13 February 2015

John Lee
Analyst
Corporations and Schemes Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Lee

Thank you for the opportunity to respond to the proposed changes to the Corporations Act 2001 and Corporations Regulations 2001 which regulate both dealings and advice in relation to Australian Carbon Credit Units (ACCUs).

Energetics is a consultancy with over 30 years of experience in carbon and energy management. We assess, and advise our clients on, both the technical and financial risks and opportunities associated with emissions reduction projects.

We are concerned that without the surety offered by an Australian Financial Services (AFS) Licence, unacceptable risks arise for participants in the Emissions Reduction Fund (the Fund).

The Fund is the centrepiece of Australia's climate change policy, and we understand the competing needs of policy makers to both encourage participation whilst also ensuring that those engaging in the Fund have confidence in its governance arrangements. That confidence will be achieved when:

- the monetary rewards for participants outweigh the perceived risks
- the rules applied to aggregators and third party advisors are both clear and unambiguous
- the process is subject to standards that minimise the risks of market failure or significant financial damage to participants who lack knowledge of the Fund's operation.

Risks are well managed under the current system

The current system ensures that aggregators in the Carbon Farming Initiative (CFI) scheme have robust governance structures and risk management procedures.

As such, those providing advice in the current CFI scheme have a high standard of care as they risk civil and criminal penalties should they provide incorrect or fraudulent advice. Aggregators are required to ensure that their advisors are highly trained and supervised.

Knowing these requirements, banks in turn are willing to finance aggregation deals as they can be sure that the aggregators are committed on a long term basis and have high levels of internal governance.

Finally we would make the point that there are a large number of parties with both current AFS Licences and the technical skills to advise on projects. Alternatively, participants can easily obtain separate technical and financial advice.

Providing exemptions significantly raises the risks associated with the scheme.

The Fund is a high profile scheme and its operation will be closely observed locally and internationally. As recognised in the Consultation Paper, aggregation agreements will typically be highly complex multi-year deals, involving the sharing of risk amongst multiple parties. The protection of these often small or unsophisticated parties is precisely the reason for the need for aggregators to be subject to the AFS Licencing regime.

Removing the requirement to hold an AFS Licence can encourage short term opportunists, creating unnecessary risks; such as those seen in the failed Home Insulation Program.

It is Energetics' professional view that the creation of a standardised disclosure document and best practice aggregation contract provides only a token solution and does not alleviate this risk.

The confidence of Australia's banking community is also critical in the successful operation of the Fund. As the scheme provides funding as emissions reductions occur (i.e. no upfront funding), parties will commonly need to borrow to fund projects. This leverage increases the risk associated with projects and further enhances the need for a strong governance framework.

Finally, the advent of the Safeguard Mechanism could further heighten this risk due to a potential increase in the value of the ACCU market. There are clear imperatives for ensuring that the market (and the creation of secondary markets) for these ACCUs, operates in a predictable, responsible way.

The Fund requires the support of Australia's business community and the general public

The Fund is the centrepiece of Australia's climate change policy and the risks to participants should be minimised. Energetics is firmly of the view that the proposed exemptions will both reduce the governance requirements and thereby greatly increase the risk that the scheme could fail, and small or unsophisticated participants could be adversely impacted.

Energetics recommends that the current regime be maintained until after the first series of auctions to determine the level of activity. Loosening the regulations following the scheme's commencement will be far easier than re-instating AFS Licence requirements following a failure.

Yours sincerely

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