) shares in and stock and debentures of a company and any other form of participation in a company; (iii) claims to money or to any performance under contract having a financial value; (iv) intellectual property rights, goodwill, technical processes and know-how; v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.”

additional characteristics.¹¹ The scope of protection therefore varies across instruments of consent and the specific definition of investment in the applicable instrument will be determinative.

Beyond the definition in the instrument of consent, numerous ICSID tribunals have concluded that the term “investment” in Article 25 carries an objective meaning independent of the parties’ consent, and that a transaction or activity must satisfy that objective notion in addition to qualifying under the applicable instrument of consent. Under this approach, tribunals have developed a set of characteristics – the so-called *Salini* criteria – to help identify what qualifies as an investment for this purpose: (i) an economic contribution by the investor; (ii) a certain duration; (iii) the assumption of risk; and (iv) a contribution to the development of the host State.¹² Tribunals have consistently emphasized that these criteria are to be applied flexibly, with due regard to the specific circumstances of each case.¹³

Where the instrument of consent is a contract, the jurisdictional analysis differs in an important respect. Unlike investment treaties and domestic investment laws, where a State consents in advance to arbitrate disputes with an undefined class of investors over a broad range of future transactions, a contract involves consent to arbitrate disputes arising from a specific identified transaction. Tribunals have treated the inclusion of an ICSID arbitration clause in a contract as a strong presumption that the underlying transaction qualifies as an investment under Article 25.¹⁴

¹¹ E.g., 2012 US Model BIT: “‘investment’ means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include: (a) an enterprise; (b) shares, stock, and other forms of equity participation in an enterprise; (c) bonds, debentures, other debt instruments, and loans; (d) futures, options, and other derivatives; (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; (f) intellectual property rights; (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”

¹² *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco* [I], ICSID Case No. ARB/00/4, Decision on Jurisdiction, July 31, 2001 (*Salini v. Morocco*), para. 52. Each of these criteria may be relevant in the context of disputes involving carbon market assets, including VCCs, depending on the specific facts and circumstances of the transaction or activity in question.

¹³ See e.g., *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania* (ICSID Case No. ARB/15/41), Award, October 11, 2019, para. 200; *Ceskoslovenska Obchodni Banka, A.S. v. The Slovak Republic*, ICSID Case No. ARB/97/4 (“*CSOB v. Slovak Republic*”), Decision on Objections to Jurisdiction, May 24, 1999, para. 90. An increasing number of tribunals have declined to treat the fourth criterion – contribution to the host State’s development – as an independent requirement. See Schreuer, Article 25, para. 258.

¹⁴ In *CSOB v. Slovak Republic*, for instance, the tribunal observed that “[t]he Parties’ acceptance of the Centre’s jurisdiction with respect to the rights and obligations arising out of their agreement therefore creates a strong presumption that they considered their transaction to be an investment within the meaning of the ICSID Convention.” (*CSOB v. Slovak Republic*, Decision on Objections to Jurisdiction, May 24, 1999, para. 66). Parties may reinforce this further by including an express clause in their agreement stating that the contract or related transaction constitutes an investment under Article 25, which tribunals have generally treated as a strong signal that an investment exists. For additional information on contract-based ICSID arbitration, see Background Paper on Contract-Based ICSID Arbitration, July 2026 available at: [https://icsid.worldbank.org/sites/default/files/publications/Contract-Based ICSID Arbitration-Background Paper.pdf](https://icsid.worldbank.org/sites/default/files/publications/Contract-Based%20ICSID%20Arbitration-Background%20Paper.pdf).

This is relevant in the context of VCCs. Where a State or government entity and a private investor from another Contracting State include an ICSID arbitration clause in a contract whose subject matter relates to VCCs, tribunals would approach this jurisdictional threshold with the benefit of that presumption.

4. *KOCH v. CANADA*

Koch v. Canada arose under the North American Free Trade Agreement (“NAFTA”). The claimants argued that their emission allowances constituted a protected investment under NAFTA’s Chapter 11, which governs investor-State disputes and defines investments through an exhaustive list of qualifying asset categories in Article 1139.

a. Factual Background

Ontario’s Cap and Trade Program was established under the Climate Change Mitigation and Low-Carbon Economy Act (the “Cap and Trade Act”), which came into force in January 2017.¹⁵ The program created a regulatory scheme to reduce greenhouse gas emissions through a market-based mechanism: the government issued emission allowances representing the right to emit a specified quantity of greenhouse gases, which capped participants had to surrender to the government in an amount corresponding to their actual emissions.¹⁶ Allowances could be acquired through government auctions or on secondary markets, held, traded, and transferred between registered participants. The program was subsequently linked to the cap and trade programs of California and Québec.¹⁷

Koch Supply & Trading, LP (“KS&T”), a wholly owned subsidiary of Koch Industries, Inc., registered as a market participant in Ontario’s program, purchased emission allowances in six auctions, including two joint auctions with California and Québec, between 2017 and 2018, with the standard practice of transferring the allowances acquired in Ontario to its California account for resale.¹⁸

Following a change of government after the June 2018 Ontario elections, Ontario cancelled the Cap and Trade Program. Ontario Regulation 386/18 prohibited all transactions involving emission allowances, and the subsequent Cap and Trade Cancellation Act expressly provided that market participants, such as KS&T, would receive no compensation for unused allowances remaining in their accounts.¹⁹ KS&T sought compensation through administrative channels, which was denied,²⁰ and Koch Industries and KS&T subsequently filed a claim before ICSID under NAFTA, alleging expropriation and breach of the minimum standard of treatment.

¹⁵ *Koch v. Canada* Award, paras. 70-71.

¹⁶ *Koch v. Canada* Award, paras. 281-283.

¹⁷ *Koch v. Canada* Award, para. 75.

¹⁸ *Koch v. Canada* Award, paras. 373, 378-379.

¹⁹ *Koch v. Canada* Award, para. 97.

²⁰ *Koch v. Canada* Award, paras. 113-116.

b. The Tribunal's Jurisdictional Findings

The tribunal dismissed the case for lack of jurisdiction. The discussion centered on whether these emission allowances constituted an “investment” as defined in Article 1139 of NAFTA. The tribunal expressly noted that its analysis was limited to determining jurisdiction in the specific circumstances of the case and was not intended to establish any general rule or definition as to the legal nature of emission allowances for other purposes or in other contexts.²¹

Whether the allowances were “property” under NAFTA Article 1139(g)

NAFTA Article 1139(g) defines investment to include “real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes.” As NAFTA does not define the term “property,” the tribunal turned to Ontario law.²² Since neither Ontario legislation nor any Ontario court had addressed the question of whether emission allowances constituted property, the tribunal examined relevant Ontario case law on novel property claims over intangible statutory creations.²³

The tribunal concluded that, while the case law did not settle a general test for property under Ontario law, it consistently identified “exclusive control” as an essential attribute of property under common law.²⁴ The tribunal then analyzed the Cap and Trade Act to determine whether holders of emission allowances enjoyed sufficient exclusive control. It found that, while certain provisions gave participants some degree of control (including the ability to hold, trade, and transfer allowances) the Act as a whole granted the government broad discretionary powers that significantly limited that control: the government could cancel allowances, impose restrictions on accounts, remove allowances without compensation, and exclude expropriation claims entirely under Section 70 of the Act.²⁵

The tribunal described this as “a very close case,” acknowledging that emission allowances possessed a number of attributes associated with property. Nevertheless, it concluded that, on the balance of probabilities, KS&T had not demonstrated sufficient exclusive control to satisfy the essential attribute of property under Ontario law, and accordingly found that KS&T did not hold a qualifying investment under NAFTA Article 1139(g).²⁶

Whether the allowances gave rise to “interests” under NAFTA Article 1139(h)

The tribunal also considered whether KS&T held a protected investment under NAFTA Article 1139(h), which covers “interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory.” It concluded that KS&T’s emission

²¹ *Koch v. Canada* Award, para. 156.

²² The Parties agreed that the meaning of “property” under NAFTA should be principally interpreted under Ontario Law. *Koch v. Canada* Award, paras. 159, 162-163.

²³ *Koch v. Canada* Award, para. 169.

²⁴ *Koch v. Canada* Award, para. 239.

²⁵ *Koch v. Canada* Award, paras. 311-313.

²⁶ *Koch v. Canada* Award, para. 316.

allowances did not grant it a legal share in any asset or resource and for that reason, could not be considered as “interests” under Article 1139(h).²⁷ Moreover, the tribunal found that KS&T’s activities (consisting primarily of purchasing allowances at auction and transferring them to California for resale) did not constitute sufficient economic activity in the territory of Ontario. The tribunal found that there needed to be a “cognizable interest” directed toward economic activity within Ontario’s territory,²⁸ and that KS&T’s trading activity amounted to cross-border trade with no link to a specific underlying economic project, operation, or activity taking place in Ontario.²⁹

c. Significance

Several aspects of the *Koch v. Canada* award are pertinent in the context of the Draft Principles.

First, the tribunal’s analysis is a clear example of how the legal characterization of a carbon market instrument under applicable domestic law, and in particular whether it carries proprietary rights, can in certain circumstances be a relevant, or even determinative, factor in the jurisdictional analysis under an investment treaty.

Second, it is important to note that the result in *Koch v. Canada* does not foreclose the possibility that carbon market instruments, including VCCs, could qualify as investments in other cases. The applicable instrument of consent in this case was NAFTA, a treaty with a narrower definition of investment than other investment treaties. The tribunal’s findings that the allowances did not constitute a protected investment were shaped by the specific structure and content of that definition. A different instrument of consent – whether an investment treaty, domestic investment law or contract – might have required a different analysis and could potentially have led to a different outcome on jurisdiction.

Third, it is also worth noting that the tribunal did not examine whether the emission allowances would satisfy the objective characteristics of investment, the so called *Salini* criteria, discussed in Section 3 above. That question therefore remains open and may arise in future disputes involving carbon market instruments, including those relating to VCCs.

Fourth, the tribunal observed that the ambiguities in the Cap and Trade Act as to the nature of allowances, and the absence of any right to compensation upon their cancellation, did not contribute to a predictable legal framework and might discourage private actor participation in climate-related market mechanisms.³⁰ This observation resonates directly with the Draft Principles’ recognition that legal certainty as to the nature of carbon market instruments is a prerequisite for the development of a well-functioning market. As these comments seek to

²⁷ *Koch v. Canada*, Award, para. 359.

²⁸ *Koch v. Canada* Award, para. 347.

²⁹ *Koch v. Canada* Award, paras. 361-366.

³⁰ *Koch v. Canada* Award, para. 157.

illustrate, greater clarity under private law will also mean greater clarity under international investment law, strengthening the overall legal framework within which these markets operate.

5. CONCLUSION

The *Koch v. Canada* award illustrates that the legal characterization of carbon market assets under applicable private law, and in particular whether they carry proprietary rights, is not merely a question of private law. It can have direct consequences for the investment law framework within which cross-border transactions in those assets take place, and specifically for whether investors in carbon markets may access the protections available under international investment treaties and the ICSID Convention.

