

Attachment to CP 378: Draft regulatory guide



ASIC

Australian Securities &
Investments Commission

REGULATORY GUIDE 236

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

May 2024

About this guide

This guide is for:

- people involved in carbon abatement activities related to the Australian Carbon Credit Units (ACCU) Scheme;
- people who enter into carbon abatement contracts related to the ACCU Scheme;
- safeguard facilities;
- other participants in carbon markets; and
- people who advise carbon market participants.

You can use this guide to help you consider whether you need an 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 draft guide was issued in May 2024 and is based on legislation and regulations as at the date of consultation.

Previous versions:

- Superseded Regulatory Guide 236, issued March 2012, May 2012, June 2012, July 2013 and May 2015.

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.

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A Overview

Key points

Australian carbon credit units (ACCUs), safeguard mechanism credit units (SMCs) 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—that is, to participate in carbon markets.

Among other things, ASIC is responsible for assessing and approving AFS licence applications, and ensuring that licensees operate efficiently, honestly and fairly. ASIC also 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 outlines other information ASIC has published that may be useful for you, and where you can find it.

Emissions units in Australia

- RG 236.1 The key types of emissions units that are traded in Australia are:
- (a) ACCUs; and
 - (b) SMCs, which are a type of eligible international emissions units (EIEUs).
- RG 236.2 There are other emissions units and environmental units that can be traded in Australia, some of which are financial products under the Corporations Act, and some of which are not.

Note: This guide refers to emissions units that are financial products as ‘regulated emissions units’.

Australian carbon credit units

- RG 236.3 An ACCU represents one tonne of carbon dioxide equivalent emissions that are avoided or sequestered by an eligible offsets project. An eligible offsets project is a project carried out in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act).
- RG 236.4 ACCUs can be sold to generate income. They can be sold to the Australian Government through a carbon abatement contract, or to companies and other private buyers (i.e. in the secondary market).
- Note: ‘Carbon abatement contract’ is defined in s20B of the CFI Act; it is a contract entered into by or on behalf of the Government, for the purchase of ACCUs.
- RG 236.5 ACCUs can also be used by operators of certain large industrial facilities to ensure they do not exceed their baseline of emissions (see RG 236.81 for further information).

- RG 236.6 The Clean Energy Regulator is responsible for administering the ‘ACCU Scheme’ (formerly the Emissions Reduction Fund) under which it registers eligible offsets projects and issues ACCUs for carbon abatement achieved by these projects.
- RG 236.7 The avoidance of emissions, or the removal of one or more greenhouse gases from the atmosphere, is referred to as ‘carbon abatement’: see s5 of the CFI Act.
- RG 236.8 Since 2015, financial services provided in relation to emissions units in Australia have primarily involved ACCUs generated under the ACCU Scheme.

Safeguard mechanism and SMCs

- RG 236.9 In November 2014, the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) was amended to establish the safeguard mechanism, which commenced on 1 July 2016.
- RG 236.10 Under the safeguard mechanism, Australia’s largest industrial facilities (referred to in this guide as ‘safeguard facilities’) must ensure that their net emissions number does not exceed their baseline emissions number at the end of each monitoring period, which is usually a financial year.
- Note: Under the NGER Act, the person with operational control of a safeguard facility, the responsible emitter, is responsible for meeting the safeguard mechanism requirements.
- RG 236.11 In April 2023, the NGER Act and legislative rules were amended as part of the ‘safeguard mechanism reforms’. These reforms apply a baseline emissions number to certain facilities, referred to in this guide as ‘safeguard facilities’ (see also RG 236.78(a)), which will decline over time to incentivise those facilities to reduce emissions.
- RG 236.12 The safeguard mechanism legislation also allows for the creation of a new regulated emissions unit, which is called a ‘safeguard mechanism credit unit’ (SMC).
- RG 236.13 If a safeguard facility’s covered emissions are below its baseline emissions number for a monitoring period, and if certain other legislative requirements are met, the Clean Energy Regulator can issue the facility with SMCs. SMCs may be traded between safeguard facilities or with other people.

Note 1: Much of the detail of the safeguard mechanism is set out in legislative rules, primarily the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (Safeguard Rules).

Note 2: See RG 236.79 to RG 236.217 for further details about the obligations of safeguard facilities and when they will be issued with SMCs.

Note 3: A safeguard facility can apply for its monitoring period to span more than one financial year. See Div 2 of Pt 4 of the Safeguard Rules for more details.

- RG 236.14 Both SMCs and ACCUs represent one tonne of carbon dioxide equivalent emissions stored or avoided.

Other markets

- RG 236.15 There are also other markets in Australia and overseas through which other emissions units are traded, some of which are financial products in Australia, and some of which are not. These units are referred to in RG 236.88 to RG 236.94 and RG 236.119 to RG 236.122.

Note: Our use of the term ‘market’ in this guide encompasses bilateral trading of units not on a facility or licensed market, as well as trading on a facility or a licensed market.

ASIC’s role in carbon markets

- RG 236.16 ASIC is an independent Australian Government body 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.

Licensing and supervision

- RG 236.17 Among other things, we licence and monitor financial services businesses to ensure they operate efficiently, honestly and fairly. We refer to this as the ‘AFS licensing regime’, or the ‘AFS licensing system’.

Note 1: Further details on the roles and responsibilities of AFS licensees and their representatives are provided in Sections B and F of this guide.

Note 2: ASIC is also responsible for the licensing and supervision of operators of financial markets. The regulation of financial markets is beyond the scope of this guide: see Regulatory Guide 172 *Financial markets: Domestic and overseas operators* ([RG 172](#)) for more details.

- RG 236.18 A financial services business is one that provides services in relation to financial products. Typically, financial services businesses are involved in superannuation, managed funds, shares and company securities, derivatives and insurance.
- RG 236.19 ASIC also maintains a register of AFS licensees and authorised representatives of AFS licensees.

Regulated emissions units and AFS licensing

- RG 236.20 ACCUs, SMCs and certain other emissions units are financial products under the Corporations Act. This means that you may require an AFS licence if you are carrying on a financial services business in relation to these types of emissions units.

Note: See Section C for further information about which types of emissions units are financial products.

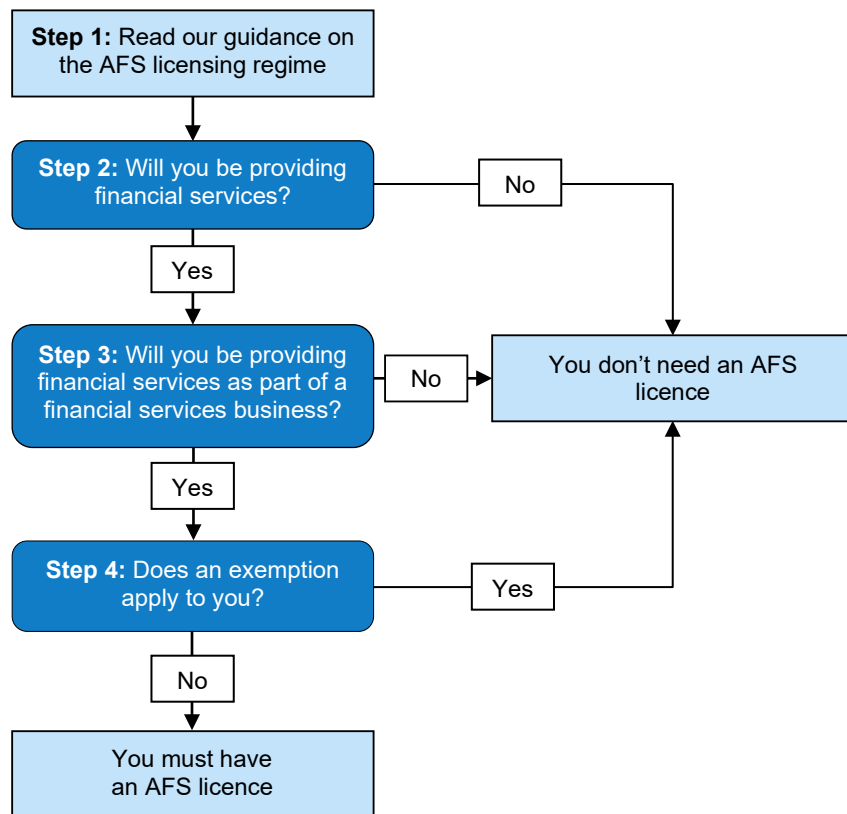
RG 236.21 Other emissions-related financial products include, for example, derivatives over emissions units and interests in managed investment schemes involving carbon abatement activities or emissions units. You may also require an AFS licence to carry on a financial services business in relation to these financial products.

Note: The underlying product for a derivative or the assets of a managed investment scheme do not have to be a financial product for the derivative or the interest in the managed investment scheme to be a financial product.

Deciding whether you need an AFS licence

RG 236.22 In Figure 1, we provide an overview of the steps you should take to work out whether you need an AFS licence to provide financial services for regulated emissions units. Table 1 explains each of the steps in further detail.

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



Note 1: A responsible entity of a registered managed investment scheme is required to hold an AFS licence regardless of whether they provide financial services as part of a financial services business: see s601FA.

Note 2: An accessible version of the information in this figure is provided in Table 1.

Table 1: 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>AFS 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> <p>If you determine that you <i>are</i> likely to be providing financial services, continue to Step 3. If you are not likely to be providing financial services, you do not need an AFS licence.</p>
Step 3: Determine whether you are providing those services as part of a financial services business in Australia	<p>You will 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> <p>If you determine that you <i>will</i> be providing financial services as part of a financial services business, continue to Step 4. If you won't, you do not need an AFS licence.</p> <p>Note: A responsible entity of a registered managed investment scheme is required to hold an AFS licence regardless of whether they provide financial services as part of a financial services business: see s601FA.</p>
Step 4: Determine whether any exemption applies to you	<p>Some people 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. If an exemption applies to you, you will not need an AFS licence.</p>

How to use this guide

RG 236.23 You can use this guide to help you decide whether you require an AFS licence to participate in carbon markets.

RG 236.24 Table 2 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 2: Topics covered in this guide

Topic	Section
Overview of the AFS licensing regime	Section B

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Topic	Section
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 AFS licensees	Section F

RG 236.25 Once you hold an AFS licence, you will also need to meet ongoing requirements of the Corporations Act and *Australian Securities and Investments Commission Act* (ASIC Act): see Section F.

Further guidance for AFS licensees and licence applicants

RG 236.26 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.

