



Corporations Amendment Regulation 2012 (No. 1)

Select Legislative Instrument 2012 No. 42

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*.

Dated 5 April 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BILL SHORTEN
Minister for Financial Services and Superannuation

1 Name of regulation

This regulation is the *Corporations Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(section 3)

[1] Subregulation 1.0.02 (1), definition of *investment-based financial product*, paragraph (g)

substitute

- (g) a deposit product; or
- (ga) a carbon unit;
- (gb) an Australian carbon credit unit;
- (gc) an eligible international emissions unit;

[2] After regulation 7.1.07H

insert

**7.1.07I Specific things that are not financial products—
Australian carbon credit units and eligible
international emissions units**

- (1) For paragraph 765A (1) (y) of the Act:
 - (a) an Australian carbon credit unit is not a financial product;and

(b) an eligible international emissions unit is not a financial product.

(2) On 1 July 2012:

(a) subregulation (1) ceases to apply; and

(b) Australian carbon credit units and eligible international emissions units become financial products.

[3] After regulation 7.1.08

insert

7.1.08A Modification of section 766D of the Act—free carbon units

For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies in relation to free carbon units (within the meaning of the *Clean Energy Act 2011*) as if section 766D of the Act were modified by inserting after subsection 766D (2) the following subsection:

(3) A person who holds a free carbon unit (within the meaning of the *Clean Energy Act 2011*) that has been issued to the person by the Clean Energy Regulator is taken not to be making a market for a financial product if the person states the price of the free carbon unit.

[4] After paragraph 7.1.09 (1) (f)

insert

(fa) each obligation arising from a contract to transfer a carbon unit, an Australian carbon credit unit or an eligible international emissions unit;

Note See paragraphs 764A (1) (ka) and (kb) of the Act.

[5] After regulation 7.1.35A

insert

7.1.35B Conduct that does not constitute dealing in a financial product—issuing carbon units, Australian carbon credit units or eligible international emissions units

For subsection 766C (7) of the Act, a financial service provided by a person is taken not to be dealing in a financial product if:

- (a) the financial product is a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and
- (b) the person is:
 - (i) the Clean Energy Regulator; or
 - (ii) the Clean Development Mechanism Executive Board; or
 - (iii) the government of a country other than Australia; or
 - (iv) an authority acting on behalf of the government of a country other than Australia; and
- (c) the financial service consists of issuing the carbon unit, Australian carbon credit unit or eligible international emissions unit.

7.1.35C Conduct that does not constitute dealing in a financial product—carbon units, Australian carbon credit units or eligible international emissions units

For subsection 766C (7) of the Act, a financial service provided by a person is taken not to be dealing in a financial product if:

- (a) the financial product is a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and
- (b) the financial service consists of dealing in the carbon unit, Australian carbon credit unit or eligible international emissions unit on behalf of:
 - (i) a related body corporate of the person; or
 - (ii) an associated entity of the person; and

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- (c) the related body corporate or associated entity is an entity that is a liable entity entered in the information database under section 183 of the *Clean Energy Act 2011*.

[6] Regulation 7.1.40

omit

For paragraph 766E (3) (e)

insert

- (1) For paragraph 766E (3) (e)

[7] Regulation 7.1.40

insert

- (2) For paragraph 766E (3) (e) of the Act, conduct that is mentioned in subsection 766E (1) of the Act does not constitute providing a custodial or depository service if the financial product is an Australian carbon credit unit that has been issued to:
- (a) a special native title account in accordance with section 49 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (b) a nominee account in accordance with section 141 of that Act.

[8] Paragraph 7.2.09 (a)

substitute

- (a) the Clean Energy Regulator;
- (aa) the Australian Competition and Consumer Commission;

[9] Paragraph 7.3.07 (a)

substitute

- (a) the Clean Energy Regulator;
- (aa) the Australian Competition and Consumer Commission;

[10] Paragraph 7.3.08 (a)*substitute*

- (a) the Clean Energy Regulator;
- (aa) the Australian Competition and Consumer Commission;