The adoption of the Draft Principles, by providing clarity on the legal nature of VCCs under private law, would therefore serve not only the private law objectives of legal certainty in transactions, but also the broader investment law environment. Where the proprietary nature of VCCs is clear, that clarity will also inform the analysis of investment tribunals called upon to determine whether disputes involving VCCs fall within their jurisdiction, reducing a source of uncertainty that, as *Koch v. Canada* illustrates, can be dispositive. Regulatory clarity of this kind is essential to attracting and sustaining international investment, a goal that lies at the heart of ICSID's mandate and of the World Bank Group's broader mission of promoting sustainable economic development.

ICSID thanks UNIDROIT for the opportunity to contribute to this important initiative and looks forward to continuing to engage with the development of the legal framework for carbon markets.

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UNIDROIT Draft Principles on the Legal Nature of Verified Carbon Credits: An Islamic Finance Assessment

1. Introduction

The UNIDROIT *Draft Principles on the Legal Nature of Verified Carbon Credits* (Study LXXXVI, consultation draft, July 2026) seek to establish greater legal certainty concerning **Verified Carbon Credits (VCCs)**. The Principles focus primarily on private-law questions, including the creation, transfer, ownership, custody, cancellation, security interests and insolvency treatment of VCCs. They are intended to facilitate the development of domestic and cross-border carbon markets by providing a common legal framework.

The UNIDROIT approach is broadly compatible with the fundamental position adopted by the IsDB Shariah Board in its 2022 resolution (annex 1), which recognises carbon credit and carbon offset certificates as intangible financial rights relating to non-physical assets, capable in principle of being transferred for monetary consideration, provided that gharar, deception and fraud are avoided. However, the UNIDROIT Principles also introduce certain legal concepts and market mechanisms that require specific Shariah safeguards before they can be adopted or used in Islamic finance transactions.

2. Legal Nature of the VCC

A central feature of the UNIDROIT Principles is the recognition of the VCC as an intangible asset capable of being the subject of proprietary rights.

Under Principle 2, a VCC represents a verified mitigation outcome equivalent to one tonne of CO₂, provided that the mitigation outcome has been independently verified, approved by the relevant crediting body, recorded in a VCC registry and uniquely identified. The Principles expressly define the underlying "unit" as an intangible asset.

This is highly consistent with the IsDB Shariah Board's conclusion that carbon credit certificates are intangible rights and financial rights relating to non-physical assets.

The UNIDROIT approach also strengthens the argument for treating a VCC as a recognised *māl* (valuable property/right) in contemporary Islamic finance, because the VCC is:

- individually identifiable;
- legally permissible;
- controllable through a registry;
- transferable;
- economically valuable; and
- capable of providing a recognised benefit to its holder.

UNIDROIT specifically explains that registration and unique identification give VCCs characteristics enabling them to be the subject of proprietary rights.

Shariah assessment: Compatible.

The legal characterisation of VCCs as intangible property/rights is broadly aligned with the IsDB Shariah Board's fatwa and provides a useful legal foundation for their treatment as financial rights in Islamic finance.

3. Transfer and Sale of VCCs

The UNIDROIT Principles establish a framework under which VCCs may be transferred between holders. The transfer mechanism is linked to the registry, and the Principles recognise proprietary rights in the VCC itself rather than merely contractual claims against a registry operator.

The framework also protects certain innocent acquirers, allowing them in specified circumstances to acquire a VCC free from conflicting proprietary claims.

This is broadly compatible with Islamic Finance Principles, which permits disposal and transfer of carbon credit certificates for monetary consideration, provided that:

1. the transaction is free from *gharar*, deception and fraud;
2. the certificates have recognised financial value; and
3. the buyer genuinely intends to use the certificates for greenhouse-gas reduction purposes.

The key difference is that UNIDROIT is primarily concerned with legal certainty, whereas the IsDB resolution imposes a substantive Shariah condition concerning the purpose of the

transaction. Thus, a legally valid transfer under the UNIDROIT Principles would not automatically be Shariah-compliant.

Shariah assessment: Generally compatible, subject to additional conditions.

For Islamic finance, a VCC sale should therefore incorporate contractual provisions establishing the eligibility, validity, ownership, quantity, transferability and intended legitimate use of the VCC.

4. Genuine Use Versus Investment and Speculation

This is one of the most important areas of difference.

The IsDB Shariah Board expressly ruled that carbon certificates:

may be traded among parties who genuinely utilise them for reducing greenhouse-gas emissions;

but may not be traded merely for investment purposes, nor sold to parties where genuine utilisation cannot reasonably be expected.

The UNIDROIT Principles, by contrast, deliberately create a legal framework capable of supporting primary and secondary markets, including transfers through exchanges. The document notes that VCCs may be traded in secondary markets and that buyers can include market intermediaries intending to resell VCCs.

From the perspective of Islamic Finance, this is an important point of divergence.

A conventional legal framework may permit a secondary market in VCCs for investment and liquidity purposes, whereas the Islamic Finance principles (as per the IsDB Shariah resolution) restricts trading where the purpose is merely investment or where actual environmental use is not reasonably expected.

Islamic finance implication

An Islamic financial institution should not assume that all transactions permitted under the UNIDROIT Principles are Shariah-compliant.

In particular, it should distinguish between:

- purchase for genuine environmental use → potentially permissible;
- purchase to finance genuine carbon-reduction activities → expressly contemplated as permissible;

- purchase purely for speculative appreciation → not permissible under the Islamic Finance principles;
- sale to an entity with no genuine intended use → not permissible under the Islamic Finance principles.

This distinction should be explicitly reflected in carbon-market documentation whenever an Islamic Finance institution is concerned.

5. Creation, Verification and *Gharar*

UNIDROIT places considerable importance on the verification process. A VCC cannot qualify as a VCC under Principle 2 unless the mitigation outcome has been positively verified, approved by the crediting body and registered with a unique identifier.

The underlying lifecycle also involves monitoring, reporting and independent third-party verification before creation of the VCC. This is positive from a Shariah perspective because robust verification helps reduce *gharar* and *tadlīs* (deception), both of which are expressly relevant to the Islamic Finance principles.

Nevertheless, UNIDROIT recognises that verification does not completely eliminate the possibility of fraud, overissuance or reversal. Accordingly, Shariah compliance would require not only formal verification but also adequate procedures to ensure that the VCC represents a genuine and identifiable environmental benefit.

Shariah assessment: Strongly supportive, but verification should be treated as a continuing integrity requirement rather than an absolute guarantee.

6. Overissuance and Reversal: The Main Shariah Concern

Perhaps the most significant issue requiring further consideration is the treatment of overissuance.

UNIDROIT distinguishes between:

- revocation, where deliberate wrongdoing or complete nullity is established; and
- overissuance, where the constitutive steps for creating the VCC occurred but it is later established that the mitigation outcome was not achieved to the extent represented.

Under the proposed base rule, an overissued VCC does not automatically cease to exist (principle 11(2)). It can continue to be treated as property, while the environmental integrity issue is dealt with through crediting-body rules, contractual arrangements, insurance and regulatory mechanisms. This creates a potential Shariah concern.

The IsDB Sharia Resolution permits trading subject to the absence of *gharar* and fraud and the ability to deliver the certificate. If a VCC is subsequently shown not to represent the environmental outcome that it purports to represent, the original transaction may raise questions concerning the subject matter of the sale, its characteristics and the existence of material uncertainty.

The UNIDROIT approach prioritises market stability and legal certainty, whereas Shariah additionally requires attention to the substantive reality and validity of the underlying benefit.

Recommended Islamic finance approach

Islamic financial institutions should therefore require:

- robust verification standards;
- clear contractual representations and warranties;
- mechanisms for replacement or cancellation of defective VCCs;
- allocation of the risk of reversal and overissuance;
- appropriate compensation/restitution mechanisms; and
- Shariah Board approval of the relevant contractual arrangements.

7. Retirement and Cancellation

UNIDROIT provides detailed rules for retirement, cancellation and revocation. Retirement effectively brings the normal lifecycle of the VCC to an end and prevents further circulation or use. Voluntary cancellation is also recognised, with the VCC ceasing to exist once the registry records the cancellation.

Revocation is different: where the VCC was created through deliberate wrongdoing or where its creation was a complete nullity, it is treated retrospectively as having been void from the outset.

These mechanisms are generally compatible with Islamic principles because they help preserve the integrity of the underlying right and prevent a defective or invalid certificate from

continuing to generate benefits. The retrospective treatment of fraudulent or void VCCs is particularly relevant to the Shariah prohibition of fraud and deception.

8. Custody and Protection of Ownership

UNIDROIT provides detailed rules for custodians. A custodian must safeguard VCCs, must not use them for its own benefit without proper authorisation, and must comply with valid instructions from the client concerning transfer or retirement.

This is broadly compatible with Islamic concepts of *amānah*, *wakālah* and fiduciary responsibility. For Islamic financial institutions, these provisions could provide a useful basis for structuring VCC custody arrangements, particularly where a bank or investment institution holds VCCs on behalf of clients.

The framework is also useful in insolvency because proprietary rights that have become effective against third parties generally remain effective against an insolvency representative and creditors, subject to applicable insolvency rules.

Shariah assessment: Compatible and potentially useful for Islamic financial-market infrastructure.

9. VCCs as Collateral

UNIDROIT Principle 20 expressly allows a VCC to be the subject of a security right, thereby recognising its capacity to serve as collateral. This could potentially facilitate the use of eligible VCCs in Shariah-compliant financing structures, subject to the applicable requirements governing *rahn* (pledge/security).

However, from an Islamic finance perspective, the use of VCCs as collateral raises an important additional issue concerning the enforcement of the security. If enforcement results in the transfer of ownership or control of the VCC to the secured creditor, such as a financial institution, the creditor may become the holder of the VCC without having a genuine intention to use it for greenhouse-gas emission reduction purposes. This could conflict with the Islamic Finance requirement that carbon credit certificates be traded only among parties who genuinely utilise them for reducing greenhouse-gas emissions, and that they not be traded merely for investment purposes.

Accordingly, the permissibility of using VCCs as collateral should not be assessed solely on the basis of the validity of the security right. The structure should also provide a Shariah-compliant mechanism for dealing with the VCC upon enforcement. For example, the

documentation could provide for its transfer to an eligible party that genuinely intends to utilise the VCC for the permitted purpose, rather than allowing the secured creditor to retain it merely as an investment asset.

Shariah assessment: Potentially compatible, but subject to specific safeguards concerning enforcement, ownership and subsequent use of the VCC.

10. Derivatives, Futures, Options and Short Sales

The UNIDROIT Principles recognises that spot, forward, futures and option transactions exist in the VCC market (par.41). However, these transactions fall outside the scope of the Draft Principles, which focus primarily on the private-law aspects of VCCs, including their legal nature, proprietary rights, transfer, custody, cancellation, security interests and insolvency.

Shariah assessment: The IsDB Shariah Board's Resolution expressly prohibits transactions involving carbon credit certificates that are not Shariah-compliant, including options, futures, short sales and other conventional transactions of a similar nature. Accordingly, these structures should be excluded from Islamic finance transactions involving VCCs, notwithstanding their recognition as existing market practices in the UNIDROIT materials.

11. Tokenisation and Blockchain

The draft Principles recognise tokenisation as a potential mechanism for converting VCCs into blockchain-based digital representations. They identify potential benefits including transparency, fractionalisation, liquidity and automated settlement.