Table 3: ASIC guidance for AFS licensees and licence applicants

Preparing your licence application	Regulatory Guide 1 <i>AFS Licensing Kit: Part 1—Applying for and varying an AFS licence</i> (RG 1)
	Regulatory Guide 2 <i>AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application</i> (RG 2)
	Regulatory Guide 3 <i>AFS Licensing Kit: Part 3—Preparing your additional proofs</i> (RG 3)
	Pro Forma 209 <i>Australian financial services licence conditions</i> (PF 209)
	Information Sheet 156 <i>Regulated emissions units: Applying for or varying an AFS licence</i> (INFO 156)
Information Sheet 240 <i>AFS licence applications: Providing information for fit and proper people and certain authorisations</i> (INFO 240)	
Meeting your licensing, conduct and disclosure obligations	Regulatory Guide 36 <i>Licensing: Financial product advice and dealing</i> (RG 36)
	Regulatory Guide 90 <i>Example Statement of Advice: Scaled advice for a new client</i> (RG 90)
	Regulatory Guide 104 <i>AFS licensing: Meeting the general obligations</i> (RG 104)
	Regulatory Guide 105 <i>AFS licensing: Organisational competence</i> (RG 105)
	Regulatory Guide 126 <i>Compensation and insurance arrangements for AFS licensees</i> (RG 126)
	Regulatory Guide 146 <i>Licensing: Training of financial product advisers</i> (RG 146)
	Regulatory Guide 166 <i>AFS licensing: Financial requirements</i> (RG 166)
	Regulatory Guide 167 <i>AFS licensing: Discretionary powers</i> (RG 167)
Regulatory Guide 175 <i>Licensing: Financial product advisers—Conduct and disclosure</i> (RG 175)	

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Meeting your licensing, conduct and disclosure obligations (cont.)	Regulatory Guide 181 <i>Licensing: Managing conflicts of interest</i> (RG 181) Regulatory Guide 244 <i>Giving information, general advice and scaled advice</i> (RG 244) Regulatory Guide 255 <i>Providing digital financial product advice to retail clients</i> (RG 255) Regulatory Guide 271 <i>Internal dispute resolution</i> (RG 271) Regulatory Guide 274 <i>Product design and distribution obligations</i> (RG 274)
Managed investment schemes	Regulatory Guide 80 <i>Managed investment schemes: Interests not for money</i> (RG 80) Regulatory Guide 132 <i>Funds management: Compliance and oversight</i> (RG 132) Regulatory Guide 133 <i>Funds management and custodial services: Holding assets</i> (RG 133) Regulatory Guide 134 <i>Funds management: Constitutions</i> (RG 134) Regulatory Guide 136 <i>Funds management: Discretionary powers</i> (RG 136)

B The AFS licensing regime

Key points

This section provides a brief introduction to the AFS licensing regime.

Two key concepts of the regime are 'financial products' and 'financial services'. 'Financial services' are services provided to clients in relation to financial products: see RG 236.28 to RG 236.63 and RG 236.123 to RG 236.169.

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 236.67 to RG 236.71.

The financial services regime recognises two different types of clients—'wholesale' and 'retail': see RG 236.71 to RG 236.73. Some requirements of the AFS licensing regime apply only if you are providing services to retail clients.

Financial products and services

- RG 236.27 Two key concepts of the AFS licensing regime are:
- (a) 'financial products'; and
 - (b) 'financial services' (i.e. services provided to clients that relate to financial products).

Financial products

- RG 236.28 A 'financial product' is a facility that allows a person to make a financial investment, manage a financial risk or make non-cash payments: see s763A of the Corporations Act.
- RG 236.29 Financial products are regulated under the Corporations Act. Generally, a person requires an AFS licence if they provide financial services in relation to these products in Australia as part of a financial services business.
- RG 236.30 ACCUs and EIEUs (which include SMCs) are financial products. In addition to these regulated emissions units, s764A of the Corporations Act specifies that the following, amongst other things, are financial products:
- (a) shares;
 - (b) debentures;
 - (c) interests in a managed investment scheme;
 - (d) interests in a notified foreign passport fund;

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

Note: The definition of ‘financial product’ is found in Div 3 of Pt 7.1 of the Corporations Act

RG 236.31 A facility or arrangement that is not specified in s764A of the Corporations Act may still fall within the general definition of a financial product, if it is a facility through which, or through the acquisition of which, a person makes a financial investment: see s763B of the Corporations Act.

RG 236.32 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:
 - (i) the other person uses the contribution to generate a financial return, or other benefit, for the investor; the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor; or
 - (ii) 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 236.33 An arrangement in carbon markets that does not relate to regulated emissions units may still be a financial product if it is a facility for making a financial investment.

RG 236.34 Certain products are specified in s765A of the Corporations Act, or declared under regulations made for s765A, as not being financial products. A carbon abatement contract under the CFI Act is not a financial product: see reg 7.1.07J of the *Corporations Regulations 2001* (Corporations Regulations). Consequently, you do not need an AFS licence if you provide advice about a carbon abatement contract or deal in a carbon abatement contract.

Financial services

RG 236.35 The AFS licensing regime is structured around whether a person is providing a financial service. A person requires an AFS licence to carry on a business of providing financial services in Australia, unless they are exempt.

- RG 236.36 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) operate the business and conduct the affairs of a corporate collective investment vehicle;
 - (f) provide a custodial or depository service;
 - (g) provide a crowd-funding service;
 - (h) provide a claims handling and settlement service;
 - (i) provide a superannuation trustee service; or
 - (j) are a traditional trustee company providing traditional trustee services.

Note: Div 4 of Pt 7.1 of the Corporations Act includes provisions about when a person provides a financial service. See also Regulatory Guide 121 *Doing financial services business in Australia* ([RG 121](#)) for further information.

- RG 236.37 The financial services that are more likely to be provided in relation to regulated emissions units are briefly explained below at RG 236.38 to RG 236.64.

Providing financial product advice

- RG 236.38 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: see s766B of the Corporations Act.
- RG 236.39 Simply providing factual information will generally not constitute financial product advice. Factual information is information that can be objectively ascertained and generally does not involve qualitative judgement, an evaluation or expression of an opinion or recommendation about the relevant subject matter.

Example 1: Factual information vs financial product advice

A person is informed of the volume-weighted average price for ACCUs in the carbon abatement contracts entered into at an ACCU Scheme auction.

This would constitute factual information rather than financial product advice.

- RG 236.40 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](#) and [RG 244](#).

- RG 236.41 There are two types of financial product advice—personal and general advice:
- (a) *Personal advice* is financial product advice given or directed to a person (including by electronic means) in circumstances where:
 - (i) the provider of the advice has considered one or more of the person’s objectives, financial situation and needs; or
 - (ii) a reasonable person might expect the provider to have considered one or more of those matters.
 - (b) *General advice* is financial product advice that is not personal advice.

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

Note 2: For further information about the distinction between personal and general advice, see [RG 175](#).

- RG 236.42 Advice given in some situations is exempt from the definition of ‘financial product advice’: see [RG 36](#). While these exemptions generally apply in limited, specific circumstances, a broader exemption applies to the provision of advice:

- (a) that is not:
 - (i) about a particular financial product;
 - (ii) personal advice; and
 - (iii) intended, and could not reasonably be regarded as intended, to influence a person in making a decision on a particular financial product; and
- (b) where the adviser or its associates will not receive any remuneration, commission or other benefit for providing that advice.

Note: See reg 7.1.33G of the Corporations Regulations.

- RG 236.43 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 from the definition of ‘financial product advice’ 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](#)); 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](#)).

RG 236.44 If you provide information to other people on a regulated emissions unit that may influence a person's decision about that emissions unit, 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.

RG 236.45 For information and examples of when information provided in the context of carbon markets may be financial product advice, see Section D.

Dealing in a financial product

RG 236.46 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 236.47 However, if a person is simply dealing on their own behalf (e.g. buying a financial product for themselves), this is not an activity that requires an AFS licence, unless they are issuing a financial product. Therefore, the main types of dealing regulated under the Corporations Act are:

- (a) dealing 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, and exemptions from the definition of 'dealing', see [RG 36](#).

RG 236.48 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, or when they are excluded from the meaning of ‘dealing’, see Section D.

Making a market for a financial product

RG 236.49 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;
- (b) other people can reasonably expect to be able to regularly buy or sell at those stated prices; and
- (c) the actions of the person do not constitute operating a financial market because of the effect of s767A(2)(a) of the Corporations Act.

RG 236.50 It is not necessary for a market maker to quote both buy and sell prices—a person may still be making a market 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 236.51 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 people (operating a financial market) or solely on their own behalf (making a market). 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 one party to the transaction only: see s767A(2)(a) of the Corporations Act.

Note 1: For more information on making a market, see s766D of the Corporations Act.

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 of the Corporations Act and [RG 172](#).

RG 236.52 Offering to enter into a carbon abatement contract does not constitute making a market for a financial product.

RG 236.53 See Section D for examples of what may constitute making a market for regulated emissions units.

Operating a managed investment scheme

RG 236.54 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 of the Corporations Act regulates the operation of managed investment schemes.

RG 236.55 An interest in a managed investment scheme—with the exception of schemes that have 20 or fewer members and some managed investment schemes that are not registered—is a financial product.

RG 236.56 A managed investment scheme must be registered with ASIC if it includes one or more retail investors and:

- (a) has more than 20 members; or
- (b) is promoted by a person who is in the business of promoting managed investment schemes.

Note: If we determine that a number of managed investment schemes are closely related, and the total number of members of all of the schemes exceeds 20, those schemes must also be registered: see s601ED(1)(c) of the Corporations Act.

RG 236.57 Registered schemes must meet the requirements of Ch 5C of the Corporations Act, including by having a single responsible entity 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. Under its AFS licence, the responsible entity must meet certain licence conditions, including meeting financial resource requirements: see [PF 209](#) and [RG 166](#).

RG 236.58 Operators of unregistered schemes also must generally hold an AFS licence to issue, vary and dispose of interests in the scheme to wholesale investors. They must also hold an AFS licence to provide any other relevant financial services in relation to the scheme and its underlying assets.

Note: See Information Sheet 251 *AFS licensing requirement for trustees of unregistered managed investment schemes* ([INFO 251](#)).

RG 236.59 Managed investment schemes hold scheme assets in a wide variety of structures and can hold a wide range of asset types, including different types of financial products, land and other assets.

RG 236.60 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.

Providing a custodial or depository service

RG 236.61 A ‘custodial or depository service’ generally involves a person holding financial products or beneficial interests in financial products on trust for, or on behalf of, another person (usually for a fee).

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

RG 236.62 For example, where a registered holder of ACCUs or SMCs under the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) holds ACCUs or SMCs on behalf of other people who are the beneficial owners of the ACCUs or SMCs, this may constitute a ‘custodial or depository service’.

RG 236.63 A custodial or depository service will not be provided where the provider of the service has no more than 20 clients in aggregate for all custodial or depository services it provides: see reg 7.1.40(1)(c) of the Corporations Regulations.

RG 236.64 For information and examples of when entities may provide a custodial or depository service, see Section C.

AFS licence authorisations and conditions

RG 236.65 A person requires an AFS licence to carry on a business of providing financial services in Australia, unless they are exempt. The types of financial services provided by a person will determine what specific AFS licence authorisations they require (see Section F for more details about licence authorisations).

RG 236.66 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.

AFS licensees and their representatives

RG 236.67 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 s9 of the Corporations Act for the definition of ‘representative’ and ‘authorised representative’. In this guide, references to ‘representatives’ and ‘authorised

representatives' are references to such people as defined in the Corporations Act, and should be distinguished from people referred to in the ANREU Act as 'authorised representatives'.

RG 236.68 People acting as representatives of AFS licensees are exempt from needing to hold a licence themselves. Additionally, representatives acting for people who are exempt from holding a licence are similarly exempt: see s911A(2)(a) of the Corporations Act.

RG 236.69 AFS licensees are ultimately responsible for supervising the conduct of their representatives: see Section F for more details on licensees' obligations.

RG 236.70 We maintain a register of AFS licensees and authorised representatives of licensees. This register can be searched online through [ASIC Connect](#).

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 236.71 The AFS licensing regime recognises two main types of clients—wholesale and retail. A financial product or service is generally considered to be provided to a retail client, unless the client is classified as a 'wholesale client'.

RG 236.72 A person may fall within the definition of a 'wholesale client' if, among other things:

- (a) the value of the financial products provided to them, or to which a financial service relates, is \$500,000 or more;

Note: Where financial product advice is provided for more than one product at a time, the cumulative value of the products 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: see reg 7.1.19(5) of the Corporations Regulations.

