



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 236

Do I need an AFS licence to participate in carbon markets?

May 2015

About this guide

This guide is for those who are involved in carbon abatement activities and who enter into carbon abatement contracts related to the Emissions Reduction Fund, as well as other carbon financial services and markets. It is also relevant for persons advising carbon market participants.

You can use this guide to help you decide whether you need an Australian financial services (AFS) licence to participate in or provide financial product advice and other financial services in relation to carbon markets. This guide also indicates what other information ASIC has published that may be useful for you, and where you can find it.

Note: From 27 July 2020, applications for relief should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

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.

Document history

This version was issued in May 2015 and is based on legislation and regulations as at the date of issue. The note on the front page was inserted on 27 July 2020. In March 2022 we updated RG 236.167(b) (and its note) to reflect the breach reporting reforms that commenced on 1 October 2021.

Previous versions:

- Superseded Regulatory Guide 236, issued 9 March 2012, reissued May 2012, June 2012 and July 2013.

Disclaimer

This guide 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.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A	Overview	4
	Carbon markets in Australia	4
	How to use this guide	6
B	Key concepts in the AFS licensing regime	10
	What are financial products and services?	10
	Who does the financial services regime apply to?	16
C	Which emissions units and related products are financial products?	19
	Australian carbon credit units	19
	Eligible international emissions units	20
	Financial products related to emissions units	21
	Other emissions and environmental units	28
D	When will I be providing a financial service for regulated emissions units?	30
	When will I be providing financial product advice on regulated emissions units?	32
	When will I be dealing in ACCUs or EIEUs?	36
	When will I be making a market in regulated emissions units?	37
	Other financial products and services related to emissions units....	37
	Foreign financial services providers	42
E	If I provide financial services relating to regulated emissions units, do I need a licence?	43
	‘Carrying on a financial services business in Australia’	43
	Licensing exemptions	44
F	Getting and holding an AFS licence	48
	Applying for an AFS licence or variation	48
	AFS licensee obligations	51
	Key terms	55
	Related information	62

A Overview

Key points

Australian carbon credit units (ACCUs), and certain other emissions units, are financial products under the *Corporations Act 2001* (Corporations Act).

This means that you may require an Australian financial services (AFS) licence to carry on a financial services business in relation to these emissions units. Among other things, the Australian Securities and Investments Commission (ASIC) is responsible for administering the AFS licensing regime and keeps a register of all AFS licensees.

You can use this guide to help you determine whether you will need to hold an AFS licence to participate in carbon markets. This guide also indicates what other information ASIC has published that may be useful for you, and where you can find it.

Carbon markets in Australia

- RG 236.1 From 2015, financial services provided in relation to emissions units in Australia are expected to predominantly relate to the activity of the Emissions Reduction Fund (ERF), through which the Australian Government purchases ACCUs, usually under multi-year contracts. The sellers of ACCUs under these contracts are people who carry out ERF projects that generate ACCUs, but they may also deal in ACCUs with other parties (e.g. to balance their actual ACCU position with their contract sale obligations to the Australian Government).
- RG 236.2 An ERF project is a project carried out in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) which allows a person (the 'project proponent') to generate ACCUs through domestic emissions offset projects that avoid or sequester greenhouse gas emissions. The CFI Act refers to the avoidance of emissions or removal from the atmosphere (i.e. sequestration) of one or more greenhouse gases as 'carbon abatement': s5 of the CFI Act.
- RG 236.3 The Clean Energy Regulator is responsible for administering the ERF, this includes:
- (a) registering projects;
 - (b) issuing ACCUs for carbon abatement achieved by registered projects;
 - (c) conducting auctions of offers to sell ACCUs to the Clean Energy Regulator; and
 - (d) accepting offers and entering into contracts for the purchase of ACCUs by the Clean Energy Regulator on behalf of the Australian Government.

Note 1: The Clean Energy Regulator is a statutory entity, with responsibility for administering the ERF, National Greenhouse and Energy Reporting Scheme and the Renewable Energy Target. ASIC is empowered to disclose relevant confidential

information to the Clean Energy Regulator under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Note 2: A contract for the purchase of ACCUs by the Clean Energy Regulator is a 'carbon abatement contract' under the CFI Act. Although auctions are expected to be the main method through which the Clean Energy Regulator arranges to enter into carbon abatement contracts, the CFI Act also provides for a tender process (or any other process) and each of these are a 'carbon abatement purchasing process'. In addition to multi-year carbon abatement contracts, the Clean Energy Regulator may also accept offers to enter into an 'immediate delivery' carbon abatement contract for a single delivery of ACCUs within five business days.

- RG 236.4 In November 2014, the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) was amended to establish the 'emissions reduction safeguard mechanism' (safeguard mechanism), to commence on 1 July 2016. Under the safeguard mechanism, certain designated large facilities must ensure that their net emissions number does not exceed their baseline emissions number at the end of each monitoring period. A facility may reduce its net emissions number by acquiring and surrendering ACCUs and, if specified in the 'safeguard rules', other types of emissions units.

Note: The safeguard rules are to be made by the Minister for the Environment by 1 October 2015.

- RG 236.5 There are also markets through which participants voluntarily offset carbon emissions ('voluntary carbon markets'). Voluntary carbon markets operate in Australia and overseas and trade a variety of emissions units, some of which are financial products in Australia, and some of which are not.

What is ASIC's role in the carbon markets?

- RG 236.6 We are an independent government agency that regulates registered companies, financial markets, and providers of financial services and credit services. We aim to promote fair, orderly and transparent markets, and to support confident and informed participation by investors and financial consumers.
- RG 236.7 Among other things, we licence and monitor financial services businesses to ensure they operate efficiently, honestly and fairly through the AFS licensing system. These businesses provide services in relation to financial products, and are typically involved in superannuation, managed funds, shares, and company securities, derivatives and insurance. We also maintain a register of AFS licensees and authorised representatives of AFS licensees.

Note: Further details on the roles and responsibilities of AFS licensees and their representatives are provided in Sections B and F of this guide.

- RG 236.8 ACCUs and certain other emissions units are also financial products under the Corporations Act. This means that you may require an AFS licence to carry on a financial services business for those types of emissions units: see Section C for further details about which types of emissions units are financial products. This guide refers to emissions units that are financial products as 'regulated emissions units'.

RG 236.9 Other emissions-related financial products include, for example, derivatives over emissions units and interests in managed investment schemes involving carbon abatement activities or emissions units. You may require an AFS licence to carry on a financial services business in relation to these financial products.

Note: The underlying unit to a derivative, or the assets of a managed investment scheme, does not have to be a financial product (e.g. an ACCU) for the derivative or the interest in the managed investment scheme to be a financial product.

RG 236.10 Although the main use of ACCUs and related financial products may be in relation to the ERF or the safeguard mechanism, financial services may also be provided for other purposes (e.g. trading in voluntary carbon markets) and the requirement to hold an AFS licence may also apply in such circumstances.

RG 236.11 In addition to our role in administering the AFS licensing system, we also have some responsibility over financial markets and associated clearing and settlement (CS) facilities.

Note 1: A financial market is a facility through which offers to acquire or dispose of financial products are regularly made or accepted: s767A. A CS facility is a facility providing a regular mechanism for parties to transactions relating to financial products to meet obligations to each other: s768A.

Note 2: In this document, references to sections (s), divisions (Divs), parts (Pts) and chapters (Chs) are to the Corporations Act, unless otherwise specified; references to regulations (regs) are to the Corporations Regulations 2001 (Corporations Regulations), unless otherwise specified.

RG 236.12 Generally, unless exempt, a person requires an Australian market licence to operate a financial market in Australia, and a CS facility licence to operate a CS facility in Australia. These licences are granted by the Minister, on ASIC's advice (and, for CS facility licences, the Reserve Bank of Australia's advice). Financial markets and CS facilities that facilitate the trading, or clearing and settlement, of regulated emissions units in Australia will generally also require an Australian market licence or an exemption.

Note: The regulation of financial markets is beyond the scope of this guide: see Regulatory Guide 172 *Australian market licences: Australian operators* (RG 172) for more details. A similar approach to the regulation of financial markets applies to licensed CS facilities: see Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211).

How to use this guide

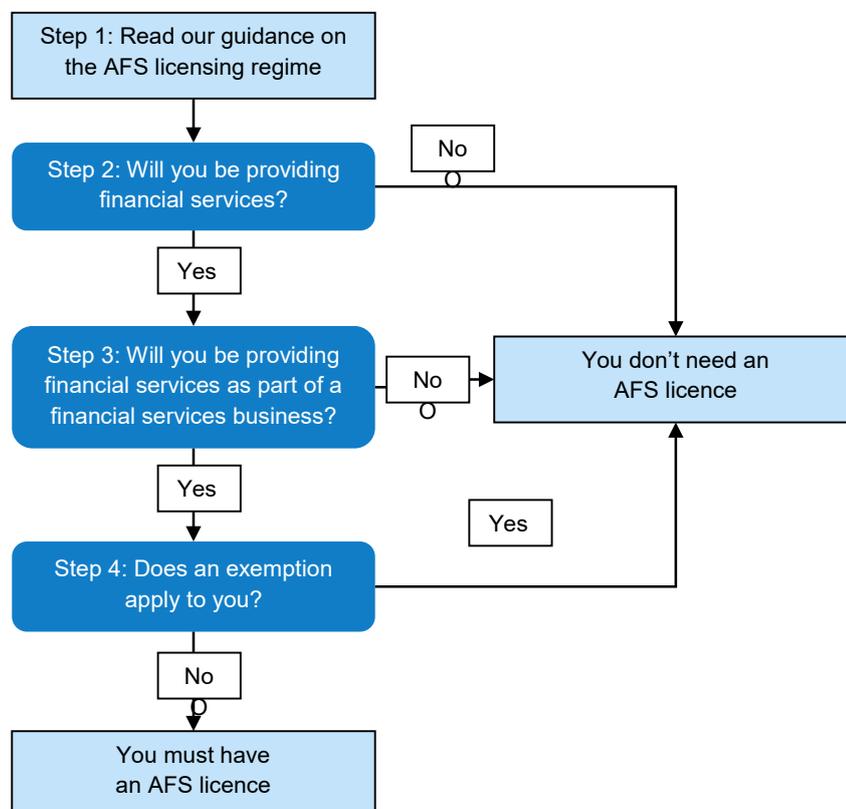
RG 236.13 You can use this guide to help you decide whether you require an AFS licence to participate in carbon markets. Table 1 provides an overview of the topics covered in this guide. We have also developed a range of other guidance for AFS licensees that may be useful to you: see Table 3.

Table 1: Topics covered in this guide

Topic	Section
Overview of the AFS licensing regime	Section B
How the financial services laws apply to regulated emissions units and the carbon markets	Sections C and D
When you are likely to require an AFS licence for regulated emissions units	Section E
How to apply for an AFS licence, or vary an existing licence, and conduct expected of licensees	Section F

RG 236.14 Once you hold an AFS licence, you will also need to meet ongoing requirements of the Corporations Act and ASIC Act: see Section F.

RG 236.15 Figure 1 provides an overview of the steps to take to work out whether you need an AFS licence to provide financial services for regulated emissions units. Table 2 explains each of the steps in further detail, and Table 3 lists the guidance we have provided for AFS licensees and licence applicants. 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.

Figure 1: Steps in deciding whether you need an AFS licence*

* A responsible entity of a registered managed investment scheme is required to hold an AFS licence whether or not they provide financial services as part of a financial services business: s601FA.

Table 2: Description of the steps in deciding whether you need an AFS licence

Step	Description
Step 1: Read our guidance on the licensing regime	<p>Read the information provided on the licensing regime in this guide, as well as our range of regulatory guides for licensees: see Table 3. In particular, see:</p> <ul style="list-style-type: none"> • Regulatory Guide 36 <i>Licensing: Financial product advice and dealing</i> (RG 36) on what constitutes dealing in and advising on a financial product; and • Regulatory Guide 104 <i>Licensing: Meeting the general obligations</i> (RG 104) on the conduct that is required of a licensee.
Step 2: Determine whether you are likely to be providing financial services	<p>Review the kinds of activities you will engage in through your participation in carbon markets and determine if the law requires you to hold an AFS licence. You can use our guidance to help you decide whether these will fall within the definition of 'financial services'. We also encourage you to seek your own professional advice.</p>
Step 3: Determine whether you are providing those services as part of a financial services business in Australia	<p>If you will be providing financial services, this does not necessarily mean you will require a licence. You only require a licence to provide financial services while carrying on a business in Australia or operating a registered managed investment scheme: see Section E for more guidance on when you will be carrying on a financial services business.</p>
Step 4: Determine whether any exemption applies to you	<p>Some persons who carry on a financial services business are exempt from the need to hold a licence: see Section E for more guidance on exemptions that may apply to you.</p>

Table 3: ASIC guidance for AFS licensees and licence applicants

Preparing your licence application	<p>Regulatory Guide 1 <i>AFS Licensing Kit: Part 1—Applying for and varying an AFS licence</i> (RG 1)</p> <p>Regulatory Guide 2 <i>AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application</i> (RG 2)</p> <p>Regulatory Guide 3 <i>AFS Licensing Kit: Part 3—Preparing your additional proofs</i> (RG 3)</p> <p>Pro Forma 209 <i>Australian financial services licence conditions</i> (PF 209)</p> <p>Information Sheet 156 <i>Regulated emissions units: Applying for or varying an AFS licence</i> (INFO 156)</p>
Meeting your licensing, conduct and disclosure obligations	<p>Regulatory Guide 36 <i>Licensing: Financial product advice and dealing</i> (RG 36)</p> <p>Regulatory Guide 104 <i>Licensing: Meeting the general obligations</i> (RG 104)</p> <p>Regulatory Guide 105 <i>Licensing: Organisational competence</i> (RG 105)</p> <p>Regulatory Guide 126 <i>Compensation and insurance arrangements for AFS licensees</i> (RG 126)</p> <p>Regulatory Guide 146 <i>Licensing: Training of financial product advisers</i> (RG 146)</p> <p>Regulatory Guide 165 <i>Licensing: Internal and external dispute resolution</i> (RG 165)</p> <p>Regulatory Guide 166 <i>Licensing: Financial requirements</i> (RG 166)</p> <p>Regulatory Guide 167 <i>Licensing: Discretionary powers</i> (RG 167)</p> <p>Regulatory Guide 175 <i>Licensing: Financial product advisers—Conduct and disclosure</i> (RG 175)</p> <p>Regulatory Guide 181 <i>Licensing: Managing conflicts of interest</i> (RG 181)</p>

**Managed
investment
schemes**

Regulatory Guide 80 *Managed investment schemes: Interests not for money* (RG 80)

Regulatory Guide 132 *Managed investments: Compliance plans* (RG 132)

Regulatory Guide 133 *Managed investments and custodial or depository services: Holding assets* (RG 133)

Regulatory Guide 134 *Managed investments: Constitutions* (RG 134)

Regulatory Guide 136 *Managed investments: Discretionary powers and closely-related schemes* (RG 136)

Note: See [our website](#) for our regulatory guidance, information sheets and pro formas.