This is generally compatible with the Islamic Finance perspective because the technology itself is not the source of Shariah permissibility or impermissibility. What matters is the nature of the underlying right and how it is transacted.

Blockchain may actually strengthen Shariah compliance by improving:

- traceability;
- ownership records;
- prevention of double counting;
- transparency;
- settlement; and

- auditability.

However, tokenisation must not be used to transform a permissible VCC into a speculative instrument nor the creation of new VCCs by the blockchain itself (mining). UNIDROIT itself cautions that tokenisation does not automatically confer legal rights to the underlying VCC and requires clear connections between blockchain systems and traditional registries. From a practical point of view, the tokenization will render harder to control who owns the tokenized VCC and to verify whether the owner(s) could use them for their intended use.

12. Overall Shariah Assessment

The UNIDROIT Principles are broadly compatible with the conceptual foundation of the Islamic Finance principles and the IsDB Shariah Board's 2022 resolution, particularly in their recognition of VCCs as identifiable intangible assets capable of proprietary ownership and transfer.

However, legal permissibility under the UNIDROIT Principles should not be equated with Shariah permissibility.

The following table resumes the sharia assessment of UNIDROIT Principles:

UNIDROIT Issue	Islamic Finance Assessment
VCC as intangible asset/property	Compatible (section 2)
Sale and transfer	Permissible subject to Shariah conditions (section 3)
Genuine environmental use	Required by IsDB fatwa (section 4)
Pure investment trading	Not permissible (section 4)
Secondary-market trading	Requires restriction to Shariah-compliant users/transactions (section 4)
Measurement, Reporting and Verification (MRV)	Strongly supportive of avoiding gharar and fraud (section 5)
Overissuance	Requires additional Shariah safeguards (section 6)

UNIDROIT Issue	Islamic Finance Assessment
Reversal	Generally compatible with Islamic principles (section 6)
Fraudulent VCC/revocation	Generally compatible with Islamic principles (section 7)
Custody	Generally compatible with amānah/wakālah concepts (section 8)
VCC as collateral	Generally compatible under rahn, subject to financing structure (section 9)
Tokenisation	Generally compatible (section 11)
Derivatives/futures/options	Not permissible (section 10)

13. Key Recommendation for Islamic Finance

The most appropriate approach would be not to reject the UNIDROIT Principles, but rather to develop an Islamic Shariah overlay for their application to Islamic financial institutions.

Such an overlay should establish at least five conditions:

1. **Recognised asset/right:** The VCC must constitute a valid, identifiable and transferable intangible financial right, consistent with the Islamic Finance perspective.
2. **Genuine underlying mitigation:** The VCC must be supported by credible verification and must represent an actual mitigation outcome, with adequate safeguards against fraud, double counting, reversal and overissuance.
3. **Genuine end-use:** Transactions should involve parties that genuinely use the VCC for greenhouse-gas reduction purposes or for financing parties that genuinely undertake such activities.
4. **No speculative trading:** Islamic financial institutions should not engage in transactions whose sole purpose is investment/speculation, and should avoid options, futures, short sales and similar conventional instruments prohibited by Islamic Finance principles.

5. **Shariah-approved documentation:** Sale, custody, financing, collateral, tokenisation and other contractual arrangements should be submitted to the relevant Shariah authority before implementation, particularly where the transaction involves new market mechanisms.

Conclusion

The UNIDROIT Draft Principles provide a generally suitable legal foundation for recognising VCCs as intangible proprietary assets and facilitating their transfer, custody, financing and use as collateral. This fundamental approach is consistent with the Islamic Finance perspective determination that carbon credit certificates constitute intangible financial rights with recognised economic value.

The principal distinction is that UNIDROIT's market-oriented framework is broader than the Sharia-compliant framework. In particular, the UNIDROIT framework accommodates secondary-market activity and investment-oriented market participants, whereas the Sharia-compliant framework restricts trading to genuine users and expressly prohibits trading merely for investment purposes. Therefore, Islamic financial institutions could potentially operate within the UNIDROIT framework, but only with an additional Shariah overlay governing the purpose of transactions, environmental integrity, *gharar*, fraud, delivery, and prohibited derivative or speculative structures.

This makes the UNIDROIT Principles potentially valuable as a legal infrastructure for Islamic carbon markets, provided that their implementation is supplemented by Shariah standards and contractual safeguards reflecting the Islamic Finance requirements.

Annex

Resolution of the Shariah Board of the Islamic Development Bank Group

Regarding the Carbon Credit Certificates

All praise is due to Allah, Lord of the Worlds, and peace and blessings be upon our master Muhammad, the Seal of the Prophets, and upon his family and companions.

The Shari'ah Board of the Islamic Development Bank Group, at its extraordinary meeting held virtually in conjunction with the Subcommittee meeting on **Sunday, 2 Muharram 1444 AH, corresponding to 31 July 2022**, via the Microsoft Teams platform, reviewed the inquiry memorandum submitted by the **International Islamic Trade Finance Corporation (ITFC)** regarding **carbon credit certificates**.

After extensive deliberations over more than one session, after listening to the technical experts' explanation of the nature of these certificates and the origin of the underlying carbon credits, and after reviewing the resolution of the **International Islamic Fiqh Academy No. 43 (5/5) concerning Intellectual Rights**, as well as **Shariah Standard No. 42 on Financial Rights and Their Disposition**, issued by the **Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)**, the Board resolved as follows:

First:

Carbon Credit Certificates and Carbon Offset Certificates represent **intangible rights**. They are financial rights relating to non-physical assets (the right to utilize carbon credits), and they grant their holder exclusive entitlement to the benefits arising therefrom.

Second:

As a matter of principle, it is permissible to dispose of and transfer these rights for monetary consideration, provided that uncertainty (gharar), deception, and fraud are absent, because under contemporary custom these rights have acquired recognized financial value and are treated as assets by people.

Third:

Trading in these certificates is permissible among parties who genuinely utilize them for the purpose of reducing greenhouse gas emissions, subject to the ability to deliver them.

Fourth:

It is permissible to purchase these certificates from the Corporation for the purpose of financing parties who genuinely use them to reduce greenhouse gas emissions.

Fifth:

It is not permissible to trade these certificates merely for investment purposes, nor to sell them to parties whose actual use of them is not reasonably expected, so as to prevent these certificates from being diverted from their intended purposes.

Sixth:

The Corporation may not engage in any transaction involving these certificates if the transaction is not Shariah-compliant. Transactions that are not Shariah-compliant include options, futures, short sales, and other conventional transactions of a similar nature.

Seventh:

The Corporation must submit any related contracts that it intends to enter into to the Shariah Board for approval prior to their execution.

And Allah knows best.



September 21, 2026

To:

The Secretary-General
International Institute for the Unification of Private Law (“UNIDROIT”)
Via Panisperna 28, 00184 Rome, Italy

Members of the UNIDROIT Working Group on the Legal Nature of Verified Carbon Credits (the “**Working Group**”)

Dear Secretary-General and Members of the Working Group:

We submit this letter on behalf of Emergent Forest Finance Accelerator, Inc. (“**Emergent**”) to provide comments on the Draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits (Study LXXXVI, July 2026) (the “**Draft Principles**”).¹ As used throughout this letter, “we,” “us,” and “our” refer to the undersigned signatories to this letter writing on behalf of Emergent. At the outset, Emergent wishes to thank UNIDROIT and the members of the Working Group for their work on this important initiative and for the opportunity to comment during the public consultation.

Emergent is a non-profit organization established in the United States that works to mobilize large-scale public and private finance in support of government-led programs that reduce deforestation across entire countries and regions.² Emergent manages the LEAF Coalition, a demand aggregation platform that has secured commitments from global companies of more than \$1 billion and has completed transactions with six forest governments (including Ghana, Costa Rica, Nepal, Ecuador and the State of Para, Brazil), with additional transactions in progress.³⁴

I. Background and Objectives

As background, the undersigned are practitioners with decades of experience advising sponsors, project developers, financial institutions, multilateral organizations, commodities firms, not-for-profit organizations, and States on carbon markets globally, and specifically on the negotiation,

¹ Draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits, UNIDROIT 2026, Study LXXXVI, English only, For consultation (July 2026) (the “Draft Principles”), Introduction, paras. 5, 64–70.

² <https://www.emergentclimate.com/>.

³ <https://www.leafcoalition.org/>.

⁴ This letter is submitted solely for purposes of providing information to the Working Group in connection with its public consultation. Nothing in this letter constitutes legal advice to any party, and this submission is made on a non-reliance basis. The undersigned hereto reserve the right to take positions different from those expressed herein in other matters or on behalf of other clients.

structuring and drafting of more than 500 voluntary carbon credit (“VCC”) transactions in more than 50 countries, including several such transactions involving Emergent as a counterparty.

This letter serves four primary purposes: (i) to express support for the Working Group’s objective of legal certainty and harmonization; (ii) to identify, and to fill, a gap in the published record supporting the Draft Principles concerning the treatment of VCCs under U.S. law; (iii) to record the practical experience that market practice in several major contracting jurisdictions treats issued VCCs as transferable intangible assets that are bought, sold, financed and delivered as commodities; and (iv) to offer high-level substantive comments on the Draft Principles.

II. Recommendation Summary

This letter’s principal recommendation is a narrow but important one. To be consistent with existing standard documentation and industry practice globally (and not only in the United States), Principle 3(1) should provide that a VCC *is* intangible property, capable of delivery by transfer on a registry, rather than only that a VCC “can be the subject of proprietary rights.” The Commentary should then confirm that (i) transfer by debit and credit of registry accounts constitutes delivery of the VCC itself, and not merely the assignment of a contractual claim against the registry or crediting body, and (ii) nothing in the Principles (once adopted) is inconsistent with the characterization of a VCC as an intangible non-financial commodity capable of physical delivery under the law of an implementing State. These recommendations are intended to promote consistency with existing market practice and with the position reflected under U.S. law, and to help achieve the stated objectives of the Draft Principles.

Two exhibits accompany this letter. Exhibit 1, “Overview – Legal Nature of Voluntary Carbon Credits under U.S. Law” (“**Exhibit 1**”), sets out an overview of the treatment of VCCs under U.S. law, for the reasons described in Section III below. Exhibit 2 contains specific, Principle-by-Principle comments in the UNIDROIT consultation comments template. References to the exhibits throughout this letter should be read as incorporating those materials in full.

III. The Published Record Does Not Address the Treatment of VCCs Under U.S. Law

In preparing this submission, we reviewed the publicly available record of the Working Group’s deliberations. That record does not appear to include a comprehensive analysis of the treatment of VCCs under U.S. law. We have therefore prepared Exhibit 1 to fill that gap and to place the relevant U.S. authorities before the Working Group in a single place.