- (b) they have net assets of at least \$2.5 million;
- (c) they have had a gross income for each of the past two financial years of at least \$250,000;
- (d) they are a 'professional investor'—this category includes AFS licensees, listed entities, banks, and other specified entities that may be presumed to have the expertise or access to professional advice to justify their being treated as a wholesale client; or
- (e) they are a 'sophisticated investor' being provided with certain financial products and services that are not provided in connection with the client's business, and:
 - (i) 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

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

Note: See s761G, 761GA of the Corporations Act and regs 7.1.11 to 7.1.28 of the Corporations Regulations for provisions on wholesale and retail clients.

RG 236.73 Some requirements of the AFS licensing regime apply only if you are providing services to retail clients. This is because 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.

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C Types of emissions units and related products that are financial products

Key points

The emissions units that are financial products are:

- Australian carbon credit units (ACCUs) (see RG 236.74 to RG 236.78);
- safeguard mechanism credit units (SMCs), which are a type of eligible international emissions units (EIEUs) (see RG 236.79 to RG 236.85); and
- EIEUs other than SMCs (see RG 236.88 to RG 236.94).

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

A carbon abatement contract is not a financial product.

Generally, derivatives over any emissions unit, and interests in a managed investment scheme involving carbon abatement activities or emissions units (including non-domestic units), are financial products.

Australian carbon credit units

RG 236.74 An ACCU is a unit issued by the Clean Energy Regulator and is a financial product. ACCUs are issued to a project proponent for undertaking activities that result in carbon abatement in an eligible offset project under the ACCU Scheme (referred to in this guide as an ACCU Scheme project).

RG 236.75 The ACCU Scheme, established under the CFI Act, encourages landholders, communities and businesses to undertake activities that:

- (a) avoid the release of greenhouse gas emissions;
- (b) remove carbon dioxide from the atmosphere; and
- (c) sequester carbon in living biomass, dead organic matter or soil.

These activities may be registered as ACCU Scheme projects if they are undertaken in accordance with specified methods.

RG 236.76 For each tonne of carbon dioxide equivalent emissions stored or avoided by an ACCU Scheme project, the Clean Energy Regulator issues an ACCU to the project proponent.

RG 236.77 Project proponents may, among other things:

- (a) sell ACCUs to the Government through a carbon abatement contract;

- (b) surrender ACCUs to the Clean Energy Regulator to offset their own greenhouse gas emissions; and
- (c) trade ACCUs on the carbon market.

RG 236.78 Other participants in the carbon market for ACCUs include:

- (a) safeguard facilities, trading in ACCUs to meet their baseline emissions number under the NGER Act;

Note: See RG 236.79 to RG 236.85 for more information regarding the safeguard mechanism.

- (b) other businesses and individuals that voluntarily purchase ACCUs to offset the greenhouse gas emissions of their business, product or other endeavour; and
- (c) financial institutions and other liquidity providers that trade ACCUs as part of their financial services business activities.

Safeguard mechanism credit units

RG 236.79 An SMC is a type of EIEU, and like other types of EIEUs, it is a financial product.

RG 236.80 However, an SMC is quite different from other EIEUs. SMCs are issued in Australia by the Clean Energy Regulator, whereas most other kinds of EIEUs are issued outside of Australia. Further, safeguard facilities and eligible facilities may be incentivised to trade in SMCs or ACCUs, whereas there is no such incentive for other kinds of EIEUs. Note that:

- (a) *a safeguard facility* is a facility whose total amount of covered emissions from its operations during the financial year has a carbon dioxide equivalence of more than 100,000 tonnes; and
- (b) *an eligible facility* is a facility whose total amount of covered emissions is less than 100,000 tonnes, but was more than 100,000 tonnes in the past.

Note 1: See s58B of the Safeguard Rules for the full definition of an ‘eligible facility’.

Note 2: See RG 236.88 to RG 236.94 for a detailed explanation of the other types of EIEUs. The Clean Energy Regulator only issues SMCs under the NGER Act to a safeguard facility or eligible facility where the facility’s covered emissions are below its baseline emissions number for a monitoring period.

RG 236.81 Under the NGER Act, all safeguard facilities are given a baseline emissions number, and they must ensure their net emissions number does not exceed that baseline emissions number for the monitoring period. Otherwise, they may be liable for a civil penalty arising from action by the Clean Energy Regulator.

Note: ‘Baseline emissions number’ is the number ascertained in accordance with the relevant formula set out in the Safeguard Rules in relation to that facility: see s22XL of the NGER Act and s9 to 12 of the Safeguard Rules. ‘Net emissions number’ means 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 less any ACCUs or SMCs surrendered: see s22XK of the NGER Act.

- RG 236.82 If a safeguard facility or eligible facility's covered emissions are below its baseline emissions number for a monitoring period, and certain other legislative requirements are satisfied, the Clean Energy Regulator issues that facility with an amount of SMCs worked out in accordance with Pt 3A of the Safeguard Rules.
- RG 236.83 Conversely, if a safeguard facility considers that its covered emissions will be higher than its baseline emissions number for the monitoring period (referred to as an 'excess emissions situation' under the NGER Act), in order to avoid a penalty, it can purchase sufficient ACCUs or SMCs and surrender them to the Government so as to reduce its net emissions number to the baseline emissions number. In this way, the safeguard mechanism arrangements may create an incentive for safeguard facilities to trade in SMCs and ACCUs.
- RG 236.84 For a safeguard facility to surrender units to the Government, it can:
- (a) use any existing SMCs or ACCUs it holds;
 - (b) purchase additional SMCs or ACCUs from another registered holder;
 - (c) purchase additional ACCUs from the Government (in limited circumstances); or
 - (d) arrange to have a third party surrender SMCs or ACCUs to the Government on its behalf.

Interaction between the safeguard mechanism and the ACCU Scheme

- RG 236.85 The safeguard mechanism legislation operates so that a safeguard facility may participate in the ACCU Scheme but its abatement activities in relation to covered emissions are only counted once for the purposes of calculating its net emissions.
- RG 236.86 Project proponents cannot register new eligible offsets projects after May 2023 that solely abate covered emissions from the operation of safeguard facilities: see s27(4)(l) of the CFI Act and s20 of the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (CFI Rules). This is because such abatement could be used to reduce a facility's net emissions number as well as to generate ACCUs, thereby counting the same emissions reduction twice.
- RG 236.87 Safeguard facilities, other than landfill facilities, can enter into new eligible offset projects that reduce emissions other than covered emissions, as these kinds of emissions are not covered by the safeguard mechanism.

Note: See s15(2)(h) and 27(4)(l) of the CFI Act and s9(8) to (10) of the CFI Rules for more detail

Other types of eligible international emissions units (EIEUs)

RG 236.88 This section relates to EIEUs other than SMCs.

RG 236.89 EIEUs are defined in the ANREU Act as:

- (a) certified emission reductions (other than a temporary certified emission reduction or a long-term certified emission reduction);
- (b) emission reduction units;
- (c) removal units;
- (d) prescribed units issued in accordance with the Kyoto rules; and
- (e) SMCs (if the legislative rules specify that kind of unit).

Note 1: 'Kyoto rules' is defined in s4 of the ANREU Act.

Note 2: The *Australian National Registry of Emissions Units Rules 2023* specifies SMCs as EIEUs in accordance with the ANREU Act.

RG 236.90 Unlike SMCs, there is no incentive under a legislative framework to trade in other EIEUs in order to meet Australian legislative requirements involving emissions reduction.

RG 236.91 An EIEU cannot be purchased by the Clean Energy Regulator under a carbon abatement contract.

RG 236.92 EIEUs other than SMCs cannot be used by a safeguard facility to reduce its net emissions number under the Safeguard Rules unless they are specified in the Safeguard Rules.

Note: No other EIEUs have been prescribed or specified for this purpose.

RG 236.93 EIEUs may be traded in the domestic carbon market.

RG 236.94 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.

RG 236.95 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 236.96 There are two main types of financial products related to emissions units that are specified in s764A of the Corporations Act, they are:

- (a) derivatives over emissions units; and
- (b) interests in a managed investment scheme.

RG 236.97 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: see s763A of the Corporations Act. For example, where a contract in relation to carbon abatement (that generates regulated emissions units) is a facility to make a financial investment, it is a financial product.

Derivatives

RG 236.98 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: see s761D of the Corporations Act. Forms of arrangements in carbon markets that are likely to be a derivative over emissions units include, for example, 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: see regs 7.1.04(8)(c) and 7.1.07J of the Corporations Regulations.

RG 236.99 A contract for the future provision of services is excluded from the meaning of ‘derivative’: see s761D(3)(b). It can often be difficult to determine in practice whether s761D(3)(b) applies. It will depend on the facts of each case and requires consideration of the substance of the contract, objectively ascertained from the contractual terms. The exclusion in s761D(3)(b) will not apply to every contract that involves some provision of services in the future. For example, where the substance of the contract is to provide exposure to an underlying product (such as ACCUs), and the provision of future services are merely incidental or ancillary to that purpose, the exception will not apply.

Note: See *Joffe v The Queen* [2012] NSWCCA 277; *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2024] FCA 64; and *International Litigation Partners Pte Ltd v Chameleon Mining NL* [2011] NSWCA 50.

Example 2: Options contract for the provision of SMCs

A safeguard facility enters into a contract for an option to purchase SMCs from another safeguard facility in 6 months time at the price of \$40 per SMC.

The contract is a derivative because it is an option to acquire emissions units at a fixed price on a future date. While the price of SMCs is fixed, the value of the arrangement varies by reference to the value of SMCs as at any given time during the life of the options contract.

RG 236.100 Example 2 is an options contract that involves the right to purchase a product, SMCs, at some point in the future. Under the above contractual

terms, neither party is obliged to provide the other with ‘services’ in the future so the contract is not a contract for the future provision of services.

Interests in a managed investment scheme

- RG 236.101 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.
- RG 236.102 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): see s9 of the Corporations Act.

Note: Generally, a managed investment scheme is a scheme where (i) people contribute money or money’s worth as consideration to acquire rights to benefits produced by the scheme; (ii) any of the contributions are to be pooled, or used in a common enterprise, to produce benefits for the members; and (iii) the members do not have day-to-day control over the operation of the scheme. For the precise definition, see s9 of the Corporations Act.

ACCU Scheme aggregated projects

- RG 236.103 In relation to carbon markets, a managed investment scheme may, for example:
- (a) pool investors’ money or other contributions, such as use of land and/or labour, 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 people for the purpose of providing financial benefits to those people from the eventual sale of the units; or
 - (c) pool, or use in common enterprise, contributions of carbon abatement for the purposes of generating emissions units to provide financial benefits to the contributors from the eventual sale of the units.
- RG 236.104 Under the ACCU Scheme, such a scheme is generally known as an ‘aggregation’ or an ‘aggregated project’ and the project proponent is generally known as an ‘aggregator’.
- RG 236.105 The contributions may also be 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.

Example 3: ACCU Scheme aggregated project that is a managed investment scheme

A carbon aggregator (the project proponent) enters into an arrangement with several farmers within the same region, with the intention of creating an ACCU Scheme soil carbon project and generating income for the farmers who are contributing to the scheme.

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The farmers contribute to the scheme by granting the aggregator permission to enter their land to cover crops to promote soil vegetation cover and improve soil health. The farmers also contribute money to finance the crop covering.

