

Australian Securities and Investments Commission
Corporations Act 2001 – Subsections 283GA(1), 601QA(1), 741(1), 926A(2),
992B(1) and 1020F(1) and paragraph 911A(2)(l) – Exemptions and Declaration

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under subsections 283GA(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) and paragraph 911A(2)(l) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 14/1001].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; or
 - (b) the date of its gazettal.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Object

4. The object of this instrument is to facilitate the making of offers of financial products of an unlisted body by the body or a wholly-owned subsidiary of the body to persons under an arrangement (an *employee incentive scheme*) that is designed to support interdependence between the body and those persons for their long-term mutual benefit.

Disclosure relief

Offers made under an employee incentive scheme

5. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product to an eligible participant under an employee incentive scheme covered by this instrument does not have to comply with Part 6D.2, 6D.3 or Part 7.9 of the Act in relation to the offer.
6. A trustee that holds or will hold underlying eligible products in connection with an employee incentive scheme covered by this instrument and which makes an offer of a unit in the underlying eligible product to an eligible participant does not have to comply with Part 6D.2, 6D.3 or Part 7.9 of the Act in relation to the offer of the unit.

Note: The trustee need not be the unlisted body or a wholly-owned subsidiary of the body.

Subsequent sale offers

7. A person that makes a sale offer of an underlying eligible product within 12 months after the issue of the product does not have to comply with Part 6D.2, 6D.3 or Part 7.9 of the Act in relation to the sale offer where:
 - (a) the product was issued or otherwise granted:
 - (i) to an eligible participant under an employee incentive scheme; or
 - (ii) to a trustee in connection with an employee incentive scheme; and
 - (b) the person has no reason to believe the employee incentive scheme is not covered by this instrument.

8. A person that makes a sale offer of a financial product within 12 months after the issue of the product does not have to comply with Part 6D.2, 6D.3 or Part 7.9 of the Act in relation to the sale offer where:
 - (a) the product was issued by reason of the exercise or vesting of an eligible product issued or otherwise granted to:
 - (i) an eligible participant under an employee incentive scheme; or
 - (ii) to a trustee in connection with an employee incentive scheme; and
 - (b) the person has no reason to believe the employee incentive scheme is not covered by this instrument.

Advisers

9. A financial services licensee or an authorised representative of a financial services licensee who gives financial product advice to an eligible participant that consists of, or includes, a recommendation to acquire an eligible product in connection with an employee incentive scheme, does not have to give the participant a Product Disclosure Statement for the product in relation to the giving of such advice, provided the person giving the advice has no reason to believe the employee incentive scheme is not covered by this instrument.

Licensing, hawking and other incidental relief

General advice

10. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product to an eligible participant under an employee incentive scheme covered by this instrument and, in relation to the offer, provides a financial service consisting of general advice in connection with the offer, does not have to comply with subsection 911A(1) of the Act in relation to the advice.

Dealing

11. An unlisted body or a wholly-owned subsidiary of the body that provides any of the following financial services in relation to an offer of an eligible product to an eligible participant in connection with an employee incentive scheme covered by this instrument does not have to comply with subsection 911A(1) of the Act in relation to the financial service:
 - (a) issuing the eligible product;
 - (b) dealing in the eligible product where any acquisition by purchase or disposal of the eligible product by the unlisted body or a wholly-owned subsidiary of the body occurs either:
 - (i) through a financial services licensee; or
 - (ii) outside this jurisdiction and through a person which is licensed or otherwise authorised to deal in financial products of that kind in the relevant place.

Custodial or depository services

12. An unlisted body or a wholly-owned subsidiary of the body that provides any of the following financial services in relation to an offer of an eligible product to an eligible participant in connection with an employee incentive scheme covered by this instrument does not have to comply with subsection 911A(1) of the Act in relation to the financial service:
 - (a) a custodial or depository service in relation to the eligible product where the body performs their duties in good faith and has sufficient resources to perform those duties;
 - (b) dealing in the eligible product in the course of providing a custodial or depository service covered by paragraph (a).