IV. Harmonization and Consistency in the Global VCC Market

The premise stated in the Draft Principles that consistency among States and predictability in cross-border transactions will reduce the costs of transactions is practical and appreciated. The Draft Principles are designed to provide guidance to States on private law rules that, if adopted into domestic law, will facilitate the voluntary carbon market; the greater the consistency among

States, the greater the predictability in cross-border transactions and the lower the resulting transaction costs.⁵

We would add a practitioner's point: uniformity is valuable only if the uniform rule is specific enough to be operative. In our experience, a rule that is uniform in wording but leaves the classification of VCCs to each State's residual law does not deliver the predictability that capital requires, and instead risks fragmenting the market. The Draft Principles define a VCC as an intangible asset and make it capable of being the subject of proprietary rights, but leave many of the practical consequences to "other law." Classifying a VCC as an "object of proprietary rights" is important but not sufficient. The Draft Principles would better achieve their objectives by providing that a VCC is property, consistent with the characterization reflected in standard market documentation and under U.S. law, rather than merely that it is capable of being the object of proprietary rights. This distinction is meaningful in practice.

As a practical matter, the Draft Principles may be addressed principally to States that have not yet adopted a designated legal framework for VCCs, and the Working Group may reasonably expect jurisdictions with developed frameworks, including the United States, where the Commodity Futures Trading Commission ("CFTC") has stated that VCCs are intangible non-financial commodities capable of physical delivery, to continue to apply those frameworks. This expectation, while understandable, risks producing the opposite of the intended effect. Because the Draft Principles stop short of characterizing a VCC as intangible property and leave the practical consequences of classification to each implementing State's residual law, a State that adopts the Principles as drafted may reasonably conclude that no further characterization is required, and may enact a regime that is inconsistent with the property- and commodity-based frameworks of the jurisdictions in which the substantial majority of VCC demand, capital, and standard-form documentation currently reside. Ambiguity in the Principles as to whether a VCC is property may create particular difficulties for States that adopt them as a baseline framework, because purchasers, lenders, and offtakers in those jurisdictions may be unable to determine with confidence the nature of the interest they hold. To promote consistency with those frameworks, Principle 3(1) could state that a VCC is intangible property, and the Commentary could confirm that nothing in the Principles is inconsistent with its characterization as an intangible non-financial commodity capable of physical delivery under the law of an implementing State. That approach would avoid this outcome at no cost to States that have already legislated in this area.

V. The Legal Nature of VCCs Is Well Established in Commercial Practice

The legal nature of VCCs is uncontroversial in commercial practice, both in the United States and globally. This is not to suggest that the characterization question is closed in every jurisdiction; legal uncertainty genuinely exists in a number of States, and the Principles serve a real function there. The point is that the Principles will best achieve their stated goals of consistency and increased investment if they build on established commercial practice while resolving the questions that remain genuinely open.

To be consistent with existing market practice and with the position reflected in U.S. regulatory authorities, the Draft Principles should provide that a VCC is intangible property, and should attach

⁵ Draft Principles, Introduction, paras. 42, 64–65.

to that characterization the legal consequences specified in the Draft Principles. Stating the characterization expressly would align future regulatory frameworks for VCCs with those in place today and reduce the risk of market fragmentation. The following is offered in support of that recommendation.

The U.S. authorities discussed below are regulatory in nature, and their relevance to the private law questions addressed by the Draft Principles should therefore be considered with care. The CFTC has stated that VCCs are commodities, and U.S. courts have proceeded on that basis in certain commercial disputes, referring to carbon credits as commodities and treating them as assets that can be owned, sold and pledged as security. Those authorities do not themselves resolve the private-law characterization of VCCs in every jurisdiction, and the Draft Principles need not adopt the CFTC’s rules or any other regulatory regime. Nonetheless, the Draft Principles would benefit from accommodating, rather than conflicting with, the frameworks already in place in major contracting jurisdictions.

A. Legal Nature of VCCs under U.S. Law

As discussed in Exhibit 1, the CFTC has stated that VCCs are commodities under the Commodity Exchange Act (“CEA”), and has proceeded on that basis since at least 2011. The CFTC and the U.S. Securities and Exchange Commission (“SEC”) jointly stated in 2012 that environmental commodities, including carbon credits, are intangible non-financial commodities capable of physical delivery, and in its first voluntary carbon market enforcement order in 2024, the CFTC stated that VCCs “are commodities traded in both spot and derivatives markets.”⁶ Separately, the prevailing view under Article 9 of the Uniform Commercial Code (“UCC”) is that VCCs are general intangibles, and security interests in VCC portfolios may be perfected by filing a UCC-1 financing statement.⁷

We respectfully invite the Working Group to consider the status of VCCs in the United States for two reasons. First, as discussed in Exhibit 1, Section 1, U.S. environmental programs have used transferable economic instruments since the 1970s, and the United States has accordingly developed significant legal scholarship, agency interpretation, regulatory frameworks and judicial precedent that should assist the Working Group.

Second, the United States is where most of the current demand sits. One report estimated the annual value of direct carbon-removal offtake agreements in 2025 at approximately \$7.1 billion through November 2025, up from \$2.6 billion in 2024.⁸ In the transactions of this kind on which we advised in 2025, the substantial majority of VCC purchasers were based in the United States, and the applicable offtake agreements were governed by New York or Washington State law. A legal framework that departs from that practice — for example, by leaving a purchaser unable to acquire title to the credits it has paid for — is likely to lead project investors and credit purchasers to direct their capital to other jurisdictions.

⁶ Section 2, Exhibit 1.

⁷ Section 5, Exhibit 1.

⁸ Morgan Stanley Inst. for Sustainable Investing, *Voluntary Carbon Markets: Surveying Current and Future Corporate Participants* (2026).

B. Financial Sector and Capital Providers

In our experience, financial institutions, energy companies, and investment and trading firms globally have located their VCC trading businesses within their commodities divisions. VCCs are typically recorded, accounted for, tracked, risk-managed, and transacted as commodities – held in commodity inventory and trading books and subject to commodities risk limits and compliance surveillance. Because those systems and controls presuppose an asset that can be owned and delivered, these market participants may find it difficult to invest in VCC projects, or to acquire VCCs, in a jurisdiction that does not treat VCCs as property. The Draft Principles should accommodate these established industry practices unless a countervailing policy justifies departure.

C. Existing Transactional Market Practice

Standard VCC documentation commonly used in the market employs sale, delivery, title, and risk-of-loss concepts familiar from physical commodity trading. For example, market-standard delivery mechanics in VCC contracts mirror those used in physical commodity transactions and require a seller to “sell and deliver” and a buyer to “buy and accept delivery” of VCCs, with title and risk of loss passing from seller to buyer at delivery. These mechanics appear in the ISDA Verified Carbon Credit Transaction Definitions, the International Emissions Trading Association (“IETA”) trading documents and Emissions Reduction Purchase Agreement (“ERPA”) forms, and the European Federation of Energy Traders allowance appendices, and were used consistently in the market throughout 2025. They are also incorporated in the standard documentation of demand aggregation organizations, such as the LEAF Coalition⁹ and the Symbiosis Coalition.¹⁰

D. Trading of VCCs on Exchanges

VCCs have traded on exchanges since at least 2003, when the Chicago Climate Exchange (“CCX”) began operations. Multiple CFTC-regulated exchanges have since created and listed futures contracts for VCCs, including the Intercontinental Exchange (ICE), the Chicago Mercantile Exchange (CME), and the European Energy Exchange (EEX). Each of these is a commodity exchange that may list futures contracts only for commodities, such as power, natural gas, oil, metals, and agricultural products; we are not aware of any VCC futures contract listed by a major securities exchange such as the New York Stock Exchange (NYSE), Nasdaq or the London Stock Exchange (LSE). That listing pattern is consistent with prevailing market practice of transacting VCCs as commodities – that is, as assets that are owned, delivered and consumed rather than as contractual claims.

VI. Substantive Comments on the Draft Principles

Exhibit 2 sets out specific comments on individual Draft Principles and the related Commentary, presented in the UNIDROIT consultation template. Those comments address, in particular, the characterization of a VCC in Principle 3(1), the consequences of the current formulation, delivery

⁹ See <https://www.leafcoalition.org/>.

¹⁰ See <https://www.symbiosiscoalition.org/>.

by registry transfer under Section III, and the presumption as to the registered holder under Section VI.

* * *

Emergent thanks you again for this opportunity to provide comments on the Draft Principles. Should you have any questions or wish to discuss the contents of this letter or its exhibits, please do not hesitate to contact us.

Sincerely,

/s/ Jean-Philippe Brisson
Jean-Philippe Brisson
Latham & Watkins LLP

/s/ Michael Dreibelbis
Michael Dreibelbis
Latham & Watkins LLP

/s/ Eric Freedman
Eric Freedman
Greenberg Traurig, LLP

/s/ Claire Suni
Claire Suni
Greenberg Traurig, LLP

/s/ Elisabeth Yandell McNeil
Elisabeth Yandell McNeil
Greenberg Traurig, LLP

/s/ Jeremy D. Weinstein
Jeremy D. Weinstein
The Law Offices of Jeremy D. Weinstein, P.C.

Enclosures: Exhibit 1 – Overview: Legal Nature of Voluntary Carbon Credits under U.S. Law;
Exhibit 2 – UNIDROIT Consultation Comment Template

EXHIBIT 1

Overview – Legal Nature of Voluntary Carbon Credits under U.S. Law

This Exhibit is an overview discussing the legal nature of verified carbon credits (“VCCs”) under U.S. law and is organized as follows. Section 1 provides a brief historical overview of environmental programs in the U.S. that have relied on economic instruments to achieve environmental outcomes. Section 2 discusses the Commodity Futures Trading Commission’s position with respect to VCCs. Section 3 examines how other governmental agencies and courts in the U.S. have treated VCCs. Section 4 discusses the unique circumstances (the corner case) applicable to emission allowances issued under various cap-and-trade programs in the U.S. Finally, Section 5 discusses the treatment of VCCs under the U.S. Uniform Commercial Code.

1. Historical Overview of Economic Instruments in the U.S.

This Section 1 describes U.S. environmental programs that have relied on economic instruments. Its relevance is twofold: U.S. law has more than fifty years of practical experience with transferable, registry-supported environmental instruments, and that experience produced the agency guidance, judicial precedent and market practice discussed in the sections that follow. Modern VCCs arise under distinct private crediting programs, but they were built on that infrastructure.

Historically, environmental agencies in the U.S. relied on command-and-control and technology-forcing standards to address pollution issues.¹¹ As early as the 1960s, however, some began discussing how tradable credits could be used to manage the release of contaminants.¹² In the 1970s, governmental agencies started implementing economic instruments, starting with the U.S. Clean Air Act of 1970 that contemplated trading that would allow certain sources to increase emissions as long as reduction took place at another source. U.S. offset and netting policies developed in the mid-1970s, and in 1979 the U.S. Environmental Protection Agency (“EPA”) issued an Offset Interpretative Ruling providing that “emission reductions (offsets) from existing sources in the area of the proposed source . . . are required such that there will be reasonable progress toward attainment of the applicable NAAQS.”¹³

¹¹ Bruce A. Ackerman & Richard B. Stewart, “Reforming Environmental Law,” 37 Stanford Law Review 1333 (1985) and Bruce A. Ackerman & Richard B. Stewart, “Reforming Environmental Law: The Democratic Case for Market Incentives,” 13 Columbia Journal of Environmental Law 171 (1988).

¹² See, e.g., Ronald H. Coase, “The Problem of Social Cost,” Journal of Law and Economics 3 (October 1960) 1–44. Coase’s work is part of the economic foundation for market-based allocation and is not a direct authority on environmental-credit trading.