B Key concepts in the AFS licensing regime

Key points

Two key concepts in the financial services regime are ‘financial products’ and the range of ‘financial services’ provided to clients for those products: see RG 236.19–RG 236.44.

Generally, a person requires an AFS licence to carry on a business of providing financial services in Australia, unless they are exempt. In many cases, a licensee carries out its business through its ‘representatives’: see RG 236.45–RG 236.48.

The financial services regime recognises two different types of clients—‘wholesale’ and ‘retail’: see RG 236.49–RG 236.50.

RG 236.16 This section provides a brief introduction to some key concepts of the AFS licensing regime.

Note: You can find more detailed information on the AFS licensing regime by referring to Ch 7 of the Corporations Act.

RG 236.17 The types of financial services provided by a person will determine what specific authorisations they require: see Section F for more details about licence authorisations.

RG 236.18 Each AFS licence is subject to various conditions. PF 209 sets out the standard licence conditions which, subject to individual circumstances, will usually be applied to licences authorising a person to provide financial services. There are also prescribed conditions for all licences that are set out in reg 7.6.04 of the Corporations Regulations, which apply in addition to the conditions in PF 209.

Note: See [our website](#) to view PF 209.

What are financial products and services?

Financial products

RG 236.19 A ‘financial product’ is a facility that allows a person to make a financial investment, manage a financial risk or make non-cash payments. s763A. In addition to regulated emissions units, s764A specifies that the following are financial products:

- (a) shares;
- (b) debentures;
- (c) interests in a managed investment scheme;

- (d) derivatives;
- (e) foreign exchange contracts that are not derivatives;
- (f) general insurance;
- (g) life insurance;
- (h) superannuation;
- (i) basic deposit products and other deposit products;
- (j) retirement savings accounts; and
- (k) margin lending facilities.

Note: The definition of ‘financial product’ is found in Div 3 of Pt 7.1. See Section C for further details about which types of emissions units are financial products.

RG 236.20 A facility or arrangement that is not specified in s764A may still fall within the general definition of a financial product, in particular as a facility through which, or through the acquisition of which, a person makes a financial investment: s763B. Generally, a person (the investor) makes a financial investment if:

- (a) the investor gives money or money’s worth (the contribution) to another person and either:
 - (i) the other person uses the contribution to generate a financial return, or other benefit, for the investor;
 - (ii) the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor; or
 - (iii) the other person intends that the contribution will be used to generate a financial return, or other benefit, for the investor; and
- (b) the investor does not have day-to-day control over the use of the contribution to generate the return or benefit.

RG 236.21 Some arrangements in carbon markets (that are not another type of financial product) may be a financial product as a facility for making a financial investment: see RG 236.68 and RG 236.83.

A carbon abatement contract under the CFI Act

RG 236.22 Certain products are also specified in s765A, or declared under regulations made for s765A, as not being financial products.

RG 236.23 Regulation 7.1.07J, as made for s765A, declares that a carbon abatement contract is not a financial product. Consequently, an AFS licence is not required to, for example, provide advice about a carbon abatement contract or deal in a carbon abatement contract.

Financial services

RG 236.24 The AFS licensing regime is structured around whether a person is providing a financial service. Generally, you are providing a financial service if you:

- (a) provide financial product advice;
- (b) deal in a financial product;
- (c) make a market for a financial product;
- (d) operate a registered managed investment scheme;
- (e) provide a custodial or depository service; or
- (f) provide traditional trustee company services.

Note: See Div 4 of Pt 7.1 for provisions on when a person provides a financial service. While a person may be providing traditional trustee company services in relation to regulated emissions units, such services are generally beyond the scope of this guide. See Regulatory Guide 121 *Doing financial services business in Australia* (RG 121) at RG 121.36–RG 121.37 for further details.

What is the meaning of ‘provide financial product advice’?

RG 236.25 A recommendation or a statement of opinion, or a report of either of those things, constitutes ‘financial product advice’ if it is provided with the intention of influencing a person’s decision on a financial product—or could reasonably be regarded as being intended to have such an influence: s766B.

RG 236.26 Simply providing factual information (i.e. objectively ascertainable information the truth or accuracy of which cannot be reasonably questioned) will generally not involve the expression of opinion or a recommendation and will not, therefore, constitute financial product advice.

Example 1: Factual information vs financial product advice

A person is informed of the volume-weighted average price for ACCUs, as published by the Clean Energy Regulator, in the carbon abatement contracts entered into at an ERF auction.

This would constitute factual information rather than financial product advice.

RG 236.27 However, it is also important to consider the overall context in which the information is presented. For example, where factual information is presented in a manner that may reasonably be regarded as suggesting or implying a recommendation to buy, sell or hold a particular financial product, it may constitute financial product advice.

Note: For more information about what constitutes financial product advice, and examples illustrating the distinction between factual information and financial advice, see Section B of RG 36.

- RG 236.28 There are two types of financial product advice—personal and general advice. Personal advice is financial product advice given or directed to a person (including by electronic means) in circumstances where:
- (a) the provider of the advice has considered one or more of the person’s objectives, financial situation and needs; or
 - (b) a reasonable person might expect the provider to have considered one or more of those matters.

All other financial product advice is general advice.

Note 1: The definition of ‘personal advice’ is set out in s766B(3).

Note 2: For further information about the distinction between personal and general advice, see RG 175.43–RG 175.54.

- RG 236.29 Advice given in some situations is exempt from the definition of ‘financial product advice’: see RG 36.31–RG 36.34. While these exemptions generally apply in limited, specific circumstances (e.g. providing advice about the taxation implications of a financial product in certain circumstances), a broader exemption applies to the provision of advice that is not about a particular financial product and is not intended, and could not reasonably be regarded as intended, to influence a person in making a decision on a particular financial product, and the adviser or its associates will not receive any remuneration, commission or other benefit for the advice: reg 7.1.33G.
- RG 236.30 General advice (but not personal advice) provided by issuers of financial products (e.g. interests in a managed investment scheme or derivatives) is also exempt in circumstances where the product issuer:
- (a) prepares general advice about the issuer’s own product(s), but only where a third-party licensee gives the advice to the recipients (see RG 36.34(l)); or
 - (b) provides general advice about the issuer’s own products in circumstances where the issuer is not licensed to provide financial product advice and, at the time of giving the advice, the issuer advises the client that it is not licensed and, if appropriate, recommends that the client obtain and read a copy of the Product Disclosure Statement (PDS) or Short-Form PDS for the product before making a decision about the product, and notifies the client about any cooling-off period (see RG 36.34(p)).

- RG 236.31 If you provide information to other persons on regulated emissions units that may influence a person’s decision about a financial product in the context of carbon markets or otherwise, this may constitute financial product advice. Similarly, information provided on financial products that are associated with emissions units in some way (e.g. derivatives and managed investment schemes) may also constitute financial product advice. For information and examples of when information provided in the context of carbon markets may be financial product advice, see Section D.

What is the meaning of ‘deal in a financial product’?

- RG 236.32 Unless exempt, the following conduct may constitute ‘dealing in a financial product’:
- (a) applying for or acquiring a financial product;
 - (b) issuing a financial product;
 - (c) for securities or managed investment schemes, underwriting the securities or interests;
 - (d) varying a financial product; or
 - (e) disposing of a financial product.
- RG 236.33 However, if a person is simply dealing on their own behalf (e.g. acquiring the legal and economic interests in a financial product for themselves), this is not an activity that requires an AFS licence, unless the dealing consists of issuing a financial product. Therefore, the main types of dealing regulated under the financial services laws are:
- (a) a dealing by a person on another’s behalf, for example:
 - (i) as an arranger of a transaction between other parties;
 - (ii) as an agent binding their principal as a party to a transaction; or
 - (iii) as a principal on behalf of another person with a beneficial interest in the transaction; and
 - (b) issuing a financial product (including issuing a derivative or an interest in a managed investment scheme).
- Note: For more information on dealing in financial products, including where arranging and acting as an agent, see RG 36.42–RG 36.49.
- RG 236.34 Some activities undertaken in carbon markets may constitute dealing in a financial product. For information and examples of when activities relating to emissions units may constitute dealing in a financial product, see Section D. There are also various exceptions to the definition of dealing: see RG 236.144–RG 236.152.

What is the meaning of ‘make a market for a financial product’?

- RG 236.35 Generally, a person ‘makes a market for a financial product’ if:
- (a) they regularly state the prices at which they propose to buy or sell financial products on their own behalf; and
 - (b) other persons can reasonably expect to be able to regularly buy or sell at those stated prices.
- RG 236.36 It is not necessary for a market maker to quote both buy and sell prices—a person may still be market making if they quote only the prices at which

they propose to buy a financial product, or only the prices at which they propose to sell a financial product.

- RG 236.37 There is a distinction between making a market for a financial product and operating a financial market. To distinguish between the two, the general test is whether the person operates a facility where the prices for a financial product are quoted on behalf of other persons (operating a financial market) or solely on their own behalf (making a market). However, a person will not be operating a financial market if their conduct consists solely of making or accepting offers on their own behalf, or on behalf of a single person: s767A(2)(a).

Note 1: For more information on making a market, see s766D.

Note 2: The licensing and operation of financial markets are beyond the scope of this guide. For more information on operating a financial market, see Div 5 of Pt 7.1 and RG 172.

- RG 236.38 Offering to enter into a carbon abatement contract does not constitute making a market for a financial product. For other examples of what may constitute making a market for regulated emissions units, see Section D.

What is a 'managed investment scheme'?

- RG 236.39 Managed investment schemes often include managed funds, pooled investments or collective investments. Generally, in a managed investment scheme:

- (a) people are brought together to contribute money or money's worth to acquire rights to benefits produced by the scheme;
- (b) these contributions are pooled together or used in a common enterprise to produce financial benefits for the contributors; and
- (c) some other person operates the enterprise, and those contributing do not have day-to-day control over its operation.

Note: The definition of 'managed investment scheme' is set out in s9, and Ch 5C regulates the creation and operation of managed investment schemes.

- RG 236.40 Generally, if a managed investment scheme has more than 20 members, which includes one or more retail investors, the scheme must be registered with ASIC. A managed investment scheme that is promoted by a person who is in the business of promoting managed investment schemes, and which includes one or more retail investors, must also be registered with ASIC. An interest in a managed investment scheme—with the exception of some managed investment schemes that are not registered schemes and have no more than 20 members—is a financial product.

Note: A managed investment scheme that includes one or more retail investors must be registered with ASIC if we determine that a number of managed investment schemes are closely related, and that each of them must be registered at any time the total number of members of all of the schemes exceeds 20: s601ED(1)(c).

- RG 236.41 Registered schemes must meet the requirements of Ch 5C, including by having a single responsible entity to operate the scheme, and having in place a constitution and compliance plan. A responsible entity must be a public

company and must hold an AFS licence authorising it to operate the scheme, to which ASIC attaches specific licence conditions: see PF 209.

RG 236.42 Managed investment schemes hold scheme assets in a wide variety of forms. This includes various types of financial products, as well as land and other assets. For information and examples of when the arrangements for entities participating in carbon markets or in carbon abatement activities may constitute a managed investment scheme, see Section C.

What is a ‘custodial or depository service’?

RG 236.43 A ‘custodial or depository service’ generally involves a person holding financial products or beneficial interests in financial products in trust for, or on behalf of, another person (usually for a fee).

Note: See s766E for the general definition of ‘provide a custodial or depository service’ and for exceptions to this definition.

RG 236.44 Most persons participating in carbon markets are likely to hold their emissions units in their own account in the Australian National Registry of Emissions Units (ANREU), which is an electronic registry operated by the Clean Energy Regulator. There may be situations where custodial services are provided for regulated emissions units, including where other persons have a beneficial interest in units held by an ERF project proponent. However, a custodial or depository service will not be provided where the provider of the service and its associates have no more than 20 clients in aggregate for all custodial or depository services they provide: reg 7.1.40(1)(c). Additionally, a custodial or depository service will not be provided for an ACCU issued to:

- (a) a special native title account in accordance with s49 of the CFI Act; or
- (b) a nominee account in accordance with s141 of the CFI Act (reg 7.1.40(2)).

Who does the financial services regime apply to?

AFS licensees and their representatives

RG 236.45 In many cases, an AFS licensee carries on its business through its representatives. Employees and directors of the licensee, or a related body corporate of the licensee, are a licensee’s ‘representatives’. Additionally, a licensee may authorise another, otherwise unrelated, person (including a body corporate) to provide financial services on its behalf. This type of representative is called an ‘authorised representative’.

Note: See s910A for the definition of ‘representative’. See also s761A for the definition of ‘authorised representative’. In this guide, references to ‘representatives’ and ‘authorised representatives’ are references to such persons as defined in the Corporations Act, and should be distinguished from persons referred to in the Australian National Registry of Emissions Units Regulations 2011 as ‘authorised representatives’.

