

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 14/1000].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*;
 - (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 a listed body by the body or an associated body corporate 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. A listed body or an associated body corporate 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 listed body or an associated body corporate.

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. A listed body or an associated body corporate 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. A listed body or an associated body corporate 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 listed body or an associated body corporate 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;
 - (c) dealing in an interest in a managed investment scheme covered by paragraph 15 of this instrument.

Custodial or depository services

12. A listed body or an associated body corporate 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. A listed body or an associated body corporate 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. A listed body, an associated body corporate 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.

Incidental managed investment scheme

15. A listed body, an associated body corporate or a trustee that operates a managed investment scheme only by reason of operating a contribution plan in relation to offers of eligible products to eligible participants in connection with an employee incentive scheme covered by this instrument does not have to comply with section 601ED of the Act in relation to the operation of that managed investment scheme.

Conditions

Notice of reliance

16. A listed body or associated body corporate 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.

17. 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

18. A listed body or an associated body corporate that makes an offer of an eligible product to an eligible participant under an employee incentive scheme must ensure that the offer is made in, or is accompanied by, an offer document.

5% issue limit

19. A listed body or an associated body corporate 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 listed body that have been or may be issued in any of the circumstances covered by the following paragraphs will not exceed 5% 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. A listed body or an associated body corporate 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 listed body or the associated body corporate (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 listed 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 5% of the voting shares or voting interests in the listed body where such holdings relate to employee incentive schemes of the listed body or an associated body corporate in reliance on this instrument.

Contribution plans

21. A listed body or an associated body corporate that makes an offer of an eligible product to an eligible participant under an employee incentive scheme that involves a contribution plan:

- (a) must not allow an eligible participant to participate in the contribution plan unless the eligible participant has agreed in writing to the terms of the contribution plan;
- (b) must not allow an eligible participant to participate in the contribution plan to acquire options or incentive rights;
- (c) must ensure that any contributions (other than contributions in the form of future

gross (before-tax) salary or wages or from a loan from the body or an associated body corporate to an eligible participant) under the terms of the contribution plan which are to be used but have not yet been used to acquire underlying eligible products are held by or on behalf of the listed body or an associated body corporate on trust for eligible participants, in an account with an Australian ADI that is used solely in connection with employee incentive schemes of the listed body or an associated body corporate (whether or not the other employee incentive schemes are covered by this instrument), whether the account is maintained in this jurisdiction or elsewhere;

- (d) must ensure that if underlying eligible products have been acquired using contributions made by an eligible participant under a contribution plan, the eligible participant has the right to:
 - (i) exercise, or to direct the holder of the underlying eligible products to exercise on their behalf, any voting rights attaching to the underlying eligible products; and
 - (ii) receive income deriving from the underlying eligible products, including dividends and distributions;

Note: The right to receive dividends or distributions may be subject to terms that the dividends or distributions are to be applied to repay a loan from the body or an associated body corporate to the eligible participant in connection with the employee incentive scheme.

- (e) must ensure that an eligible participant may, by giving a notice to the body, discontinue their participation in the contribution plan, the discontinuance to take effect no more than 45 days after the giving of the notice; and
- (f) must ensure that if an eligible participant has discontinued their participation in the contribution plan, any contributions (other than contributions in the form of future gross (before-tax) salary or wages or from a loan from the body or an associated body corporate to an eligible participant) under the terms of the contribution plan that have not been used to acquire underlying eligible products, are repaid to or as directed by the participant as soon as practicable after the participant has discontinued their participation in the contribution plan (such repayment including any accumulated interest (if any), less any tax).

Loans

- 22. A listed body or an associated body corporate making an offer of an eligible product under an employee incentive scheme that involves a loan from the body or an associated body corporate to an eligible participant to acquire the product:
 - (a) must ensure that the loan is not provided to acquire options or incentive rights; and
 - (b) must ensure that under the terms of the loan:
 - (i) no fees or interest is payable; and
 - (ii) either:

- (A) the lender has no recourse against the participant in relation to the repayment of the loan; or
- (B) the recourse of the lender against the participant in relation to the repayment of the loan is limited to forfeiture of the eligible products issued or transferred to, or held on behalf of, the participant in connection with the scheme.