¹³ Appendix S to Part 51—Emission Offset Interpretative Ruling, 40 CFR Part 51, Appendix S.

In December 1979, the EPA introduced the concept of “bubble” and then added a banking mechanism in 1980,¹⁴ and the Supreme Court upheld the bubble policy in 1984.¹⁵ Inter-refinery lead credit trading, which the EPA permitted from late 1982 and extended to banking in 1985, functioned as the first free and open trading market in an environmental instrument, and the absence of any government pre-approval requirement for individual trades is widely credited with the program’s low transaction costs and active trading.¹⁶

Two programs launched in the mid-1990s converted that experience into durable market infrastructure to address air pollution. California’s South Coast Air Quality Management District adopted the Regional Clean Air Incentives Market (“**RECLAIM**”) in 1993, capping nitrogen oxide and sulfur oxide emissions from most stationary sources in the Los Angeles basin and issuing tradeable RECLAIM Trading Credits against starting allocations for 1994.¹⁷ At the federal level, Title IV of the 1990 Clean Air Act Amendments authorized the Acid Rain Program (“**Acid Rain Program**”),¹⁸ whose first compliance phase ran from 1995 through 1999 and capped sulfur dioxide emissions from 263 large coal-fired generating units.¹⁹ The two programs arose from separate statutory triggers rather than through the scaling up of a single regional pilot, and contemporaneous assessments identified the federal Acid Rain Program as the largest and most successful emissions cap and allowance trading program then in operation, and as a compliance “gold standard” capable of adaptation to international trading.²⁰

The same period saw the emergence of other tradeable environmental attributes: wetland mitigation banking under Section 404 of the Clean Water Act originated in 1984²¹ and was formalized by federal guidance in 1995;²² Renewable Energy Certificates (“**RECs**”), typically

¹⁴ The “bubble” policy treated all of the emission points at a facility as though they vented through a single bubble, permitting a firm to exceed its permitted limit at one emission point so long as it over-controlled emissions at another point within the same bubble by an equal or greater amount, so that the facility’s aggregate emissions remained within the overall cap; “banking” allowed firms to hold excess reductions as credits for future use. Gorman & Solomon at 301-02 and U.S. Environmental Protection Agency, Emission Reduction Banking & Trading Update 2 (October 1980).

¹⁵ *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984).

¹⁶ See Gorman & Solomon, *supra*, at 305–07; UNCTAD, *International Rules for Greenhouse Gas Emissions Trading* (Tietenberg, Grubb, Michaelowa, Swift & Zhang) at 6–7, 31–32 (1999).

¹⁷ South Coast Air Quality Management District Rule 2000, General, in Regulation XX, Regional Clean Air Incentives Market (RECLAIM) (adopted Oct. 15, 1993, as amended Dec. 4, 2020). See also James M. Lents & Patricia Leyden, *RECLAIM: Los Angeles’ New Market-Based Smog Cleanup Program*, 46 J. Air & Waste Mgmt. Ass’n 195 (1996); O. Fromm & B. Hansjurgens, *Emissions Trading in Theory and Practice: An Analysis of RECLAIM in Southern California*, 14 Env’t & Plan. C 367 (1996).

¹⁸ Clean Air Act, Title IV (Acid Deposition Control), 42 U.S.C. §§ 7651-7651o.

¹⁹ Gorman & Solomon, *supra*, at 308–09; 42 U.S.C. §§ 7651–7651o.

²⁰ UNCTAD, *supra*, at 6, 27–28.

²¹ Env’tl. L. Inst., *Banks and Fees: The Status of Off-Site Wetland Mitigation in the United States*, 176 (2002); Robert Brumbaugh & Richard Reppert, Inst. for Water Res., U.S. Army Corps of Eng’rs, *National Wetland Mitigation Banking Study: First Phase Report* 12–14 (IWR Rep. 92-WMB-1, 1992).

²² Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, 60 Fed. Reg. 58,605 (Nov. 28, 1995). Env’tl. L. Inst., *Banks and Fees: The Status of Off-Site Wetland Mitigation in the*

representing one megawatt-hour of renewable generation, emerged in the late 1990s as states adopted Renewable Portfolio Standards; regional electronic tracking platforms proliferated between 2001 and 2005, creating liquid secondary markets.²³ Wetland mitigation credits and RECs continue to be issued, traded and used in the U.S. in 2026.

Over the years, these early programs have resulted in a body of agency guidance, judicial precedents and industry practices described in the following sections.

2. Treatment of VCCs by the Commodity Futures Trading Commission

The Commodity Futures Trading Commission (“CFTC”) is an independent federal regulatory agency created by Congress in 1974 under the Commodity Futures Trading Commission Act.²⁴ The CFTC oversees U.S. derivatives markets, including futures, options, and swaps, with responsibility for promoting market integrity, transparency, and resilience and protecting market participants against fraud and manipulation.

Since at least 2011 (and arguably since the initial VCC contract listing in 2003 on a CFTC-regulated exchange), the CFTC has stated that VCCs are commodities. The CFTC has not identified the status of VCCs as a contested or open question. Rather, when it has discussed VCCs in various settings, the CFTC’s analysis has turned on a question of further classification — specifically, whether carbon credits are “nonfinancial commodities” — proceeding from the commodity determination as an underlying premise.

A. CFTC Treatment of VCCs as Commodities

Section 2(a)(1)(A) of the Commodity Exchange Act (“CEA”) grants the CFTC exclusive jurisdiction over “contracts of sale of a commodity for future delivery.”²⁵ Because that jurisdiction attaches only to contracts in a commodity, the CFTC’s asserted supervisory authority over the voluntary carbon derivatives market depends on whether carbon credits are commodities.

Section 1a(9) of the CEA contains an expansive statutory definition of “commodity” which includes “wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange

United States, 35 (2002). By the early 2000s, more than 219 mitigation banks were operating nationwide.

²³ Ryan Wiser, *Supporting Renewable Generation Through Green Power Certification: The Green-e Program 2* (Lawrence Berkeley Nat’l Lab., LBNL-42485, Sept. 1998); Paul Hudson & Evan Rowe, *Mandate & Market: Texas Electric Restructuring Act of 1999, an Environmental Case Study Six Years into Implementation*, 1 *Env’tl. & Energy L. & Pol’y J.* 235, 240–41, 244–46 (2006); Eastern Research Grp., Inc. & Ed Holt & Assocs., Inc., *Status and Trends Report on U.S. Energy Attribute Tracking Systems* 5, 9 (U.S. Env’tl. Prot. Agency, EPA Pub. No. 430S25002).

²⁴ Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, § 101, 88 Stat. 1389, 1391 (codified as amended at 7 U.S.C. § 4a).

²⁵ CEA Section 2(a)(1)(A), codified at 7 U.S.C. § 2(a)(1)(A).

juice, and all other goods and articles, ... and all services, rights, and interests ... in which contracts for future delivery are presently or in the future dealt in.”²⁶ The Commission has relied on that definition in stating, since 2011, that VCCs are commodities. In addition, the Interagency Working Group for the Study on Oversight of Carbon Markets—established under Section 750 of the Dodd-Frank Act²⁷—published a report analyzing oversight of existing and prospective carbon markets (the “**Report**”).²⁸ The Report noted that “[i]n most respects, emissions markets operate no differently than markets for other commodities” and that the CEA definition of “commodity” is “quite broad, extending from physical commodities such as corn, wheat, oil or gold to financial instruments such as interest rates or foreign currency.” While it did not expressly conclude that carbon allowances and offsets were commodities, the Interagency Working Group treated them as commodities subject to the same oversight principles as other commodities.²⁹

The CFTC carried that premise forward when it solicited comment on whether the forward exclusion should apply to environmental commodities and when it finalized a rule on such issue in 2012, as discussed below in Subsection B.³⁰

B. CFTC Treatment of VCCs as Intangible Nonfinancial Commodities Capable of Physical Delivery

Under the CFTC’s approach, the commodity classification of carbon credits addresses the threshold jurisdictional question, and a distinct question then arises under U.S. law as to whether a carbon credit is a “nonfinancial commodity.” That classification matters because an important exclusion under the CFTC regulations — the “nonfinancial forward contract exclusion,” which is designed to ensure that traditional commercial agreements for deferred shipment of nonfinancial commodities are not subject to derivatives regulation, provided that they are commercial merchandising agreements capable of being physically delivered — is available only with respect to nonfinancial commodities.³¹ The analysis requires an additional step for carbon credits that is unnecessary for physical goods. Because a carbon credit has no physical form, the statutory

²⁶ 7 U.S.C. § 1a(9); see also 17 C.F.R. § 1.3.

²⁷ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 750, 124 Stat. 1376, 1749 (2010).

²⁸ Interagency Working Group for the Study on Oversight of Carbon Markets, [Report on the Oversight of Existing and Prospective Carbon Markets](#) (Jan. 18, 2011).

²⁹ The Working Group included the heads of the following key U.S. agencies: The Secretary of Agriculture, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Administrator of the Environmental Protection Agency, the Chairman of Federal Energy Regulatory Commission, the Chairman of the Federal Trade Commission, and the Administrator of the Energy Information Agency.

³⁰ CFTC, Joint Proposed Rule, Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 17 CFR Part 1 RIN 3038-AD46 (May 23, 2011).

³¹ Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 Fed. Reg. 48,208 (Aug. 13, 2012) (the “2012 Product Release”).

requirement that a nonfinancial commodity be one that “can be physically delivered” cannot be applied to it without an interpretation of “delivery” suited to intangibles.

The CFTC supplied that interpretive framework in the 2012 Product Release, in which the Commission and the Securities and Exchange Commission (“SEC”) jointly adopted final rules further defining “swap” and “security-based swap” under the Dodd-Frank Act. The Commission defined “nonfinancial commodity” as “a commodity that can be physically delivered and that is an exempt commodity or an agricultural commodity.”³² To determine when an intangible commodity satisfies the physical delivery requirement, the Commission articulated a two-part test: an intangible qualifies so long as (1) ownership of the commodity can be conveyed and (2) the commodity can be consumed.³³ The Commission returned to the question of intangible form later that same year, in adapting its regulations to incorporate swaps, and did not condition commodity status on an instrument having tangible or corporeal form, but rather removed the definition of “physical” to accommodate the further clarifications regarding intangible commodities under the 2012 Product Release.³⁴

The Commission concluded that environmental commodities, including carbon credits, satisfy both prongs. The Commission observed that market participants “often engage in environmental commodity transactions in order to transfer ownership of the environmental commodity (and not solely price risk), so that the buyer can consume the commodity in order to comply with the terms of mandatory or voluntary environmental programs.”³⁵ For carbon credits, consumption occurs when a credit is retired against an emissions obligation in a compliance market or in support of an environmental claim in a voluntary market. In the Commission’s analysis, it is these ownership-transfer and consumption features that permit delivery to occur “through electronic settlement or contractual attestation,” and that distinguish environmental commodities from “other types of intangible commodity transactions that cannot be delivered, such as temperatures and interest rates,” aligning them instead with “tangible commodity transactions that clearly can be delivered, such as wheat and gold.”³⁶ The Commission declined to define “environmental commodity” and did not rest the classification on any particular label, instead articulating the principle that an intangible commodity satisfying the ownership-transfer-and-consumption test qualifies as a nonfinancial commodity, regardless of how it is styled.