Hawking

13. An unlisted body or a wholly-owned subsidiary that makes an offer of an eligible product to an eligible participant in the course of, or because of, an unsolicited meeting or telephone call held or made in connection with an employee incentive scheme covered by this instrument does not have to comply with section 736, 992A or 992AA of the Act.

Advertising

14. An unlisted body, a wholly-owned subsidiary of the body or a trustee that advertises, or publishes a statement that is reasonably likely to induce eligible participants to acquire, an eligible product under an employee incentive scheme covered by this instrument does not have to comply with section 1018A of the Act in relation to the advertisement or publication.

Conditions

Notice of reliance

15. An unlisted body or a wholly-owned subsidiary of the body relying on this instrument in relation to making an offer of an eligible product in connection with a particular employee incentive scheme must give ASIC a notice of reliance.

Note 1: A notice of reliance can cover a particular employee incentive scheme that is intended to operate for many years. A new notice of reliance will be required to be given to ASIC if the body establishes a new employee incentive scheme.

Note 2: A body relying on only paragraphs 25, 26, 27 or 28 (Transitional) of this instrument does not need to give ASIC a notice of reliance.

16. The body relying on the instrument may give ASIC the notice of reliance at any time before the body first relies on this instrument in relation to the particular employee incentive scheme but, in any event, must give ASIC the notice of reliance no later than 1 month after the day the body first relies on this instrument in relation to the particular employee incentive scheme.

Disclosure

17. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product to an eligible participant under an employee incentive scheme must ensure that:

- (a) the offer is made in, or is accompanied by, an offer document; and
- (b) the offer document is accompanied by:
 - (i) a copy of the annual report; and
 - (ii) a copy of a directors' solvency resolution made no earlier than 1 month before the making of the offer; and
 - (iii) a copy of a directors' valuation resolution made no earlier than 12 months before the making of the offer and being the most recent directors' valuation resolution; and
- (c) if requested by an eligible participant at any time during the period the eligible participant is participating in the employee incentive scheme—the eligible participant is given, within 4 months after making the request, a copy of the annual report.

Terms of offer

18. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product to an eligible participant under an employee incentive scheme must ensure that:

- (a) the value of all offers of eligible products to any eligible participant in any 12 month period is not greater than \$5,000, calculated by reference to the most recent directors' valuation resolution; and
- (b) if the offer is or includes an offer of fully paid voting ordinary shares or units in fully paid voting ordinary shares—no more than nominal monetary consideration is to be provided by the eligible participant for the issue or transfer of the shares or units; and
- (c) if the offer is or includes an offer of options or incentive rights and more than nominal monetary consideration is required to be provided by the eligible participant in order for the options to become exercisable or for the incentive rights to vest—the options do not become exercisable, and the incentive rights do not vest, unless:
 - (i) the minimum quotation period is met; or
 - (ii) a valuation document which is dated no earlier than 1 month before it is given, is given to eligible participants no later than 14 days prior to exercise or vesting.

20% issue limit

19. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product under an employee incentive scheme in reliance on this instrument must, at the time of making the offer, have reasonable grounds to believe that the number of underlying eligible products in a class of underlying eligible products that form part of the issued capital of the unlisted body that have been or may be issued in any of the circumstances covered by the following paragraphs will not exceed 20% of the total number of underlying eligible products in that class on issue:
- (a) underlying eligible products that may be issued under the offer;
 - (b) underlying eligible products issued or that may be issued as a result of offers made at any time during the previous 3 year period under:
 - (i) an employee incentive scheme covered by this instrument; or
 - (ii) an ASIC exempt arrangement of a similar kind to an employee incentive scheme.

Trusts

20. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an underlying eligible product under an employee incentive scheme in relation to which a trustee holds or will hold the underlying eligible products must ensure:
- (a) the activities of the trustee of the trust in that capacity are limited to employee incentive schemes of the unlisted body or a wholly-owned subsidiary of the body (whether or not the other employee incentive schemes are covered by

this instrument);

- (b) the trustee maintains written records on the administration of the trust including, in the case of underlying eligible products being held for a specified eligible participant on an allocated basis, written records that identify the underlying eligible products held on an allocated basis for the specified eligible participant;

Note: The written records in relation to underlying eligible products held on an allocated basis may take the form of a sub-register administered by or on behalf of the trustee.