The farmers may receive financial benefits from the scheme by receiving a share of the proceeds of selling the ACCUs generated by the ACCU Scheme project, proportionate to the number of ACCUs generated on their land.

The farmers pay a management fee to the carbon aggregator who maintains day-to-day control over the scheme.

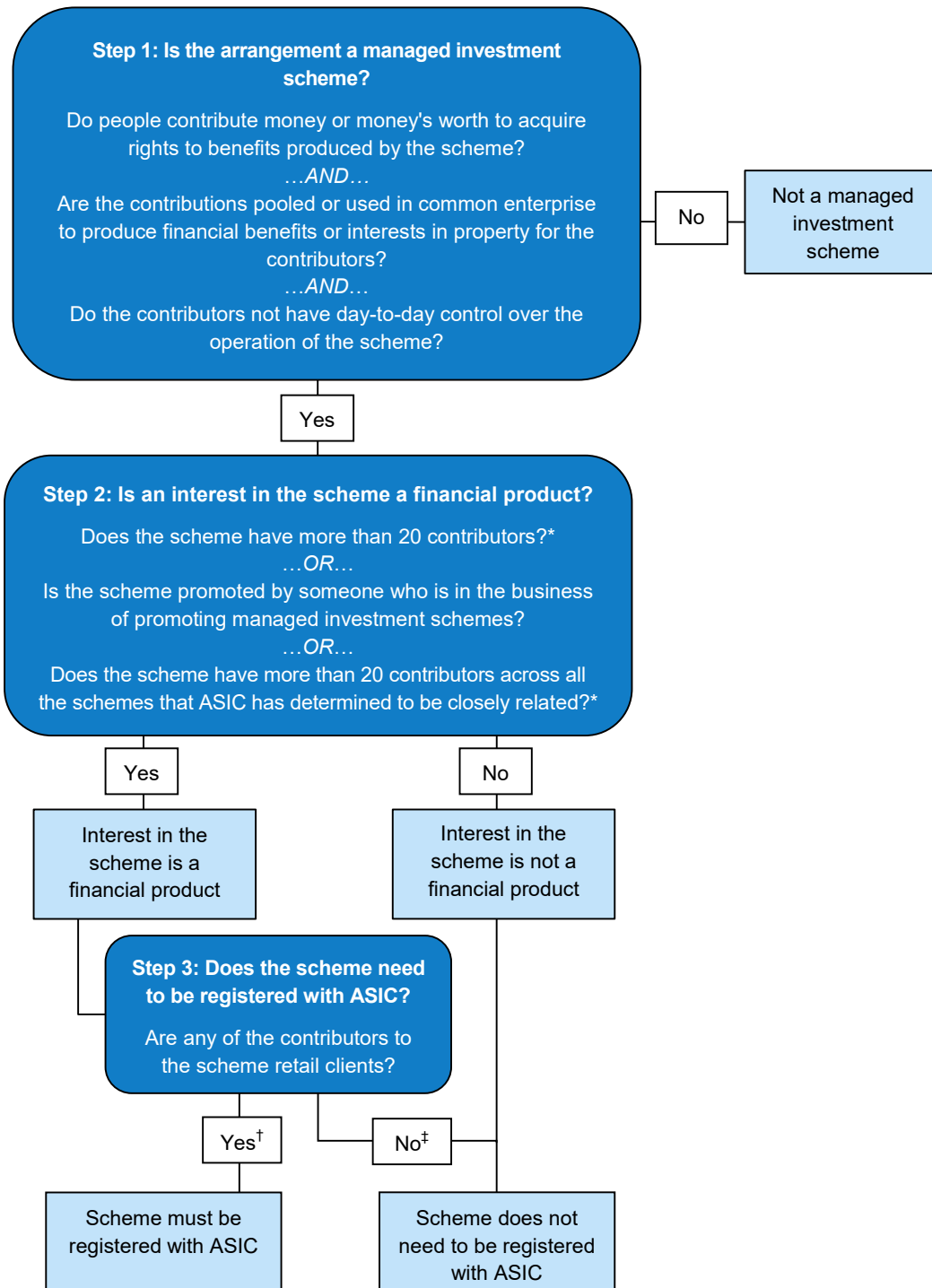
The carbon aggregator has day-to-day control over the scheme because it:

- manages the crop covering;
- undertakes periodic testing as required under the relevant project methodology;
- undertakes all registration, reporting and other regulatory requirements under the ACCU Scheme; and
- arranges to sell the ACCUs generated for income (for example, to the Queensland Government through the Land Restoration Fund).

- RG 236.106 An ACCU Scheme aggregated project may be a managed investment scheme if the arrangement includes contractual terms for the carbon abatement contributors that are related to the operation of the aggregated project. These may include terms that make the operation of the aggregated project conditional on having a minimum number of contributors, or terms of payment for contributors' carbon abatement that are related to ACCU sale prices achieved by the project proponent.
- RG 236.107 For example, under the terms of an aggregation arrangement, the ACCU Scheme project would only proceed if the carbon aggregator could secure a minimum land area to proceed so that the ACCU Scheme aggregated project is of the required scale to offset transaction costs. Any financial benefits that the farmers may earn will depend on the ACCU Scheme aggregated project, as a whole, proceeding. In this case, we consider that the ACCU Scheme aggregated project would generally be a managed investment scheme.
- RG 236.108 Not all ACCU Scheme aggregated projects are necessarily managed investment schemes. For example, an arrangement where people generate carbon abatement but are not entitled to receive further financial benefits or interests in property, may not be a managed investment scheme.
- RG 236.109 Whether or not an aggregated project is a managed investment scheme will depend on the particular arrangement between the contributors and the aggregator. Different types of aggregated projects may have different types of contributions, and different types of financial benefits may be produced using the contributions.

- RG 236.110 Contributions made under an aggregated project may take other forms, such as:
- (a) a landholder contributing carbon abatement (carried out in accordance with the relevant method for the offset project);
 - (b) a landholder contributing the right to use their land for a carbon abatement activity;
 - (c) a site or facility owner or lessee contributing the right to use their site or facility for a carbon abatement activity; or
 - (d) the provision of labour or other services that are a means to generate carbon abatement.
- RG 236.111 In each case, the contributions are consideration to acquire rights to the benefits produced by the scheme.
- RG 236.112 The ACCU Scheme 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) improvements in the productivity of their land or facility allowing the contributor to improve profitability of their business; or
 - (c) the ability to deal in ACCUs with parties who require a certain minimum quantity of ACCUs in a transaction, for example, a safeguard facility seeking to purchase a certain quantity of ACCUs in order to meet its baseline.
- RG 236.113 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).
- RG 236.114 If an ACCU Scheme aggregated project is a managed investment scheme, an interest in the scheme may be a financial product. The scheme may therefore need to be registered with ASIC (see Figure 2), in which case:
- (a) people providing financial services in relation to interests in schemes that are financial products are subject to the AFS licensing, conduct and disclosure requirements in Ch 7 of the Corporations Act; and
 - (b) a registered scheme must meet the requirements of Ch 5C of the Corporations Act.
- RG 236.115 If an ACCU Scheme aggregated project is not a managed investment scheme, then the arrangement between a contributor and the project proponent may still be a financial product as a derivative or a facility for making a financial investment: see RG 236.96 to RG 236.98 and RG 236.30 to RG 236.32.

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



Note: For the information in this figure, see RG 236.217 to RG 236.223 in the appendix (accessible version).

* 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) of the Corporations Act.

† 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 (and generally PDSs are required to be given to retail clients).

‡ 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 of the Corporations Act.

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Multiple ACCU Scheme projects for a single carbon abatement contract

RG 236.116 An ACCU Scheme project proponent may be the project proponent for a number of ACCU projects and enter into a single carbon abatement contract for the sale of a combined quantity of ACCUs. Generally, this type of arrangement would not be a managed investment scheme but, in some limited circumstances, it can be.

Example 4: Multiple projects for a single carbon abatement contract

A project proponent carries out multiple ACCU Scheme projects by having a number of farmers carry out a permanent environmental planting as a carbon abatement activity on each of their properties. Each ACCU Scheme project may participate in an auction for the purchase of ACCUs on behalf of the Australian Government.

The project proponent enters into a single carbon abatement contract for a combined quantity of ACCUs from the separate ACCU Scheme 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 project proponent and are not passed on to the farmers.

Generally, this aggregation of multiple projects to enter into a single carbon abatement contract will not produce financial benefits for the farmers involved in the separate ACCU Scheme projects. Therefore, this arrangement does not fall within the definition of a managed investment scheme.

RG 236.117 However, a single carbon abatement contract arrangement may be a managed investment scheme if, for example:

- (a) there is a reduction in contract management or other costs as a result of the pooling of the projects that are passed on to contributors in the form of higher net proceeds from the sale of the ACCUs; or
- (b) as a result of the pooling of the projects, the project proponent will be issued with more ACCUs under the carbon abatement contract than if the projects were not pooled, and the value of the increased number of ACCUs is passed on to the contributors.

Schemes involving safeguard facilities

RG 236.118 Similar considerations apply as to whether a single contract arrangement providing SMCs or ACCUs to a safeguard facility 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 multiple sellers of ACCUs or SMCs to be able to, in practice, contract with a particular buyer;
- (b) reductions in contract management or other costs that are passed on to contributors in the form of higher net ACCU or SMC sale proceeds; or
- (c) a buyer paying a higher price for ACCUs or SMCs in a single contract than for several separate, smaller contracts.

Other emissions and environmental units

- RG 236.119 There are a variety of other emissions and environmental units that can be traded in markets in Australia and overseas, including:
- (a) Biodiversity Certificates issued under the *Nature Repair Act 2023*;
 - (b) Large Scale Generation Certificates and Small Scale Technology Certificates issued under the *Renewable Energy (Electricity) Act 2000*;
 - (c) Energy Savings Certificates issued under the *NSW Electricity Supply Act 1995*;
 - (d) Victorian Energy Efficiency Certificates issued under the *Victorian Energy Efficiency Target Act 2007*;
 - (e) European Union Allowances issued by a member state of the European Union, or by other jurisdictions participating in the European Union Emissions Trading System;
 - (f) New Zealand Emissions Units issued by the New Zealand Government under the New Zealand Emissions Trading Scheme; and
 - (g) Verified Carbon Units issued according to the international Verified Carbon Standard.
- RG 236.120 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: see s764A of the Corporations Act.
- RG 236.121 We do not consider that these types of units fall within the general definition of a financial product (i.e. a facility for making a financial investment or managing a financial risk: see s763A of the Corporations Act). These types of units are ordinarily acquired to conserve or improve certain aspects of the physical environment (e.g. investing in nature repair projects through biodiversity certificates), or to offset other emissions that cannot be avoided in the short term. They are not ordinarily acquired to manage the financial consequences that may flow if a particular outcome occurs. Therefore, we do not consider that these units are ordinarily 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 236.122 However, if a derivative is created over one of these other units, the derivative itself is likely to be a financial product regulated under the Corporations Act. Additionally, if such 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 Section E, RG 236.54 to RG 236.59.

D Providing financial services involving 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;
 - operate the business and conduct the affairs of a corporate collective investment vehicle;
 - provide a custodial or depository service;
 - provide a crowd-funding service;
 - provide a claims handling and settlement service;
 - provide a superannuation trustee service; or
 - are a traditional trustee company providing traditional trustee services.
- This section explains when commonly undertaken activities relating to regulated emissions units are likely to amount to one or more of these types of financial services. It does not cover every type of financial service that may be provided involving regulated emissions units.

