



ASIC

Australian Securities & Investments Commission

Australian financial services licensing and the Carbon Farming Initiative

A fact sheet for farmers and land managers

Australian carbon credit units (ACCUs) issued under the Carbon Farming Initiative (CFI) are 'financial products'.

This fact sheet has been developed by the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Securities and Investments Commission (ASIC) to provide an overview of the regulation of financial services in ACCUs. As a farmer or land manager you can use it to help you understand whether an Australian financial services (AFS) licence is required by you or anyone advising you about your CFI activities, with particular relevance to ACCUs.

This fact sheet is for general guidance only. You should not rely solely on this information and should get professional advice relevant to your individual circumstances.

What is ASIC's role in carbon markets?

ASIC regulates registered companies, financial markets, and providers of financial services under the *Corporations Act 2001* (Corporations Act).

As part of this role, ASIC licenses and supervises financial services businesses that provide 'financial services' in 'financial products'.

Licensees are required to ensure that they operate their services efficiently, honestly and fairly and manage any conflicts of interest.

Licensees are required to meet ongoing financial resource requirements and organisational competence, and ensure that their representatives are trained and competent.

Licensees providing services to retail clients are also required to have adequate dispute resolution processes and client compensation arrangements in place.

What are 'financial services'?

Financial services are the typical services of financial advisers, brokers, dealers and fund managers. They include:

- providing financial product advice
- dealing in a financial product
- making a market for a financial product
- operating a registered managed investment scheme
- providing a custodial or depository service for financial products.

What are 'financial products'?

Financial products include investment and risk management products such as shares, interests in managed funds, insurance, foreign exchange and derivatives. Since 1 July 2012, ACCUs—both Kyoto ACCUs and non-Kyoto ACCUs—are now also financial products under the Corporations Act.

A forward sale of ACCUs for settlement in the future is classed as a derivative. Options to buy ACCUs are also derivatives, as are other complex transactions. Thus, financial service providers will need an AFS licence covering ACCUs (for presently-settled deals) **and** derivatives (for example, forward-settled trades or options) if they wish to deal, or advise or provide other financial services in, **both** types of financial products.

Do you need an AFS licence for your own CFI project?

If you simply undertake a CFI project on your own behalf, and sell the ACCUs issued for the project, you will not usually need an AFS licence.

This applies if you sell your ACCUs as and when they are issued or after you have held them for some time, or if you sell them under a forward sale contract or other derivative contract arrangement.

What are the exceptions for needing an AFS licence?

- **Making a market**—if the way that you sell your ACCUs is as a price-maker, this means regularly stating the price at which other people can reasonably expect to be able to buy your ACCUs or derivatives over ACCUs. Engaging in private price negotiations with another person is not making a market.
- **Significant scale**—if the scale of your ACCU derivatives dealings means you are carrying on a financial services business. The significance of your ACCU derivatives dealings needs to be considered in the context of your total land-use business activities. The larger the scale of your dealings relative to your overall land-use business, the more likely that your dealings are a significant part of your business. Such significance may then indicate that you are carrying on a financial services business. Note that, there is no numerical definition of significance in the Corporations Act.

Does your CFI project adviser or service provider need an AFS licence?

Financial product advice is advice that is intended to influence your decisions in relation to ACCUs. For example, this could be advice about the financial returns you might earn from an investment in a CFI project (which may also be influential in you deciding not to invest), strategies or transactions to sell your ACCUs or about the outlook for or forecast of ACCU prices. Anyone providing such advice requires an AFS licence.

Providing technical information about a current or potential CFI project is not financial product advice. The provision of information could relate to the technical feasibility and costs of implementing a project or projections of the net emissions abatement from the project's performance. People providing this type of information do not require an AFS licence.

What about other financial services providers?

You may use the services of one or more other types of financial services providers, who will also need an AFS licence. This can include:

- brokers who arrange the sale of your ACCUs to buyers
- banks and other traders who state prices to buy your ACCUs
- CFI project investment funds operated as registered managed investment schemes
- organisers of collective pools of ACCUs to access wholesale market prices.

ACCUs might also be traded on exchanges or trading platforms. The operators of these platforms may require an Australian markets licence.

Companies that need units to surrender to the Government for their own emissions may also be direct buyers of your ACCUs but they have exemptions that allow them buy ACCUs without needing an AFS licence. However, if they act as a market-maker or an adviser then the AFS licensing rules apply to them.

How can you check that a financial services provider is authorised by ASIC?

Until 1 January 2013, there are two streams of ASIC authorisations—an AFS licence and an ASIC Carbon Registration.

You can check whether the person you are dealing with has an AFS licence by searching for them on the ASIC Professional Register at <https://connectonline.asic.gov.au>. An AFS licence can cover derivatives and/or ACCUs.

Under a transitional arrangement, financial services providers have been registered with ASIC pending their application for and grant of an AFS licence. This registration only covers ACCUs.

If you cannot locate the person you are dealing with on ASIC's Professional Register, you can check whether a person has been given an interim registration on the ASIC Carbon Register at www.asic.gov.au/carbon.

From 1 January 2013, all registrations will be cancelled and only the holders of AFS licences on the ASIC Professional Register will be authorised to provide financial services in ACCUs and/or derivatives over ACCUs.

Where can you get more information?

ASIC has developed a range of resources to explain its role in the carbon markets and how the financial services licensing regime applies.

The ASIC Regulatory Guide 236 *Do I need an AFS licence to participate in carbon markets?* (RG 236) provides more information on when an Australian financial services licence is required and when exemptions may apply.

For a copy of the guide, visit ASIC's carbon webpage at www.asic.gov.au/carbon or contact ASIC on **1300 300 630**.

For more information on opportunities available to farmers and land managers under the CFI visit the DAFF website at www.daff.gov.au/cfi.