- (c) the trustee does not levy any fees or charges for administering the trust that are payable directly by any eligible participant or out of the assets of the trust, other than reasonable disbursements including brokerage and tax levied or incurred in connection with the trust;
- (d) if the trustee is the unlisted body or an associate of the body—the trustee does not, at its own discretion, exercise any voting rights attaching to any of the underlying eligible products that it holds on trust; and
- (e) the trustee, either alone or together with one or more other trustees, does not hold more than 20% of the fully paid ordinary voting shares in the unlisted body where such holdings relate to employee incentive schemes of the unlisted body or a wholly-owned subsidiary of the body in reliance on this instrument.

Contribution plans not permitted

- 21. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product under an employee incentive scheme must ensure that the terms of the scheme do not involve a contribution plan.

Loans not permitted

- 22. An unlisted body or a wholly-owned subsidiary of the body that makes an offer of an eligible product to an eligible participant under an employee incentive scheme must ensure that the terms of the scheme do not involve a loan to the eligible participant to acquire eligible products.

ASIC power to request documents

- 23. A body relying on this instrument must, if requested by ASIC and in accordance with the request, make available to ASIC the offer document and all other accompanying information or documents given to eligible participants in connection with the offer.

Exclusion

- 24. This instrument does not apply to any person to whom ASIC has given, and not withdrawn, a written notice that specifies that the person is excluded from relying on this instrument.

Transitional arrangements

25. The exemptions made under, and the conditions imposed by, ASIC Class Order [CO 03/184] as in force immediately before the day of its revocation are, with effect from the date of revocation, made under and imposed by this paragraph.
26. The exemptions made under, and the conditions imposed by, an individual instrument of relief granted by ASIC which is in terms similar to ASIC Class Order [CO 03/184] and which makes provision in relation to any matter by applying, adopting or incorporating, with or without modification, any of the provisions of the class order, are, with effect from the date of revocation of the class order, made under and imposed by this paragraph.
27. The declaration made by ASIC Class Order [CO 04/671] as it applies to the circumstances specified in Category 1 (employee shares schemes) of Schedule D of the class order as in force immediately before the day of its revocation (or partial revocation as it applies to Category 1 of Schedule D) is, with effect from the date of revocation or partial revocation, made by this paragraph and applies as if the references in Category 1 of Schedule D to class orders or instruments of relief included references to paragraphs 25 and 26 of this instrument.
28. The relief in paragraphs 25, 26 and 27 applies in relation to:
 - (a) an employee share scheme which, as at the day immediately before the day of commencement of this instrument, was covered by ASIC Class Order [CO 03/184] or an individual instrument of relief granted by ASIC which is in terms similar to that class order (including, for the avoidance of doubt, in relation to offers made under the employee share scheme on or after that date); and
 - (b) an employee share scheme the terms of which, at any time before the day of commencement of this instrument, had been approved by the unlisted body including as agreed on in accordance with a resolution of directors or members of the body and which would have been covered by ASIC Class Order [CO 03/184].

Interpretation

29. In this instrument:
 - (a) *able to be traded* has the meaning given by section 761A of the Act;

annual report means:

 - (a) for a body that is subject to Part 2M.3 of the Act—the most recent reports required by section 319 of the Act to be lodged with ASIC;
 - (b) for a body that is a registered foreign company—the most recent reports required by section 601CK of the Act to be lodged with ASIC;
 - (c) otherwise—a special purpose financial report covering the most recent financial year of the body;

ASIC Class Order [CO 03/184] includes ASIC Class Order [CO 05/1270] to the extent that it relates to ASIC Class Order [CO 03/184];

ASIC exempt arrangement of a similar kind, in relation to an employee incentive scheme, means an arrangement covered or previously covered by ASIC Class Order [CO 03/184] or an instrument expressed to apply to a specified person or persons and which grants or granted similar relief to the relief granted by that class order;

associate has the meaning given by Division 2 of Part 1.2 of the Act (except sections 12 and 16);

casual employee, in relation to an unlisted body or a wholly-owned subsidiary of the body, means an individual who is, or might reasonably be expected to be, engaged to work the number of hours that are the pro-rata equivalent of 40% or more of a comparable full-time position with the body;

contractor, in relation to an unlisted body or a wholly-owned subsidiary of the body, means:

