



**ASIC**

Australian Securities & Investments Commission

**REPORT 283**

# **Response to submissions on CP 175 Carbon markets: Training and financial requirements**

May 2012

## **About this report**

This report highlights the key issues that arose out of the submissions received on Consultation Paper 175 *Carbon markets: Training and financial requirements* (CP 175) and details our responses in relation to those issues.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) and Regulatory Guide 166 *Licensing: Financial requirements* (RG 166).

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## A Overview

- 1 In Consultation Paper 175 *Carbon markets: Training and financial requirements* (CP 175), we consulted on proposals to apply our current training and financial requirements policies for financial product advisers to persons likely to require an Australian financial services (AFS) licence to provide financial services in relation to regulated emissions units.
- 2 This report highlights the key issues that arose out of the submissions received to CP 175 and our responses to those issues.
- 3 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 175. We have limited this report to the key issues.
- 4 For a list of the non-confidential respondents to CP 175, see the appendix. Copies of the submissions are on the ASIC website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 175.

### ASIC's role in carbon markets

- 5 Through its Clean Energy Legislative Package, the Australian Government has introduced a carbon pricing mechanism, which will operate from 1 July 2012. Under the carbon pricing mechanism, certain entities (liable entities) will face a charge for their carbon emissions, unless they acquire and surrender the number of emissions units that represents their total annual emissions.

Note: The Clean Energy Legislative Package includes the *Clean Energy Act 2011* (Clean Energy Act) the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act), and the *Australian National Registry of Emissions Units Act 2011* (ANREU Act).

- 6 Three types of emissions units are recognised under the carbon pricing mechanism:
  - (a) carbon units issued by the Clean Energy Regulator under the Clean Energy Act;
  - (b) Australian carbon credit units (ACCUs), which may be generated via carbon offset projects under the Carbon Farming Initiative; and
  - (c) eligible international emissions units (EIEUs)—various types of internationally traded units that meet the requirements of the ANREU Act, including certain units issued in accordance with the rules of the Kyoto Protocol.

In this report, we refer to these types of emissions units recognised under the carbon pricing mechanism as 'regulated emissions units'.

- 7 Regulated emissions units (as outlined at paragraph 6) will be financial products under the *Corporations Act 2001* (Corporations Act), with effect from 1 July 2012.

Note: The *Clean Energy (Consequential Amendments) Act 2011* deems that carbon units are financial products for the purposes of the Corporations Act and the ASIC Act from 1 July 2012. Similarly, the *Carbon Credits (Consequential Amendments) Act 2011* deems that ACCUs and EIEUs are financial products. Regulation 7.1.071 specifies that ACCUs and EIEUs are not financial products before 1 July 2012.

- 8 This means that, from this date, persons may require an AFS licence to carry on a financial services business for regulated emissions units. Under transitional arrangements, persons will have from 1 May to 30 June 2012 to register their intention to provide financial services in relation to emissions units, and then they will then have from 1 July to 31 October 2012 to apply for a new AFS licence or variation to an existing licence: see reg 7.6.02AGA, inserted by Corporations Amendment Regulation 2012 (No 1). Visit [www.asic.gov.au](http://www.asic.gov.au) for more information on the transitional arrangements.

## Our policies on adviser training and financial requirements

- 9 All AFS licensees are required to comply with certain general conduct obligations.
- 10 Part of this is ensuring their organisation and representatives are able to provide the types of financial services authorised by the licence by:
- (a) maintaining the competence to provide the financial services covered by their licence (s912A(1)(e)); and
  - (b) ensuring that their representatives are adequately trained and competent to provide these financial services (s912A(1)(f)).
- 11 As part of our role as regulator of the financial services industry, we are responsible for providing guidance on the training advisers should undertake before providing financial product advice to retail clients. We have set minimum standards for the training of all advisers providing financial product advice to retail clients, as described in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).
- 12 In addition to the obligations described in paragraph 10, AFS licensees are required to maintain:
- (a) adequate resources to provide the financial services covered by their licence and to carry out supervisory arrangements (s912A(1)(d)); and
  - (b) adequate risk management systems (s912A(1)(h)).

- 13 We have set financial requirements that AFS licensee must meet, according to the types of financial service they provide. These are explained in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) and apply to AFS licensees by way of conditions on their AFS licence.

## Consultation Paper 175

- 14 ASIC has provided a range of general guidance to AFS licensees on their conduct and disclosure obligations under legislation. Much of this guidance is general in nature and applies to all AFS licensees, and will not require any amendments specifically relating to emissions units. However, our policies on adviser training and financial requirements do contain requirements that are specific to different types of financial services and products. We initiated the consultation through CP 175 in order to determine how these policies should apply to financial services provided in relation to emissions units.
- 15 In relation to applying our guidance on adviser training requirements to emissions units (RG 146), in CP 175 we proposed to:
- (a) characterise emissions units as ‘Tier 1’ products for the purposes of RG 146;
  - (b) publish a new table of specialist knowledge requirements for regulated emissions units in RG 146;
  - (c) allow advisers 18 months from the commencement of the regulation of emissions units under Ch 7 of the Corporations Act to complete the training requirements.
- 16 In relation to applying our policy on financial requirements to regulated emissions units (RG 166), in CP 175 we proposed to apply the current requirements set out in RG 166 to AFS licensees providing financial services for regulated emissions units, unless they are exempt (i.e. because they are regulated by the Australian Prudential Regulation Authority (APRA), or follow the financial requirements applying to a participant of a licensed market or clearing and settlement facility).