³² *Id.* at 48,232.

³³ *Id.* at 48,233.

³⁴ CFTC, Adaptation of Regulations to Incorporate Swaps, Final Rule, 77 Fed. Reg. 66,288, 66,293-94 (Nov. 2, 2012).

³⁵ *Id.* at 48,233–34.

³⁶ *Id.* at 48,234.

C. Recent Developments Reflecting the CFTC's Stated Position

The CFTC has treated the commodity characterization of VCCs as the predicate for its regulatory engagement in the sector — from product listing to market surveillance to enforcement. Recent agency actions and initiatives reflect that approach.

In June 2022, CFTC Chairman Behnam held the CFTC's first Voluntary Carbon Markets Convening to discuss supply and demand for high-quality carbon credits, product standardization, and the data needed to support the integrity of carbon-credit greenhouse-gas reduction and removal claims. That same month, the Commission issued a Request for Information on Climate-Related Financial Risk, 87 Fed. Reg. 34,856 (June 8, 2022), receiving feedback from 44 commenters on voluntary carbon markets; several supported the CFTC's use of its spot-market anti-fraud authority.

In June 2023, the CFTC's Whistleblower Office issued an alert on identifying and reporting potential CEA violations in carbon markets, and the Division of Enforcement created the Environmental Fraud Task Force to address fraud and misconduct in both derivatives and spot carbon-credit markets. In July 2023, the Second Voluntary Carbon Markets Convening discussed recent private-sector initiatives, market trends, and the CFTC's role in promoting market integrity. Each of these actions proceeded on the premise, as stated by the CFTC, that VCCs are commodities within the scope of its anti-fraud authority.

The same premise underlies the CFTC's exercise of anti-fraud and anti-manipulation authority in carbon markets. CEA Section 6(c)(1) prohibits any person from using any manipulative or deceptive device in connection with any contract of sale of any commodity in interstate commerce.³⁷ CEA Section 9(a)(2) makes it a felony to manipulate or attempt to manipulate the price of any commodity in interstate commerce. By its terms, this authority extends to spot market transactions, but only in commodities.

The CFTC has exercised that authority in the voluntary carbon market. In 2024, the Commission entered its first enforcement order for fraud in the voluntary carbon markets.³⁸ The Commission found violations of CEA Sections 6(c)(1), 6(c)(1)(A), and 9(a)(2), and Regulation 180.1(a)(1)–(4), including the use of manipulative or deceptive devices in connection with contracts of sale of VCCs as a commodity in interstate commerce. In that Order, the CFTC summarized its position on the characterization of VCCs, which was not a contested issue, as follows:

A voluntary carbon credit, or VCC, is a tradeable intangible instrument that is issued by a carbon crediting program. VCCs are designed to represent real reductions or removals of greenhouse gas emissions from the atmosphere, which market participants can trade on the voluntary carbon market and use in efforts to offset greenhouse emissions to meet emissions reductions goals. One VCC typically represents greenhouse gas emissions reduced by, or

³⁷ 7 U.S.C. § 9(1) (CEA § 6(c)(1)); 7 U.S.C. § 13(a)(2) (CEA § 9(a)(2)); 17 C.F.R. pt. 180.

³⁸ CFTC Dkt. No. 24-33 (Sept. 30, 2024) and Press Release, Commodity Futures Trading Comm'n, Release No. 8994-24 (Oct. 2, 2024).

removed from, the atmosphere equivalent to one metric ton of carbon dioxide. Like other carbon credits, VCCs are commodities traded in both spot and derivatives markets.³⁹

The commodity characterization of VCCs has also featured in private litigation in the derivatives markets. In *Global Carbon Opportunity (Cayman) Fund Ltd. v. CME Group Inc.*, investment funds challenged the delivery specifications for the NYMEX GEO Futures Contract — a physically-settled carbon credit futures contract.⁴⁰ The court dismissed the claims under Section 22 of the CEA, holding that the dispute concerned exchange rule interpretation consigned to CFTC oversight rather than private litigation. CEA commodity status was assumed rather than litigated, because no party contested that VCCs are commodities, and the court proceeded on that basis throughout.

3. Broader Regulatory and Judicial Treatment in the U.S.

In addition to the CFTC, other U.S. agencies have had to review and determine the status of environmental attributes and VCCs, as discussed below.

A. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (“FERC”) is the U.S. federal agency charged with regulating wholesale energy markets across the United States. Since 1993, FERC has treated emissions allowances issued pursuant to the Acid Rain Program and held for operational purposes as inventory, recorded in current-asset accounts.⁴¹ In 2023, FERC extended that treatment to all “environmental credits,” including renewable energy certificates and emissions allowances.⁴² FERC Order No. 552 is an accounting rule rather than a property determination. Even so, treating an allowance as “inventory” presupposes an asset that has ascertainable market value and that can be bought, sold, exchanged and traded – attributes consistent with treatment as intangible property.

B. Securities and Exchange Commission

The SEC, the federal agency charged with regulation of securities and exchanges, has acted consistently with the commodity characterization of VCCs. The SEC joined the CFTC in the 2012 joint rulemaking confirming that environmental commodities are not securities, with the result that carbon credits are not subject to the registration and disclosure requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934.⁴³ The SEC’s participation in that joint rulemaking

³⁹ *Id.* at 3 (footnotes omitted and emphasis added).

⁴⁰ *Global Carbon Opportunity (Cayman) Fund Ltd. v. CME Group Inc.*, 2025 WL 1993703 (S.D.N.Y. July 17, 2025).

⁴¹ FERC Order No. 552, 58 FR 17982 (April 7, 1993) (FERC Stats. & Regs. ¶ 30,967) and associated reporting forms, FERC Form Nos. 1-F, 2, and 2A.

⁴² FERC Order No. 898, 99 FR 69,294 at ¶ 89 (2023).

⁴³ 77 Fed. Reg. at 48,235 n.292; Comments on Product Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Release No. 33-9204; File No. S7-16-11), 2011 WL 3511659.

placed environmental commodities outside the federal securities laws, and the SEC has not since asserted securities jurisdiction over these instruments.

C. Internal Revenue Service

The U.S. Internal Revenue Service (“IRS”) has recognized that environmental credits are intangible personal property for federal tax purposes. IRS Private Letter Ruling 200825009 concluded that emissions allowances traded on the European Climate Exchange constitute intangible personal property, applying the same analytical framework used for physical commodities.⁴⁴

D. Recent Court Decisions

When disputes over VCCs have reached federal courts in the United States, those courts have resolved them by applying ordinary commercial law — contract law in the case of a prepaid forward, and exchange and futures principles in the case of a listed derivative — without characterizing the asset class as “novel” or “sui generis”, and without finding it necessary to determine as a threshold matter what kind of thing a carbon credit is.

In *Zero Carbon Holdings, LLC v. Aspiration Partners, Inc.*, the U.S. District Court for the Southern District of New York applied standard commercial law to a prepaid forward agreement for VCCs documented under an International Swaps and Derivatives Association (“ISDA”) Master Agreement.⁴⁵ The dispute involved a \$29.5 million prepayment for 3.6 million VCCs from REDD+ projects in Brazil. Seller’s performance was secured by (1) an equity pledge and (2) a security interest in seller’s “entitlement” in the VCCs. Crucially, no party contested the legal nature of the credits: neither party argued that the credits were securities, contractual claims, or anything other than deliverable assets. Similarly, no party argued that the security interest did not cover the VCCs because VCCs are not property. For this reason, the court applied traditional breach of contract elements and analyzed the credits as ordinary commercial commodities.

4. United States Cap-and-Trade Programs

This Section 4 addresses a narrow exception in U.S. cap-and-trade programs: most such programs provide expressly that “allowances” issued by governmental agencies are not “property”. Those provisions have led some commentators to argue that (1) allowances, and by extension VCCs, are not property, or (2) the legal nature of all VCCs under U.S. law – not only allowances – is unclear, unsettled or controversial. For the reasons set out below, that reading conflates two different instruments and does not withstand scrutiny.

⁴⁴ IRS Private Letter Ruling 200825009 (released June 20, 2008; dated March 7, 2008) (“for purposes of Code section 954(c)(1)(B), the allowances are intangible property within the meaning of Code section 936(h)(3)(B).”). Note that a private letter ruling is binding only on the taxpayer who requested it and does not constitute precedent for other taxpayers. See 26 U.S.C. § 6110(k)(3).

⁴⁵ *Zero Carbon Holdings, LLC v. Aspiration Partners, Inc.*, 732 F. Supp. 3d 326, 332–33 (S.D.N.Y. 2024).

A. Property Disclaimers

In most U.S. cap-and-trade programs, “allowances” are typically defined as limited authorizations issued by a government agency to emit a specified quantity of pollutants. For example, the Acid Rain Program defines an allowance as “an authorization. . . to emit, during or after a specified calendar year, one ton of sulfur dioxide. . .”.⁴⁶ Similarly, California’s Cap-and-Invest Program defines an allowance as “a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.”⁴⁷

In addition, most programs provide that an allowance is not property or a property right. This provision was included for the first time in the Acid Rain Program, which provides that an SO₂ allowance “does not constitute a property right.”⁴⁸ Since then, most cap-and-trade programs have included the same or similar provisions. For example, the California Cap-and-Invest Program provides that an allowance “issued by the Executive Officer does not constitute property or a property right.”⁴⁹ In a comprehensive review of these issues (including, for example, programs establishing fishing quotas), Professor Pappas termed these provisions “property disclaimers.”⁵⁰

B. Property Disclaimers Origins and Purpose

The Fifth Amendment to the U.S. Constitution includes a “Takings Clause” that protects property owners by prohibiting the government from taking private property for public use unless it provides the owner with just compensation. When it adopted the Acid Rain Program, the U.S. Congress wanted to preserve the government’s ability to modify, reduce, or terminate allowances in the future without facing Fifth Amendment takings claims for just compensation.⁵¹ Accordingly, Congress included the property disclaimer described above.

A similar rationale motivated the California Air Resources Board (“CARB”) when it promulgated the Cap-and-Invest Regulation in 2011 (then, the Cap-and-Trade Regulation). In its Initial Statement of Reasons, CARB explained the following:

⁴⁶ Title IV of the Clean Air Act defines an ‘allowance’ as ‘an authorization, allocated to an affected unit by the Administrator under this subchapter, to emit, during or after a specified calendar year, one ton of sulfur dioxide.’ 42 U.S.C. § 7651a(3). Each allowance is a discrete, fungible, and freely transferable unit of emission authority, issued in a fixed annual quantity and tracked in a federal Allowance Tracking System.

⁴⁷ California Cap-and-Invest Regulation, Cal. Code Regs. tit. 17, § 95802(a)(8) (2026).

⁴⁸ Acid Rain Program, 42 U.S.C. § 7651b(f).

⁴⁹ California Cap-and-Invest Regulation, Cal. Code Regs. tit. 17, § 95820(c) (2026).

⁵⁰ Michael Pappas, *Disclaiming Property*, 42 Harv. Envtl. L. Rev. 391 (2018).