- RG 236.46 Persons acting as representatives of AFS licensees are exempt from needing to hold a licence themselves. Additionally, representatives acting for persons who are exempt from holding a licence are similarly exempt: s911A(2)(a).
- RG 236.47 AFS licensees are ultimately responsible for supervising the conduct of their representatives: see Section F for more details on licensees' obligations.
- RG 236.48 We maintain a register of AFS licensees and authorised representatives of licensees, which may be searched on [our website](#).

Note: We also maintain a register of financial advisers that provide personal advice on investments, superannuation and life insurance on [our MoneySmart website](#).

'Wholesale' versus 'retail' clients

- RG 236.49 The financial services regime recognises two different types of clients—wholesale and retail. A person may fall within the definition of a wholesale client if, among other things, they are:
- (a) a person purchasing a financial product or products (e.g. an ACCU, or a number of ACCUs), and the value of the product(s) is above the prescribed threshold (currently set by the Corporations Regulations at \$500,000);
- Note 1: For financial products deemed to be 'investment products' (including regulated emissions units and derivatives), the value of the product is calculated using the market value or, if this is not relevant, the amount of money that stands in the client's credit for that product: reg 7.1.19(3).
- Note 2: Where financial product advice is provided for more than one product at a time, the cumulative value of the products in question is taken into account in assessing whether a client is a retail client. A similar approach applies when a person is arranging for a dealing to take place: reg 7.1.19(5).
- (b) a person who is provided with a financial service related to a financial product such as regulated emissions units, where the value of the product is above the prescribed threshold (currently set by the Corporations Regulations at \$500,000);
 - (c) a person with certified net assets of at least \$2.5 million or a person who had a gross income for each of the past two financial years of at least \$250,000;
 - (d) a 'professional investor'—this category includes AFS licensees, listed entities, banks and friendly societies, and other specified entities that may be presumed to have the expertise or access to professional advice to justify their being treated as wholesale client; or
 - (e) a 'sophisticated investor' who is a client of an AFS licensee for certain financial products and services not provided in connection with a business of the client, and the AFS licensee is satisfied, for reasons given to the client in writing, that the client is experienced in assessing the product or service and has acknowledged in writing that:

- (i) they have not received a PDS or other information required to be given to a retail client; and
- (ii) are not owed obligations that are owed to a retail client by the AFS licensee.

Note: See s761G, 761GA and regs 7.1.11–7.1.28 for provisions on wholesale and retail clients.

RG 236.50 Some requirements of the financial services regime apply only to retail clients because it is recognised that wholesale clients are in a better position to look after their own interests. For example, AFS licensees that provide financial services to retail clients must have in place dispute resolution and compensation arrangements: see Section F.

C Which emissions units and related products are financial products?

Key points

The emissions units that are financial products are:

- Australian carbon credit units (ACCUs) (see RG 236.51–RG 236.56); and
- eligible international emissions units (EIEUs) (see RG 236.57–RG 236.60).

Other types of emissions and environmental units are not financial products.

Generally, derivatives over any emissions unit, and interests in a managed investment scheme involving carbon abatement activities or emissions units, are financial products. A carbon abatement contract is not a financial product.

Australian carbon credit units

RG 236.51 An ACCU is a unit issued by the Clean Energy Regulator under the CFI Act to an ERF project proponent for the carbon abatement achieved by the proponent's ERF project: see RG 236.2. ACCUs are financial products.

Note 1: The Clean Energy Regulator may issue ACCUs under s11 of the CFI Act. In issuing ACCUs, the Clean Energy Regulator is taken not to be dealing in a financial product: reg 7.1.35B.

Note 2: For concise descriptions of the characteristics of ACCUs, see www.cleanenergyregulator.gov.au/ANREU/Concise-description-of-units.

RG 236.52 The Clean Energy Regulator issues an ACCU as one of two types, depending on whether the related carbon abatement is eligible to be used to meet Australia's climate change targets under the Kyoto Protocol (or any successor international agreement). The two types of ACCUs are:

- a Kyoto ACCU—which is eligible; or
- a non-Kyoto ACCU—which is not eligible.

RG 236.53 The Clean Energy Regulator is only empowered by the CFI Act to enter into carbon abatement contracts on behalf of the Australian Government for the purchase of Kyoto ACCUs or prescribed eligible carbon units. Non-Kyoto ACCUs are not eligible for purchase by the Clean Energy Regulator.

Note: No eligible carbon units have been prescribed for the purposes of the CFI Act.

RG 236.54 Under the safeguard mechanism, commencing on 1 July 2016, a designated large facility may reduce its net emissions number by acquiring and surrendering prescribed carbon units, including ACCUs and other types of emissions units that may be specified in the safeguard rules.

Note: Surrendering prescribed carbon units can assist a designated large facility to keep its net emissions number below its baseline emissions number. Other than ACCUs, no units have been specified as prescribed carbon units for the purposes of the NGER Act.

- RG 236.55 An ACCU, including a non-Kyoto ACCU, can also be traded in the voluntary carbon market.
- RG 236.56 It is important to note that both Kyoto ACCUs and non-Kyoto ACCUs are financial products.

Eligible international emissions units

- RG 236.57 EIEUs are defined in the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) as certain types of emissions units issued under mechanisms established by the Kyoto rules. These are:
- (a) certified emission reductions (CERs) (other than a temporary CER or a long-term CER);
 - (b) emission reduction units (ERUs);
 - (c) removal units (RMUs); or
 - (d) prescribed units issued in accordance with the Kyoto rules.

Note 1: The Kyoto rules and Kyoto Protocol are defined in s4 of the ANREU Act.

Note 2: No units have been prescribed as an EIEU for the purposes of the ANREU Act.

- RG 236.58 An EIEU cannot be purchased by the Clean Energy Regulator under a carbon abatement contract unless it is prescribed as an eligible carbon unit under the CFI Act. An EIEU cannot be used by a designated large facility to reduce its net emissions number under the safeguard rules unless it is specified in the safeguard rules.

Note: No EIEUs have been prescribed or specified for either of these purposes.

- RG 236.59 EIEUs may be traded in the domestic voluntary carbon market but have been more actively traded internationally by entities with obligations under, for example, the EU Emissions Trading System (EU ETS) or the NZ Emissions Trading Scheme.

Note: The design of Australia's (now repealed) carbon pricing mechanism also allowed some types of EIEUs to be eligible, subject to conditions, for surrender by liable entities.

- RG 236.60 It is important to note that each type of EIEU has the status of a financial product in Australia, regardless of whether it is issued, acquired, held or disposed of outside Australia. Accordingly, an Australian person or company conducting a financial services business in Australia in relation to EIEUs held overseas may be required to hold an AFS licence. In some cases, a person or company from outside Australia may be required to hold an AFS licence to carry on a financial services business in Australia: see RG 121. However, if the only activity you undertake is to hold EIEUs registered in a foreign registry, you are unlikely to require an AFS licence.

Financial products related to emissions units

- RG 236.61 There are two main types of financial products related to emissions units that are specified in s764A, they are:
- (a) derivatives over emissions units; and
 - (b) interests in a managed investment scheme.
- RG 236.62 A facility or arrangement that is not specified in s764A may still fall within the general definition of a financial product: s763A. Products that are not derivatives or interests in a managed investment scheme may still be a financial product under the general definition of a financial product.

Derivatives

- RG 236.63 A derivative is defined as an arrangement where the amount of the consideration or the value of the arrangement is ultimately determined, derived from, or varies by reference to (wholly or in part) the value or amount of something else, subject to certain exceptions: s761D.
- RG 236.64 Forms of arrangements in carbon markets that are likely to be a derivative over emissions units include, for example:
- (a) a sale and purchase agreement for emissions units for delivery on a future date or dates; and
 - (b) an option to acquire emissions units at a fixed-price on a future date.

Note 1: A derivative over an emissions unit is a financial product regardless of the type of emissions unit involved—the underlying emissions unit does not have to be a financial product for the derivative to be a financial product.

Note 2: A carbon abatement contract is neither a derivative nor a financial product: regs 7.1.04(8)(d) and 7.1.07J.

- RG 236.65 Where an ERF project proponent carries out a project by having another person conduct a carbon abatement activity, the contract between the two parties may be a financial product, depending on the terms of the contract.

Example 2: Contract for the future provision of carbon abatement

An ERF project proponent enters into a contract with a farmer where the farmer agrees to establish and carry out a permanent environmental planting on their land. As payment for this carbon abatement activity, the ERF project proponent will make payments to the farmer at a price per unit of carbon abatement provided.

The contract may be a derivative, a contract for the future provision of services or a facility for making a financial investment.

- RG 236.66 The contract in Example 2 is likely to be a derivative if, for example:
- (a) the consideration paid to the farmer was ultimately determined by reference to a future price of ACCUs; or
 - (b) the price per unit of carbon abatement provided does not reference a future price of ACCUs, but the contract does include that providing less than a certain amount of carbon abatement will incur a ‘make-good’ payment that is determined by reference to a price of ACCUs.

RG 236.67 However, a contract for the future provision of carbon abatement may be a ‘contract for the future provision of services’ (s761D(3)(b)) and, if so, the contract is not a derivative. This would also apply even if the price is determined by reference to the price of ACCUs or some other derived amount. Section 761D(3)(b) does not depend on the nature of the consideration for the provision of the services.

- RG 236.68 If the contract in Example 2 is not a derivative because, for example:
- (a) the price paid per unit of carbon abatement is a fixed price; or
 - (b) it is exempt from the meaning of a derivative as a contract for the future provision of services,
- the contract may still be a financial product (as a facility for making a financial investment), where the contributions of carbon abatement by the farmer are used by the ERF project proponent to generate a financial return for the farmer.

- RG 236.69 However, this would not be the case (and, therefore, the contract would not be a financial product) where the payments for the carbon abatement are, for example:
- (a) a fixed price per unit of carbon abatement—so long as it was not intended that the ERF project proponent would use the carbon abatement to generate the financial returns that allow the payments to be made to the person providing the carbon abatement, and that this did not in fact occur; or
 - (b) a fixed amount that is paid before the carbon abatement is provided.

- RG 236.70 In addition, if the payments to the farmer under the contract in Example 2—whether the contract is a derivative, a contract for the future provision of services, or a facility for making a financial investment—are:
- (a) determined as a share in proceeds of ACCU sales by the ERF project proponent of the ACCUs issued for the farmer’s carbon abatement activity; or
 - (b) otherwise determined by reference to the price of ACCUs that the ERF project proponent achieves in a sale of those ACCUs,

then we consider that the dealing in ACCUs may be a dealing in a financial product by the ERF project proponent on behalf of the farmer.

Interests in a managed investment scheme

RG 236.71 A managed investment scheme is not, of itself, a financial product—it is the ‘interest in a managed investment scheme’ that is a financial product. An interest in a managed investment scheme is a right to benefits produced by the scheme (whether the right is actual, prospective or contingent, and whether or not it is enforceable): s9.

RG 236.72 In relation to carbon markets, a managed investment scheme may, for example:

- (a) pool investors’ money to invest in emissions offset projects or emissions units for the purposes of providing financial benefits to investors that may be in the form of money or money’s worth (e.g. distributions of emissions units);
- (b) pool emissions units contributed by persons for the purpose of providing financial benefits to the persons from the eventual sale of the units; or
- (c) pool, or use in common enterprise, contributions of carbon abatement to the scheme operator for the purposes of generating emissions units to provide financial benefits to the contributors from the eventual sale of the units.

Note 1: Under the ERF, such a scheme is generally known as an ‘aggregation’ or an ‘ERF aggregated project’ and the ERF project proponent is generally known as an ‘aggregator’.

Note 2: The contributions may also be as one (or more) of the means to generate carbon abatement. For example, a landholder can make some or all of their land available to an aggregator to conduct a carbon abatement activity.

RG 236.73 Not all ERF aggregated projects are necessarily managed investment schemes. For example, an arrangement where persons generate carbon abatement but do not receive further financial benefits or interests in property—when the carbon abatement is used by an ERF project proponent in an ERF project—may not be a managed investment scheme.

Example 3: ERF aggregated project

An ERF aggregated project is carried out by implementing energy efficient measures in numerous small businesses. Each business will earn the financial benefit of reduced energy costs from the measures (the measures may also be implemented at a discounted price). However, each business does not have any rights to any further financial benefits produced when the associated carbon abatement is used in the ERF project.

Each business’s financial benefit is created in the making of their carbon abatement contribution (i.e. the implementation and performance of the measures) and not in the use of their carbon abatement contribution in the ERF aggregated project. This means that the ERF aggregated project would not be a managed investment scheme.

RG 236.74 However, an ERF aggregated project may be a managed investment scheme if the arrangement includes terms for carbon abatement contributors that are related to

the operation of the ERF aggregated project. These may be terms that make the operation of the ERF aggregated project conditional on having a minimum number of contributors, or terms of payments for contributors' carbon abatement that are related to ACCU sale prices achieved by the ERF project proponent.

