

AFSL & the boundaries for when a licence is needed

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GTA Advisory and Compliance Workshop
Melbourne, Australia
25 July, 2016

DISCLAIMER

- The information contained in this presentation is general in nature and informational purposes only. It is not legal advice. No one should act on the information without appropriate specific advice for your particular circumstance.
- The views expressed are that of the presenter and are not the views of any other organisation associated with the presenter.

INTRODUCING NARELLE WATTERS

- Narelle has 20 years experience in the Agriculture industry in a range of commercial and corporate roles. Previously employed by AWB and Cargill, Narelle has experience in cash trading, derivatives, risk management, regulatory compliance including AFSL and AML.
- Narelle holds a BA of Agricultural Science from the University of Melbourne and is a member of the Governance Risk and Compliance (GRC Institute)

Agenda

- AFS Licensing refresh
- What does this mean for the grain industry?
- Grain pools MIS relief- Sun-setting
- Advisors – Register and Standards

Australian Financial Services (AFSL)

LICENSING REFRESH

When do you need an AFSL?

- If you are carrying on a business of providing financial services in Australia unless an exemption applies
- An AFSL allows you to provide a particular financial **service** in relation to a particular financial **product**, to a type of **client**



Types of Financial Services



Giving Advice (Recommending)



Dealing- issuing, arranging



Making a market



Operating a scheme



Custodial & Depositary services

What are financial products?

General

- Makes a Financial investment
- Manages a Financial risk
- Makes a Non-cash payment

Inclusions

- Derivatives
- FX
- **MIS**
- Securities
- Carbon credits
- General insurance
- ...

Exclusions

- Credit facilities
- Some insurance
- reinsurance
- Not a derivative
- ...

**WHAT DOES THIS MEAN FOR
THE GRAINS INDUSTRY?**

AFSL & Grains Industry?

Financial Products



Broad general definitions

Exceptions



Narrowly defined



Must meet all criteria



- Deliverable forward contract
- Not settled in Cash

Watch-out for:



- changes in settlement types, rollovers, things that might make the contract non-deliverable.

Consequences

- Enforceable Undertakings
- Suspensions or cancellations
- Banning orders
- Fines/Imprisonment



- Bad for your business
- Expensive
- Bad for the industry?
- Legislative changes?
- Social Contract

ASIC focus?

Monday 20 June 2016



16-197MR ASIC releases report highlighting significant failures in the retail OTC derivatives industry

Wednesday 6 July 2016

16-218MR ASIC crackdown on unlicensed retail OTC derivative providers



The screenshot shows the ASIC website header and navigation menu. The header includes the Australian coat of arms, the ASIC logo (Australian Securities & Investments Commission), and the 'MONEYSMART' logo (Financial guidance you can trust). The navigation menu is a green bar with white text and icons for: Home, Managing your money, Borrowing & credit, Insurance, Superannuation & retirement, Investing, and Scams. Below the menu, the breadcrumb trail reads 'Home > Scams > Companies you should not deal with'. The main heading is 'Companies you should not deal with' in green, followed by a sub-heading 'List of unlicensed companies' in green. A sidebar on the left contains a grey box with the text 'Companies you should not deal with' and a link '► Unlicensed companies'.

Considerations

- What's the Service (activity?)
- What are the Product features
- Is a AFSL required, or exemption available
- What type of customers (retail/wholesale)
- Does the exemption apply in all situations?

POOLS MIS RELIEF

Grain Pools as MIS?

MANAGED INVESTMENT SCHEMES

- Money or moneys worth
- Pooled to produce financial benefit
- Members have no day to day control



Current Relief

- **ASIC Class Order 02/211-**
MIS- Interests not for money
- Conditions apply->the fine print

Relieves:

- MIS registration
- AFS licensing
- Some disclosure obligations

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraphs 601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a)
and 1020F(1)(a) — Revocation and Exemption

1. Under paragraphs 601QA(1)(a) and 741(1)(a) of the *Corporations Act 2001* (the "Act"), the Australian Securities and Investments Commission ("ASIC") hereby revokes Class Order [00/198].
2. Under paragraphs 601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the Act, ASIC hereby exempts the class of persons mentioned in Schedule A from:
 - (a) section 601ED of the Act in relation to the operation of the managed investment scheme mentioned in Schedule B;
 - (b) sections 992A and 992AA and Part 7.9 of the Act in relation to:
 - (i) an offer mentioned in Schedule B;
 - (ii) an issue of an interest in a managed investment scheme resulting from an offer mentioned in Schedule B; and

What did the WIAT say?



RECOMMENDATIONS

- Growers to access risk
- Industry Code of Practice
- Class order to remain until its review

Sunseting Class Orders

- Repealed automatically after 10 years “SUNSET”
- unless ASIC take action to preserve them
- Must be remade before their sunset date to be preserved

ASIC Class Order [CO 02/0211]-scheduled to sunset **1 April 2017***

Consultative Process

ASIC Release Consultation Papers (CP)

ASIC Encourage Responses

Assess

Remake or propose change or repeal

When and how will you know?

- ASIC indicative date for consultation papers (CP's)-
Sept 2016*
- Check ASIC website
- Watch ASIC media releases

*subject to change

Developments & things to watch for

ADVISERS

ASIC Register of Financial Advisers



Financial Advisers Register

- Personal advice, relevant financial products, retail clients.
- Register, includes qualifications & experience



Authorised Representatives Register

Can be both Financial Adviser & Authorised Representative

Financial Advisers Professional Standards

RAISE STANDARDS FOR RETAIL FINANCIAL ADVISERS

- Relevant Degree
- Professional Year
- Pass an exam
- Professional development
- Party to code of Ethics

Proposed to commence **1 Jan 2019** (revised from July 2017)

Summary

- Caution with Financial Products & Services
- Grain pools MIS Sunsetting → get involved
- Financial Advisers → registered, best interest duties, professional standards

Contact

If you would like to continue the discussion on any items raised in this presentation, I can be contacted via:

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THANK YOU