- (a) an individual with whom the body has entered into a contract for the provision of services under which the individual performs work for the body; or
- (b) a company with whom the body has entered into a contract for the provision of services under which an individual, who is a director of the company or their spouse, performs work for the body;

where the individual who performs the work under or in relation to the contract is, or might reasonably be expected to be, engaged to work the number of hours that are the pro-rata equivalent of 40% or more of a comparable full-time position with the body;

contribution plan means a plan under which an eligible participant may make monetary contributions towards the acquisition of underlying eligible products from one or more of the following:

- (a) gross (before-tax) wages or salary;
- (b) net (after-tax) wages or salary;
- (c) other monies;

Note: The terms of an employee incentive scheme covered by this instrument must not involve a contribution plan: see paragraph 21.

directors' solvency resolution means a resolution of the directors of the unlisted body that there are reasonable grounds to believe that the body will be able to pay its debts as and when they become due and payable;

directors' valuation resolution means a resolution of the directors of the unlisted body which relates to a valuation of the body or its eligible products, and is used to determine the value of an offer of eligible products to an eligible participant;

eligible participant, in relation to an unlisted body or a wholly-owned subsidiary of the body, means a person specified in column 2 of Table A;

eligible product, in relation to an unlisted body, means a financial product specified in column 1 of Table A;

employee incentive scheme has the meaning given in paragraph 4;

financial product advice has the meaning given by section 766B of the Act;

general advice has the meaning given by section 766B of the Act;

incentive right means a conditional right:

- (a) to acquire underlying eligible products;
- (b) to be paid a cash amount that is ultimately determined by reference to (wholly or in part):
 - (i) the price or value at a given time of the underlying eligible product to which the right relates;
 - (ii) a change in the price or value over a given period of the underlying eligible product to which the right relates;
 - (iii) the amount or value of dividends or distributions paid or payable in relation to the underlying eligible product to which the right relates;
or
 - (iv) a change in the amount or value over a given period of time of dividends or distributions paid or payable in relation to the underlying eligible product to which the right relates; or
- (c) to acquire or to be paid a combination of underlying eligible products and a cash amount as determined in accordance with paragraph (b);

minimum quotation period means a period of at least 3 months during which:

- (a) the fully paid voting ordinary shares of the body are in a class of shares that are able to be traded on any of the eligible financial markets specified in column 1 of Table A of ASIC Class Order [CO 14/1000]; and
- (b) trading of shares in that class of shares was not suspended for more than a total of 5 days during the shorter of the period during which the class of

shares were able to be traded and the immediately preceding period of 12 months;

nominal monetary consideration means monetary consideration of a token or trivial amount;

notice of reliance, in relation to a particular employee incentive scheme, means a written notice in a form approved in writing by ASIC;

offer, in relation to an eligible product, has a meaning affected by sections 700, 702 and 1010C of the Act and includes:

- (a) an offer to issue the eligible product;
- (b) an issue or grant of the eligible product;
- (c) an offer to transfer the eligible product;
- (d) a transfer of the eligible product;
- (e) an offer to arrange for the issue or transfer of the eligible product;

offer document, in relation to an offer of eligible products under an employee incentive scheme, means a document which includes, or is accompanied by, the following information, statements and explanations worded and presented in a clear, concise and effective manner:

- (a) on the cover page of the offer document, in a box and in a minimum font size of 14 points—prominent statements to the following effect:
 - (i) the eligible products offered under this document may or may not have any value that is capable of being realised by the eligible participant;
 - (ii) whether the eligible products have any value that is capable of being realised by the eligible participant will depend on future events which may or may not occur;
- (b) prominent statements to the effect that:
 - (i) any advice given by the body in relation to eligible products offered under the employee incentive scheme does not take into account an eligible participant's objectives, financial situation and needs; and
 - (ii) eligible participants should consider obtaining their own financial product advice from a person who is licensed by ASIC to give such advice; and
 - (iii) eligible participants may, at any time during the operation of the employee incentive scheme, make a request to be given, without

charge, a copy of the most recent annual report;

