

# EXPOSURE DRAFT

EXPOSURE DRAFT (11/02/2014)

Inserts for

## **Corporations Laws Amendment (2014 Measures No. 1) Regulation 2014: Water Trading Exemptions**

# EXPOSURE DRAFT

---

## Schedule 1—Amendments

### *Australian Securities and Investments Commission Regulations 2001*

#### 1 After regulation 2BB

Insert:

#### 2BC Specific things that are not financial products—certain tradeable water rights

- (1) For paragraph 12BAA(8)(p) of the Act, each of the following is not a financial product:
  - (a) tradeable water rights;
  - (b) an arrangement in relation to which:
    - (i) a person (the *seller*) has, or may have, an obligation to sell tradeable water rights on a future date; and
    - (ii) another person (the *buyer*) has, or may have, an obligation to buy the tradeable water rights, or replacement water rights, on a future date; and
    - (iii) the arrangement does not permit the seller's obligations to be wholly settled by cash, or by set-off between the seller and the buyer, rather than by transfer of ownership of the tradeable water rights or replacement water rights; and
    - (iv) neither usual market practice, nor the rules, allow the seller's obligations to be closed out by matching up the arrangement with another arrangement of the same kind under which the seller has offsetting obligations to buy the tradeable water rights or replacement water rights.

- (2) In subregulation (1):

*replacement water rights* means tradeable water rights that are granted, issued or authorised as a replacement for the seller's tradeable water rights, including as a result of transformation arrangements mentioned in subsection 97(1) of the *Water Act 2007*.

*rules* means the rules of:

# EXPOSURE DRAFT

- 
- (a) a licensed market (within the meaning given by section 761A of the Corporations Act); or
  - (b) a licensed CS facility (within the meaning given by section 761A of the Corporations Act).

*tradeable water rights* has the same meaning as in the *Water Act 2007*.

## *Corporations Regulations 2001*

### **2 Subregulation 7.1.04(8)**

Repeal the subregulation, substitute:

- (8) For paragraph 761D(3)(d) of the Act, each of the following is declared not to be a derivative for Chapter 7 of the Act:
  - (a) tradeable water rights;
  - (b) an arrangement in relation to which:
    - (i) a person (the *seller*) has, or may have, an obligation to sell tradeable water rights on a future date; and
    - (ii) another person (the *buyer*) has, or may have, an obligation to buy the tradeable water rights, or replacement water rights, on a future date; and
    - (iii) the arrangement does not permit the seller's obligations to be wholly settled by cash, or by set-off between the seller and the buyer, rather than by transfer of ownership of the tradeable water rights or replacement water rights; and
    - (iv) neither usual market practice, nor the rules, allow the seller's obligations to be closed out by matching up the arrangement with another arrangement of the same kind under which the seller has offsetting obligations to buy the tradeable water rights or replacement water rights.
- (9) Subregulations (4) to (8) apply whether or not a matter mentioned in those subregulations is described in subsection 761D(1) of the Act.
- (10) In subregulation (8):

*replacement water rights* means tradeable water rights that are granted, issued or authorised as a replacement for the seller's tradeable water rights, including as a result of transformation

# EXPOSURE DRAFT

---

arrangements mentioned in subsection 97(1) of the *Water Act* 2007.

**rules** means the rules of:

- (a) a licensed market; or
- (b) a licensed CS facility.

**tradeable water rights** has the same meaning as in the *Water Act* 2007.