

A) Current Legislative Environment and Background to Proposed Amendments

The Corporations Amendment Regulation 2012 (No. 1) amended the Corporations Regulations 2001 (Cth) to insert r 7.1.071(2). This effect of this modification was to deem Australian carbon credit units ('ACCUs'), and eligible international emissions units ('EIEUs') as 'financial products' effective 1 July 2012.

The inclusion of ACCUs and EIEUs as 'financial products' by r 7.1.071(2) was in contemplation of the Carbon Pricing Mechanism and eventual transition to a cap and trade market as envisioned at that time.

S 911A of the Corporations Act 2001 (Cth) compels entities dealing in financial products to obtain an Australian Financial Services License ("AFSL"). Thus, the 2012 amendment defining ACCUs and EIEUs as 'financial products' may require entities dealing in them to obtain an AFSL.

The activities of entities providing a voluntary offset service are likely to meet the definition of dealing if they purchase and retire ACCUs or EIEUs on behalf of their customers.

The proposed amendments envision retaining r 7.1.071(2) deeming ACCUs and EIEUs as 'financial products,' while exempting their definition as such when used for the purpose of participation in the Emissions Reduction Fund ('ERF') as carbon abatement contracts.

The rationale for retaining r 7.1.071(2) as outlined in the explanatory statement is to protect consumers in the secondary market for ACCUs and EIEUs envisioned as a consequence of the ERF. It contemplates most entities providing financial services in relation to ACCUs and EIEUs will be firms already holding an AFSL. This reasoning does not take into account voluntary offsetting service providers.

C) Improvements to Amendments

The amendments in their current form effectively preclude voluntary carbon offset providers from supporting domestic carbon abatement projects producing ACCUs and EIEUs. The compliance costs associated with obtaining and maintaining a retail AFSL exclusively to provide voluntary offsetting using ACCU and EIEU credits is not commercially viable.

The regulations should create an exemption for voluntary carbon offset providers from obtaining an AFSL where dealing in ACCUs and EIEUs. Voluntary offsetting provides a valuable private sector complement to the Government's Direct Action Plan's ('DAP') aim to reduce carbon emissions in Australia while promoting continued economic growth. This exemption would increase support for domestic carbon abatement projects. Given voluntary offset programs are complementary to existing Government policy, they should be provided the support of a legislative framework that minimises compliance costs.

The Corporations Act 2001 (Cth) s 763A(1) defines a financial product as a 'facility through which, or through the acquisition of which a person (1) makes a financial investment, (2) manages a financial risk or (3) makes non-cash payments. Voluntary offset organisations generally manage all financial and investment risk associated with the procurement of carbon



credits, charging customers a fixed price per tonne. The customer bears no risk that warrants ASIC oversight through AFSL requirements by engaging in voluntary offsetting.

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