

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 69

Issued by the Minister for Financial Services and Superannuation

Subject - *Australian Securities and Investment Commission Act 2001*

*Australian Securities and Investment Commission Amendment Regulation
2012 (No. 1)*

The *Australian Securities and Investment Commission Act 2001* (the Act) complements the *Corporations Act 2001* and outlines additional obligations and regulations applicable to business entities in Australia.

Section 251 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulation makes amendments to the *Australian Securities and Investment Commission Regulations 2001* (the Principal Regulations) in respect of the definitions for financial products, and the dealing with financial products.

The amendments aim to recognise Australian carbon credit units issued under the Carbon Farming Initiative, eligible international emissions units issued in accordance with the Kyoto rules or another relevant international agreement and carbon units issued under the Clean Energy Legislation, as financial products.

The Regulation:

- includes Australian carbon credit units, eligible international emissions units and carbon units in the definitions of the Principal Regulations;
- provides a transitional period until 1 July 2012 to allow affected stakeholders sufficient time to comply with their new obligations before the licensing requirements commence;
- includes the Clean Energy Regulator as a prescribed agency for the purposes of the Principal Regulations; and
- includes any obligation from a contract to transfer Australian carbon credit units, eligible international emissions units or carbon units as a prescribed obligation for the purposes of the clearing and settlement facility provision of the Principal Regulations.

The Commonwealth consulted publicly on a draft of the Regulation in November and December 2011.

Under the Corporations Agreement 2002 (the Corporations Agreement), the State and Territory Governments referred their constitutional powers with respect to corporate regulation to the Commonwealth. The Legislative and Governance Forum for Corporations (meeting as the Ministerial Council for Corporations) has been consulted about the proposed Regulation as required by the Corporations Agreement. However, paragraph 507(1)(f) and subclause 511(2) of the Corporations Agreement provide that approval of the Council and the usual public exposure period are not required for amendments to regulations relating to financial products and services.

Details of the proposed Regulation are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences the day after registration.

Details of the proposed Australian Securities and Investments Commission Amendment Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This section specifies the name of the Regulation is the *Australian Securities and Investments Commission Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides for Schedule 1 of the Regulation to commence the day after registration.

Section 3 – Amendment of the Australian Securities and Investments Commission Regulations 2001

This section provides that Schedule 1 amends the *Australian Securities and Investments Commission Regulations 2001* (Principal Regulations).

Schedule 1 – Amendments

Item 1 inserts the definitions of Australian carbon credit units, eligible international emissions units and carbon units in regulation 2 of the Principal Regulations, which relates to definitions.

Item 2 inserts a new regulation 2BB which provides that Australian carbon credit units and eligible international emissions units are not financial products until 1 July 2012. This is seven months after the date of proclamation of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Item 3 inserts a new paragraph (a) in regulation 3 and includes the Clean Energy Regulator as a prescribed agency for the purposes of paragraph 18(2)(d) of the *Australian Securities and Investments Commission Act 2001*. Subsection 18(2) outlines agencies to whom the Australian Securities and Investments Commission may give a copy of a report under Part 3 Division 1 of the Act.

Item 4 makes a minor technical amendment to regulation 45 to allow for a new paragraph (f) to be inserted after paragraph 45(e).

Item 5 inserts a new paragraph 45(f) which outlines that obligations arising from a contract to transfer an Australian carbon credit unit, eligible international emissions unit or carbon unit are a prescribed obligation in relation to clearing and settlement facilities.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Securities and Investment Commission Amendment Regulation 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to recognise Australian carbon credit units issued under the Carbon Farming Initiative, eligible international emissions units issued in accordance with the Kyoto rules or another relevant international agreement and carbon units issued under the Clean Energy Legislation, as financial products.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.