

Regulatory Reform and Implementation  
Australian Securities and Investments Commission  
By email: RG236.  
Feedback@asic.gov.au

31 May 2024

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To whom it may concern

We appreciate the invitation to comment on the proposed updates to RG 236. We have not responded to all the specific matters for comment requested but have provided comments for the matters we felt were most relevant.

Grant Thornton's global network maintains an open and constructive relationship with national governments, standard-setters and regulators, consistent with our policy of embracing external oversight. Grant Thornton's response reflects our position as auditors and business advisers to the Australian business community. We work with listed and privately held companies, government, industry, and not-for-profit organisations and are the leading business advisor to mid-market business internationally. Grant Thornton belongs to an international affiliation and are structured as a public unlisted company within Australia.

Our observations are made in the context of impending mandatory climate-related financial disclosures, and the expectation that a significant number of entities in the Australian market will soon be required to disclose their absolute gross greenhouse gas emissions, and transition plans (if they have one). We observe that the transition plans of many entities involve the use of ACCUs or EIEUs ("regulated emissions units"), as well as other emissions and environmental units that do not constitute regulated emissions units ("non-regulated emissions units"). We refer to both categories of emissions units together broadly as "carbon credits", aligned with the current definition of carbon credits in the draft Australian Sustainability Reporting Standards as proposed by the Australian Accounting Standards Board. We consider that RG 236 will become particularly relevant as a source of guidance for these entities who may be engaging with carbon markets for the first time.

#### **Updated examples of other types of financial products**

We observe that the distinction between regulated emissions units and non-regulated emissions units is somewhat technical and generally not well understood by the majority of small and medium-sized enterprises (SMEs) that are currently expected to prepare mandatory climate-related financial disclosures.

Accordingly, we welcome the updated examples in the proposed amendments to RG 236, and suggest as a recommendation for restructuring the guidance, that the section on EIEUs and non-regulated emissions units (RG 236.88-94 and RG 236.119-122) is moved to the start of the regulatory guide.

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## Updated guidance on financial product advice

We observe that there is significant upskilling and education expected to be required in the Australian market in relation to mandatory climate-related financial disclosures. In particular we have observed a pervasive lack of understanding or confusion in relation to carbon credits among entities preparing climate-related financial disclosures for the first time.

We recommend that as part of the updates to RG 236, ASIC considers:

- Clarification of what constitutes factual advice as opposed to financial product advice, particularly as it relates to:
  - accounting treatment of carbon credits, including regulated emissions units; and
  - taxation treatment of carbon credits, including regulated emissions units; and
- Clarification as to whether transition planning services may constitute carrying on a financial services business in Australia.

### *Clarification of what constitutes factual advice as opposed to financial product advice, particularly as it relates to accounting and taxation treatment of carbon credits.*

In our view, there are instances where general advice regarding the application of Australian Accounting Standards, or tax legislation (both Australian and international) in relation to transactions involving carbon credits, might be considered financial product advice. In some circumstances, the accounting and taxation implications of carbon credits may influence a person's decision in relation to a regulated emissions unit, despite the fact the advice was not specifically addressing a regulated emissions unit.

In our view, the need for entities to obtain advice in this area in future is heightened by the differences that current exist between the accounting and taxation treatment of regulated and non-regulated emissions units. At present, a distinction currently exists in taxation law for ACCUs under Division 420 of the *Income Tax Assessment Act 1997*, which does not apply to non-regulated emissions units. Such a distinction does not currently exist in accounting treatment under the Australian Accounting Standards, which considers the substance of the transaction over the legal form of the underlying emissions unit. This nuance is not commonly understood by the majority of entities that are expected to prepare climate-related financial disclosures.

In context, an inability to provide advice regarding accounting outcomes applying Australian Accounting Standards or Australian tax legislation in a protected manner would be akin to preventing an accounting analysis being completed for investments in equity instruments by a managed investment scheme as a user would rely on the presentation resulting from that analysis.

We would recommend that ASIC considers explicitly including in the explanation of "advice that is purely technical in nature", general advice regarding application of Australian Accounting Standards, or the implications of tax legislation (both Australian and international) to transactions involving regulated emissions units, or in relation to the overall business model of the entity. This will enable provision of necessary advice to entities that are considering transition planning for the first time.

We recognise that where the advice is provided regarding accounting or taxation implications of a specific proposed offset project or prospective transaction involving regulated emissions units, this is more likely to constitute financial product advice.

### *Clarification as to whether transition planning services may constitute carrying on a financial services business in Australia*

In preparing for mandatory climate-related financial disclosures, we are observing significant growth in the number of sustainability professionals and consultants providing services in relation to transition planning, which may include the use of carbon credits to meet net-zero targets, including the potential use of regulated emissions units.

We consider there to be a relatively high risk that such consultants or professionals may unwittingly be providing financial product advice and/or carrying on a financial services business in Australia due to the classification of regulated emissions units as financial products. Such individuals or businesses may not be aware of AFS licensing requirements.

We would recommend that ASIC consider how they address this risk in the proposed updates to RG 236, and in broader communications to the market.

Yours sincerely

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