## Responses to consultation

- 17 We received five written responses to CP 175, including one confidential submission. We are grateful to respondents for taking the time to provide us with their comments.
- 18 We received comments from respondents in relation to the following issues:
- (a) the specialist knowledge that advisers should apply in relation to regulated emission units, and whether regulated emissions units should

be characterised as Tier 1 products for the purposes of the training requirements;

- (b) the transitional arrangements that should apply to advisers providing advice in relation to regulated emissions units, to allow them to complete training;
- (c) financial requirements for AFS licensees providing financial services in relation to regulated emissions units; and
- (d) general transitional arrangements for the licensing of persons intending to provide financial services in relation to regulated emissions units.

19 Section B provides more details on the issues raised, and our response to these issues. For a list of the respondents to CP 175, see the appendix.

## B Response to submissions on CP 175

### Key points

This section outlines the key issues covered in submissions to CP 175 and our response to these issues.

It covers:

- guidance on adviser training for regulated emissions units;
- transitional arrangements for advisers completing training;
- financial requirements for AFS licensees providing financial services in relation to regulated emissions units; and
- general transitional arrangements for the licensing of persons intending to provide financial services in relation to regulated emissions units.

### Guidance on adviser training for regulated emissions units

- 20 Respondents to CP 175 were very supportive of our proposal to categorise regulated emissions units as Tier 1 products. Respondents considered that these products are sufficiently complex to justify the imposition of the more advanced Tier 1 training standards.
- 21 Some respondents provided direct feedback on the draft new specialist knowledge training requirements for regulated emissions units set out in CP 175 (proposed knowledge requirements). They generally felt that the proposed knowledge requirements did not sufficiently cover all relevant risks and characteristics of regulated emissions units and carbon markets, and suggested additional content. They also asked ASIC to provide more guidance on the expected depth of knowledge in each area of content.
- 22 Some respondents argued that the proposed knowledge requirements did not adequately reflect current industry terminology when distinguishing between trading for compliance with the requirements of the carbon pricing mechanism and trading for voluntary purposes. They asked us to amend the language we use in RG 146 to refer to ‘Corporations Act-regulated’ versus ‘voluntary’ markets.
- 23 One respondent also submitted that the proposed knowledge requirements covered some unnecessary areas, including the status of regulated emissions units as personal property.



### *ASIC's response*

As a result of this feedback, we have implemented our proposal to categorise emissions units as Tier 1 products.

We have also generally taken respondents' proposed additional content into account in finalising the specialist knowledge requirements, and included a number of new items: see new Appendix A2.11 of RG 146. These additional areas emphasise a deeper understanding of the dynamics of carbon markets and the objectives of carbon market participants, as well as liquidity, pricing, credit, operational and regulatory risks associated with these markets.

In relation to respondents' request for us to provide more guidance on the expected depth of knowledge in each area of content, in RG 146 we state that the Tier 1 education level is broadly equivalent to the 'Diploma' level under the Australian Qualifications Framework: RG 146.6. Innovation and Business Skills Australia (IBSA), the relevant Industry Skills Council for the financial services industry, will specify the elements required to complete a unit of competency in regulated emissions units at the Diploma level under the Australian Qualifications Framework from the required knowledge we have established. This is done through FNS10 *Financial Services Training Package* (available at [www.training.gov.au](http://www.training.gov.au)), an integrated set of nationally endorsed competency standards, assessment guidelines and Australian Qualifications Framework qualifications for the financial services industry.

Nevertheless, in finalising the specialist knowledge requirements we have tried to ensure that the table of specialist knowledge better defines each area of content, to provide more guidance to course providers.

In relation to respondents' request for us to use language that distinguishes between 'Corporations Act-regulated' versus 'voluntary' markets, we do not consider this to be an appropriate distinction. Where regulated emissions units are traded in the context of voluntary markets, they still have the status of financial products under the Corporations Act. Financial services provided in relation to these units in the context of voluntary markets are still regulated under the Corporations Act.

Therefore, we have decided that we will continue to distinguish between financial services provided in relation to regulated emissions units for the purposes of the carbon pricing mechanism (i.e. for the 'compliance' market), and those provided for voluntary carbon markets.

While we have considered the feedback that it is unnecessary to cover the status of regulated emissions units as personal property, we think this is an essential characteristic of regulated emission units, and have retained this in the final specialist knowledge. However, we would not expect that this single area would be covered in a disproportionate amount of depth in any training course.