⁵¹ See S. Rep. No. 101-228, at 321 (1989); 42 U.S.C. § 7651b(f). In fact, the intent was to preserve the ability of the U.S. EPA to reduce the quantity of free SO₂ allowances given to individual emitters subject to the Acid Rain Program. Surprisingly, the concern was not to protect the ability of the EPA to rescind or terminate an allowance after such allowance has been sold at auction or allocated for free; somehow, the U.S. Congress, unlike CARB, does not seem to have considered this possibility during its deliberations.

It is necessary for the Executive Officer to retain authority to terminate or limit the “authorization to emit” so that in the case of fraud or market manipulation, ARB has a mechanism to protect the market. Additionally, property rights cannot attach to the compliance instruments because, in the event of federal preemption in the cap-and-trade market or other conditions, California must have the ability to revoke the compliance instruments without creating a loss to the people of California.⁵²

C. Effect of Property Disclaimers

U.S. Courts have reviewed the effect of property disclaimers on a few occasions. In *Ormet Corp. v. Ohio Power Co.*, plaintiff sued defendant claiming ownership to certain SO₂ allowances issued under the Acid Rain Program.⁵³ Although the legal status of allowances was not the issue in the case, in its ruling the Fourth Circuit agreed that plaintiff was “asserting a proprietary interest in ... allowances” and concluded that “[i]n establishing a system of marketable allowances, the Act creates proprietary interests in emissions allowances and provides for their transferability”. In addition, citing to statements made by Senator Moynihan during the deliberations preceding passage of the Acid Rain Program, the Fourth Circuit noted also that the Acid Rain Program “provides that these emission allowances may be bought and sold as any other commodity.”⁵⁴

The California Court of Appeal examined the effect of the California Cap-and-Invest property disclaimer in *California Chamber of Commerce v. State Air Resources Board*.⁵⁵ In its analysis, the Court of Appeal interpreted the property disclaimer narrowly, concluding it served only to preclude claims against the state under the Takings Clause of the U.S. Constitution. As between private parties, however, the court found that allowances bear the traditional hallmarks of property: they are freely transferable, they confer on the holder the right to exclude others from their use, and they can be sold, assigned, or otherwise traded on the secondary market. The court also analogized emissions allowances to earlier emission reduction credits recognized as “valuable commodit[ies]” in *Jopson v. Feather River Air Quality Management District*,⁵⁶ and to federal Clean Air Act allowances, which have been treated as assets with durable economic value given their transferability.⁵⁷ The broader implication is that government-created compliance instruments may be treated as “property” for purposes of due process and private commercial dealings even when applicable statutes or regulations disclaim any property right, so long as the instruments are transferable and confer meaningful economic value on their holders.

⁵² California Air Resources Board, Proposed Regulation to Implement the California Cap-and-Trade Program, Staff Report: Initial Statement of Reasons (Oct. 18, 2010) at IX-18.

⁵³ *Ormet Corp. v. Ohio Power Co.* (4th Cir. 1996) 98 F.3d 799 (Ormet).

⁵⁴ *Ormet, supra*, citing 136 Cong. Rec. S16,980 (daily ed. Oct. 27, 1990) (statement of Sen. Moynihan).

⁵⁵ *Cal. Chamber of Com. v. State Air Res. Bd.*, 10 Cal. App. 5th 604, 647, 216 Cal. Rptr. 3d 694 (2017).

⁵⁶ *Jopson v. Feather River Air Quality Management Dist.*, 108 Cal.App.4th 492, 494, 133 Cal.Rptr.2d 506 (2003).

⁵⁷ *Cal. Chamber, supra*, at 647.

D. Prevailing View and the Limits of the Disclaimer

Despite the confusion that property disclaimers have created with respect to the legal status of allowances under U.S. cap-and-trade programs, the prevailing view today is best summarized as follows:

Disclaimed property is treated as ordinary private property between private individuals, but it is treated as an unprotected interest between individuals and the government. These disclaimed interests receive either property-rule or liability rule protection as between private parties. That is, interest holders could expect either injunctive relief or damages to remedy interference by other private parties. However, disclaimed interests receive no-liability treatment as between interest holders and the government; that is, interest holders would have no remedy against government interference. Disclaimed property looks like property, acts like property, and appears to be property, except where the government is concerned.⁵⁸

5. Status of VCCs under the Uniform Commercial Code

The UCC is a model statute drafted by the American Law Institute and the Uniform Law Commission and enacted, in substantially uniform form, in all fifty U.S. States.⁵⁹ UCC Article 9 governs consensual security interests in personal property, including how such interests are created, made effective against third parties, and enforced.⁶⁰ Importantly, Article 9 generally governs consensual security interests in personal property and fixtures. Accordingly, identifying the category into which a VCC falls is necessary to determine applicable rules governing the creation, perfection, priority and enforcement of security interests in VCCs as collateral.

The prevailing view in the U.S. market is that privately issued, registry-based VCCs are general intangibles under UCC Article 9. The UCC defines a general intangible as “any personal property” other than the enumerated categories of accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and unextracted minerals.⁶¹ A serialized VCC credited to an account in a registry, transferable by debit and credit between accountholders, and extinguished on retirement, is personal property that fits none of those enumerated categories, and so falls within Article 9’s residual general-intangible category unless another UCC category or a special statutory regime applies. Security interests in VCC portfolios may therefore be taken and perfected by filing a “UCC-1” financing statement, subject to the applicable State’s enactment of the 2022 UCC amendments, under which perfection by control may obtain priority over perfection by filing for controllable electronic records.

⁵⁸ Michael Pappas, *supra* at 394 (2018).

⁵⁹ UCC § 1-103(a) (Am. L. Inst. & Unif. L. Comm’n 2022).

⁶⁰ UCC art. 9 (Am. L. Inst. & Unif. L. Comm’n 2022).

⁶¹ UCC § 9-102(a)(42).

Some have expressed concerns that property disclaimers contained in various cap-and-trade programs would prevent private parties from taking a security interest in allowances because allowances are not “personal property”. As an initial matter, it is important to clarify that these concerns were limited exclusively to compliance allowances and offset credits issued by governmental agencies pursuant to applicable law containing property disclaimers, not the broader scope of voluntary VCCs issued by private registries.

Even with respect to such government-issued allowances and offset credits, however, for the reasons discussed above in Section 4, the prevailing view is that property disclaimers affect only the rights of parties against the government, and not those that exist between private parties as a result of commercial transactions, including secured transactions. CARB has confirmed this position as recently as 2023 when it issued guidance that recognizes that a market participant may give allowances as collateral to secure a financing arrangement, and that a secured party may take control and possession of those allowances upon a default.⁶² In fact, CARB was never concerned that the ability to give a security interest would be inconsistent with its position on the ability of private parties to bring takings claims against the state. Rather, CARB wants to ensure that the registration of secured parties does not amount to a level of control of the allowances in violation of its Cap-and-Invest Regulation.⁶³

⁶² Guidance for Registering as a Voluntarily Associated Entity (Updated June 2023), page 5, available at https://ww2.arb.ca.gov/sites/default/files/2023-06/nc-VAE_Guidance.pdf.

⁶³ *Id.*

EXHIBIT 2 – UNIDROIT Comment Template

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
GENERAL					
1	General – Accompanying cover letter	This consultation template is submitted together with an accompanying cover letter and its exhibits, which are incorporated herein by reference and should be read as part of this submission.			
2	General – Exhibit 1 to the cover letter (Overview: Legal Nature of Voluntary Carbon Credits under U.S. Law)	In preparing this submission we reviewed the publicly available record of the Working Group’s deliberations. That record does not contain a comprehensive analysis of the treatment of VCCs under U.S. law. <u>Exhibit 1</u> to the cover letter, “Overview – Legal Nature of Voluntary Carbon Credits under U.S. Law”, is submitted to fill that gap and to place the relevant U.S. authorities before the Working Group in a single place.			
3	General – Additionality	A key requirement of purchasers of VCCs is that the VCCs represent carbon removals or reductions that are additional. The Draft Principles currently do not include any reference to additionality. We believe that the fundamental importance of additionality to the VCM warrants that it be addressed in the Principles.			
INTRODUCTION					
4	A. Reasons for the Principles Para. 4(e)	The introduction provides that VCC markets provide a context for participants “to make a commitment to voluntarily finance GHG mitigation outcomes through the purchase of VCCs” and that			

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
	Para. 6	VCCs represent "a mechanism for raising finance." If such references to finance are taken literally, they may cause confusion. VCC purchase and sale transactions generally do not involve actual financing of mitigation outcomes. Although a transaction that is structured as a prepay may include a financing component, a pay on delivery structure is an offtake that provides a stream of revenues to a project without any element of actual debt or equity financing. We recommend that the Principles avoid the use of the term "financing" unless the Working Group intends to refer to actual financing as opposed to the provision of funds to a project through VCC purchase price payments.			
5	B. Development of Carbon Markets Para 12.	We would recommend generally using the term "system" in place of "scheme". The following sentence could be interpreted as suggesting that emitters have individual caps under the EU ETS: "under the EU ETS primary emitters of GHGs within specified sectors are allocated a cap on their emissions". In actuality, under the EU ETS, each member state has set a cap on the aggregate emissions of its covered sectors and individual emitters within such sectors must surrender a quantity of allowances equal to their reported emissions. In order to avoid any potential misunderstanding, we would recommend that the sentence be rephrased to reflect that structure. It may also be helpful to refer to the fact the cap declines over time, thereby reducing supply			

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
		(because right now the paragraph refers only to the demand side of the market – the emissions).			
6	B. Development of Carbon Markets Para 13.	We are not sure what “Canadian ETS” refers to, since Canada does not have a federal ETS. We think the Working Group may have in mind the Quebec ETS, which is limited to the Province of Quebec, but which is linked through the Western Climate Initiative (WCI) to the California State cap-and-trade system and is proposed to be linked similarly to the Washington State cap-and-invest trading system.			
7	B. Development of Carbon Markets Para 14.	The Draft Principles provide that “entities ... desired to voluntarily invest in GHG mitigation outcomes or the projects that resulted in them.” As in the case of the Draft Principles’ references to financing, as noted in our comment above, the reference in this sentence to investment may cause confusion. Very few VCC procurement transactions are structured as actual investments (meaning transactions involving an investment of capital in an entity in return for equity in that entity). The main drivers for participation by corporate and other non-governmental buyers in the VCM are not a desire to make actual investments but instead to reduce their GHG emissions, enable them to make offsetting claims, or mitigate the impact of their operations on the climate.			
8	3. Use and Retirement – Paras 44-45.	The Draft Principles should note that retirement of a VCC is the functional equivalent of consuming a commodity (because retirement of the VCC allows the carbon removal or reduction represented by the VCC to be applied against emissions from			

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
		activities such as burning natural gas). The Draft Principles should note that a VCC has two primary uses: either enabling the holder to make a claim of voluntary offsetting or mitigation or for other voluntary purposes or to meet a compliance obligation.			
SECTION I: SCOPE AND DEFINITIONS					
9	Principle 2(3); Principle 3(1)–(2); Commentary 3.1; Commentary 20.6	The Principles should take a clear position that a VCC is an intangible property capable of physical delivery, rather than stopping short with the formulation that a VCC “can be the subject of proprietary rights”. It is acknowledged that the Draft Principles already define a VCC as an intangible asset (Principle 2(3)) and provide that a VCC can be the subject of proprietary rights (Principle 3(1)), with “proprietary rights” defined to include both proprietary interests and rights with proprietary effects (Principle 3(2)). The recommendation is that Principle 3(1) be revised to state explicitly that a VCC is an intangible property capable of delivery by transfer on a registry. Further, the Working Group should clarify in the Commentary that the VCC itself – rather than only contractual rights against a registry or crediting body – is the relevant proprietary object. That clarification is consistent with Commentary 20.6, which already treats the VCC itself as the collateral asset in secured transactions. Classifying a VCC as an “object of proprietary rights” is important but not sufficient: uniformity is valuable only if the uniform rule is specific enough to be operative, and a rule that is uniform in wording but leaves the classification question to each State’s residual law does not			