[11] After paragraph 7.6.01 (1) (m), including the examples*insert*

- (ma) a financial service provided by a person in the following circumstances:
 - (i) the service consists only of 1 or more of the following:
 - (A) dealing in derivatives over carbon units, Australian carbon credit units or eligible international emissions units;
 - (B) dealing in a carbon unit, an Australian carbon credit unit or an eligible international emissions unit;
 - (C) dealing in foreign exchange contracts for carbon units, Australian carbon credit units or eligible international emissions units;
 - (ii) the service does not involve the making of a market for those derivatives, units or foreign exchange contracts;
 - (iii) the dealing is entered into for the purpose of managing financial risk in relation to the surrender, cancellation or relinquishment of carbon units, Australian carbon credit units or eligible international emissions units by:
 - (A) the person; or
 - (B) a related body corporate of the person; or
 - (C) an associated entity of the person;

Note Section 175 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* deals with the relinquishment of Australian carbon credit units. Section 210 of the *Clean Energy Act 2011* deal with the relinquishment of carbon units.

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- (iv) the person does not deal in those derivatives, units or foreign exchange contracts as the principal activity of the person's business;
 - (v) the dealing is entered into:
 - (A) on the person's own behalf; or
 - (B) on behalf of a related body corporate of the person; or
 - (C) on behalf of an associated entity of the person;

[12] Regulation 7.6.02AG, inserted paragraph 911A (2E) (c) of the Act

substitute

- (c) the service consists of any or all of the following:
 - (i) dealing in derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units;
 - (ii) providing advice on derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units;
 - (iii) making a market in derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units."

[13] After regulation 7.6.02AG

insert

7.6.02AGA Further modification of section 911A of the Act

For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as if section 911A of the Act were modified by inserting after subsection 911A (5A) the following subsections:

“Australian financial services licence in relation to carbon units, Australian carbon credit units or eligible international emissions units before and after 1 July 2012

- (5B) Subsections (5C) to (5U) apply during the period that:
- (a) starts on 1 May 2012; and
 - (b) ends on 31 December 2012, or a later day prescribed by the regulations.
- (5C) A person must not provide a financial service in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is a financial product unless:
- (a) the person holds a licence authorising the person to provide the financial service; or
 - (b) the person:
 - (i) is registered to provide the financial service; and
 - (ii) applies, no later than 31 October 2012, for a licence authorising the person to provide the service.

Civil penalty: 2,000 penalty units.

Note: Carbon units, Australian carbon credit units and eligible international emissions units become financial products on 1 July 2012. The period mentioned in subsection (5B) relates to the registration process explained in subsection (5F) onwards.

- (5D) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (5C); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the requirement.

Criminal penalty: 200 penalty units, or 2 years imprisonment, or both.

(5E) For the purposes of subsections (5C) and (5D), it is a defence if the person:

- (a) provides a financial service in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and
- (b) is exempted under this Act or the regulations from the operation of those subsections.

Note: For the purposes of subsection (5E), a defendant bears an evidential burden in relation to the matter in subitem (3): see subsection 13.3(3) of the *Criminal Code*.

(5F) A person may apply to be registered by lodging an application with ASIC.

(5G) The application must be lodged during the period that:

- (a) starts on 1 May 2012; and
- (b) ends on 30 June 2012, or a later day prescribed by the regulations.

(5H) The application must be in the approved form.

(5I) ASIC must register a person (the *registrant*) if (and must not register the registrant unless):

- (a) the application makes the statement set out in subsection (5J) in relation to each of the following persons:
 - (i) the registrant;
 - (ii) if the registrant is a body corporate—each director or secretary of the body corporate who would perform duties in relation to the financial services to be authorised by the registration or, if there is no director of that kind, each director or secretary of the body corporate;
 - (iii) if the registrant is a partnership or the trustees of a trust—each partner or trustee who would perform duties in relation to the financial services to be authorised by the registration; and
- (b) ASIC is satisfied that:
 - (i) the application is not false in a material particular and is not materially misleading; and

- (ii) no material matter has been omitted from the application.

