greenbank
environmental

12 February 2015

John Lee
Analyst
Corporations and Schemes Unit
Financial System and Services Division
The Treasury
Langton Crescent
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Dear Mr Lee,

GRENEBANK ENVIRONEMNTAL PTY LTD (GBE) CONSULTATION RESPONSE - CORPORATIONS AMENDMENT (EMISSIONS REDUCTION FUND PARTICIPANTS) REGULATION 2015

1. Introduction

We write in response to the above Treasury Consultation Paper released for public consultation on 21 January 2015.

Greenbank Environmental Pty Ltd (**GBE**) is an aggregator, developer and trader across all five environmental markets in Australia, namely:

- NSW Energy Efficiency Scheme (**NSW ESS**);
- Victorian Energy Efficiency Target (**VEET**);
- The Federal Small-scale Renewable Energy Scheme (**SRES**);
- The Federal Large-scale Renewable Energy Target (**LRET**); and
- The Carbon Pricing Mechanism (now replaced by the Emissions Reduction Fund (**ERF**)).

We have been operating across these markets for over ten years since 2003 and are one of the largest and most established participants in these markets. We have held an Australian Financial Services Licence (**AFSL**) since 2012.

We employ 25 people with offices in Melbourne and Sydney servicing our customers across the nation.

We have consulted on all the relevant consultations in the carbon market to date.

2. High Level Response.

Our overall response is these types of suggested changes go beyond what has been discussed in the market place. They feel like the types of changes the Government was/is seeking to make to the wider financial services industry under the Future of Financial Advice (**FOFA**) Reforms.

We as a holder of an Australian Financial Services Licence (**AFSL**) and as a SME clearly understand the costs involved in procuring, maintaining and operating under an AFSL. However, we are strongly of the view that such compliance requirements and costs are positive measures in the domestic carbon market as it helps to facilitate reputable companies operating in the market and reduces the risk of unscrupulous participants/service providers. Unscrupulous stakeholders undermine the integrity and confidence in markets and it is these two key elements that are the backbone of any efficient, transparent and functioning market. If trust is undermined, the market is undermined.

The only exceptions we agree with are:

- that a project proponent as site owner contracting directly with the CER on its own behalf should be exempt from holding an AFSL; and

- that eligible aggregation arrangements be exempt from being classified as a derivative and a Managed Investment Scheme (**MIS**) because as you note it is primarily for the purpose of aggregating carbon rather than for collective investment.

We believe that an aggregator acting on behalf of the third party/site owner should be required to hold an AFSL: thus the issue of an aggregator providing depository/custodial services would also be covered under that AFSL. The last thing the industry and Government needs is for the ERF to not deliver the required abatement due to lax compliance requirements and unscrupulous stakeholders exposing site owners to negligence and fraudulent conduct. As you would be aware, over 90 companies already hold and AFSL for the carbon markets[1] so we do not feel a need to relax the AFSL requirements as these companies have met current supply/demand and have absorbed compliance costs for the protection of consumers.

We do not understand your hypothesis that the current financial services law could increase the risks to site owners. We believe that if the aggregator is required to hold an AFSL (but exempted from the aggregation being a MIS) then

[1] See: http://download.asic.gov.au/media/1322659/carbon-register-040113.pdf last accessed 6 February 2015.

surely they have more protection and flexibility to deal with risk sharing arrangements in their contracts?

These comments are made in the acknowledgment that the Government will release shortly the: standardised disclosure document; draft regulatory protections; and standardised aggregation contract, for further consultation.

2.3 General Observations

Our views in this consultation paper are based on the following risks:

(a) Unscrupulous aggregators/advisors misleading a site owner as has happened across the other environmental markets in the past;

(b) A dumbing down of participants in the markets;

(c) Undermining first mover advantages of participants like ourselves that have spent considerable time and money in procuring, administering and maintaining our AFSL;

(d) A lack of insurance coverage for losses sustained by those defrauded by unscrupulous aggregators/advisors;

(e) We do not believe there is a need to introduce these restrictions with the amount of current stakeholders in the carbon market already holding an AFSL; and

(f) Exposing the Government to risks of increased contractual default if sub-optimal service providers/aggregators are allowed to provide financial product advisory services.

3. Specific Responses to the Consultation.

Questions 1, 2 & 3

We would like to only see one amendment made that allows a project proponent acting on its own behalf (i.e. not an aggregator acting on behalf of a third party/site owner) directly contracting with the CER be exempt from holding an AFSL. In all other instances, an AFSL should be required.