Types of financial services that relate to regulated emissions units

- RG 236.123 As ACCUs and EIEUs (including SMCs) are financial products, providing financial services in relation to these emissions units is regulated under the Corporations Act.
- RG 236.124 This section explains how the financial services provisions of the Corporations Act outlined in Section B apply to ACCUs and EIEUs (including SMCs). A summary of when you may be providing a financial service for these regulated emissions units is provided in Table 4.
- RG 236.125 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 236.155.

Table 4: When you may be providing some common types of financial services in relation to regulated emissions units

Financial service	Key questions to ask	Types of activities to consider
<p>Providing financial product advice</p> <p>See RG 236.126 to RG 236.143.</p>	<p>What is the nature of the information given to a client?</p> <p>What is the purpose of giving the information?</p>	<p>Providing an opinion or recommendation that is intended, or could reasonably be regarded as being intended, to influence a client's decision about a financial product can constitute financial product advice.</p> <ul style="list-style-type: none"> In addition, advice that is solely intended, or could reasonably be regarded as being 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. <p>Where the above does not apply, the following may not be financial product advice:</p> <ul style="list-style-type: none"> technical advice about an offset project; objective factual information about financial products; and advice to a safeguard facility about operational improvements that may be used to reduce a safeguard facility's covered emissions.
<p>Dealing in a financial product</p> <p>See RG 236.144 to RG 236.151.</p>	<p>Who is undertaking the transaction?</p> <p>What is the purpose of the transaction?</p>	<p>Dealing in a financial product includes conduct such as issuing, buying or selling a financial product. Arranging for another person to deal is also generally a dealing. Some activities that would otherwise be dealing, which are done on your own behalf, are not considered to be dealing. However, an exception to this rule is dealing by issuing derivatives and interests in a managed investment scheme.</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 236.152 to RG 236.152.</p>	<p>Are you quoting prices of regulated emissions units on your own behalf?</p>	<p>Where a person quotes prices at which they are prepared to buy or sell ACCUs or EIEUs, or derivatives over ACCUs or EIEUs, on their own behalf, in certain circumstances they will be making a market.</p>

Financial service	Key questions to ask	Types of activities to consider
<p>Operating a registered managed investment scheme</p> <p>See RG 236.159 to RG 236.166.</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 236.167 to RG 236.169.</p>	<p>Do you hold financial products or beneficial interests in financial products on 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 on 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>A 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 those products).</p> <p>Some exemptions apply to certain services that may otherwise be a custodial or depository service: see RG 236.167 to RG 236.169.</p>

Providing financial product advice on regulated emissions units

RG 236.126 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 236.127 Such advice may be provided to a wide range of people. For example:

- (a) advice to people seeking to enter into an ACCU Scheme project, or 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 236.132 to RG 236.139 for more information about when advice relating to an offset project may constitute financial product advice.

- (b) advice to people engaged in voluntarily offsetting their emissions (voluntary offsetters) on approaches to, or strategies for, acquiring or disposing of regulated emissions units for this purpose;
- (c) advice to safeguard facilities to assist them to make a decision about acquiring or disposing of SMCs or ACCUs;
- (d) advice to any person about regulated emissions units;
- (e) advice to any person about 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 236.128 There are additional obligations under Pt 7.7 of the Corporations Act if advice is provided to retail clients. These obligations vary depending on whether the advice is personal advice or general advice.

Note: See RG 236.41, RG 236.71 to RG 236.41, [RG 175](#) and [RG 244](#) for further guidance on the distinction between personal and general advice, and information on which clients are considered to be retail clients.

RG 236.129 Generally, if you are providing personal advice to retail clients, you must meet the conduct obligations under Div 2 of Pt 7.7A of the Corporations Act, 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](#) and [RG 244](#) for more details about meeting these and other requirements.

RG 236.130 In most cases, where an adviser recommends a financial product (for example, an interest in a managed investment scheme) 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 236.209.

RG 236.131 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 Section E.

Advice on offset projects

RG 236.132 The key question when determining whether advice on an offsets project is financial product advice, is whether the advice is, or could reasonably be regarded as being, intended to influence a person's decision in relation to regulated emissions units (which are or may be derived from the project). It is immaterial whether:

- (a) the advice relates to a project that has not yet been declared an eligible offsets project under the CFI Act;
- (b) the advice relates to an eligible offsets project, but the project proponent has not yet been issued with ACCUs for carbon abatement generated by the project; or
- (c) the project has been in existence for some time and is consistently generating ACCUs.

Note: Advice may relate to the regulated emissions unit itself (e.g. ACCUs or SMCs) or it may relate to other types of financial products such as derivatives over ACCUs (other than a carbon abatement contract) or an interest in an ACCU Scheme aggregated project that is a managed investment scheme.

RG 236.133 Advice given to a landholder in the following circumstances is likely to constitute financial product advice because it will influence their decision in relation to acquiring (or generating) ACCUs, which are financial products:

- (a) A project proponent recommends that the landholder participate in a project where the landholder will receive ACCUs for their participation, or proceeds from the sale of ACCUs generated by the project.
- (b) A carbon project adviser recommends that the landholder structure a carbon abatement project in a certain way, in order to maximise the number of ACCUs generated under the project.

RG 236.134 Other examples of financial product advice that may be provided in the context of offset projects to generate ACCUs (or EIEUs other than SMCs) include:

- (a) recommendations on whether to buy, sell or hold ACCUs generated by a project;
- (b) strategies or transaction terms for dealing in ACCUs; and
- (c) the outlook for, or forecast of, ACCU prices, because a forecast can influence a person's decision in relation to ACCUs.

RG 236.135 The advice does not need to be acted on, or to have succeeded in influencing the person advised, in order to be financial product advice.

RG 236.136 Advice of a technical nature about the project or potential project, which does not influence a decision about regulated emissions units may not, in isolation, be financial product advice.

RG 236.137 Examples of the type of advice that would not constitute financial product advice include:

- (a) advice about options for technology or inputs that may be used in a project, or advice about 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 financial returns of a project that are not returns related to carbon abatement or ACCUs (e.g. advice about cost savings); and
- (d) advice about the ongoing operations of a project (e.g. advice about a maintenance or asset management plan for a project).

RG 236.138 Information about a project or methodology that is factual and does not contain or imply a recommendation that is intended to influence a person to make a decision about a financial product (e.g. to buy, sell or hold a regulated emissions unit) is not financial product advice. Examples of factual information that is not financial product advice include:

- (a) advice about the eligibility of a project to gain approval as an eligible offset project under the CFI Act;
- (b) advice about the process of gaining such approval;
- (c) advice about the monitoring of the carbon abatement of the project;
- (d) advice about, or the conduct of, a verification or audit of the carbon abatement of the project;
- (e) advice as to the current price of ACCUs (without any further information or statement);
- (f) advice about project reporting and audit;
- (g) advice about meeting permanence obligations; or
- (h) advice about evidence and records that should be kept to support the project's compliance.

RG 236.139 It is important to consider the overall context in which the information is presented to determine whether that information together with other material that you provide may constitute financial product advice: see RG 236.40. For example, if you provide forecasts of potential financial returns from ACCUs to a landholder who is deciding whether or not to invest in the project, this could reasonably be regarded as being intended to influence the landholder's decision about participating in a project to generate ACCUs. This is therefore likely to constitute financial product advice.

Advice to safeguard facilities

- RG 236.140 For advice provided to safeguard facilities, there is also a distinction between:
- (a) advice of a technical nature that does not influence a decision about SMCs and ACCUs (e.g. advice about measuring emissions or technological improvements to reduce a safeguard facility's covered emissions); and
 - (b) advice that is, or could reasonably be regarded as being, intended to influence a decision about SMCs and ACCUs (e.g. advice about whether to acquire emissions units now, or wait to acquire them at some future time).
- RG 236.141 Similar to the examples provided in RG 236.135 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 safeguard facility's covered emissions;
 - (b) advice about options for technological improvements that may be used to reduce a safeguard facility's covered emissions; or
 - (c) advice about the potential carbon abatement resulting from a safeguard facility altering its operations to reduce its own emissions that does not include advice about the relative financial benefits of instead acquiring SMCs or ACCUs.
- RG 236.142 Conversely, advice that is likely to represent financial product advice includes, for example:
- (a) advice about strategies for buying, selling or holding SMCs or ACCUs;
 - (b) advice about particular transactions for buying or selling SMCs or ACCUs;
 - (c) forecasts in relation to future prices of SMCs or ACCUs;
 - (d) advice about buying ACCUs from a registered holder or from the Government; or
 - (e) advice about whether a safeguard facility should reduce emissions or instead buy and surrender SMCs and ACCUs.
- RG 236.143 If you provide advice to a safeguard facility that includes a comparison of the costs of avoiding an excess emissions situation through operational changes and the costs of purchasing and surrendering SMCs and ACCUs to meet its baseline, this advice is likely to be financial product advice. This is because the advice is not limited to advice of a technical nature in regard to operational changes, but might be, or reasonably be regarded as being, intended to influence a safeguard facility's decision on whether or not to buy or sell SMCs and ACCUs.

Dealing in ACCUs or EIEUs

- RG 236.144 Some activities you may undertake in carbon markets may constitute dealing in a financial product, including where you arrange a dealing: see RG 236.46 to RG 236.48.
- RG 236.145 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 eligible offsets projects, or generating EIEUs (other than SMCs) by participating in international offset projects;
 - (b) a safeguard facility or eligible facility applying to the Clean Energy Regulator for SMCs given its covered emissions are below its baseline emissions number;
 - (c) a safeguard facility buying or selling SMCs and/or ACCUs under the safeguard mechanism;
 - (d) a person buying or selling ACCUs or EIEUs (including SMCs) as legal and beneficial owner for any purpose; and
 - (e) an investor trading on their own behalf in regulated emissions units.
- RG 236.146 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 or more parties; and
 - (b) a project proponent paying other people who contributed to the carbon abatement in an eligible offsets project their share of the proceeds of the sale of the ACCUs issued under that project.
- RG 236.147 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.
- RG 236.148 ACCUs and SMCs are issued by the Clean Energy Regulator. EIEUs other than SMCs are issued under the mechanism of various international rules.
- RG 236.149 The act of issuing an ACCU or SMC by the Clean Energy Regulator, and of issuing other kinds of EIEUs is deemed not to be a financial service for the purposes of the Corporations Act: see reg 7.1.35B of the Corporations Regulations.
- RG 236.150 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 an emissions unit that is a financial product.

Whether or not that dealing occurs under the ACCU Scheme, the safeguard mechanism, or another mechanism, is not relevant to the question of whether there is a dealing in a financial product.

- RG 236.151 If your activities amount to a dealing in a financial product, 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 Section E. Additionally, there are some exemptions from the requirement to hold a licence for dealings in regulated emissions units or in derivatives over emissions units: see Table 7 and Table 8 in Section E.

Making a market in regulated emissions units

- RG 236.152 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 these units on their own behalf;
 - (b) other people can reasonably expect to be able to enter into transactions at the stated prices; and
 - (c) the actions of the person do not constitute operating a financial market because of the effect of s 767A(2)(a) of the Corporations Act.

Note 1: See s766D of the Corporations Act.

Note 2: The combined effect of s766D(1)(c) and 767A(2)(a) of the Corporations Act is that a person will not be operating a financial market where they offer to buy and sell financial products (and those offers are regularly accepted) through a facility only on their own behalf or on behalf of one party to the transaction.