(5J) For the purposes of paragraph (5I) (a), the statement is that:

- (a) a banning order or disqualification order under Division 8 of Part 7.6 of the *Corporations Act 2001* is not in force against the person; and
- (b) if the person is or has been registered—the person's registration is neither suspended nor cancelled; and
- (c) an Australian financial services licence of the person is neither suspended, nor has been cancelled within the last 7 years, under:
 - (i) paragraph 915B(1)(d) or subparagraph 915B(4)(b)(iii) (which deals with suspension or cancellation because of mental or physical incapacity); or
 - (ii) section 915C (which deals with suspension or cancellation after offering a hearing); and
- (d) if the person is not the trustee of a trust—the person is not insolvent; and
- (e) if the person is a natural person:
 - (i) the person is not disqualified from managing corporations under Part 2D.6; and
 - (ii) the person has not been convicted, within 10 years before the application is made, of serious fraud; and
- (f) the person is of good fame and character within the meaning of section 913B.

(5K) A person who is registered under this section is registered on the basis that:

- (a) conditions on the registration may be imposed, varied or revoked under subsection (5L); and
- (b) the registration will be cancelled under subsection (5U); and
- (c) the registration may be cancelled, revoked, terminated or varied by or under later legislation; and
- (d) no compensation is payable if:
 - (i) conditions on the registration are imposed, varied or revoked as referred to in paragraph (a); or
 - (ii) the registration is cancelled, revoked, terminated or varied as referred to in paragraphs (b) and (c).

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- (5L) ASIC may, at any time:
- (a) impose conditions, or additional conditions, on a person's registration; and
 - (b) vary or revoke conditions imposed on a person's registration.
- (5M) ASIC may do so:
- (a) on its own initiative; or
 - (b) if the registered person lodges an application with ASIC for the imposition, variation or revocation.
- (5N) ASIC must give the registered person written notice of the imposition, variation or revocation of the conditions. The imposition, variation or revocation of the conditions comes into force on the day specified in the notice, which must not be before the day on which the decision to impose, vary or revoke the conditions was made.
- (5O) Despite subsection (5L), ASIC may only impose conditions or additional conditions, or vary or revoke the conditions, on the registration after giving the registered person an opportunity:
- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
 - (b) to make submissions to ASIC in relation to the conditions.
- This subsection does not apply to ASIC imposing conditions when a person becomes registered.
- (5P) ASIC must ensure that the registration is subject to a condition that specifies the financial services or classes of financial services that the registered person is authorised to provide in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit.
- (5Q) The registration is subject to such other conditions as are prescribed by the regulations. However, ASIC cannot vary or revoke those conditions.
- (5R) If, after 1 July 2012, a registered person provides a financial service to a retail client in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit, the person must:
- (a) be a member of an approved external dispute resolution scheme; and

(b) ensure that the person has in place compensation arrangements within the meaning of section 912B.

(5S) A registered person must:

- (a) do all things necessary to ensure that the financial services provided in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit by the registration are engaged in efficiently, honestly and fairly; and
- (b) comply with the conditions on the registration; and
- (c) comply with the financial services laws; and
- (d) take reasonable steps to ensure that its representatives comply with this Act and the regulations; and
- (e) take reasonable steps to ensure that clients of the registered person are not disadvantaged by any conflict of interest that arises wholly or partly in relation to financial services provided in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit by the registered person or its representatives; and
- (f) comply with any other obligations that are prescribed by the regulations.

(5T) For the purposes of this section:

- (a) ASIC may suspend or cancel the registration of a registered person:
 - (i) on its own initiative; or
 - (ii) if the registered person lodges an application with ASIC for the suspension or cancellation; and
- (b) a suspended registration has no effect while it remains suspended; and
- (c) ASIC may at any time revoke the suspension of a registered person's registration; and
- (d) ASIC must exercise its powers under this subsection in a manner that is consistent, as far as practicable, with the manner in which it must exercise its powers to suspend or cancel registrations under Division 4 of Part 3 of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

(5U) The registration of every registered person is cancelled at the end of 31 December 2012, or a later day prescribed by the regulations.

Note: After 31 December 2012, a person who has been registered but does not hold a licence authorising the person to provide financial services in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit will be required to cease providing the financial services.’’.