- RG 236.75 For example, if a minimum number of businesses are required to participate for the arrangement in Example 3 to proceed—so that the ERF aggregated project is of the required scale to be able to participate in an ERF reverse auction—then any financial benefits that the businesses may earn will depend on the ERF aggregated project, as a whole, proceeding. In this case, we consider that the ERF aggregated project would generally be a managed investment scheme.
- RG 236.76 The small businesses in Example 3 may also, for example, receive payments for their carbon abatement that are a share of the proceeds of ACCU sales made by the ERF project proponent—the ERF aggregated project produces the financial benefit of ACCU sales proceeds which is ultimately distributed to the businesses in proportion to their contributions of carbon abatement. In this case, we consider that the ERF aggregated project would generally be a managed investment scheme.
- RG 236.77 Whether or not an ERF aggregation project is a managed investment scheme will depend on the particular arrangements of that ERF aggregated project. Different types of ERF aggregated projects may have different types of contributions, and different types of financial benefits may be produced using the contributions.
- RG 236.78 In addition to contributions of carbon abatement resulting from the carbon abatement activities of the contributors, the contributions made under an ERF aggregated project can include other types of contributions that allow or assist an aggregator to carry out a carbon abatement activity, for example:
- (a) a landholder contributing the right to use their land for a carbon abatement activity;
 - (b) a site or facility owner or lessee contributing the right to use their site or facility for a carbon abatement activity; or
 - (c) as labour or other services that are means to generate carbon abatement,
- and where the contributions are as consideration to acquire rights to benefits produced by the scheme.
- RG 236.79 The ERF aggregated project may also produce various financial (and other) benefits for the contributors, for example:
- (a) a share in the proceeds of ACCU sales;
 - (b) higher net proceeds because of the lower costs incurred in generating carbon abatement or having ACCUs issued for that carbon abatement; or
 - (c) the ability to deal in ACCUs with parties who require a certain minimum quantity of ACCUs in a transaction.

RG 236.80 In considering who has day-to-day control over the operation of the scheme, it is important to distinguish between:

- (a) the day-to-day control that a contributor has over the making of their contribution (e.g. control over their generation of carbon abatement to contribute to a scheme); and
- (b) the day-to-day control over the operation of the scheme (e.g. control over the use of the contributions made to produce financial benefits for the contributors).

Note: Where the contribution is, for example, the right for an aggregator to use a person's land or site to carry out a carbon abatement activity, the operation of the scheme under the day-to-day control of the aggregator may include the generation of carbon abatement using that contribution of a use of land or site.

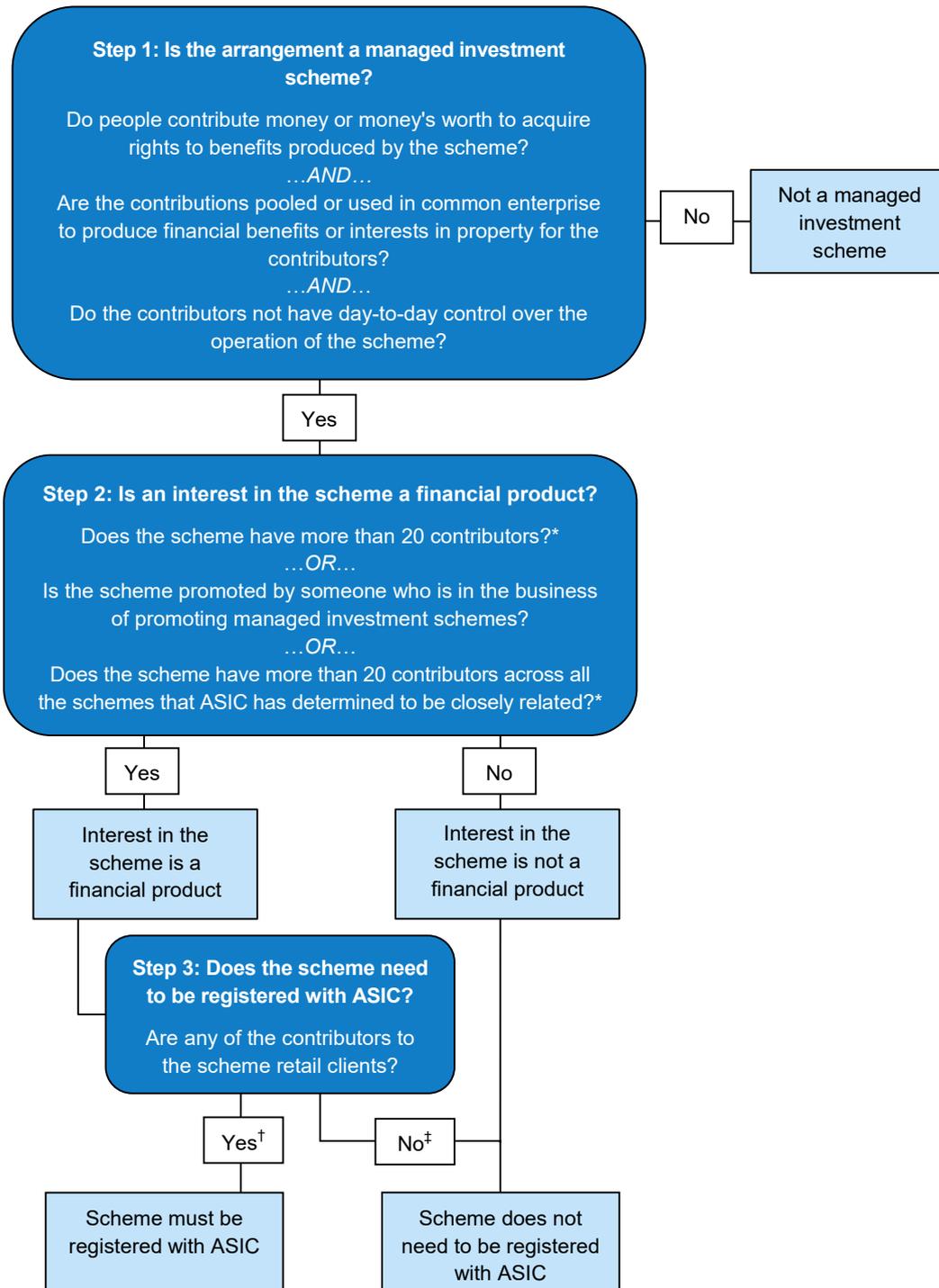
RG 236.81 Although the contributors may have day-to-day control over the making of their contributions, in an arrangement that is a managed investment scheme they do not have day-to-day control over the operation of the scheme.

RG 236.82 If an ERF aggregated project is a managed investment scheme, an interest in the scheme may be a financial product and the scheme may be required to be registered with ASIC (see Figure 2), in which case:

- (a) persons providing financial services in relation to interests in a scheme that are financial products are subject to the AFS licensing, conduct and disclosure requirements provisions of Ch7; and
- (b) a registered scheme must meet the requirements of Ch 5C.

RG 236.83 If an ERF aggregated project is not a managed investment scheme, then the arrangement between a contributor and the ERF project proponent may still be a financial product as a derivative or a facility for making an investment: see RG 236.63–RG 236.70.

Figure 2: When will an interest in a scheme be a financial product and when will a scheme be required to be registered?



* When working out how many contributors a scheme has, if an interest is held on trust for beneficiaries, generally the number of beneficiaries are counted rather than the trustee: s601ED(4).

† A managed investment scheme is only required to be registered if the issue of at least one interest in the scheme required a PDS to be given. In some limited circumstances an issue may be made to a retail client without a PDS being required: see, for example, s1012E.

‡ In some circumstances registration may be required because the acquisition of the interest in a managed investment scheme is by a wholesale client acting under a custodial arrangement under s1012IA.

Multiple ERF projects for a single carbon abatement contract

RG 236.84 An ERF project proponent may be the project proponent for a number of ERF projects and enter into a single carbon abatement contract for the sale of a combined quantity of ACCUs: see Example 4. Generally, this type of arrangement would not be a managed investment scheme but, in some limited circumstances, it can amount to one.

Example 4: Multiple projects for a single contract

An ERF project proponent carries out multiple ERF projects by having a number of farmers carry out a permanent environmental planting as a carbon abatement activity on each of their properties. Each ERF project is of the required scale to be able to participate in an ERF reverse auction. The guidelines for an ERF reverse auction state that the Clean Energy Regulator will decide to accept offers solely on the basis of the price offered and not the quantity offered.

The ERF project proponent enters into a single carbon abatement contract for a combined quantity of ACCUs from the separate ERF projects instead of separate contracts for each project. Any cost savings of administering a single carbon abatement contract, compared to multiple carbon abatement contracts, are retained by the ERF project proponent and are not passed on to the farmers.

Generally, this particular arrangement involving a single carbon abatement contract does not involve a common enterprise to produce financial benefits (e.g. a higher price, a larger quantity of ACCUs sold or higher net proceeds from cost savings) for the farmers involved in the separate ERF projects and, therefore, does not fall within the definition of a managed investment scheme.

RG 236.85 The arrangement in Example 4 does not produce a financial benefit of a higher price for the ACCUs, because the Clean Energy Regulator accepts offers solely on the basis of price, and the offer of the combined quantity of ACCUs is not advantaged over separate, smaller offers at the same or a lower price.

RG 236.86 The arrangement in Example 4 does not produce a financial benefit of a larger quantity of ACCUs sold, for the following reasons:

- (a) the terms of the carbon abatement contract do not require ACCUs from any particular ERF project to be delivered under the contract; and
- (b) the ERF project proponent is not more easily able to satisfy its ACCU delivery obligations by delivering ACCUs from any of its separate ERF projects for:
 - (i) a single carbon abatement contract; than
 - (ii) any of its separate, smaller carbon abatement contracts.

RG 236.87 That is, the ACCU delivery risk is not lower under a single carbon abatement contract which allows a higher quantity of ACCUs to be offered, than under separate contracts at the same price.

- RG 236.88 However, a single carbon abatement contract arrangement may be a managed investment scheme in some circumstances, for example, if:
- (a) the ERF projects are not of the required scale to be able to separately participate in an ERF reverse auction and are pooled, or used in common enterprise, for the purposes of participating in the auction; or
 - (b) there is a reduction in contract management or other costs that is passed on to contributors and results in the contributors benefiting from higher net proceeds from the sale of the ACCUs.
- RG 236.89 In circumstances other than an ERF reverse auction—such as a single contract arrangement for a transaction with a safeguard entity—similar considerations apply as to whether a single contract arrangement may be a managed investment scheme, including whether the arrangement produces financial benefits for the contributors in terms of, for example:
- (a) being of a sufficient scale for a buyer to be able to, in practice, contract with that buyer;
 - (b) reductions in contract management or other costs that are passed on to contributors as higher net ACCU sale proceeds; or
 - (c) a buyer paying a higher price for ACCUs in a single contract than for separate, smaller contracts.

Other emissions and environmental units

- RG 236.90 There are a variety of other emissions and environmental units currently traded in markets in Australia and overseas, including:
- (a) Renewable Energy Certificates (RECs) issued under the *Renewable Energy (Electricity) Act 2000*;
 - (b) Energy Savings Certificates (ESCs) issued under the *NSW Electricity Supply Act 1995*;
 - (c) Victorian Energy Efficiency Certificates (VEECs) issued under the *Victorian Energy Efficiency Target Act 2007*;
 - (d) European Union Allowances (EUAs) issued by a member state of the European Union, or by other jurisdictions participating in the EU ETS;
 - (e) New Zealand Emissions Units (NZUs) issued by the New Zealand Government under the NZ Emissions Trading Scheme; and
 - (f) Voluntary Carbon Units (VCUs) issued according to the international Verified Carbon Standard.
- RG 236.91 We consider that these other emissions and environmental units are generally not financial products. Unlike ACCUs and EIEUs, they have not been specifically listed as financial products in the Corporations Act: s764A.

RG 236.92 We do not consider these types of units to fall within the general definition of a financial product (i.e. a facility for making a financial investment or managing a financial risk: s763A). These types of units are ordinarily acquired to prevent a particular outcome from occurring (e.g. the imposition of liability to pay a charge), not to manage the financial consequences that may flow if it happens. Therefore, we do not consider that these units are used to manage a financial risk, and no AFS licensing obligations apply to activities conducted directly in relation to these other emissions and environmental units.

RG 236.93 However, if a derivative is created over one of these types of other emissions or environmental units, the derivative itself is likely to be a financial product regulated under the Corporations Act. Additionally, if such emissions or environmental units are held as part of the scheme property of a registered managed investment scheme, the responsible entity will need to comply with the relevant requirements of the Corporations Act: see RG 236.39–RG 236.42.

Note: Although the products described in RG 236.90–RG 236.93 are not financial products for the purposes of the Corporations Act, we may nevertheless take into account previous experience relating to such products when assessing the knowledge and skills of your responsible managers: see RG 236.160–RG 236.164.

D When will I be providing a financial service for regulated emissions units?

Key points

Generally, you are providing a financial service if you:

- provide financial product advice;
- deal in a financial product;
- make a market for a financial product;
- operate a registered managed investment scheme; or
- provide a custodial or depository service.

This section explains when an activity relating to regulated emissions units is likely to amount to one or more of these types of financial service.

RG 236.94 Because ACCUs and EIEUs are financial products, financial services activities relating to these emissions units are regulated under the Corporations Act. This section explains how the financial services provisions of the Corporations Act outlined in Section B apply to ACCUs and EIEUs. A summary of when you may be providing a financial service for these regulated emissions units is provided in Table 4.

RG 236.95 Additionally, emissions units may be associated with another financial product in various ways (e.g. derivatives over emissions units and managed investment schemes holding emissions units as scheme property). These arrangements are regulated as the associated financial product, rather than as an emissions unit: see RG 236.120–RG 236.131.