- RG 236.153 If your activities amount to making a market in a financial product, you will need to consider whether you are carrying on a financial services business, and therefore need a licence: see Section E.

- RG 236.154 Examples of situations where a person may be a market maker are shown below in Example 5 and Example 6.

Example 5: Making a market when buying regulated emissions units

A project proponent regularly states the price at which it will buy ACCUs to meet its ACCU delivery obligations under a carbon abatement contract. Other people can reasonably expect to be able to sell ACCUs at the price the project proponent has stated. In these circumstances, the project proponent may be a market maker.

Example 6: Marking market when selling regulated emissions units

A safeguard facility closed one of its plants. As a result, its covered emissions are much lower than its baseline emissions number for a number of years.

The safeguard facility has an excess of SMCs for several years. During that period, it regularly states the price at which it is prepared to sell the SMCs. Other people can reasonably expect to be able to purchase SMCs at the price the facility states. In these circumstances, the safeguard facility may be a market maker.

Other financial products and services related to emissions units

RG 236.155 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 financial product (meaning the derivative or the managed investment scheme) will be regulated, rather than the underlying emissions unit that the derivative relates to or that is scheme property of the managed investment schemes.

Derivatives over emissions units

RG 236.156 Derivatives over emissions units (including non-regulated 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: see regs 7.1.04(8)(d) and 7.1.07J of the Corporations Regulations.

RG 236.157 Similar factors apply to derivatives as to other financial products when determining whether a person is providing financial product advice, dealing or marking a market in derivatives. One key distinction in relation to derivatives is that when two people enter into a derivatives contract that is not on a licensed financial market, both people are considered to be issuing a financial product, even if they are acting on their own behalf. Therefore, they both 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 of the Corporations Act for when a derivative is issued.

RG 236.158 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 236.210.

Managed investment schemes

- RG 236.159 If a scheme operating in a 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 236.160 There are a range of financial services that may be provided by the operator of a managed investment scheme and its agents. 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 236.161 Interests in managed investment schemes are issued by the operator of the scheme. Where the interest in a scheme is a financial product, the operator deals in a financial product when they issue the interest in the scheme (see Figure 2 for when an interest in a scheme will be a financial product).
- RG 236.162 Where the managed investment scheme is required to be registered, the scheme must be operated by a single responsible entity that will be providing the financial service of operating a registered scheme.
- RG 236.163 However, other financial services may be provided by the operator or by other people, depending on the arrangements between the operator and those other people. There are a range of different combinations of financial services that an operator and other people may agree to provide.
- RG 236.164 Table 5 and Table 6 provide simplified overviews of the financial services that may be provided using two examples of different combinations of business arrangements for an ACCU Scheme aggregated project that is a managed investment scheme:
- (a) Table 5—The project proponent is the operator of the scheme and provides all financial services related to the scheme.
 - (b) Table 6—The project proponent is responsible for marketing the interests in the scheme and dealing in the property of the scheme; a responsible entity that is not the project proponent is the operator of the scheme; and a custodian separately holds the scheme property.

Note: Table 5 and Table 6 are simplified overviews and the financial services provided will depend on the particular arrangements of each scheme and the types of financial products held under the scheme.

Table 5: When you may be providing a financial service in carrying out an ACCU Scheme aggregated project—All services provided by the ACCU Scheme project proponent (which is a responsible entity)

Type of financial service	All services provided by the ACCU Scheme project proponent
Operating a registered managed investment scheme	Yes
Dealing by issuing an interest in a managed investment scheme	Yes
Dealing by arranging the issue of an interest in a managed investment scheme	N/A*
Providing financial product advice about interests in a managed investment scheme	Yes
Dealing in the scheme property by dealing in ACCUs or derivatives over ACCUs on behalf of another	Yes
Providing a custodial or depository service for ACCUs or derivatives over ACCUs for a registered scheme,	N/A†
Providing a custodial or depository service for ACCUs or derivatives over ACCUs for a scheme that is not registered	Yes

Table 6: When you may be providing a financial service in carrying out an ACCU Scheme aggregated project—Services provided separately by different entities

Type of financial service	Responsible entity	Project proponent	Custodian
Operating a registered managed investment scheme	Yes	N/A*	N/A*
Dealing by issuing an interest in a managed investment scheme	Yes	N/A*	N/A*
Dealing by arranging the issue of an interest in a managed investment scheme	N/A*	Yes	N/A*
Providing financial product advice about interests in a managed investment scheme	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, in certain circumstances	Yes	Yes, in certain circumstances
Providing a custodial or depository service for ACCUs or derivatives over ACCUs for a registered scheme	N/A*	N/A*	Yes
Providing a custodial or depository service for ACCUs or derivatives over ACCUs for a scheme that is not registered	N/A*	N/A*	Yes

* Not applicable.

† Not applicable as the conduct does not constitute providing a custodial or depository service: see s766E(3) of the Corporations Act.

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- RG 236.165 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 236.210. This also applies to the sale of certain interests in a managed investment scheme that are financial products: see s1012C of the Corporations Act.
- RG 236.166 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 236.167 Generally, holding financial products or beneficial interests in financial products on 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 has no more than 20 clients for all custodial or depository services it provides (reg 7.1.40(1)(c) of the Corporations Regulations); or
 - (b) the provider is operating a registered scheme or holding the assets of a registered scheme (s766E(3) of the Corporations Act).
- RG 236.168 Where a person holds regulated emissions units in their Australian National Registry of Emissions Units (ANREU) account on behalf of other people, this may constitute the provision of a custodial or depository service. For example, where a small landholder who does not have their own ANREU account, has a beneficial interest in units held by a project proponent, the project proponent may be providing a custodial or depository service, if they are also holding units on behalf of many other people.

Note: The ANREU is the electronic registry that tracks holdings of ACCUs and SMCs and is operated by the Clean Energy Regulator.

- RG 236.169 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)).

Foreign financial services providers

RG 236.170 In some cases, the activities of a person from outside Australia will amount to the provision of a financial service within Australia. This will depend on factors such as:

- (a) the extent to which the person's activities have a connection with Australia; and
- (b) the extent to which 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 When you need an AFS licence

Key points

You will require an AFS licence to provide financial services while carrying on a financial services business in Australia, unless an exemption applies.

You will also need a licence if you're acting as a responsible entity of a registered scheme.

This section sets out circumstances in which you will need an AFS licence and when an exemption from the AFS licensing regime applies.

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.

If you are dealing in regulated emissions units on your own behalf, this does not constitute dealing, and is not an activity that requires an AFS licence.

'Carrying on a financial services business in Australia'

RG 236.171 If you are 'carrying on a financial services business' in Australia, you will need an AFS licence to provide financial services unless a licensing exemption applies.

RG 236.172 The meaning of 'carrying on a financial services business' has been interpreted by Australian courts, and is qualified and modified by provisions in the Corporations Act.

Note: See also [RG 121](#) for further guidance on 'carrying on a financial services business in Australia'.

RG 236.173 Australian courts have stressed that whether an entity's activities constitute 'carrying on a business in Australia' depends on the factual circumstances.

RG 236.174 Generally, if the financial services you provide are more than very minor and are systematic, repetitious and have continuity, then you are carrying on a financial services business.

RG 236.175 However, system, repetition and continuity are not the only relevant factors for determining whether an entity is 'carrying on a business'. For example, a one-off transaction may amount to the carrying on of a business, if there is an intention that the transaction is to be the first in a series of transactions. The nature of the business being conducted and the statutory context are also

relevant factors in determining whether you are ‘carrying on a business in Australia’.

RG 236.176 There are some statutory provisions that qualify the concept of ‘carrying on a business’, including the Corporations Act, which provides 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;
- (c) a business may be carried out by a single person, or together with other persons; and
- (d) a person or entity that has a place of business in Australia, carries on a business in Australia.

Note: See s18, 19, 20, 21(1) to (2) of the Corporations Act.

RG 236.177 Further, a company may carry on a business in Australia through its agent. This is because acts of an agent are generally attributed to their principal for the purposes of Ch 7 of the Corporations Act, if the agent is acting within actual or apparent authority: see s769B of the Corporations Act.

Licensing exemptions

RG 236.178 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 236.179 While there are a number of exemptions within the financial services laws, the 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 236.180 Table 7 and Table 8 summarise 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 236.181 If you are dealing in regulated emissions units on your own behalf (e.g. purchasing regulated emissions units for your own use), this does not constitute dealing, and is not an activity that requires an AFS licence: see s766C(3) of the Corporations Act. Similarly, a person does not require an AFS licence to provide financial services to a related body corporate: see s911A(2)(i) of the Corporations Act.
- RG 236.182 However, the exemption for dealing on one's own behalf may not extend to dealings that involve the issue of derivatives over emissions units other than on a financial market. This is because when parties enter into such a derivatives contract, each is considered to be issuing a financial product even if acting on their own behalf. Each party may require a licence if they are carrying on a financial services business. However, if the derivative is acquired on a financial market through an arrangement made with another person on your behalf, that other person will be the 'issuer' and may require an AFS licence, but you would not need an AFS licence.

Dealing for financial risk management purposes

- RG 236.183 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 the units are purchased or sold by a person on their own behalf or on behalf of a related body corporate or associated entity: see reg 7.6.01(1)(ma) of the Corporations Regulations. This exemption may apply to dealings in regulated emissions units by entities covered by the safeguard mechanism, overseas emissions schemes or voluntary offsetting schemes.
- RG 236.184 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 is not a significant part of the person's business: see reg 7.6.01(1)(m) of the Corporations Regulations. This exemption may apply, for example, to dealings in derivatives by project proponents on their own behalf for the purposes of managing a financial risk in relation to ACCUs.

Table 7: AFS licensing exemptions for types of dealings in regulated emissions units by particular entities

Type of dealing	Entities dealing for the following 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 own behalf	Licensing exemption applies: see s766C(3) of the Corporations Act.	Licensing exemption applies: see s766C(3) of the Corporations Act.	Licensing exemption applies: see s766C(3) of the Corporations Act.
On behalf of a related body corporate	Licensing exemption applies: see s911A(2)(i) of the Corporations Act	Licensing exemption applies: see s911A(2)(i) of the Corporations Act.	Licensing exemption applies: see s911A(2)(i) of the Corporations Act.
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: see reg 7.6.01(1)(ma) of the Corporations Regulations. For related bodies corporate, see also s911A(2)(i) of the Corporations Act.	Licensing exemption applies if dealing on behalf of a related body corporate: see s911A(2)(i) of the Corporations Act.	Licensing exemption applies if dealing on behalf of a related body corporate: see s911A(2)(i) of the Corporations Act.
On behalf of any other person	Generally, no exemption applies.	Generally, no exemption applies.	Generally, no exemption applies.