[14] Paragraph 7.6.02A (a)

substitute

- (a) *Australian National Registry of Emissions Units Act 2011*;
- (aa) *Banking Act 1959*;
- (ab) *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- (ac) *Clean Energy Act 2011*;

[15] After regulation 7.7.10AH

insert

7.7.10AI Obligation to warn client that advice does not take account of client’s objectives, financial situation or needs—carbon units, Australian carbon credit units and eligible international emissions units

For paragraph 951C (1) (c) of the Act, Part 7.7 of the Act applies in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as if paragraph 949A (2) (c) read as follows:

- “(c) if the advice relates to the acquisition, or possible acquisition, of a carbon unit, the providing entity must:
 - (i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 202 of the *Clean Energy Act 2011*; and
 - (ii) inform the client that the client should consider each statement mentioned in section 202 of the *Clean Energy Act 2011* before making any decision about whether to acquire the financial product; and
- (d) if the advice relates to the acquisition, or possible acquisition, of an Australian carbon credit unit, the providing entity must:
 - (i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 162 of the

Carbon Credits (Carbon Farming Initiative) Act 2011;
and

- (ii) inform the client that the client should consider each statement mentioned in section 162 of that Act before making any decision about whether to acquire the financial product; and
- (e) if the advice relates to the acquisition, or possible acquisition, of an eligible international emissions unit, the providing entity must:
 - (i) provide the client with the address of the website of the Clean Energy Regulator mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and
 - (ii) inform the client that the client should consider each statement mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* before making any decision about whether to acquire the financial product.”.

[16] After regulation 7.8.21A

insert

7.8.21B Anti-hawking provisions if no Product Disclosure Statement is required—carbon units, Australian carbon credit units and eligible international emissions units

For paragraph 992C (1) (c) of the Act, Part 7.8 of the Act applies in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as if paragraphs 992A (3) (c), (d) and (e) (including the note) read as follows:

“(c) informed that:

- “(i) for a carbon unit, the person should consider all information about the financial product that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011* before becoming bound to acquire a financial product; and

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- (ii) for an Australian carbon credit unit, the person should consider all information about the financial product that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* before becoming bound to acquire a financial product; and
 - (iii) for an eligible international emissions unit, the person should consider all information about the financial product that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* before becoming bound to acquire a financial product; and
 - (d) clearly informed of the importance of using that information when making a decision to acquire a financial product; and
 - (e) given the option of having the information on that website read out to that person.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).”.

[17] Part 7.9, Division 4, after Subdivision 4.1

insert

Subdivision 4.1A No Product Disclosure Statement for carbon units, Australian carbon credit units and eligible international emissions units

7.9.09A Application of Subdivision

This Subdivision applies:

- (a) to a person who, apart from this Subdivision, would be required to give a Product Disclosure Statement for a carbon unit, an Australian carbon credit unit or an eligible international emissions unit; and
- (b) in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit.

7.9.09B Provisions of Part 7.9 of Act that do not apply in relation to carbon units, Australian carbon credit units and eligible international emissions units

For paragraph 1020G (1) (b) of the Act, the following provisions of Part 7.9 of the Act do not apply in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit:

- (a) subparagraph 1012A (3) (b) (i);
- (b) subparagraph 1012A (3) (b) (ii);
- (c) subparagraph 1012B (3) (a) (ii);
- (d) paragraph 1012C (3) (b);
- (e) paragraph 1012C (4) (c);
- (f) subsection 1012C (6);
- (g) section 1013A;
- (h) section 1013B;
- (i) section 1013C;
- (j) section 1013D;
- (k) section 1013E;
- (l) section 1013F;
- (m) section 1013G.

7.9.09C Modification of Act

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit as set out in Part 19 of Schedule 10A.

[18] Schedule 10A, heading

substitute

Schedule 10A Modifications of Part 7.9 of the Act

(regulations 7.9.02, 7.9.04, 7.9.05, 7.9.06, 7.9.09C, 7.9.10B, 7.9.11C, 7.9.11N, 7.9.11V, 7.9.12, 7.9.24, 7.9.27, 7.9.30, 7.9.43, 7.9.47, 7.9.51, 7.9.56, 7.9.60, 7.9.61, 7.9.63, 7.9.73 and 8.4.02)

[19] Schedule 10A, after Part 18

insert

Part 19 Modifications for carbon units, Australian carbon credit units and eligible international emissions units

19.1 Subsections 1012D (1) to (3), including the subheadings

substitute

Recommendation, issue or sale situation for carbon unit—statements on Clean Energy Regulator’s website

- (1) Subject to subsections (2) and (3), in a recommendation situation, issue situation or sale situation for a carbon unit, the regulated person:
 - (a) does not have to give the client a Product Disclosure Statement; and
 - (b) must inform the client that the client should consider each statement about the carbon unit that is mentioned in section 202 of the *Clean Energy Act 2011*.