Table 4: When you may be providing a financial service for regulated emissions units

Financial service	Key questions to ask	Types of activities to consider
<p>Providing financial product advice</p> <p>See RG 236.96–RG 236.108</p>	<p>What is the nature of any information being given to a client?</p> <p>What is the purpose of giving the information?</p>	<p>Providing an opinion or recommendation that may influence a client's decision about a financial product can constitute financial product advice.</p> <p>The following may not be financial product advice:</p> <ul style="list-style-type: none"> • technical advice about an offset project; and • objective factual information about financial products. <p>In addition, advice that is solely intended, and may be reasonably regarded as solely intended, to influence a decision about a carbon abatement contract is not financial product advice because a carbon abatement product is not a financial contract.</p>

Financial service	Key questions to ask	Types of activities to consider
<p>Dealing in a financial product</p> <p>See RG 236.112–RG 236.117</p>	<p>Who is undertaking the transaction?</p> <p>What is the purpose of the transaction?</p>	<p>Some activities that would otherwise be dealing, which are done on your own behalf, are not considered to be dealing. However, this generally excludes dealing by issuing derivatives and interests in a managed investment scheme.</p> <p>Arranging for another person to deal is also generally a dealing.</p> <p>Some AFS licensing exemptions apply to persons dealing: see Section E.</p>
<p>Making a market for a financial product</p> <p>See RG 236.118–RG 236.119</p>	<p>Are you quoting prices of regulated emissions units on your own behalf?</p>	<p>Generally, activity involving a person quoting prices at which they are prepared to buy or sell ACCUs or EIEUs, or derivatives over ACCUs or EIEUs, on their own behalf, will mean that the person is making a market.</p>
<p>Operating a registered managed investment scheme</p> <p>See RG 236.124–RG 236.131</p>	<p>Has a person contributed money or other consideration to obtain a financial benefit from an arrangement?</p> <p>Are the contributions of more than one person pooled or used in a common enterprise to obtain benefits for those involved?</p> <p>Do those contributing to the arrangement have day-to-day control over its operation?</p> <p>Does the scheme need to be registered?</p>	<p>If a managed investment scheme is a registered scheme, the operator of the scheme must be a responsible entity.</p> <p>Examples of schemes operating in carbon markets may include:</p> <ul style="list-style-type: none"> • schemes that pool money to benefit members through the acquisition of emissions units; • schemes that pool emissions units to benefit members through the collective disposal of emissions units; and • schemes that pool, or use in common enterprise, contributions of carbon abatement to benefit members by generating and selling emissions units.
<p>Providing a custodial or depository service</p> <p>See RG 236.132–RG 236.135</p>	<p>Do you hold financial products or beneficial interests in financial products in trust for, or on behalf of, another person?</p> <p>Do you and your associates provide these services for more than 20 clients?</p>	<p>Holding financial products or beneficial interests in financial products in trust for, or on behalf of, another person is generally providing a custodial or depository service, unless the provider and its associates have no more than 20 clients in aggregate for all custodial or depository services that they provide.</p> <p>An ERF project proponent may provide a custodial or depository service where it holds ACCUs or derivatives over ACCUs, and another person has a beneficial interest in those financial products (e.g. the person benefits from a share in the proceeds from disposal of the products by the ERF project proponent).</p> <p>Some exemptions apply to certain services that may otherwise be a custodial or depository service: see RG 236.132–RG 236.133.</p>

Note: Traditional trustee company services may also be provided where an ACCU or EIEU is an asset of an estate. However, the specific regulation of traditional trustee company services provided by licensed trustee companies under Ch 5D means that this financial service is generally not likely to be relevant for such emissions units.

When will I be providing financial product advice on regulated emissions units?

RG 236.96 If you provide information to another person on ACCUs or EIEUs, this can constitute financial product advice in circumstances where the information is provided with the intention of influencing the person's decision on regulated emissions units, or could reasonably be regarded as being intended to have such an influence.

RG 236.97 Such advice may be provided to a wide range of persons. For example:

- (a) advice relating to an ERF project, or to persons seeking to produce EIEUs through the development or operation of international offset projects;

Note: Not all advice about projects will constitute financial product advice: see RG 236.102–RG 236.108 for more information about when advice relating to an offset project may constitute financial product advice.

- (b) advice to persons engaged in voluntary offsetting of their emissions (voluntary offsetters) on approaches to, or strategies for, acquiring or disposing of regulated emissions units for this purpose;
- (c) advice to entities covered by the safeguard mechanism to assist them to make a decision about acquiring or disposing of regulated emissions units; and
- (d) advice to any person about regulated emissions units or financial products associated with emissions units or environmental units (e.g. derivatives or interests in managed investment schemes).

Note: Advice that may be reasonably regarded as only intended to influence a decision about a carbon abatement contract is not financial product advice because a carbon abatement contract is not a financial product.

RG 236.98 There are additional obligations under Pt 7.7 if advice is provided to retail clients. These obligations vary depending on whether the advice is personal advice or general advice.

Note: See RG 236.28 and RG 236.49, respectively, for more detail on the distinction between personal and general advice, and information on which clients are considered to be retail clients.

RG 236.99 Generally, if you are providing personal advice to retail clients, you must meet the conduct obligations under Div 2 of Pt 7.7A, to:

- (a) act in the best interests of the client;
- (b) provide the client with appropriate advice;
- (c) warn the client if your advice is based on incomplete or inaccurate information; and
- (d) where there is a conflict with your own interests, or those of one of your related parties, prioritise the interests of the client.

Note: See RG 175 for more details about meeting these requirements.

RG 236.100 In most cases, where an adviser recommends a product to a retail client the adviser must also provide the client with a PDS. However, where an adviser recommends ACCUs or EIEUs to a retail client, the adviser must instead direct the client to the description of the relevant unit that is published on the Clean Energy Regulator's website: see RG 236.173.

Note: For further information about complying with these additional obligations, see Sections C and D of RG 175.

RG 236.101 If your activities amount to providing financial product advice in relation to regulated emissions units, this does not necessarily mean you will require an AFS licence. You only require an AFS licence to provide financial services while carrying on a financial services business (and only if none of the exemptions apply to you): see RG 236.137–RG 236.143.

Advice on offset projects

RG 236.102 For advice on an Australian eligible offset project or an international offset project, it is important to distinguish between:

- (a) advice of a technical nature about the project or potential project, which does not influence a decision about a particular financial product or class of financial product (e.g. regulated emissions units) and which is not, therefore, financial product advice (see RG 236.103–RG 236.105); and
- (b) advice that is intended to influence a person's decision on a financial product or class of financial products emanating from the project or potential project (i.e. the regulated emissions units derived from the project), which is likely to be financial product advice (see RG 236.106–RG 236.108).

Note: The advice may also relate to a person's decision on other types of financial products that are related to a project, such as derivatives over ACCUs (other than a carbon abatement contract) or interests in a managed investment scheme that is an ERF aggregated project.

RG 236.103 The following activities are examples of advice of a technical nature about a project or potential project which, in isolation, may not represent financial product advice because they are not reasonably regarded as intended to influence a decision about a financial product:

- (a) advice about options for technology that may be used for a project, or the technical feasibility of implementing the physical characteristics of a project (e.g. advice on the technical feasibility of establishing a particular forestry project in Australia);
- (b) advice about the implementation, construction and costs of a project (e.g. advice about site selection, site preparation, species selection, technology procurement, project design, costs and construction);
- (c) advice about the potential quantity of carbon abatement that does not include advice about the income that may be derived from ACCUs or

EIEUs generated by a project (e.g. advice restricted to a forecast of the potential physical performance of a project, including that it may be possible to generate emissions units through the project, but not including a prediction of the potential income from sales of the units);

- (d) advice about the potential financial returns of a project that are not returns related to carbon abatement or ACCUs (e.g. advice about cost savings from reduced energy consumption); and
- (e) advice about the ongoing operations of a project (e.g. advice about a maintenance or asset management plan for a project).

RG 236.104 It is also important to consider the overall context in which the information is presented to determine whether that information associated with other material that you provide may together constitute financial product advice: see RG 236.27.

RG 236.105 Additionally, other information provided about a project may not amount to financial product advice. This may occur if the information is of a factual nature and is not presented in a manner that suggests or implies a recommendation to make a decision about a financial product (e.g. to buy, sell or hold a regulated emissions unit). Examples of these types of advice include:

- (a) advice about the eligibility of a project to gain approval as an offsetting project;
- (b) advice about the process of gaining such approval;
- (c) advice about the monitoring of the carbon abatement of the project; or
- (d) advice about, or the conduct of, a verification or audit of the carbon abatement of the project.

RG 236.106 Technical advice about the potential for a project to lead to carbon abatement is different to advice about the potential commercial benefits of a project through the generation of ACCUs or EIEUs. The latter type of advice relates to a financial product (i.e. ACCUs or EIEUs) and may reasonably be regarded as intended to influence a decision on that product—it is, therefore, likely to constitute financial product advice.

RG 236.107 Other types of financial product advice that may be provided in the context of offset projects (i.e. advice intending to influence decisions in relation to ACCUs) include:

- (a) forecasts of potential financial returns from an investment in an offset project, which may be influential in a decision on whether to invest or not;
- (b) recommendations on whether to buy, sell or hold ACCUs emanating from a project;
- (c) strategies or transaction terms for dealing in ACCUs; and
- (d) the outlook for, or forecast of, ACCU prices—including where third-party forecasts are used in advice—because a forecast could be quite

influential to a person's decision in relation to ACCUs (e.g. selecting a forecast of higher rather than lower prices).

RG 236.108 The advice does not need to be acted on, or to have succeeded in influencing, to be financial product advice.

Advice to entities covered by the safeguard mechanism

RG 236.109 For advice provided to entities covered by the safeguard mechanism, there is also a distinction between:

- (a) advice of a technical nature that does not influence a decision about ACCUs (e.g. advice about measuring emissions or technological improvements to reduce a person's own emissions); and
- (b) advice that is intended to influence a person's decision about ACCUs (e.g. advice about whether to acquire emissions units now, or wait to acquire them at some future time).

RG 236.110 Similarly to the examples provided in RG 236.103–RG 236.105 about advice on offset projects, the following activities are examples of advice of a technical nature, which, in isolation, are not likely to represent financial product advice:

- (a) advice about the monitoring, measurement and reporting of a person's own emissions;
- (b) advice about options for technological improvements that may be used to reduce a person's own emissions; or
- (c) advice about the potential carbon abatement performance of a person's internal project to reduce their own emissions, that does not include advice about the relative financial benefits which might influence a decision to either implement the project to reduce emissions or to acquire and surrender regulated emissions units.

RG 236.111 Conversely, advice that is likely to represent financial product advice includes, for example:

- (a) advice about strategies for acquiring or disposing of ACCUs;
- (b) advice about particular transactions for acquiring or disposing of ACCUs; or
- (c) advice about the relative financial costs of either reducing emissions or acquiring and surrendering ACCUs.

When will I be dealing in ACCUs or EIEUs?

- RG 236.112 Some activities you may undertake in carbon markets may constitute dealing in a financial product, including where you arrange a dealing: see RG 236.33.
- RG 236.113 Activities that would otherwise be dealing in ACCUs or EIEUs, but are done by a person on their own behalf, are not considered to be dealing in a financial product. You may be dealing on your own behalf if you are:
- (a) a person generating ACCUs through your own activities in ERF projects, or generating EIEUs by participating in international offset projects;
 - (b) an entity acquiring and disposing of ACCUs under the safeguard mechanism, or of EIEUs under an overseas emissions compliance scheme—this could include the surrender or transfer of regulated emissions units;
 - (c) a person acquiring and disposing of regulated emissions units for the purposes of voluntarily offsetting your own emissions—this could include the transfer or voluntary cancellation of regulated emissions units; and
 - (d) an investor trading on their own behalf in regulated emissions units.
- RG 236.114 Examples of dealing on behalf of others that may occur in relation to regulated emissions units include:
- (a) brokering a transaction relating to regulated emissions units between two parties; and
 - (b) an ERF project proponent dealing in ACCUs to provide payments, as a share in the proceeds of the sales of ACCUs, for carbon abatement contributed to the ERF project by other persons.
- RG 236.115 For most types of financial products, a key form of dealing is ‘issuing’ the product—that is, the act by which the product is first generated and made available to another person. Regulated emissions units are generated by an act of the Clean Energy Regulator (in the case of ACCUs) or through the mechanism of various international rules (in the case of EIEUs), and not by any other person, such as an ERF project proponent. However, the act of issuing an ACCU by the Clean Energy Regulator, and of issuing an EIEU under international rules, is deemed not to be a financial service for the purposes of the Corporations Act: reg 7.1.35B.
- RG 236.116 In deciding whether a particular activity constitutes dealing in a regulated emissions unit, it is important to examine the activity itself, and not whether the activity relates to a particular scheme or program. The crucial question is whether the dealing involves a financial product that is a regulated emissions unit. Whether or not that dealing occurs under the ERF or using some other mechanism, arrangement or facility, is not relevant to the question of whether there is a dealing in a financial product.

RG 236.117 If your activities amount to dealing in regulated emissions units, this does not necessarily mean you will require an AFS licence. You only require an AFS licence to provide financial services while carrying on a financial services business: see RG 236.137–RG 236.143. Additionally, there are some exemptions from the requirement to hold a licence for dealings in regulated emissions units or in other derivatives over emissions units: see Table 6 in Section E.

When will I be making a market in regulated emissions units?

RG 236.118 Generally, a person will be making a market in regulated emissions units if:

- (a) they regularly state the prices at which they propose to buy or sell regulated emissions units on their own behalf; and
- (b) other persons can reasonably expect to be able to effect transactions at the stated prices.

RG 236.119 Market making in regulated emissions units is likely to be undertaken by the following:

- (a) financial institutions or specialist emissions unit trading entities that regularly state prices at which they are prepared to acquire or dispose of regulated emissions units as a financial service to their clients;
- (b) ERF project proponents that regularly state prices in order to dispose of, or acquire, ACCUs to meet their ACCU delivery obligations under a carbon abatement contract; and
- (c) safeguard mechanism entities and voluntary offsetters that regularly state prices to acquire regulated emissions units.

Other financial products and services related to emissions units

RG 236.120 Emissions units (whether specifically financial products or not) may be associated with another financial product in various ways (e.g. a derivative or as the scheme property of a managed investment scheme). In this case, the other product (e.g. the derivative or the interest in a managed investment scheme) will be regulated, rather than the emissions unit.

Derivatives over emissions units

RG 236.121 Derivatives over emissions units are financial products. Consequently, you will be providing a financial service if you:

- (a) provide financial product advice about derivatives over emissions units;
- (b) deal in a derivative over emissions units; or

- (c) make a market for derivatives over emissions units.