- (c) if the annual report required to accompany the offer document is a special purpose financial report—prominent statements to the effect that:
 - (i) the financial report that accompanies this offer document is a special purpose financial report that has been prepared to inform members of the body of the body’s financial position and performance;
 - (ii) if applicable—the special purpose financial report has not been audited; and
 - (iii) eligible participants participating in the employee incentive scheme should not solely rely on the special purpose financial report;
- (d) either:
 - (i) a copy of the terms of the employee incentive scheme; or
 - (ii) a summary of the terms of the scheme together with a statement that, on request and at no charge and within a reasonable time, the body will provide the eligible participant with a copy of the terms of the scheme;
- (e) general information about the risks of acquiring and holding an eligible product being offered under the employee incentive scheme;
- (f) if a trustee will hold underlying eligible products in connection with the employee incentive scheme—either:
 - (i) a copy of the trust deed; or
 - (ii) a summary of the terms of the trust deed together with a statement that, on request and at no charge and within a reasonable time, the body will provide an eligible participant with a copy of the trust deed;
- (g) an explanation of the methodology used or adopted by the directors of the body for the purposes of the directors’ valuation resolution;

Note: The offer document must be accompanied by the most recent directors’ valuation resolution: see sub-subparagraph 17(b)(iii).

prospective participant, in relation to offers of an eligible product under an employee incentive scheme, means a person to whom offers are made but who can only accept the offers if an arrangement has been entered into that will result in the person becoming covered by one of paragraphs (a) to (d) in column 2 of Table A;

special purpose financial report means a balance sheet and profit and loss

statement prepared in accordance with a financial reporting framework designed to meet the financial information needs of specific users;

trustee means a body that holds or will hold underlying eligible products on trust for the following persons in connection with an employee incentive scheme:

- (a) eligible participants generally on an unallocated basis; or
- (b) one or more specified eligible participants on an allocated basis;

underlying eligible product means an eligible product specified in paragraph (a) in column 1 of Table A;

unlisted body means a body that is not listed on any of the eligible financial markets specified in column 1 of Table A of ASIC Class Order [CO 14/1000];

valuation document, in relation to an offer of options or incentive rights, means:

- (a) a current disclosure document for an offer of shares in the same class as the shares to which the options or rights relate;
 - (b) an independent expert's report that contains an opinion on the value of a share in the same class as the shares to which the options or rights relate; or
 - (c) a copy of an executed agreement under which shares in the same class as shares to which the options or rights relate are to be acquired on arm's length terms by a third party that is not an associate of the body and which specifies a value of a share in that class;
- (b) an offer of eligible products to an eligible participant under an employee incentive scheme on terms that the eligible participant may renounce the offer in favour of a person covered by one of the following paragraphs is to be treated as an offer of eligible products to the eligible participant:
- (i) an immediate family member of the eligible participant;
 - (ii) a company whose members comprise no persons other than the eligible participant or immediate family members of the participant;
 - (iii) a corporate trustee of self-managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) where the eligible participant is a director of the trustee;
- (c) for the avoidance of doubt, a document or other writing to be given in connection with this instrument may be given by electronic means (including, in the case of a document or other writing to be given by a person relying on this instrument, by way of making it available on a website and notifying the intended recipient that it is available on the website).

Dated this 27th day of October 2014

Signed by Grant Moodie
as a delegate of the Australian Securities and Investments Commission

Table A

Column 1 Eligible product	Column 2 Eligible participant
<ul style="list-style-type: none"> (a) a fully paid voting ordinary share of the body; (b) a unit in a financial product mentioned in paragraph (a); (c) an option to acquire, by way of issue or transfer, a financial product mentioned in paragraph (a); (d) an incentive right granted in relation to a financial product mentioned in paragraph (a). 	<ul style="list-style-type: none"> (a) a full-time or part-time employee (including an executive director); (b) a non-executive director; (c) a contractor; (d) a casual employee; (e) a prospective participant.