Recommendation, issue or sale situation for carbon unit—client has considered statements on Clean Energy Regulator’s website

- (2) In a recommendation situation, issue situation or sale situation for a carbon unit, the regulated person does not have to inform the client as described in paragraph (1)(b) if the regulated person believes, on reasonable grounds, that the client has already considered each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*.

Recommendation, issue or sale situation for carbon unit—specified persons

- (3) In a recommendation situation, issue situation or sale situation for a carbon unit, the regulated person does not have to inform the client as described in paragraph (1)(b) if the person is:
- (a) the Clean Energy Regulator; or
 - (b) the Clean Development Mechanism Executive Board; or
 - (c) the government of a country other than Australia; or
 - (d) an authority acting on behalf of the government of a country other than Australia.

Recommendation, issue or sale situation for Australian carbon credit unit—statements on Clean Energy Regulator’s website

- (3A) Subject to subsections (3B) and (3C), in a recommendation situation, issue situation or sale situation for an Australian carbon credit unit, the regulated person:
- (a) does not have to give the client a Product Disclosure Statement; and
 - (b) must inform the client that the client should consider each statement about the Australian carbon credit unit that is mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Recommendation, issue or sale situation for Australian carbon credit unit—client has considered statements on Clean Energy Regulator’s website

- (3B) In a recommendation situation, issue situation or sale situation for an Australian carbon credit unit, the regulated person does not have to inform the client as described in paragraph (3A)(b) if the

regulated person believes, on reasonable grounds, that the client has already considered each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Recommendation, issue or sale situation for Australian carbon credit unit—specified persons

- (3C) In a recommendation situation, issue situation or sale situation for an Australian carbon credit unit, the regulated person does not have to inform the client as described in paragraph (3A)(b) if the person is:
- (a) the Clean Energy Regulator; or
 - (b) the Clean Development Mechanism Executive Board; or
 - (c) the government of a country other than Australia; or
 - (d) an authority acting on behalf of the government of a country other than Australia.

Recommendation, issue or sale situation for eligible international emissions unit—statements on Clean Energy Regulator’s website

- (3D) Subject to subsections (3E) and (3F), in a recommendation situation, issue situation or sale situation for an eligible international emissions unit, the regulated person:
- (a) does not have to give the client a Product Disclosure Statement; and
 - (b) must inform the client that the client should consider each statement about the eligible international emissions unit that is mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*.

Recommendation, issue or sale situation for eligible international emissions unit—client has considered statements on Clean Energy Regulator’s website

- (3E) In a recommendation situation, issue situation or sale situation for an eligible international emissions unit, the regulated person does not have to inform the client as described in paragraph (3D)(b) if the regulated person believes, on reasonable grounds, that the client has already considered each statement about the eligible international emissions unit that is published on the website of the

Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*.

Recommendation, issue or sale situation for eligible international emissions unit—specified persons

- (3F) In a recommendation situation, issue situation or sale situation for an eligible international emissions unit, the regulated person does not have to inform the client as described in paragraph (3D)(b) if the person is:
- (a) the Clean Energy Regulator; or
 - (b) the Clean Development Mechanism Executive Board; or
 - (c) the government of a country other than Australia; or
 - (d) an authority acting on behalf of the government of a country other than Australia.

19.2 Subsection 1012D (5)

omit

give the client a Product Disclosure Statement

insert

inform the client as described in paragraph (1)(b), (3A)(b) or (3D)(b)

19.3 Subsection 1012D (6)

omit

give the client a Product Disclosure Statement

insert

inform the client as described in paragraph (1)(b), (3A)(b) or (3D)(b)

19.4 Subsections 1012D (7) to (10), including the subheading

omit

19.5 Subsection 1012IA (1), definition of *regulated acquisition*

substitute

regulated acquisition means an acquisition of a financial product pursuant to an instruction by the client under a custodial arrangement, being an acquisition:

- (a) by way of issue by the issuer (the ***regulated person***); or
- (b) pursuant to a sale by a person (the ***regulated person***) in circumstances:
 - (i) described in subsection 1012C(5) or (8); or
 - (ii) to which subsection 1012B(3), 1012C(3) or 1012C(6) would apply if those subsections were applicable in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit.