In respect to "aggregation arrangements", we believe aggregators should hold an AFSL when dealing with third party counterparties. This is require to protect consumers and site owners from unscrupulous stakeholders accessing public

funding and acting unconscionable towards the site owner (i.e. a "pink batts" risk)

What an AFSL does, is provide some comfort to the clients that the aggregator has the knowledge, experience and regulatory obligations to provide sensible pricing for such projects. We are already seeing such stakeholders misleading companies and potential clients that an AFSL is no longer required – whereas that is not the case but it is subject to consultation.

As to risk mitigation measures, again, clients dealing with aggregators who hold an AFSL have the benefit of their knowledge and experience and their PI Insurance. Risk mitigation measures can be inserted into contracts to ensure the actual process of undertaking a Project ensures that ACCU volumes and pricing is conservative to protect the parties from under delivery (exposing the project proponent to Buyers Market Damages) and indeed unrealistic pricing.

Question 4

We agree that an aggregation model as detailed in Example 1 (Hans) should be exempted from being characterised as a MIS. However, given Hans (in the example) is dealing with numerous site owners aggregating ACCUs, the site owners should be protected from aggregators without the requisite experience, expertise and indeed financial resources to complete the project.

An example for the Han's example, is if he aggregates 30 different site owners into one or numerous projects, and:

- He does not have the financial capacity to proceed with the project (to even fund his own company);
- Lacks the requisite skills/experience in doing such projects; and
- Lacks the experience of trading environmental products,

then the 30 farmers will be left exposed to substantial risks to their projects. The Government will also be exposed to contractual default where they will have to procure replacement tonnes exposing the Government to the risk of not meeting its 2020 5% reduction target.

Having an AFSL at least shows that you have absorbed the costs required to deal in financial products, you have passed the compliance requirements for holding an AFSL (being a fit and proper person, not being a bankrupt etc.) and at least provides the consumer with some protection for what is likely to be a large investment from them over 7+ years.

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An AFSL attaches to the person and is a protection against phoenix companies being created by the same directors after failed ERF projects have left consumers out of pocket. We have seen phoenix aggregators rise from the ashes of liquidation in the renewables and energy efficiency markets in the past that have not only left consumers out of pocket but also other aggregators/suppliers out of pocket and in some cases leading to flow on insolvencies.

Thus we propose that Han's should be exempted from the definition of a MIS as suggested. However, we cannot stress enough that Hans should still be required to hold an AFSL in areas where he provides financial product advice, deals in a financial product, provides custodial/depository services or is making a market.

Question 5

We suggest considering an example where an aggregator provides "up front funding linked to the ACCU revenues over the term of the Contract" as being clearly exempted from the MIS provisions.

In respect of the James example, where farmers engage James as an aggregator to plant trees on the farmers lands and contribute some funding for their projects, then we believe this should be exempt from the MIS requirements but still be captured as dealing, making a market and providing financial product advice and thus require an AFSL. We see the distinction based on the fact that the farmers are not unrelated retail/wholesale investors in such projects but directly linked.

Question 7

Alan, as a carbon service provider, should be required to hold an AFSL in instances where he advises them what price to bid into the ERF. It is unlikely that the clients would seek out independent qualified advice in such instances and it is more likely that they would rely on Alan's advice. Thus, Alan should be regulated as such as his clients are relying on his advice to make a minimum 7-year investment decision – it is not "minor"! We believe that such advice requires specialist expertise that Alan does not have as a technical advisor. It is the same logic as why a financial advisor does not advice on the technical nature of such projects.

Currently, such technical advisors have directed their clients to use licenced AFSL aggregators to provide such services often at no cost to such projects in the hope of the aggregator purchasing the ACCUs from the project. So, the AFSL holder has generally absorbed these compliance costs.

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Questions 8-10

We buy and sell ACCUs – we generally do not broker. So, that means, we pay the seller of the ACCU and hold the ACCU in our ANREU Account and then subsequently sell to another party at a later date. We have dealt in almost $2 million ACCUs in value since 2012.

As noted previously, save where the project proponent is the site owner and is contracting directly with the CER, an aggregator either contracting with the CER on behalf of the site owner/third party or dealing in the secondary market should be required to hold an AFSL. With so many parties in the carbon market already holding an AFSL, why would the Government seek to reduce compliance requirements for consumers?

Questions 11-13

Aggregators acting on behalf of a third party/site owner should not be exempted from the custodial/depository services.

Questions 14-15

Aggregators acting on behalf of third parties/site owners should not be granted an exemption from making a market.

Questions 16-18

We do not endorse changes to the current arrangements, as we see no reason to change. Such change in our view is dangerous as it is likely to allow unscrupulous aggregators into the market. The market is also weary of the political and regulatory changes in the carbon market as well as the level and tight-framed number of consultations in this sector, which clearly has added substantial costs to doing business in the carbon market in Australia.

Yours Sincerely,

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