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
		deliver the predictability that capital requires. Additionally, the Commentary can make clear that the characterization of an issued VCC as an intangible commodity and an object of proprietary rights addresses only the legal nature of the credit itself. In particular, in the context of jurisdictional REDD+ programs, that characterization should not be understood to determine ownership of the underlying forest or carbon resources, ownership of the underlying emission reductions or removals, or the rights and authority of a State or subnational jurisdiction in relation to its jurisdictional program and the mitigation outcomes generated within its territory, each of which remains a matter for the law of the host jurisdiction.			
10	Principle 3(1); Commentary to Principle 3 – consequences of the current formulation	Without the clarification described in the immediately preceding comment, the current formulation risks two adverse consequences. First, it may prolong confusion in the market, because a rule that an asset is capable of being owned, without a rule as to what kind of asset it is, does not answer the questions that transaction parties, lenders, custodians and insolvency practitioners actually ask. Second, certain jurisdictions may adopt implementing rules classifying VCCs as sui generis instruments, licences, bundles of contractual rights, securities or other product types, with adverse consequences for market development and cross-border consistency, including divergent perfection and priority regimes and divergent insolvency outcomes. Comparative experience with EU emissions trading system allowances, where Member States adopted differing classifications ranging from property to administrative rights to			

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
		mixed regimes, illustrates that fragmentation risk. These comments therefore recommend that the Commentary state expressly that nothing in the Principles is inconsistent with the characterization of a VCC under the law of an implementing State as an intangible non-financial commodity capable of physical delivery.			
SECTION II: PRIVATE INTERNATIONAL LAW					
SECTION III: CREATION AND TRANSFER					
11	Section III (creation and transfer); Commentary – delivery by registry transfer	Consistent with Comment 9, these comments recommend that the Commentary confirm that transfer by debit and credit of registry accounts constitutes delivery of the VCC itself, and not merely the assignment of a contractual claim against the registry or crediting body. Standard VCC documentation commonly employs sale, delivery, title and risk-of-loss concepts familiar from physical commodity trading: market-standard delivery mechanics require a seller to “sell and deliver” and a buyer to “buy and accept delivery” of VCCs, with title and risk of loss passing from seller to buyer at delivery. Expressly aligning the Principles with that settled transactional practice would give the transfer rules operative content and would avoid the need for implementing States to resolve the delivery question through residual law.			
SECTION IV: RETIREMENT AND CANCELLATION					

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
SECTION V: ILLEGALITY					
SECTION VI: REGISTRY					
12	Section VI (registry); Commentary – presumption as to the registered holder	The terms of use of major VCC registries, including Verra and Gold Standard, currently disclaim any responsibility on the part of the registries for determining the ownership of, or legal title to, carbon credits. Those registries effectively function as record-keeping systems for the convenience of market participants, without accepting responsibility for title assurance. These comments recommend that the Commentary address this gap and encourage implementing States to establish a legal presumption that, absent evidence of contrary custody arrangements or documented competing interests, the registered holder of a VCC is the person with proprietary rights in the VCC. Such a presumption would align the registry-centered framework of the Draft Principles with the practical reality that market participants and lenders consult the registry as the primary source of information about VCC ownership.			
SECTION VII: CUSTODY					

Comment No.	Topic / Principle / Paragraph	Comment	Respondent Name	Respondent Title / Organisation	Respondent Country
SECTION VIII: SECURED TRANSACTIONS					
SECTION IX: INSOLVENCY					

**Response to consultation on draft UNIDROIT Principles on the
Legal Nature of Verified Carbon Credits**

September 2026

Background

Established in 1961, the WFE is the global industry association for exchanges and clearing houses. Headquartered in London, it represents the providers of over 250 pieces of market infrastructure, including standalone CCPs that are not part of exchange groups. Of our members, 39% are in Asia Pacific, 41% in EMEA and 19% in the Americas region. The WFE's 74 member CCPs and clearing services collectively ensure that risk takers post some USD 1.4 trillion (equivalent) of resources to back their positions, in the form of initial margin and default fund requirements. WFE exchanges are home to over 41,000 listed companies, and the market capitalization of these entities is over \$137 trillion; around \$198.5 trillion in trading annually passes through WFE members (at end-2025).

The WFE is the definitive source for exchange-traded statistics and publishes over 350 market data indicators. Its free statistics database stretches back 50 years and provides information and insight into developments on global exchanges. The WFE works with standard-setters, policy makers, regulators and government organisations around the world to support and promote the development of fair, transparent, stable and efficient markets. The WFE shares regulatory authorities' goals of ensuring the safety and soundness of the global financial system.

With extensive experience of developing and enforcing high standards of conduct, the WFE and its members support an orderly, secure, fair and transparent environment for investors; for companies that raise capital; and for all who deal with financial risk. We seek outcomes that maximise the common good, consumer confidence and economic growth. And we engage with policymakers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in a globally integrated financial system. If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal.¹

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¹ Our EU Transparency Register number is 973382524675-69

Introduction

Voluntary Carbon Markets (VCMs) are expected to play an increasingly important role in enabling companies to offset residual emissions, demonstrate their commitment to the transition to a low-carbon economy and meet their Net Zero commitments. As a result, demand for Verified Carbon Credits (VCCs) is expected to grow significantly and VCMs are becoming more sophisticated to meet evolving demand and satisfy increasing scrutiny over companies' transition progress and commitments.

One factor impeding the growth of VCMs is that VCCs do not receive clear and consistent legal treatment internationally. This lack of clarity and consistency impacts market confidence, deterring prospective market participants, hinders cross-border activity and creates uncertainty around how VCCs should be treated in other contexts, such as accounting and tax. Where jurisdictions have legislated to provide legal certainty, the clarification provided is often limited to Carbon Credits issued under regulatory schemes, rather than VCCs issued by independent Crediting Bodies (CBs).

The International Institute for the Unification of Private Law (UNIDROIT) is seeking to address the global lack of consistency and clarity through its draft internationally applicable Principles for the legal treatment of VCCs that jurisdictions may adopt in domestic legislation and/or guidance. The WFE and its Members would like to take this opportunity to support UNIDROIT's efforts to improve global consistency and clarity, reduce barriers to VCM participation and cross-border activity, address fragmented liquidity, decrease transactional risk and costs, and build market confidence.

Response

The WFE supports the overarching objectives of the UNIDROIT draft Principles and UNIDROIT's use of existing legal structures and classifications to avoid unnecessary complexity, unintended consequences and market friction. In particular, the WFE would like to express support for:

1. **Creating Principles for clear and consistent legal treatment of VCCs in and across jurisdictions internationally.** Improving international clarity and consistency will support market confidence, encourage prospective market participants, facilitate cross-border activity, decrease transactional risk and costs, address fragmented liquidity and lay the groundwork for how VCCs should be treated in respect to accounting and tax. In particular, the proposals on how to deal with questions of legal domain, reversals of GHG mitigation outcomes, VCCs obtained through wrongful means, VCC nullification, VCCs created as a result of deliberate wrongdoing, and instances of overissuance could settle questions that many jurisdictions and market participants are currently grappling with and facilitate cross-border activity. Coupled with the widespread adoption of global quality assurance frameworks such as the Integrity Council for the Voluntary Carbon Market, this will support VCM growth.

2. **The flexible approach taken to implementation in the Principles.** The Principles are designed to be appropriate for all types of market and legal systems (including both civil and common-law systems). This will facilitate their application in any jurisdiction and support consistent international adoption, facilitating cross-border activity and liquidity. Additionally, the Principles enable States to choose whether, how and to what extent to include the Principles within their private law. This will support broad uptake, including by States that already have laws in place relating to some of the issues covered. It will also enable States to reflect targeted jurisdiction-specific considerations in their implementation.
3. **Encouraging adopting national competent authorities to deviate only where necessary.** Where national competent authorities elect to implement the UNIDROIT Principles, the WFE would encourage them to prioritise international consistency by deviating from the global Principles only where necessary to accommodate jurisdictional realities and needs. Taking this approach avoids unnecessary fragmentation that would likely impede the growth of VCMs.

Additionally, WFE Members raised a number of areas that could warrant further exploration by UNIDROIT, specifically:

1. Whether the Principles could helpfully provide examples of prospective contractual arrangements that could be deployed to mitigate losses stemming from events such as reversals (making it clear to the reader how the legal system as a whole could function to maintain the effectiveness and efficiency of carbon markets). For example, the Principles could suggest that contractual arrangements may be made to nominate a named liable party, e.g. a Performance Guarantor, that absorbs the buyer's exposure in instances such as revocation where *bona fide* exceptions are not available because the VCC is rendered void *ab initio*.
2. Confirming whether a VCC that has already been retired remains exposed to cancellation for revocation under the current draft. Principles 8-10 do not appear to exclude the exposure of retired VCCs to cancellation for revocation and the void *ab initio* effect in Principle 10(4), together with the commentary in 10.25, suggests that this exposure may exist. If retired VCCs are exposed to cancellation for revocation, the WFE would encourage UNIDROIT to explore making retirement an unconditional bar to cancellation for revocation for holders with no knowledge of the wrongdoing at the time of retirement and, potentially, substitution mechanisms for the relevant climate activities to preserve market certainty. The Principles already propose mitigations to preserve market certainty in cases of overissuance where jurisdictions have elected to retain the orthodox principle of *nemo dat quod non habet*. Making retirement an unconditional bar to cancellation for revocation and exploring introducing mandatory substitution mechanisms would remove material pricing uncertainty and ensure that a compliance submission or claim, once made honestly, is final.

In relation to tokenisation, the consultation notes that a tokenised VCC does not automatically carry the legal rights of the original, meaning tokenisation can create a separate asset rather than a digital wrapper of the asset. The WFE would like to take this opportunity to direct UNIDROIT to the [WFE's work on 'mimic tokens'](#) recommend UNIDROIT considers tokenisation only once the liability structure has been clarified.

Though they do not directly fall within UNIDROIT's private-law remit, two further focuses that could boost growth in voluntary carbon markets are: 1) safe-harbour provisions that protect market participants and 2) clarity on the role that VCCs should play in companies' wider sustainability, Net Zero and transition planning efforts. UNIDROIT should consider whether they are able to provide guidance on these issues and, wherever possible, indicate where safe-harbour provisions and further clarity on the role of VCCs would complement the UNIDROIT Principles and support further growth in VCMs. Progress in these areas would help companies navigate evolving disclosure and claims-related expectations while reducing legal and reputational risks associated with allegations of greenwashing.

The WFE and its Members stand ready to discuss the issues raised in the consultation with UNIDROIT, national competent authorities and policy makers, as well as interested market participants.