19.6 Subsection 1012IA (2), subheading

substitute

Obligation on provider to inform client about statements on Clean Energy Regulator's website

19.7 Subsection 1012IA (2)

omit

must give the client a Product Disclosure Statement for the product if a Product Disclosure Statement for the product would

insert

must inform the client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, or each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, or each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of

the *Australian National Registry of Emissions Units Act 2011*, if the statement would

19.8 Subsection 1012IA (3), subheading

substitute

Determining whether client should be informed about statements on Clean Energy Regulator's website for an equivalent direct acquisition

19.9 Subsection 1012IA (3)

omit

give the client a Product Disclosure Statement for the financial product

insert

inform the client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, or each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, or each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*

19.10 Paragraph 1017E (1) (b)

substitute

- (b) a seller (the *product provider*) of a carbon unit in relation to which the seller has informed the client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*; or
- (ba) a seller (the *product provider*) of an Australian carbon credit unit in relation to which the seller has informed the client that the client should consider each statement about the

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- Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (bb) a seller (the ***product provider***) of an eligible international emissions unit in relation to which the seller has informed the client that the client should consider each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*;

19.11 Subsection 1017G (1)

substitute

- (1) This section does not apply to:
- (a) the Regulator; or
 - (b) the CDM Executive Board; or
 - (c) the government of a country other than Australia; or
 - (d) an authority acting on behalf of the government of a country other than Australia.

(1A) If:

- (a) carbon units are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and
 - (b) the issue or sale of the carbon units is not covered by an Australian financial services licence;
- the issuer and any regulated person who is required, under subsection 1012D(1), to inform a client that the client should consider each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, must both have a dispute resolution system complying with subsection (2).

Note 1: If the issue of the carbon units is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the units is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(1B) If:

(a) Australian carbon credit units are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of the Australian carbon credit units is not covered by an Australian financial services licence; the issuer and any regulated person who is required, under subsection 1012D(3A), to inform a client that the client should consider each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, must both have a dispute resolution system complying with subsection (2).

Note 1: If the issue of the Australian carbon credit units is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the units is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(1C) If:

(a) eligible international emissions units are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of the eligible international emissions units is not covered by an Australian financial services licence; the issuer and any regulated person who is required, under subsection 1012D(3D), to inform a client that the client should consider each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*, must both have a dispute resolution system complying with subsection (2).

Note 1: If the issue of the eligible international emissions units is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the units is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311 (1)).

19.12 Section 1018A, heading

substitute

1018A Advertising or other promotional material for financial product must refer to statements on Clean Energy Regulator's website**19.13 Subsection 1018A (1), subheading**

substitute

Advertisements and promotional material must identify issuer (or issuer and seller) and refer to statements on Clean Energy Regulator's website

19.14 Subsection 1018A (1)

omit

if a particular financial product is available for acquisition by persons as retail clients (whether or not it is also available for acquisition by persons as wholesale clients) by way of issue, or pursuant to sale offers to which section 1012C applies or will apply,

insert

in an issue situation or sale situation for a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is available for acquisition by persons as retail clients (whether or not it is also available for acquisition by persons as wholesale clients),

19.15 Subparagraph 1018A (1) (c) (ii)

omit

to which section 1012C applies or will apply

insert

to which paragraphs 1012C(3)(b) and (4)(c), and subsection 1012C(6), would apply if section 1012C were applicable in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit

19.16 Paragraphs 1018A (1) (d) and (e)

substitute

(d) informs the person that the person should consider:

- (i) each statement about the carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011* in deciding whether to acquire, or to continue to hold, the carbon unit; or
- (ii) each statement about the Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* in deciding whether to acquire, or to continue to hold, the Australian carbon credit unit; or
- (iii) each statement about the eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011* in deciding whether to acquire, or to continue to hold, the eligible international emissions unit.

