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Compliance Carbon Markets: Getting Ready for Carbon Markets

Legal issues involved in doing a trade

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Overview

1. Markets, products & regulatory framework
2. Documentation pros and cons
3. Other legal issues

Markets, products & regulatory framework

Market	Products	Legal classification under EUSSF Bill	Regulatory framework
Exchange-traded	• spot →	not a “security” under Securities Act →	unregulated
	• futures) • options) →	“futures contracts” under Securities Markets Act if cash-settled →	Securities Commission authorisation required to “deal”
OTC	• spot →	not a “security” under Securities Act →	unregulated
	• forwards) • options) →	“futures contracts” under Securities Markets Act if cash-settled →	Securities Commission authorisation required to “deal”
	• structured products →	depends on type of product and settlement method →	depends on type of product and settlement method

Documentation pros and cons

Issue	Standardised approach (eg, ISDA/IETA/EFET)	Bespoke approach (eg, ERPA)
Negotiation – time and cost	Minimal (Master agreement + confirmation)	Potentially large (Single trade agreement)
Basis risk (risk of documentation mismatch with other trades)	Minimal	Potentially high
Potential applicability to other products	Yes	No
Ability to cross-product net	Yes	No
Ability to create seller/buyer favourable documentation	Difficult	Simple

Other legal issues

- Documentation:
 - principally an exercise in risk allocation (project risk, credit risk, legal risk, etc.)
 - simple concepts, but complex drafting
- How do you take ownership of, or security over, an emissions unit?
- Use of clearing and settlement systems to overcome delivery and payment risk