Table 8: AFS licensing exemptions for types of ‘dealings’ in derivatives over regulated emissions units or foreign exchange contracts by particular entities

Type of dealing	Entities dealing for the following purposes:	Entities involved in offset projects:	Intermediaries:
On own behalf	<ul style="list-style-type: none"> • safeguard mechanism • overseas scheme entities • voluntary offsetters <p>Licensing exemption applies if dealing is 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: see reg 7.6.01(1)(ma) of the Corporations Regulations.</p> <p>Licensing exemption applies if dealing is 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: see reg 7.6.01(1)(m) of the Corporations Regulations.</p>	<ul style="list-style-type: none"> • project proponents <p>Licensing exemption applies if dealing is 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: see reg 7.6.01(1)(m) of the Corporations Regulations.</p>	<ul style="list-style-type: none"> • brokers • specialist emissions unit traders • financial institutions <p>Generally, no exemption applies.</p>
On behalf of a related body corporate	Licensing exemption applies: see s911A(2)(i) of the Corporations Act	Licensing exemption applies: see s911A(2)(i) of the Corporations Act	Licensing exemption applies: see s911A(2)(i) of the Corporations Act
On behalf of a related body corporate or associated entity	Licensing exemption applies if dealing is 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: see reg 7.6.01(1)(ma) of the Corporations Regulations. For related bodies corporate, see also s911A(2)(i) of the Corporations Act.	Licensing exemption applies if dealing on behalf of a related body corporate: see s911A(2)(i) of the Corporations Act. Otherwise, generally no exemption applies.	Licensing exemption applies if dealing on behalf of a related body corporate: see s911A(2)(i) of the Corporations Act. Otherwise, generally no exemption applies.
On behalf of any other person	Generally, no exemption applies.	Generally, no exemption applies.	Generally, no exemption applies.

RG 236.185 If an entity is dealing in regulated emissions units or derivatives over them, to the extent that goes beyond their need to manage a financial risk, the AFS licensing exemption in reg 7.6.01(m) and 7.6.01(ma) of the Corporations Regulations would not apply. Such conduct may be characterised as being for trading rather than risk management purposes.

Foreign financial services providers

RG 236.186 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 where that service is a dealing, the provision of financial product advice or the making of a market in regulated emissions units, derivatives, or foreign exchange contracts: s911A(2E) of the Corporations Act, inserted by reg 7.6.02AG of the Corporations Regulations. 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 an AFS licence or vary your licence if you already hold one.

You will need to ensure that your licence carries the authorisations relevant to regulated emissions units: see RG 236.188 to RG 236.198 and INFO 156.

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 236.199 to RG 236.216.

Applying for an AFS licence or variation

RG 236.187 We have provided detailed information on how the licensing process works and what information should be submitted with your application in [INFO 156](#). This should be read with RGs 1 to 3, which are Parts 1 to 3 of the [AFS Licensing Kit](#).

Making an application

RG 236.188 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 236.189 When we assess an AFS licence application we consider whether:

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

- RG 236.190 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 236.191 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.
- RG 236.192 If your application is incomplete, it may delay our decision or we might not accept your application for lodgement.

Applying for the right authorisations for your business

- RG 236.193 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 different types of financial services, and are further broken down into the various types of financial products (such as ACCUs and EIEUs). When you complete your licence or variation application form, you should apply for only the specific authorisations you will require.

Example 7: AFS licence authorisations

An entity wants to be authorised only to arrange dealings in ACCUs on behalf of wholesale clients. On their AFS licence application, they should select the following authorisations:

- ‘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* ([RG 2](#)) 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 236.194 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 236.195 In assessing the competency of your nominated responsible managers, we will look at a combination of their relevant experience, training and qualifications. [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 236.196 People who you nominate to be responsible managers need to have knowledge and skills appropriate to the types of financial services and products you will provide: see RG 105. In the context of regulated emissions units, product knowledge might include a combination of relevant qualifications and training, and experience in ACCUs, SMCs, or in emissions or environmental products that are not financial products. In some cases responsible managers are able to supplement their existing experience with a relevant short industry course: see RG 105.
- RG 236.197 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.
- RG 236.198 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](#). 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 236.199 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 236.200 Table 9 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 9: 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. 	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. 	RG 104 RG 166
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 ensure that your representatives meet the minimum training standards. Since 1 January 2019, professional standards apply to financial advisers who provide personal advice to retail clients on relevant financial products: see Div 8A of Pt 7.6 of the Corporations Act</p>	RG 105 RG 146
Conflicts of interest	You must have adequate arrangements in place to manage your conflicts of interest.	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 the Australian Financial Complaints Authority. 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.	RG 271 Regulatory Guide 267 <i>Oversight of the Australian Financial Complaints Authority</i> (RG 267) RG 126

See s912A to B of the Corporations Act for more details on the key AFS licensee obligations.

- RG 236.201 As an AFS licensee, you may need to comply with various other conduct obligations, including:
- 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 of the Corporations Act for more information about these requirements.
 - notifying ASIC of reportable situations;

 Note: Section 912DAA of the Corporations Act 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](#)).
 - assisting us in our regulatory oversight of you as a licensee;
 - quoting your licence number in documents; and

 Note: See s912F of the Corporations Act and reg 7.6.01C of the Corporations Regulations.
 - 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 236.202 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 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 of the Corporations Act in relation to these prohibitions. Some of these obligations also apply to people other than AFS licensees. See Div 2 of Pt 2 of the ASIC Act for more details on these provisions.

RG 236.203 For emissions units and environmental 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 or deceptive conduct.

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

Design, distribution and disclosure obligations

RG 236.204 If you are an AFS licensee that provides financial services to retail clients, you generally need to comply with certain design, distribution and disclosure obligations set out in the Corporations Act, including:

- (a) requirements to provide a Financial Services Guide (FSG)—see Pt 7.7 of the Corporations Act; and
- (b) requirement to give a Product Disclosure Statement (PDS)—see Pt 7.9 of the Corporations Act; and
- (c) design and distribution obligations—see Pt 7.8A of the Corporations Act.

Financial Services Guide

RG 236.205 If you provide retail clients with financial services in relation to regulated emissions units, you will generally need to provide them with an 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.

RG 236.206 See [RG 175](#) for further guidance on:

- (a) what must be included in an FSG;
- (b) when an FSG must be provided;
- (c) situations when an FSG is not required; and
- (d) record keeping obligations in relation to FSGs.

Product disclosure statement and statements on the Clean Energy Regulator's Website

RG 236.207 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.

RG 236.208 However, a PDS does not need to be given where regulated emissions units are offered, issued or sold to retail clients.

RG 236.209 Instead, in a situation where a regulated emissions unit is sold or recommended to a retail client, and a PDS would ordinarily be required, the

AFS licensee must direct the retail client to consider the concise description of the product (for example, an ACCU) available on the Clean Energy Regulator's website: see Pt 19 of Sch 10A to the Corporations Regulations.

- RG 236.210 PDS requirements still apply where the regulated emissions unit is the underlying asset, but the financial product being offered, issued or sold is something else, such as a derivatives over emissions units, or interests in a managed investment schemes. In relation to those products, you may need to provide a PDS. The requirement to provide a PDS will apply even if you are exempt from holding an AFS licence.
- RG 236.211 The PDS regime is intended to help consumers compare and make informed choices about financial products by providing consumers with relevant information about the financial product that is clear, concise and effectively communicated.
- RG 236.212 A PDS must include certain information including the risks and benefits of a product, its significant characteristics and fees. It must also contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product: see Pt 7.9 of the Corporations Act. For further guidance on disclosure, including PDS requirements, see Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* ([RG 168](#)).

Design and distribution obligations

- RG 236.213 If you are required to prepare a PDS for a financial product, you must comply with design and distribution obligations including by making a target market determination (TMD) for that financial product. As a PDS does not need to be given to retail clients when regulated emissions units are offered, issued or sold, the design and distribution obligations do not apply to regulated emissions units.
- RG 236.214 However, where a PDS is required to be given, such as in relation to a managed investment scheme that invests in regulated emissions units, a TMD must also be prepared.
- RG 236.215 The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to consider the design of their products (including their key attributes) and to determine an appropriate target market for the product.
- RG 236.216 Issuers and distributors subject to the design and distribution obligations must prepare a TMD that sets out the target market, distribution conditions, and information related to review and monitoring, before distributing the product to retail clients. They must also take reasonable steps to ensure the product is being distributed in accordance with the TMD. For further guidance on the design and distribution obligations, see [RG 274](#).

Appendix: Accessible version of Figure 2

RG 236.217 This appendix contains an accessible version of the flowchart in Figure 2.

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

Step 1: Is the arrangement a managed investment scheme?

RG 236.218 To determine whether an arrangement is a managed investment scheme, consider the following questions:

- (a) Do people contribute money or money's worth to acquire rights to benefits produced by the scheme?
- (b) Are the contributions pooled or used in common enterprise to produce financial benefits or interests in property for the contributors?
- (c) Do the contributors not have day-to-day control over the operation of the scheme?

RG 236.219 If your answer to all of these questions is Yes, continue to Step 2. If your answer to any of these questions is No, the arrangement is not a managed investment scheme and registration with ASIC is not required.

Step 2: Is an interest in the scheme a financial product?

RG 236.220 To determine whether the interest in the scheme is a financial product, consider the following questions:

- (a) Does the scheme have more than 20 contributors?
- (b) Is the scheme promoted by someone who is in the business of promoting managed investment schemes?
- (c) Does the scheme have more than 20 contributors across all the schemes that ASIC has determined to be closely related?

Note: 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 (see s601ED(4)).

RG 236.221 If your answer to at least one of these questions is Yes, the interest in the scheme is a financial product and you should continue to Step 3. If the answer to all of these questions is No, the interest in the scheme is not a financial product and the scheme does not need to be registered with ASIC.

Step 3: Does the scheme need to be registered with ASIC?

RG 236.222 Consider: Are any of the contributors to the scheme retail clients? If yes, the scheme must be registered with ASIC.

Note: 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 (and generally PDSs are required to be given to retail clients).

RG 236.223 If none of the contributors to the scheme are retail clients, the scheme does not need to be registered with ASIC.

Note: 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 of the Corporations Act.

Key terms

Term	Meaning in this document
ACCU	An Australian carbon credit unit issued under s147 of the CFI Act
ACCU Scheme	A scheme, established under the CFI Act, that allows project proponents to generate ACCUs by undertaking domestic emissions offset activities that avoid or sequester greenhouse gas emissions in eligible projects. The ACCU Scheme was formerly known as the Emissions Reduction Fund
ACCU Scheme 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. These projects were formerly known as Emissions Reduction Fund Projects
ACCU Scheme aggregated project	<p>A project where one or more people carry out separate carbon abatement activities that could each be an ACCU Scheme project on their own but which are arranged by a project proponent to be contributions of activities to a single, aggregated ACCU Scheme project.</p> <p>An ACCU Scheme 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>
adviser	<p>A natural person who provides financial product advice to a client and is:</p> <ul style="list-style-type: none"> • an AFS licensee; or • a representative of an AFS licensee <p>Note: This is the person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply: see the definition of 'advice provider' in the 'key terms' in RG 175.</p>
AFS licence	<p>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> <p>Note: This is the definition in s9 of the Corporations Act.</p>
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
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

Term	Meaning in this document
ANREU	Australian National Registry of Emissions Units—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, ACCUs issued under the CFI Act and SMCs issued under the NGER Act
ANREU Act	<i>Australian National Registry of Emissions Units Act 2011</i>
APRA	Australian Prudential Regulation Authority
ASIC Act	<i>Australian Securities and Investments Commission 2001</i>
baseline or baseline emissions number	For a safeguard facility, the number ascertained in accordance with the relevant formula set out in the NGER Act or Safeguard Rules in relation to that facility Note: See s22XL of the NGER Act for the precise definition, and Pt 3, Divs 2 to 7 of the Safeguard Rules.
carbon abatement	The removal of one or more greenhouse gases from the atmosphere (i.e. sequestration) or the avoidance of emissions of one or more greenhouse gases Note: This is a definition in s5 of the CFI Act.
carbon abatement contract	A contract entered into by or on behalf of the Australian Government for the purchase of ACCUs, or other eligible carbon credits, by the Australian Government Note: This is a definition in s20B of the CFI Act.
carbon markets	The buying and selling of emissions units, which includes bilateral trading of units not on a facility or licensed market, as well as trading on a facility or a licensed market
CFI Act	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
CFI Rules	<i>Carbon Credits (Carbon Farming Initiative) Rule 2015</i>
Clean Energy Regulator	A statutory authority established by the <i>Clean Energy Regulator Act 2011</i> that administers the ACCU Scheme, National Greenhouse and Energy Reporting Scheme, the Safeguard Mechanism, the Guarantee of Origin Scheme, the Renewable Energy Target, the Australian National Registry of Emissions Units and the Nature Repair Market
Corporations Act	<i>Corporations Act 2001</i> , including regulations mad for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>