Note: A carbon abatement contract is neither a derivative nor a financial product: regs 7.1.04(8)(d) and 7.1.07J.

RG 236.122 Similar factors apply to derivatives as to other financial products when determining whether a person is providing financial product advice about, or dealing or making a market in, derivatives. However, a key distinction in relation to derivatives is that when two persons enter into a derivative contract, both are considered to be issuing a financial product, even if acting on their own behalf (unless they contract on a financial market). Therefore, they may need to hold an AFS licence if they are carrying on a financial services business and no licensing exemption applies to them: see Section E.

Note: See s761E for when a derivative is issued.

RG 236.123 A person offering, issuing, selling or recommending a derivative to a retail client may need to provide the client with a PDS for that derivative product: see RG 236.172.

Managed investment schemes

RG 236.124 If a scheme operating in the carbon market meets the definition of a managed investment scheme, it will be regulated in the same way as managed investment schemes that operate in other industry sectors.

RG 236.125 There are a range of financial services that may be provided by the operator of a managed investment scheme, and by agents of the operator or other persons. The financial services provided, and the person providing the financial services, will depend on a range of factors, including:

- (a) whether the interest in a scheme is a financial product;
- (b) whether the scheme is required to be registered;
- (c) who advises the contributors in the marketing of the interests in the scheme;
- (d) who is responsible for dealing in the property of the scheme and whether the property is a financial product; and
- (e) who is responsible for holding the scheme property and whether the property is a financial product.

RG 236.126 Interests in managed investment schemes are issued by the person or persons who agree to operate the scheme. Where an interest in a scheme is a financial product (see RG 236.77), the operator deals in a financial product when they issue the interest in the scheme.

Note: An operator does not make a market for an interest in a managed investment for which they are the issuer when they state prices at which they propose to acquire or dispose of those interests: s766D(2).

- RG 236.127 Where the managed investment scheme is required to be registered, the scheme is required to be operated by a single responsible entity that will be providing the financial service of operating a registered scheme.
- RG 236.128 However, other financial services may be provided by the operator or by other persons, depending on the arrangements between the operator and those other persons. There are a range of different combinations of financial services that an operator and other persons may agree to provide.
- RG 236.129 Table 5 gives a simplified overview of the financial services that may be provided using two examples of different combinations of business arrangements for an ERF aggregated project that is a managed investment scheme:
- (a) *Combination 1:* The ERF project proponent is the operator of the scheme and provides all of the financial services related to the scheme.
 - (b) *Combination 2:* A responsible entity is the operator of the scheme, a custodian separately holds the scheme property and the ERF project proponent is responsible for marketing the interests in the scheme and dealing in the property of the scheme.

Note 1: Table 5 is a simplified overview and the financial services provided will depend on the particular arrangements of each scheme and the types of financial products held under the scheme. For example, in certain circumstances, a responsible entity may be providing financial product advice to members, and the custodian and responsible entity may also be dealing by acquiring a financial product when the ERF project proponent arranges deals in the property of the scheme.

Note 2: Other related financial services may be provided in addition to the financial services listed in Table 5. For example, in the marketing of an interest in a managed investment scheme, a person may also provide financial product advice about ACCUs and require an AFS licence with an authorisation for that financial service. Similarly, in dealing in the scheme property, a person may also provide financial product advice or make a market in a financial product to market counterparties.

Table 5: When you may be providing a financial service in carrying out an ERF aggregated project

Type of financial service	Combination 1	Combination 2		
	All services provided by the ERF project proponent	Services provided separately by different entities: Responsible entity	ERF project proponent	Custodian
Operating a registered managed investment scheme	Yes	Yes	N/A*	N/A*
Dealing by issuing an interest in a managed investment scheme	Yes	Yes	N/A*	N/A*
Dealing by arranging the issue of an interest in a managed investment scheme	N/A*	N/A*	Yes	N/A*
Providing financial product advice about interests in a managed investment scheme	Yes	Yes, in certain circumstances	Yes	N/A*
Dealing in the scheme property by dealing in ACCUs or derivatives over ACCUs on behalf of another	Yes	Yes, in certain circumstances	Yes	Yes, in certain circumstances
Providing a custodial or depository service for ACCUs or derivatives over ACCUs:				
• for a registered scheme, or	Exempt†	N/A*	N/A*	Exempt†
• a scheme that is not registered	Yes	N/A*	N/A*	Yes

* Not applicable.

† Exempt from providing a custodial or depository service: s766E(3).

- RG 236.130 Generally, a person offering, issuing or recommending an interest in a managed investment scheme that is a financial product to a retail client will need to provide the client with a PDS for that product: see RG 236.172. This also applies to the sale of certain interests in a managed investment scheme that are financial products: s1012C.
- RG 236.131 In addition to the minimum financial resources requirements that AFS licensees are required to meet there are, generally, higher financial resources requirements applicable to responsible entities and providers of custodial or depository services: see RG 166.

Custodial or depository services

- RG 236.132 Generally, holding financial products or beneficial interests in financial products in trust for or on behalf of another person is providing a custodial or depository service. However, a custodial or depository service will not be provided where:
- (a) the provider of the service and its associates have no more than 20 clients in aggregate for all custodial or depository services that they provide (reg 7.1.40(1)(c)); or
 - (b) the provider is operating a registered scheme or holding the assets of a registered scheme (s766E(3)).
- RG 236.133 A custodial or depository service will also not be provided for an ACCU issued to a special native title account or a nominee account in the ANREU: see RG 236.44.
- RG 236.134 A person may otherwise provide a custodial or depository service where, for example:
- (a) they provide the service in addition to providing other financial services to clients (e.g. providing financial product advice about regulated emissions units or dealing in regulated emissions units); or
 - (b) they provide the service for regulated emissions units as part of the custodial or depository services they provide for other financial products.
- RG 236.135 An ERF project proponent may also provide a custodial or depository service where it holds ACCUs or derivatives over ACCUs on trust for, or on behalf of, another person (e.g. a person who benefits from a share in the proceeds from disposal of the products by the ERF project proponent). This may occur, for example, where an ERF project proponent carries out a project by having another person conduct a carbon abatement activity, and the other person is entitled to a share in the proceeds of the sales of the ACCUs issued for the carbon abatement—even though they may not have a proprietary interest in the ACCUs.

Foreign financial services providers

RG 236.136 In some cases, the activities of a person from outside Australia may amount to the provision of a financial service within Australia. This will depend on factors such as:

- (a) the extent that the person's activities have a connection with Australia; and
- (b) the extent that the person's conduct is likely to induce people in Australia to use the financial services they provide.

Note: See RG 121 for more information on when a person from outside Australia may be providing a financial service within Australia.

E If I provide financial services relating to regulated emissions units, do I need a licence?

Key points

Not all persons providing financial services require an AFS licence. Relevant considerations are:

- whether a person is carrying on a financial services business;
- whether the business is being conducted in Australia; and
- whether an exemption applies, so that a licence is not required.

You will require an AFS licence to provide financial services while carrying on a financial services business in Australia (see RG 236.137–RG 236.143) or acting as a responsible entity of a registered scheme, unless an exemption applies to you so that you do not require a licence: see RG 236.144–RG 236.152.

‘Carrying on a financial services business in Australia’

RG 236.137 If you engage in providing a financial service, other than operating a registered scheme, you will need to determine whether you are ‘carrying on a financial services business’ by considering:

- (a) what the Corporations Act says about the meaning of ‘carrying on a financial services business in Australia’; and
- (b) how the courts have interpreted ‘carrying on a business in Australia’.

RG 236.138 You will be deemed to carry on a business in Australia if, among other factors, you have a place of business in Australia: s21(1)–(2) and 761C.

RG 236.139 There are a number of statutory provisions that qualify the general concept of carrying on a business, including that:

- (a) a person may carry on a business even if they are not carrying on that business for profit;
- (b) a ‘business’ may include different kinds of businesses carried on in conjunction with each other; and
- (c) a business may be carried out by a single person, or together with other persons.

Note: See s18, 19 and 20.

RG 236.140 However, these statutory provisions dealing with ‘carrying on a business’ are not exhaustive. Subject to these provisions, the common law test of ‘carrying on a business’ will need to be applied to the activity.

RG 236.141 The courts stress that whether a body corporate's activities constitute 'carrying on a business in Australia' depends on the factual circumstances. Cases indicate that the degree to which a body corporate's activities in Australia are conducted with *system, regularity and continuity* generally determines whether the activities can be characterised as 'carrying on a business in Australia'.

Note: Relevant cases are listed in the 'Related information' at the end of this guide.

RG 236.142 If the financial services you provide are more than very minor (and, in particular, have elements of *system, repetition and continuity*), then it is likely that you will need an AFS licence. However, *system, repetition and continuity* are not the only factors. A one-off transaction, if substantial, could also be seen by the courts as carrying on a business in Australia.

RG 236.143 Acts of an agent are generally attributed to their principal for the purposes of Ch 7, if the agent is acting within their actual or apparent authority: s769B. The courts have found that the acts of an agent of the company can be attributed to the company, leading to the conclusion that the company carries on a business in Australia through its agent.

Licensing exemptions

RG 236.144 Generally, if you provide a financial service in relation to regulated emissions units through a financial services business, you will require an AFS licence. However, in certain specific cases, an exemption may apply to you, meaning that you are not required to hold a licence.

RG 236.145 While the financial services laws apply a number of exemptions, those exemptions most relevant for carbon markets fall into the following categories:

- (a) exemptions for persons dealing in regulated emissions units;
- (b) exemptions for persons dealing in derivatives over regulated emissions units and foreign exchange contracts in some circumstances; and
- (c) exemptions for foreign financial services providers.

Note: See Pt 7.6 of the Corporations Act and Pt 7.6 of the Corporations Regulations for other exemptions that may apply.

Licensing exemptions for dealings in regulated emissions units and derivatives over regulated emissions units

RG 236.146 Table 6 summarises when an exemption may apply to particular types of dealings in regulated emissions units.

Dealing on one's own behalf or on behalf of a related body corporate

RG 236.147 If you are simply dealing in regulated emissions units on your own behalf (e.g. acquiring regulated emissions units for your own use), this does not constitute dealing, and is not an activity that requires an AFS licence: s766C(3).

A person does also not require an AFS licence to provide financial services to a related body corporate: s911A(2)(i).

- RG 236.148 However, the exemption for dealing on one's own behalf does not extend to dealings that involve the issue of derivatives over emissions units or other financial products. When two parties enter into a derivative contract, both are considered to be issuing a financial product. Both parties may require a licence, if they are also carrying on a financial services business.

Dealing for financial risk management purposes

- RG 236.149 A licensing exemption applies for certain dealings for the purpose of managing a financial risk in relation to the surrender, cancellation or relinquishment of regulated emissions units, provided that the dealing is not the principal activity of the person's business and is on their own behalf or on behalf of a related body corporate or associated entity: reg 7.6.01(1)(ma). This exemption may apply, for example, to dealings in regulated emissions units by entities covered by the safeguard mechanism, overseas emissions schemes or voluntary offsetting schemes.
- RG 236.150 In addition, an exemption applies for certain dealings in derivatives or foreign exchange contracts for the purposes of managing a financial risk, provided that the dealing in is not a significant part of the person's business: reg 7.6.01(1)(m). This exemption may apply, for example, to dealings in derivatives by ERF project proponents on their own behalf for the purposes of managing a financial risk in relation to ACCUs.

Table 6: AFS licensing exemptions for types of dealings in regulated emissions units by particular entities

Type of dealing		Type of entity	
	Entities dealing for compliance or voluntary purposes: <ul style="list-style-type: none"> • safeguard mechanism/overseas scheme entities • voluntary offsetters 	Entities involved in offset projects: <ul style="list-style-type: none"> • project proponents 	Intermediaries: <ul style="list-style-type: none"> • brokers • specialist emissions unit traders • financial institutions
<i>Dealing in regulated emissions units</i>			
On own behalf	Licensing exemption applies: s766C(3).	Licensing exemption applies: s766C(3).	Licensing exemption applies: s766C(3).
On behalf of a related body corporate	Licensing exemption applies: s911A(2)(i)	Licensing exemption applies: s911A(2)(i).	Licensing exemption applies: s911A(2)(i).
On behalf of a related body corporate or associated entity	Licensing exemption applies if dealing in regulated emissions units done for the purposes of managing a financial risk in relation to the surrender, cancellation or relinquishment of regulated emissions units, and dealing in regulated emissions units is not the principal activity of the entity's business: reg 7.6.01(1)(ma).	Licensing exemption applies if dealing on behalf of a related body corporate: s911A(2)(i). Otherwise, generally no exemption applies.	Licensing exemption applies if dealing on behalf of a related body corporate: s911A(2)(i). Otherwise, generally no exemption applies.
On behalf of any other person	Generally, no exemption applies.	Generally, no exemption applies.	Generally, no exemption applies.
<i>Dealing in derivatives over regulated emissions units or foreign exchange contracts</i>			
On own behalf	<p>Licensing exemption applies if dealing done for the purposes of managing a financial risk in relation to surrender, cancellation or relinquishment of regulated emissions units, and dealing in derivatives or foreign exchange contracts is not the principal activity of the entity's business: reg 7.6.01(1)(ma).</p> <p>Licensing exemption applies if dealing done for the purposes of managing a financial risk, and dealing in derivatives or foreign exchange contracts is not a significant part of the entity's business: reg 7.6.01(1)(m).</p>	Licensing exemption applies if dealing done for the purposes of managing a financial risk, and dealing in derivatives or foreign exchange contracts is not a significant part of the entity's business: reg 7.6.01(1)(m).	Generally, no exemption applies.