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 paragraph 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 listed 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;

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);

associated body corporate, in relation to a listed body, means:

- (a) a body corporate that is a related body corporate of the body; or
- (b) a body corporate that has voting power in the body of not less than 20%; or
- (c) a body corporate in which the body has voting power of not less than 20%;

casual employee, in relation to a listed body or an associated body corporate, 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 a listed body or an associated body corporate, 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;

eligible financial market means a financial market specified in column 1 of Table A and, unless a contrary intention appears, is limited to the main board of that market;

eligible participant, in relation to listed body or an associated body corporate, means a person specified in column 3 of Table A;

eligible product, in relation to a listed body, means a financial product specified in column 2 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);

listed body means a body that is listed on an eligible financial market;

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) 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;
- (b) 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 an eligible participant with a copy of the terms of the scheme;
- (c) general information about the risks of acquiring and holding an eligible product being offered under the employee incentive scheme;
- (d) 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;

- (e) if the employee incentive scheme involves a contribution plan—either:
 - (i) a copy of the contribution plan; or
 - (ii) a summary of the terms of the contribution plan 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 terms of the contribution plan;
- (f) if the employee incentive scheme involves a loan from the body or an associated body corporate to an eligible participant to acquire the product—a copy of the terms of the loan;
- (g) the acquisition price of the eligible products in Australian dollars or, where the acquisition price is to be worked out in the future under a formula, an explanation of how an eligible participant could calculate the acquisition price of the eligible products in Australian dollars were that formula applied at the date of the offer;
- (h) an explanation of how an eligible participant could, from time to time, ascertain the market price of the underlying eligible products in Australian dollars;

prospective participant, in relation to an offer of an eligible product under an employee incentive scheme, means a person to whom the offer is made but who can only accept the offer if an arrangement has been entered into that will result in the person becoming covered by one of paragraphs (a) to (d) of column 3 of Table A;

related body corporate has the meaning given in section 50 of the Act;

stapled security means two or more eligible products which, under the terms on which each is traded, must be transferred together;

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 any of paragraphs (a) to (f) in column 2 of Table A;

- (b) in relation to a listed body that is a registered scheme:
 - (i) the conferral of relief on the listed body is taken to be the conferral of relief on the responsible entity of the scheme;

- (ii) a requirement imposed on the listed body is taken to be a requirement imposed on the responsible entity of the scheme;
 - (iii) a reference to occupying a position or role with the listed body is taken to be a reference to occupying a position or role with the responsible entity of the scheme;
 - (iv) the definition of *associated body corporate* is to be applied as if the body were either the registered scheme or the responsible entity of the scheme;
- (c) 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 a self-managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) where the eligible participant is a director of the trustee;
- (d) 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 financial market	Column 2 Eligible product	Column 3 Eligible participant
<ul style="list-style-type: none"> (a) ASX (also known as the Australian Securities Exchange); (b) American Stock Exchange; (c) Borsa Italiana; (d) Bursa Malaysia Main Board or Second Board; (e) Euronext Amsterdam; (f) Euronext Paris; (g) Frankfurt Stock Exchange; (h) Hong Kong Stock Exchange; (i) JSE (also known as the Johannesburg Stock Exchange); (j) London Stock Exchange; (k) NASDAQ Global Market or the NASDAQ Global Select Market; (l) New York Stock Exchange; (m) New Zealand Exchange; (n) Singapore Exchange; (o) SWX Swiss Exchange; (p) Tokyo Stock Exchange; (q) Toronto Stock Exchange. 	<ul style="list-style-type: none"> (a) a fully paid share of the body that is in a class of shares able to be traded on an eligible financial market; (b) a beneficial interest in a fully paid share of the body where the interest is in a class of interests that is able to be traded on an eligible financial market; (c) a fully paid share of the body in relation to which both of the following apply: <ul style="list-style-type: none"> (i) a beneficial interest in a share of that class are in a class of interests that is able to be traded on an eligible financial market; (ii) the share is convertible into the beneficial interest without charge or for a nominal fee; (d) a beneficial interest in a fully paid share of the body in relation to which both of the following apply: <ul style="list-style-type: none"> (i) the fully paid share is in a class of shares that is able to be traded on an eligible financial market; (ii) the beneficial interest is convertible into the share without charge or for a nominal fee; (e) a fully paid stapled security of the body that is in a class of stapled securities that is able to be traded on ASX; (f) where the listed body is a registered scheme—an interest in the body that is in a class of interests that is able to be traded on ASX; (g) a unit in a financial product mentioned in paragraphs (a) to (f); (h) an option to acquire, by way of issue or transfer, a financial product mentioned in paragraphs (a) to (f); (i) an incentive right granted in relation to a financial product mentioned in paragraphs (a) to (f), <p>where in each case in relation to a product mentioned in paragraphs (a) to (f) that is in a class of products that is able to be traded on an eligible financial market:</p> <ul style="list-style-type: none"> (j) the product is in the same class as financial products which were able to 	<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.

Column 1 Eligible financial market	Column 2 Eligible product	Column 3 Eligible participant
	<p>be traded on the relevant financial market at all times in the 3 months before the day the offer document is first given to an eligible participant; and</p> <p>(k) the class of products were not suspended for more than a total of 5 days during the shorter of the period during which the class of products were able to be traded, and the period of 12 months before the day the offer document is first given to an eligible participant.</p>	