## Transitional arrangements for advisers completing training

- 24 Respondents to CP 175 noted that successful completion of the training requirements within the proposed 18-month timeframe will consist of a number of essential steps occurring successfully. This includes the inclusion of a new unit of competency on emissions units within FNS10 and accreditation through the Australian Skills Quality Authority (ASQA).
- 25 Generally, all respondents that made submissions on the training requirements considered that an 18-month transitional period was sufficient, on the proviso that these requirements are satisfied and courses become available within a timely period.
- 26 Some respondents suggested that the safest approach to account for all contingencies would be for a transitional period to commence from the point at which training courses become available.

### *ASIC's response*

Based on the feedback we received to CP 175, we have decided to implement the proposed transitional period of 18 months from the commencement of the regulation of emissions units as financial products for advisers to comply with the training requirements (i.e. from 1 July 2012). This would involve offering licensees a licence on the condition that they and/or all of their representatives complete the necessary training within the required period.

We are confident that the transitional period should give sufficient time for the necessary accreditation to occur, for course providers to develop courses, and for advisers to complete those courses. We will continue to assist this process, by meeting with relevant stakeholders and monitoring the development of courses.

We have decided not to initiate the transitional period from the point at which training courses become available, as this could lead to inconsistencies in approach and confusion among advisers. We think that it is preferable to set a definite date by which advisers must complete training at this stage, to provide certainty.

## Financial requirements for regulated emissions units

- 27 All respondents that made submissions on the proposed financial resource requirements agreed with the approach of applying the current requirements of RG 166 to carbon market participants unchanged, in order to ensure that AFS licensees providing financial services in relation to emissions units will have a robust financial basis for their businesses.

28 Some expressed concern that new AFS licensees and smaller businesses would find it more difficult to comply with the financial requirements than larger businesses and current AFS licensees.

*ASIC's response*

Based on the feedback we received to CP 175, we have decided to implement our proposed approach to financial requirements for AFS licensees providing financial services in relation to regulated emissions units.

In relation to concerns that some new entrants and smaller business may find it difficult to comply, it should be noted that ASIC applies two levels of financial requirements:

- the base level financial requirements that apply to all licensees; and
- additional financial requirements that apply in more limited circumstances, where we have assessed that a type of service raises particular financial risks that require the holding of additional assets.

Unless they fall into specific categories that trigger the additional requirements, many licensees will only need to meet the base level requirements. As detailed in Section B of RG 166, the base level financial requirements are essentially to:

- remain solvent at all times;
- have total assets exceeding total liabilities; and
- have sufficient cash to meet projected needs over a specified period (generally the next three months).

Most licensees that just provide financial product advice or deal on behalf of others (e.g. brokers) will only be required to meet the base level requirements.

An exception that may arise is where such licensees hold client money or property exceeding \$100,000 in value. These licensees are required to hold \$50,000 in surplus liquid funds: see Section E of RG 166.

Additional financial requirements involving the holding of minimum levels of assets are only triggered by specific activities, such as the holding of client money, the operation of various collective investment arrangements, operating a business of dealing in foreign exchange contracts and incurring financial liabilities in the course of providing financial services (e.g. by making a market or issuing derivatives): see Sections C–G of RG 166 for more details.

## Transitional arrangements for licensing in relation to regulated emissions units

- 29 A number of submissions to CP 175 expressed concern that there would not be sufficient time for licensing if emissions units were to become financial products from 1 July 2012 with no concession on transitional arrangements.

### *ASIC's response*

Since the closing date for submissions to CP 175, regulations have been made providing transitional arrangements for the licensing of persons intending to provide financial services in relation to regulated emissions units. These will provide such persons with an additional period of time to prepare their AFS licence or licence variation application after 1 July 2012: Corporations Amendment Regulation 2012 (No 1).

Persons can register with ASIC to provide financial services in relation to emissions units between 1 May 2012 and 30 June 2012.

Registered persons will be allowed to provide financial services in relation to emissions units through a financial services business without holding an AFS licence with appropriate authorisations from 1 July 2012, for an initial four-month period to 31 October 2012.

Registered persons must then apply for a new AFS licence or licence variation between 1 July 2012 and 31 October 2012. They may then continue to provide those financial services as a registered person until 31 December 2012. If registered persons do not apply for an AFS licence by 31 October 2012, they must cease to provide those financial services at that point.

All registrations will be cancelled at the end of 31 December 2012, and registered persons that do not hold an AFS licence with appropriate authorisations for emissions units by the end of 31 December 2012 must cease to provide those financial services until they obtain a licence.

More details about the transitional arrangements can be found at [www.asic.gov.au](http://www.asic.gov.au).

## Appendix: List of non-confidential respondents

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- Australian Bankers' Association
  - Australian Financial Markets Association
  - Carbon Markets Institute
  - NSW Young Lawyers Business Law Committee
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