Type of dealing	Type of entity		
	Entities dealing for compliance or voluntary purposes: <ul style="list-style-type: none"> • safeguard mechanism/overseas scheme entities • voluntary offsetters 	Entities involved in offset projects: <ul style="list-style-type: none"> • project proponents 	Intermediaries: <ul style="list-style-type: none"> • brokers • specialist emissions unit traders • financial institutions
On behalf of a related body corporate	Licensing exemption applies: s911A(2)(i)	Licensing exemption applies: s911A(2)(i)	Licensing exemption applies: s911A(2)(i)
On behalf of a related body corporate or associated entity	Licensing exemption applies if dealing done for the purposes of managing a financial risk in relation to surrender, cancellation or relinquishment of regulated emissions units, and dealing in derivatives or foreign exchange contracts is not the principal activity of the entity's business: reg 7.6.01(1)(ma).	Licensing exemption applies if dealing on behalf of a related body corporate: s911A(2)(i). Otherwise, generally no exemption applies.	Licensing exemption applies if dealing on behalf of a related body corporate: s911A(2)(i). Otherwise, generally no exemption applies.
On behalf of any other person	Generally, no exemption applies.	Generally, no exemption applies.	Generally, no exemption applies.

RG 236.151 If an entity acquires or disposes of regulated emissions units, either directly or through a derivative, that are excessive to their needs in relation to surrender, cancellation, relinquishment or for managing a financial risk, the entity may not be subject to an AFS licensing exemption. This conduct may be wholly or partly for trading purposes and, therefore, not wholly for risk management purposes.

Foreign financial services providers

RG 236.152 Various AFS licensing exemptions apply to foreign financial services providers. These include the situation where a person or company located outside Australia provides a financial service to a professional investor in relation to a dealing in derivatives, foreign exchange contracts or regulated emissions units: s911A(2E)(c), inserted by reg 7.6.02AG. See the appendix to RG 121 for more details on exemptions that may apply to foreign financial services providers.

F Getting and holding an AFS licence

Key points

To provide financial services for regulated emissions units, or other products that relate to emissions units (e.g. derivatives and managed investment schemes), you may need to apply for a new AFS licence or, if you are already a licensee, apply for a variation to your existing licence to ensure that your licence carries the authorisations relevant to regulated emissions units: see RG 236.153–RG 236.159.

Once you have been granted an AFS licence, you will need to meet ongoing conduct obligations, as well as specific obligations that apply in certain circumstances: see RG 236.165–RG 236.175.

Applying for an AFS licence or variation

RG 236.153 We have provided detailed information on how the licensing process works and what questions you will need to answer: see INFO 156, to be read with RGs 1–3, which are Parts 1–3 of the *AFS Licensing Kit*.

Note: See RG 236.154–RG 236.164 for an overview of the key steps in applying for an AFS licence or variation.

Making an application

RG 236.154 If you need an AFS licence you must complete an application form (Form FS01 *Application for AFS licence*), lodge it with ASIC and pay the application fee. To vary your licence you must complete and lodge Form FS03 *Application for variation of authorisation and other conditions*. The process for this is very similar to the process for completing and lodging an application for a new licence.

How we assess an AFS licence application

RG 236.155 When we assess an AFS licence application we consider whether you:

- (a) are ‘competent’ to carry on the kind of financial services business you are applying for;
- (b) have sufficient financial resources to carry on the business you are proposing—unless you are regulated by the Australian Prudential Regulation Authority (APRA) and, from 1 July 2015, are not both a trustee of a regulated superannuation entity and a responsible entity of a registered scheme; and
- (c) can meet your other obligations as a licensee if we grant you a licence.

- RG 236.156 How long it takes us to decide your application for an AFS licence will vary depending on our analysis of your business and the market you propose to operate in, as well as the completeness of your application.
- RG 236.157 However, you can also minimise the time we will need to spend on your application through preparation, and ensuring that your application is complete and contains all relevant information. Make sure you:
- (a) understand which financial services and products you need to select in your application to enable you to carry on that business;
 - (b) understand the obligations of an AFS licensee and have appropriate systems and processes in place to meet them; and
 - (c) are able to support your application with any documents we request to prove that you can meet the AFS licensee obligations—we call these supporting documents ‘proofs’.
- RG 236.158 If your application is incomplete, it may delay our decision or we might not even accept your application for lodgement.

Applying for the right authorisations for your business

- RG 236.159 Holding an AFS licence does not authorise you to provide any kind of financial service. Each licence that we issue comes with specific ‘authorisations’. These broadly relate to the different types of financial services, and are further broken down into the various types of financial products. When you complete your licence or variation application form, you should apply for only the specific authorisations you will require.

Example 5: AFS licence authorisations

If you wish to be authorised only to arrange dealings in ACCUs on behalf of wholesale clients, as well as providing general financial product advice to those clients, you should select the following authorisations on your AFS licence application:

- ‘Arrange for a person to deal in a financial product—Apply for, acquire, vary or dispose of financial products on behalf of another—Australian carbon credit units’;
- ‘Provide general financial product advice only to wholesale clients—Australian carbon credit units’; and
- ‘What type of client group(s) will the applicant’s current or intended business service?—Wholesale clients’.

Note: See Part 2 of the *AFS Licensing Kit* for more details on selecting authorisations, as well as PF 209 for the standard licence conditions that usually apply to each licence, depending on the authorisations selected. You can also find a sample licence application on [our website](#).

Demonstrating your organisational competence

- RG 236.160 We assess the competence of your organisation to provide financial services by looking at the knowledge and skills of people who manage your financial services business. We refer to these people as your ‘responsible managers’.
- RG 236.161 In assessing the competency of your nominated responsible managers, we will look at a combination of their relevant experience, training and qualifications. Regulatory Guide 105 *Licensing: Organisational competence* (RG 105) details the different options you may select to demonstrate the competency of your responsible managers: see Section C of RG 105. These different options provide sufficient flexibility to account for responsible managers with a range of different educational and occupational backgrounds.
- RG 236.162 People who you nominate to be responsible managers need to have knowledge and skills that collectively correspond with the types of financial services and products you will provide: see RG 105.45. In the context of regulated emissions units, product knowledge might include a combination of relevant qualifications and training, and experience in voluntary carbon markets or in emissions or environmental products that are not financial products: see RG 236.90–RG 236.93. In some cases responsible managers are able to supplement their existing experience with a relevant short industry course: see RG 105.59–RG 105.60.
- RG 236.163 If we are satisfied with your organisational competence, but we think you are heavily dependent on the knowledge and skills of one or two responsible managers, we will generally impose a ‘key person condition’ on your AFS licence. The key person condition will name those responsible managers whose competence we think you heavily depend on, and you will need to inform us if that person leaves the business: see RG 105.83.
- RG 236.164 If you are applying for a new AFS licence, or adding new responsible managers for a variation to your existing licence, you will need to provide us with information about your nominated responsible managers: see RG 2.261–RG 2.293. You should ensure that this information explains as precisely as possible how the knowledge and skills of each nominated responsible manager will support the particular financial services for which you wish to be authorised.

Note: If you are varying your AFS licence and intend to nominate additional responsible managers to meet the competencies of the new authorisation, you will first need to complete Form FS20 *Change of details for an Australian financial services licence*.

AFS licensee obligations

RG 236.165 AFS licensees are subject to conduct and disclosure obligations. If you are applying for a new licence or licence variation, you must be able to demonstrate in your application that you will be able to comply with them.

Conduct obligations

RG 236.166 Table 7 sets out the key obligations AFS licensees must meet, as well as the guidance we have provided on how to meet each obligation. A key obligation for licensees is to ensure that all financial services are provided efficiently, honestly and fairly.

Table 7: AFS licensee obligations and ASIC guidance[#]

Type of obligation	Requirements	Guidance
General	<p>You must:</p> <ul style="list-style-type: none"> do all things necessary to ensure that the financial services covered by your licence are provided efficiently, honestly and fairly; comply with your licence conditions; comply with the financial services laws; and take reasonable steps to ensure that your representatives comply with the financial services laws. 	Regulatory Guide 104 <i>Licensing: Meeting the general obligations</i> (RG 104)
<p>Capacity to provide financial services</p> <p>Note: These obligations do not generally apply if you are a body regulated by APRA within the meaning of s3(2) of the <i>Australian Prudential Regulation Authority Act 1998</i>.</p>	<p>You must:</p> <ul style="list-style-type: none"> have available adequate resources to provide the financial services authorised by your licence, including financial resources; and have adequate risk management systems. 	<p>Regulatory Guide 104 <i>Licensing: Meeting the general obligations</i> (RG 104)</p> <p>Regulatory Guide 166 <i>Licensing: Financial requirements</i> (RG 166)</p>
Competence	<p>You must:</p> <ul style="list-style-type: none"> maintain the competence of your business to provide the financial services authorised by your licence; and adequately train your representatives and ensure that they are competent to provide the financial services. <p>If financial product advice is provided to retail clients, you must meet the minimum training standards set out in RG 146.</p>	<p>Regulatory Guide 105 <i>Licensing: Organisational competence</i> (RG 105)</p> <p>Regulatory Guide 146 <i>Licensing: Training of financial product advisers</i> (RG 146)</p>
Conflicts of interest	You must have adequate arrangements in place to manage your conflicts of interest.	Regulatory Guide 181 <i>Licensing: Managing conflicts of interest</i> (RG 181)

Type of obligation	Requirements	Guidance
Resolving complaints Note: These requirements only apply where financial services are provided to retail clients.	You must have a dispute resolution system for handling retail client complaints. This dispute resolution system must consist of: <ul style="list-style-type: none"> • internal dispute resolution processes; and • membership of one or more ASIC-approved external dispute resolution schemes. You must have in place compensation arrangements if financial services are provided to retail clients, which must generally consist of holding adequate professional indemnity (PI) insurance.	Regulatory Guide 165 <i>Licensing: Internal and external dispute resolution</i> (RG 165) Regulatory Guide 139 <i>Approval and oversight of external dispute resolution schemes</i> (RG 139) Regulatory Guide 126 <i>Compensation and insurance arrangements for AFS licensees</i> (RG 126)

See s912A–B for more details on the key AFS licensee obligations.

- RG 236.167 As an AFS licensee, you may need to comply with various other conduct obligations, including:
- (a) preparing and lodging annual profit and loss statements and balance sheets with ASIC, and appointing an auditor to audit these documents within one month of beginning to hold a licence;

Note: See Subdivs C and D of Div 6 of Pt 7.8 for more information about these requirements.
 - (b) notifying ASIC of reportable situations;

Note: Section 912DAA sets out the obligation to notify ASIC of reportable situations. For guidance on complying with this obligation, see [Regulatory Guide 78 Breach reporting by AFS licensees and credit licensees](#) (RG 78).
 - (c) assisting us in our regulatory oversight of you as a licensee;
 - (d) quoting your licence number in documents; and

Note: See s912F and reg 7.6.01C.
 - (e) complying with certain procedures for holding client money separately when the money is received in connection with a financial product or service (as opposed to money simply paid as remuneration to the licensee).

Note: See Section A of Regulatory Guide 212 *Client money relating to dealing in OTC derivatives* (RG 212) for a discussion of the client money provisions.
- RG 236.168 AFS licensees are prohibited from engaging in market misconduct and other conduct that is contrary to the prohibitions in the Corporations Act, including in relation to regulated emissions units. Additionally, the consumer protection provisions of the ASIC Act apply to prohibit a person from engaging in misleading or deceptive conduct in relation to financial services, and prohibit unconscionable conduct. Under the ASIC Act, a term in a consumer contract may also be rendered void if it is deemed to be unfair.

Note: See Pt 7.10 in relation to these prohibitions. Some of these obligations also apply to persons other than AFS licensees. See Div 2 of Pt 2 of the ASIC Act for more details on these provisions.

RG 236.169 For those types of emissions units that are not financial products, the provisions of the Australian Consumer Law may still apply to conduct in relation to such units, including the provisions on misleading and deceptive conduct.

Note: The Australian Consumer Law is set out in Sch 2 to the *Competition and Consumer Act 2010*.

Disclosure obligations

RG 236.170 As an AFS licensee, if you provide financial services to retail clients, you will need to comply with certain disclosure obligations.

RG 236.171 You will generally need to provide retail clients with a Financial Services Guide (FSG) as soon as possible after it becomes apparent that you may provide a financial service to them. The FSG is a document that provides general information about you, and the types of financial services you provide. Its purpose is to assist a retail client to decide whether to obtain financial services from you.

Note: For information about complying with the FSG and other disclosure obligations in Pt 7.7, see RG 175.

RG 236.172 Generally, where an AFS licensee issues or, in some cases, sells a financial product to a retail client they must also provide the client with a PDS (unless exempt from that obligation). Advisers who recommend a financial product are also usually obliged to pass on a PDS prepared by the issuer or, in some cases, the seller of the product.

Note: For information about complying with the PDS and other disclosure obligations in Pt 7.9, see Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

RG 236.173 However, the PDS requirement does not apply to regulated emissions units. Concise descriptions of each type of unit are required to be published on the website of the Clean Energy Regulator. In a situation where a regulated emissions unit is sold or recommended to a retail client, and a PDS would ordinarily be required, a client must instead be directed to consider the relevant description for the type of emissions unit in question: see Pt 19 of Sch 10A to the Corporations Regulations.

RG 236.174 As discussed in RG 236.120–RG 236.131, emissions units may sometimes be associated with another product in some way (e.g. derivatives over emissions units and some types of managed investment schemes). These products are not regulated as emissions units, but as the other product (i.e. as a derivative or managed investment scheme). As the PDS requirement generally applies to these financial products, if you offer, issue, sell or

recommend such a product to a retail client, you may need to provide a PDS: see RG 168 for more details about when a PDS must be given.

RG 236.175 It is important to note that the PDS requirement applies to persons that would have required an AFS licence, had they not been subject to a licensing exemption, including those subject to exemptions listed in Table 6 in Section E. If you are exempt from holding a licence, but offer, issue, sell or recommend a product (other than a regulated emissions unit) to a retail client, you may still need to give the client a PDS.

