



ASIC

Australian Securities & Investments Commission

Australian financial services licensing and the Carbon Farming Initiative

A fact sheet for advisers and project developers

Australian carbon credit units (ACCUs) issued under the Carbon Farming Initiative (CFI) are 'financial products'.

This fact sheet has been developed by the Australian Government Department of Agriculture, Fisheries and Forestry and the Australian Securities and Investments Commission (ASIC) to provide an overview of the regulation of financial services in ACCUs. As a provider of financial services to farmers and land managers, you can use it to help you understand whether an Australian financial services (AFS) licence is required for activities relating to ACCUs.

This factsheet is for general guidance only. You should not rely solely on this information and should get professional advice relevant to your individual circumstances.

What is ASIC's role in carbon markets?

ASIC regulates registered companies, financial markets, and providers of financial services under the *Corporations Act 2001* (Corporations Act).

As part of this role, ASIC licenses and supervises financial services businesses that provide 'financial services' in 'financial products'.

Licensees are required to ensure that they operate their services efficiently, honestly and fairly and manage any conflicts of interest.

Licensees are required to meet ongoing financial resource requirements and organisational competence, and ensure that their representatives are trained and competent.

Licensees providing services to retail clients are also required to have adequate dispute resolution processes and client compensation arrangements in place.

What are 'financial services'?

Financial services are the typical services of financial advisers, brokers, dealers and fund managers. They include:

- providing financial product advice
- dealing in a financial product
- making a market for a financial product
- operating a registered managed investment scheme
- providing a custodial or depository service for financial products.

Advisers and project developers involved in CFI activities may provide one or more of these types of services.

You should carefully consider the nature of your services and decide if they meet the definition of financial services provided by a financial services business and thus require you to hold an AFS licence.

You should refer to ASIC's Regulatory Guide 236 *Do I need an AFS licence to participate in carbon markets?* (RG 236), which explains in detail when an Australian financial services (AFS) licence is required and when exemptions may apply. For more details, visit ASIC's carbon webpage at www.asic.gov.au/carbon.

What are 'financial products'?

Financial products include investment and risk management products such as shares, interests in managed funds, insurance, foreign exchange and derivatives. Since 1 July 2012, ACCUs—both Kyoto ACCUs and non-Kyoto ACCUs—are now also financial products under the Corporations Act.

A forward sale of ACCUs for settlement in the future is classed as a derivative. Options to buy ACCUs are also derivatives, as are other complex transactions. Thus, financial service providers will need an AFS licence covering ACCUs (for presently-settled deals) **and** derivatives (for example, forward-settled trades or options) if they wish to deal, or advise or provide other financial services in, **both** types of financial products.

What is financial product advice in ACCUs and when is an AFS licence required?

The key meaning of financial product advice in s766B of the Corporations Act is "a recommendation or a statement of opinion, or a report of either of those things, that (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or (b) could reasonably be regarded as being intended to have such an influence".

Advice intending to influence decisions in relation to ACCUs could be advice about:

- the financial returns from a CFI project investment (which may also be influential in a decision not to invest)
- whether or not to buy, sell or hold ACCUs
- strategies or transaction terms for dealing in ACCUs
- the outlook for or forecast of ACCU prices (including using third-party forecasts in advice, as the choice of a higher forecast versus a lower forecast can be quite influential to a person's decision in relation to ACCUs).

The advice does not need to be acted on or to have succeeded in influencing to be financial product advice. Anyone providing such advice is carrying on a financial services business and requires an AFS licence.

What kind of advice is NOT financial product advice in ACCUs and does not require an AFS licence?

People providing information or advice, which does not intend to influence a person in making a decision in relation to ACCUs, does not require an AFS licence.

Providing technical information about a current or potential CFI project or factual information about the CFI rules and processes is not financial product advice as it is not about the ACCUs themselves. This includes information relating to:

- the technical feasibility and costs of implementing or operating a CFI project
- projections or auditing of the net emissions abatement from a project's performance
- the processes for attaining CFI eligible offset project status
- the requirements to periodically apply for ACCU certificates of entitlement.

What about the activities of CFI project developers?

Project developers can act in a variety of roles. They may be CFI project proponents, owners, operators, managers or arrangers, and may be ACCU marketers, brokers or dealers. They may act on their own behalf or on behalf of one or more CFI project parties or ACCU buyers or sellers.

Regardless of the title of the role, the AFS licence requirements solely depend on the nature of the person's financial services activities and the capacity in which they act.

Examples of CFI project activities that require an AFS licence include:

- providing financial product advice to landholders when they promote and negotiate CFI project hosting or management rights
- entering into—that is, issuing—derivatives over ACCUs by virtue of royalty or revenue-/profit-sharing agreements made for land use for CFI projects
- raising funds from investors to finance CFI projects via a registered managed investment scheme
- acting as a market-maker to buyers by regularly stating prices at which they are prepared to sell their ACCUs.

Examples of ACCU activities that require an AFS licence include:

- making a market in ACCUs as a principal dealer when they regularly state prices at which they are prepared to buy smaller parcels of ACCUs
- making a market when they resell these acquired ACCUs in the wholesale market
- acting as a broker in arranging sales of ACCUs on behalf of others
- organising multiple sellers to collectively pool their ACCUs to sell into the wholesale market.

Where can I get more information?

ASIC's carbon webpage at www.asic.gov.au/carbon has a range of resources to assist CFI advisers and aggregators in understanding their AFS licensing requirements and obligations, as well as tips on "Making a successful application".

You can also contact ASIC on **1300 300 630**.

For more information about the CFI visit the DAFF website at www.daff.gov.au/cfi.