19.17 Subsection 1018A (2)

omit

if a particular financial product, or proposed financial product, is not available for acquisition by persons as retail clients but it is reasonably likely that the product will become so available (whether or not it is, or will also become, available for acquisition by persons as wholesale clients) by way of issue, or pursuant to sale offers to which section 1012C will apply,

insert

in an issue situation or sale situation for a financial product that is a carbon unit, an Australian carbon credit unit or an eligible international emissions unit and is not available for acquisition by persons as retail clients, but is reasonably likely to become so available (whether or not it is, or will also become, available for acquisition by persons as wholesale clients),

19.18 Subparagraph 1018A (2) (c) (ii)

omit

to which section 1012C will apply

insert

to which paragraphs 1012C(3)(b) and (4)(c), and subsection 1012C(6), would apply if section 1012C were applicable in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit

19.19 Paragraphs 1018A (2) (d) to (f)

substitute

(d) informs the person that:

- (i) a statement about the carbon unit is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*; or
- (ii) a statement about the Australian carbon credit unit is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (iii) a statement about the eligible international emissions unit is published on the website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and

(e) informs the person that the person should consider each statement about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published on that website in deciding whether to acquire, or to continue to hold, the carbon unit, Australian carbon credit unit or eligible international emissions unit.

19.20 Subsection 1018A (3)

omit

distribute a Product Disclosure Statement

insert

inform a person that the person should consider each statement about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published

on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*

19.21 Subparagraph 1018A (4) (c) (i)

substitute

- (i) does not contain information that materially affects affairs of the issuer, other than information about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published:
 - (A) on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*; or
 - (B) in a disclosure document that has been lodged with ASIC; or
 - (C) in an annual report or in a notice or report referred to in paragraph (a) or (b); and

19.22 Subparagraphs 1018A (4) (d) (i) and (ii)

substitute

- (i) information about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published:
 - (A) on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*; or
 - (B) in a disclosure document that has been lodged with ASIC; or

19.23 Paragraph 1020D (b)

substitute

- (b) if the acquisition occurs in circumstances in which the party is required by a provision of this Part to have been informed that the party should consider each statement about the carbon unit, Australian carbon credit unit or eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011*—taken to have notice of any contract, document or matter not specifically referred to in those statements.

19.24 Paragraph 1020E (7) (b)

omit

the document, advertisement or statement

insert

the statement or advertisement

19.25 Section 1021C, heading

substitute

1021C Offence of failing to refer to statements on Clean Energy Regulator's website**19.26 Subparagraph 1021C (1) (a) (i)**

substitute

- (i) is required by a provision of this Part to inform a person that the person should consider each statement about a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian*

National Registry of Emissions Units Act 2011 (the required statement); or

19.27 Subparagraph 1021C (1) (b) (i)

substitute

- (i) if subparagraph (a)(i) applies—inform the person that the person should consider each required statement; or

19.28 Subparagraph 1021C (3) (a) (i)

substitute

- (i) is required by a provision of this Part to inform a person that the person should consider each statement about a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011 (the required statement); or*

19.29 Subparagraph 1021C (3) (b) (i)

substitute

- (i) if subparagraph (a)(i) applies—inform the person that the person should consider each required statement; or

19.30 Paragraph 1021C (4) (b)

substitute

- (b) the representative's failure to inform the person that the person should consider each required statement occurred because the representative was acting in reliance on that information or those instructions; and

19.31 Section 1021G

omit

to give or communicate disclosure documents or statements as and when required by this Part.

insert

to inform a person that the person should consider each statement about a carbon unit, an Australian carbon credit unit or an eligible international emissions unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*, section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* or section 61 of the *Australian National Registry of Emissions Units Act 2011* as and when required by this Part.

19.32 After paragraph 1022B (1) (ac)

insert

(ad) a person:

- (i) is required to inform another person (the *client*) that the client should consider each statement about a carbon unit that is published on the website of the Clean Energy Regulator as mentioned in section 202 of the *Clean Energy Act 2011*; and
- (ii) does not inform the client by the time the person is required to do so; or

(ae) a person:

- (i) is required to inform another person (the *client*) that the client should consider each statement about an Australian carbon credit unit that is published on the website of the Clean Energy Regulator as mentioned in section 162 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
- (ii) does not inform the client by the time the person is required to do so; or

(af) a person:

- (i) is required to inform another person (the *client*) that the client should consider each statement about an eligible international emissions unit that is published on the

website of the Clean Energy Regulator as mentioned in section 61 of the *Australian National Registry of Emissions Units Act 2011*; and

- (ii) does not inform the client by the time the person is required to do so; or