Term	Meaning in this document
covered emissions	<p>In relation to the safeguard mechanism, scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the Safeguard Rules</p> <p>Note: This is the definition given in s22XI of the NGER Act.</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.</p>
EIEU	<p>Eligible international emissions unit—which means:</p> <ul style="list-style-type: none"> • a certified emission reduction issued outside of Australia in accordance with the relevant provisions of the Kyoto rules (other than a temporary certified emission reduction or a long-term certified emission reduction); • an emission reduction unit issued in accordance with the relevant provisions of the Kyoto rules; • a removal unit issued in accordance with the relevant provisions of the Kyoto rules; • a prescribed unit issued in accordance with the Kyoto rules; or • an SMC <p>Note: This is the definition contained in s4 of the ANREU Act.</p>
eligible facility	<p>A facility that was a safeguard facility (meaning its total amount of covered emissions from its operation during the financial year had a carbon dioxide equivalence of more than 100,000 tonnes), but its total covered emissions have now fallen below 100,000 tonnes</p> <p>Note: For a detailed explanation, see s58B of the Safeguard Rules.</p>
eligible offsets project	<p>An emissions avoidance or sequestration offsets project carried out in accordance with the CFI Act, which has been declared by the Clean Energy Regulator to be an eligible offsets project under s27(2) of the CFI Act</p>
emissions units	<p>Units recognised under schemes in Australia and overseas, which are associated with greenhouse gas emissions or carbon abatement (e.g. an ACCU or an EIEU)</p>

Term	Meaning in this document
environmental units	Units recognised under various schemes which are associated with restoring or improving the environment, ranging from schemes that issue units representing enhancement or protection of biodiversity in native species, such as Biodiversity Certificates issued under the <i>Nature Repair Act 2023</i> to units representing energy savings, energy efficiency or renewable energy such as renewable energy certificates issued under the <i>Renewable Energy (Electricity) Act 2000</i>
excess emissions situation	Where a safeguard facility's net emissions number is higher than its baseline emissions number for the monitoring period, which may result in a penalty
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: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.</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 people 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>This does not include anything in an exempt document or statement</p> <p>Note: This is a definition in s9 of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
financial services business	A business of providing financial services
financial services laws	Has the meaning given in s761A of the Corporations Act
financial services provider	A person who provides a financial service

Term	Meaning in this document
foreign exchange contract	<p>Has the same meaning as in s761A of the Corporations Act</p> <p>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.</p>
greenhouse gas	<p>Under the NGER Act, the following are greenhouse gases:</p> <ul style="list-style-type: none"> • carbon dioxide; • methane; • nitrous oxide; • sulfur hexafluoride; • hydrofluorocarbons referred to s7A of the NGER Act; • petrofluorocarbons referred to in s7A of the NGER Act; and • a prescribed gas. <p>Note: No further gases have been prescribed as greenhouse gases.</p>
investor	<p>For an AFS licensee, includes an existing, potential or prospective client</p>
managed investment scheme	<p>A scheme that has the following features:</p> <ul style="list-style-type: none"> • people contribute money or money's worth to acquire rights to benefits produced by the scheme; • the contributions are pooled together or used in a common enterprise to produce financial benefits for the contributors; and • some other person operates the scheme, and those contributing do not have day-to-day control over its operation. <p>Note: See s9 of the Corporations Act.</p>
monitoring period	<p>This generally coincides with a safeguard facility's financial year.</p> <p>Note: See s22XG of the NGER Act for more details.</p>
net emissions number	<p>For a safeguard facility, 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 less any ACCUs or SMCs surrendered</p> <p>Note: See s22XK of the NGER Act for the precise definition.</p>
NGER Act	<p><i>National Greenhouse and Energy Reporting Act 2007</i></p>

Term	Meaning in this document
PDS	<p>A Product Disclosure Statement—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</p> <p>Note: See s9 of the Corporations Act for further details.</p>
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the person giving 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 <p>Note: This is the definition in s9 of the Corporations Act.</p>
project proponent	<p>A person responsible for, and with the legal right to, carry out an ACCU Scheme project</p> <p>Note: See s5 of the CFI Act for the precise definition.</p>
provide a financial service	<p>A person provides a financial service if they:</p> <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; operate the business and conduct the affairs of a CCIV; provide a custodial or depository service; provide a crowd-funding service; provide a claims handling and settling service; provide a superannuation trustee services; or as a trustee company, provide traditional trustee services. <p>Note: This is a definition in s766A of the Corporations Act.</p>
regulated emissions unit	<p>Emissions units that are financial products under the Corporations Act</p>
retail client	<p>A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations</p>
safeguard facility	<p>A facility whose total amount of covered emissions of greenhouse gases from its operation during the financial year has a carbon dioxide equivalence of more than 100,000 tonnes. The safeguard mechanism applies to safeguard facilities</p> <p>Note: The NGER Act uses the term 'designated large facility' where we use the term 'safeguard facility' (see s22XJ of the NGER Act). We have adopted this industry term in order to reduce complexity for readers who may not be familiar with the NGER Act.</p>

Term	Meaning in this document
safeguard mechanism	A legislative framework that sets out limits on greenhouse gas emissions for Australia's largest industrial facilities. The safeguard mechanism applies to safeguard facilities
safeguard mechanism reforms	Reforms introduced to the safeguard mechanism in April 2023, primarily through the <i>Safeguard Mechanism (Crediting) Amendment Act 2023</i> that, among other things, created the legislative framework for SMCs
Safeguard Rules	<i>National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015</i>
scope 1 emissions	In relation to a safeguard facility or eligible facility, means the release of greenhouse gases into the atmosphere as a direct result of an activity or series of activities that constitutes the facility Note: This is the definition given in s2.23 of the <i>National Greenhouse and Energy Reporting Regulations 2008</i> for the purposes of s10(1)(a) of the NGER Act.
sequestration	The removal and storage of one or more greenhouse gases from the atmosphere
SMC	Safeguard mechanism credit unit—a unit issued under s22XNA of the NGER Act
TMD	Target market determination
voluntary offsetter	A person who voluntarily offsets greenhouse gas emissions attributable to their activities by compensating with a reduction or sequestration of emissions (for example, by purchasing ACCUs)

Term	Meaning in this document
wholesale client	<p>A client, who, among other things:</p> <ul style="list-style-type: none"> • has financial products or financial services provided to them whose value is \$500,000 or more; • has net assets of at least \$2.5 million; • has had a gross income for each of the past two financial years of at least \$250,000; • is a 'professional investor'—this category includes AFS licensees, listed entities, banks, 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 • is a 'sophisticated investor' being provided with certain financial products and services that are not provided in connection with the client's business, and: <ul style="list-style-type: none"> – 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 – the client has acknowledged in writing that they have not received a PDS or other information required to be given to a retail client and are not owed obligations that are owed to a retail client by the AFS licensee <p>Note: See s761G and 761GA of the Corporations Act and regs 7.1.11 to 7.1.28 of the Corporations Regulations for provisions on wholesale and retail clients.</p>

Related information

Headnotes

ACCU, ACCU Scheme project, 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 unit, facility for making a financial investment, financial product, foreign financial services providers, licensing exemptions, managed investment scheme, retail clients, safeguard facility, safeguard mechanism, safeguard mechanism credit unit, Safeguard Rules, SMC

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 90](#) *Example Statement of Advice: Scaled advice for a new client*

[RG 104](#) *AFS licensing: Meeting the general obligations*

[RG 105](#) *AFS licensing: Organisational competence*

[RG 121](#) *Doing financial services business in Australia*

[RG 126](#) *Compensation and insurance arrangements for AFS licensees*

[RG 132](#) *Funds management: Compliance and oversight*

[RG 133](#) *Funds management and custodial services: Holding assets*

[RG 134](#) *Funds management: Constitutions*

[RG 136](#) *Funds management: Discretionary powers*

[RG 146](#) *Licensing: Training of financial product advisers*

[RG 166](#) *AFS licensing: Financial requirements*

[RG 167](#) *AFS licensing: Discretionary powers*

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

[RG 172](#) *Financial markets: Domestic and overseas 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*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 255](#) *Providing digital financial product advice to retail clients*

[RG 267](#) *Oversight of the Australian Financial Complaints Authority*

[RG 271](#) *Internal dispute resolution*

[RG 274](#) *Product design and distribution obligations*

Information sheets

[INFO 156](#) *Regulated emissions units: Applying for or varying an AFS licence*

[INFO 240](#) *AFS licence applications: Providing information for fit and proper people and certain authorisations*

[INFO 251](#) *AFS licensing requirement for trustees of unregistered managed investment schemes*

Legislation

Australian Consumer Law, set out in Sch 2 to the [Competition and Consumer Act 2010](#)

[Australian National Registry of Emissions Units Act 2011](#), s4

[Australian National Registry of Emissions Units Regulations 2011](#)

[Australian Prudential Regulation Authority Act 1998](#), s3(2)

[Australian Securities and Investments Commission Act](#), Div 2 of Pt 2

[Carbon Credits \(Carbon Farming Initiative\) Act 2011](#), s5, 15(2)(h), 20B, 27(4)(l), 49, 141

[Carbon Credits \(Carbon Farming Initiative\) Rule 2015](#), s9(8) to (10), 20

Corporations Act 2001, Chs 5C, 7; Divs 3, 4 and 5 of Pt 7.1; Div 8A of Pt 7.6; Pt 7.7; Div 2 of Pt 7.7A; Pt 7.8A; Pt 7.9; Pt 7.10; Subdivs C and D of Div 6 of Pt 7.8; Pt 7.9; s9, 18, 19, 20, 21, 601ED, 601FA, 761D, 761E, 761G, 761GA, 763A, 763B, 764A, 765A, 766B, 766C, 766D, 766E, 767A, 769B, 911A, 912A to B, 912DAA, 912F, 1012C, 1012IA

Corporations Regulations 2001, Pt 7.6; regs 7.1.04, 7.1.07J, 7.1.11 to 7.1.28, 7.1.33G, 7.1.35B, 7.1.40, 7.6.01, 7.6.01C, 7.6.02AG, 7.6.04; Pt 19 of Sch 10A

Electricity Supply Act 1995 (NSW)

National Greenhouse and Energy Reporting Act 2007, s22XK, 22XL,

National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015, Pt 3A; Div 2 of Pt 4; s9 to 12, 58B

Nature Repair Act 2023

Renewable Energy (Electricity) Act 2000

Victorian Energy Efficiency Target Act 2007

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*

Cases

Australian Securities and Investments Commission v Web3 Ventures Pty Ltd [2024] FCA 64

International Litigation Partners Pte Ltd v Chameleon Mining NL [2011] NSWCA 50

Joffe v The Queen [2012] NSWCCA 277