Key terms

Term	Meaning in this document
ACCU	Australian carbon credit unit
adviser	A natural person who provides financial product advice to a retail client and is: <ul style="list-style-type: none"> • an AFS licensee; or • a representative of an AFS licensee
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
AFS licensee obligations	The obligations of an AFS licensee as set out in s912A and 912B of the Corporations Act, and the requirement to be of good fame and character as included in s913B of the Corporations Act
ANREU	Australian National Registry of Emissions Units
ANREU Act	<i>Australian National Registry of Emissions Units Act 2011</i>
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Australian carbon credit unit (ACCU)	A unit issued under s147 of the CFI Act
Australian market licence	An Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Australian National Registry of Emissions Units (ANREU)	A secure electronic system operated by the Clean Energy Regulator designed to accurately track the location and ownership of emissions units issued under the Kyoto Protocol and ACCUs issued under the CFI Act.
baseline emissions number	Has the meaning given in s22XL of the NGER Act, as inserted by the CFI Amendment Act
cancellation	For voluntary carbon markets, the process by which voluntary offsetters arrange the cancellation of emissions units to offset their emissions

Term	Meaning in this document
carbon abatement	<p>The removal of one or more greenhouse gases from the atmosphere or the avoidance of emissions of one or more greenhouse gases</p> <p>Note: This is a definition contained in s5 of the CFI Act.</p>
carbon abatement contract	<p>A contract entered into by the Clean Energy Regulator, on behalf of the Australian Government for the purchase of ACCUs, or other eligible carbon credits, by the Australian Government</p> <p>Note: This is a definition contained in s20B of the CFI Act.</p>
carbon markets	<p>Activities involving emissions units, including those generated under the ERF, as well as voluntary carbon markets</p>
carbon pricing mechanism	<p>A scheme administered by the Clean Energy Regulator under which certain entities (liable entities) faced a charge for their carbon emissions unless they acquired and surrendered the number of emissions units that represented their total annual emissions</p> <p>Note: The carbon pricing mechanism was repealed in July 2014 and the final emissions unit surrender date for the 2013–14 financial year was 2 February 2015.</p>
CER	<p>Certified emission reduction</p>
certified emission reduction (CER)	<p>A certified emission reduction issued outside of Australia in accordance with the relevant provisions of the Kyoto rules</p> <p>Note: This is a definition contained in s4 of the ANREU Act.</p>
CFI Act	<p><i>Carbon Credits (Carbon Farming Initiative) Act 2011</i></p>
CFI Amendment Act	<p><i>Carbon Farming Initiative Amendment Act 2014</i></p>
Ch 7 (for example)	<p>A chapter of the Corporations Act (in this example, numbered 7), unless otherwise specified</p>
Clean Energy Regulator	<p>A statutory authority that administers the Emissions Reduction Fund, National Greenhouse and Energy Reporting Scheme and the Renewable Energy Target</p>
complaint	<p>Has the meaning given in AS ISO 10002–2006</p>
Corporations Act	<p><i>Corporations Act 2001</i>, including regulations made for the purposes of that Act</p>
Corporations Regulations	<p>Corporations Regulations 2001</p>
derivative	<p>An arrangement under which the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies by reference to the value or amount of something else, subject to certain exceptions</p> <p>Note: See s761D of the Corporations Act for the exact definition.</p>

Term	Meaning in this document
Directive 2003/87/EC	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (EU)
external dispute resolution scheme	A scheme approved by ASIC under the Corporations Act (see s912A(2)(b) and 1017G(2)(b)) and/or the <i>National Consumer Credit Protection Act 2009</i> (see s11(1)(a)) in accordance with our requirements in RG 139
EIEU	Eligible international emissions unit
eligible international emissions unit (EIEU)	Means: <ul style="list-style-type: none"> • a certified emission reduction (other than a temporary certified emission reduction or a long-term certified emission reduction); • an emission reduction unit; • a removal unit; or • a prescribed unit issued in accordance with the Kyoto rules. <p>Note: This is a definition contained in s4 of the ANREU Act.</p>
emission reduction unit (ERU)	An emission reduction unit issued in accordance with the relevant provisions of the Kyoto rules <p>Note: This is a definition contained in s4 of the ANREU Act.</p>
emissions reduction safeguard mechanism	A mechanism to ensure that the net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility <p>Note: The mechanism is established under Pt 3H of the NGER Act, as inserted by the CFI Amendment Act.</p>
emissions unit	One of various types of units recognised under schemes in Australia and overseas, which are associated with greenhouse gas emissions or carbon abatement (e.g. an ACCU or an EUA)
environmental unit	One of various types of units recognised under schemes other than the Emissions Reduction Fund, which are associated with various types of energy savings, energy efficiency or renewable energy (e.g. renewable energy certificates issued under the <i>Renewable Energy (Electricity) Act 2000</i>)
ERF	Emissions Reduction Fund
ERF project	A project carried out in accordance with the CFI Act that allows the project proponent to be issued with ACCUs for the carbon abatement resulting from the project's activity

Term	Meaning in this document
ERF aggregated project	<p>A project where one or more persons carry out separate carbon abatement activities which could each be an ERF project on their own but which are arranged by a project proponent to be contributions of activities to a single, aggregated ERF project.</p> <p>An ERF aggregated project may also be arranged as contributions by one or more persons of one (or more) of the means to generate carbon abatement</p>
Energy Savings Certificate (ESC)	A unit created by an accredited certificate provider under the NSW Energy Savings Scheme established under the NSW <i>Electricity Supply Act 1995</i> and administered by the NSW Independent Pricing and Regulatory Tribunal
ERU	Emission reduction unit
ESC	Energy Savings Certificate
EU	European Union
EUA	EU allowance unit
EU allowance unit (EUA)	An allowance (within the meaning of Directive 2003/87/EC) issued by, or under the authority of, a member state of the European Union or a foreign country that participates in the EU ETS
EU emissions trading system (EU ETS)	The emissions trading system established by the European Union under Directive 2003/87/EC
EU ETS	EU emissions trading system
financial product	<p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (s763B); • manages financial risk (s763C); or • makes non-cash payments (s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of those things, that:</p> <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or • could reasonably be regarded as being intended to have such an influence. <p>However, the provision or giving of an exempt document or statement is not to be taken to be a provision of financial product advice</p> <p>Note: This is a definition contained in s766B(1) of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act

Term	Meaning in this document
financial services business	A business of providing financial services Note: This is a definition contained in s761A of the Corporations Act. The meaning of 'carry on a financial services business' is affected by s761C.
Financial Services Guide (FSG)	A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
financial services laws	Has the meaning given in s761A of the Corporations Act
financial services provider	A person who provides a financial service
foreign exchange contract	Has the same meaning as in s761A of the Corporations Act Note: This definition includes derivatives (as defined in s761D) that are foreign exchange contracts (as defined in s761A) and may, for example, include a contract for delivery of foreign currency, where the rate at which the exchange takes place is determined with reference to interest rates or interest rate differentials. It does not include a contract that is to be settled by adjustment rather than the delivery of any foreign currency.
general insurance	Has the meaning given in s761A of the Corporations Act
internal dispute resolution processes	Processes that meet the requirements and approved standards of ASIC under RG 165
investor	For an AFS licensee, includes an existing, potential or prospective client
Kyoto ACCU	An ACCU that was, is, or is to be, identified as a Kyoto ACCU within the ANREU Note: This is a definition contained in s5 of the CFI Act.
Kyoto Protocol	A protocol document to the <i>United Nations Framework Convention on Climate Change</i> , opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994)
Kyoto rules	Has the meaning given in s4 of the ANREU Act
managed investment scheme	As defined in s9 of the Corporations Act
net emissions number	For the purposes of the safeguard mechanism, the net emissions number for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period Note: This is a definition contained in s22XK of the NGER Act, as inserted by the CFI Amendment Act.

Term	Meaning in this document
New Zealand Unit (NZU)	A unit issued by the New Zealand Government under the New Zealand Emissions Trading Scheme established by the <i>Climate Change Response Act 2002</i> (NZ) and administered by the New Zealand Environmental Protection Authority
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>
non-Kyoto ACCU	An ACCU other than a Kyoto ACCU Note: This is a definition contained in s5 of the CFI Act.
NZU	New Zealand Unit
PDS	Product Disclosure Statement
personal advice	Financial product advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> the provider of the advice has considered one or more of the person's objectives, financial situation and needs; or a reasonable person might expect the provider to have considered one or more of those matters Note: This is the definition contained in s766B(3) of the Corporations Act.
prescribed carbon unit	For the purposes of the emissions reduction safeguard mechanism, a prescribed carbon unit is: <ul style="list-style-type: none"> an ACCU; or a unit that is specified in the safeguard rules Note: This is a definition contained in s22XM of the NGER Act, as inserted by the CFI Amendment Act.
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
project proponent	A person responsible for, and with the legal right to, carry out an offset project under the Emissions Reduction Fund Note: This is a definition contained in s5 of the CFI Act.
provide a financial service	A person provides a financial service if they: <ul style="list-style-type: none"> provide financial product advice; deal in a financial product; make a market for a financial product; operate a registered scheme; provide a custodial or depository service; or provide traditional trustee services Note: This is a definition contained in s766A of the Corporations Act.
Pt 7.9 (for example)	A part of the Corporations Act (in this example, numbered 7.9), unless otherwise specified

Term	Meaning in this document
REC	Renewable Energy Certificate
reg 7.6.04 (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04), unless otherwise specified
regulated emissions unit	An ACCU or an EIEU, which are financial products under the Corporations Act
Renewable Energy Certificate (REC)	A unit created by a registered person under the Renewable Energy Target established by the <i>Renewable Energy (Electricity) Act 2000</i> and administered by the Clean Energy Regulator
RMU	Removal unit
removal unit (RMU)	A removal unit issued in accordance with the relevant provisions of the Kyoto rules Note: This is a definition contained in s4 of the ANREU Act.
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
RG 172 (for example)	An ASIC regulatory guide (in this example numbered 172)
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified
safeguard mechanism	Emissions reduction safeguard mechanism
safeguard rules	The rules about the safeguard mechanism, to be made by legislative instrument by the Minister for the Environment by 1 October 2015 under s22XS of the NGER Act, as inserted by the CFI Amendment Act
VEEC	Victorian Energy Efficiency Certificate
Verified Carbon Standard	An internationally-recognised standard for measuring and verifying carbon offsets from offset projects
Victorian Energy Efficiency Certificate (VEEC)	A unit created by an accredited person under the Victorian Energy Efficiency Target established by the <i>Victorian Energy Efficiency Target Act 2007</i> and administered by the Victorian Essential Services Commission
voluntary carbon markets	Markets through which participants make voluntary commitments to offset carbon emissions, which are not for the purposes of a regulatory scheme requiring persons to pay for their emissions
voluntary offsetter	A person who makes voluntary commitments to offset carbon emissions

Related information

Headnotes

ACCU, AFS licence, AFS licence obligations, Australian carbon credit unit, Australian financial services licence, authorisation, carrying on a business, Clean Energy Regulator, conduct and disclosure obligations, EIEU, eligible international emissions unit, emissions reduction safeguard mechanism, emissions unit, facility for making a financial investment, financial product, foreign financial services providers, licensing exemptions, managed investment scheme, prescribed carbon unit, retail clients, safeguard mechanism, safeguard rules, wholesale clients

Regulatory guides

RG 1 *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence*

RG 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application*

RG 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs*

RG 36 *Licensing: Financial product advice and dealing*

RG 78 *Breach reporting by AFS licensees and credit licensees*

RG 80 *Managed investment schemes: Interests not for money*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 121 *Doing financial services business in Australia*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 132 *Managed investments: Compliance plans*

RG 133 *Managed investments and custodial or depository services: Holding assets*

RG 134 *Managed investments: Constitutions*

RG 136 *Managed investments: Discretionary powers and closely-related schemes*

RG 139 *Approval and oversight of external dispute resolution schemes*

RG 146 *Licensing: Training of financial product advisers*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 172 *Australian market licences: Australian operators*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 181 *Licensing: Managing conflicts of interest*

RG 211 *Clearing and settlement facilities: Australian and overseas operators*

RG 212 *Client money relating to dealing in OTC derivatives*

Information sheets

INFO 156 *Regulated emissions units: Applying for or varying an AFS licence*

Legislation

Australian Consumer Law, set out in Sch 2 of the *Competition and Consumer Act 2010*

Australian National Registry of Emissions Units Act 2011

Australian National Registry of Emissions Units Regulations 2011

Australian Prudential Regulation Authority Act 1998

Australian Securities and Investments Commission Act 2001

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Farming Initiative Amendment Act 2014

Corporations Act 2001, Pts 7.1, 7.6, 7.7, 7.7A, 7.8, 7.9 and 7.10

Corporations Regulations 2001

Electricity Supply Act 1995

National Consumer Credit Protection Act 2009

National Greenhouse and Energy Reporting Act 2007

Renewable Energy (Electricity) Act 2000

Victorian Energy Efficiency Target Act 2007

Cases

Bray v. F Hoffman-La Roche Ltd (2002) 118 FCR 1

Constantine v. Davies (1984) ASC 55-312

Edgelow v. MacElwee [1918] 1 KB 205

Hope v. Bathurst City Council (1980) 144 CLR 1

Hungier v. Grace (1972) 127 CLR 210

Hyde v. Sullivan (1956) 56 SR (NSW) 113

Luckins v. Highway Motel (Carnarvon) Pty Ltd (1975) 133 CLR 164

Pioneer Concrete Services Ltd v. Galli [1985] VR 675

PT v. Maradona [1992] NSWLR 643 at 650

Re New Cap Reinsurance Corp Holdings Ltd (1999) 17 ACLC 1024

Smith v. Anderson (1880) 15 Ch D 247

ASIC pro forma

PF 209 *Australian financial services licence conditions*

ASIC forms

Form FS01 *Application for AFS licence*

Form FS03 *Application for variation of authorisation and other conditions*

Form FS20 *Change of details for an Australian financial services licence*