



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Amendment) Instrument 2015/943**

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I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 15 October 2015

Grant Moodie

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This instrument is the *ASIC Corporations (Amendment) Instrument 2015/943*.

### **2 Commencement**

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislative Instruments; and
- (b) the day after it is gazetted.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### **3 Authority**

This instrument is made 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*.

### **4 Schedules**

The instruments that are specified in the Schedule to this instrument are amended as set out in the applicable items in that Schedule.

## Schedule 1—Amendments

### ASIC Class Order [CO 14/1000]

**1 Paragraph 4**

Omit “(an *employee incentive scheme*)”

**2 Paragraph 5**

Omit “of an eligible product to an eligible participant”

**3 Paragraph 9**

Omit “give the participant a Product Disclosure Statement for the product”, substitute “comply with section 1012A of the Act”

**4 Paragraph 10**

Omit “of an eligible product to an eligible participant”

**5 Paragraph 11**

Omit “of an eligible product to an eligible participant”

**6 Paragraph 12**

Omit “in relation to an offer of an eligible product to an eligible participant”

**7 Paragraph 12**

Omit “depository” (twice occurring), substitute “depository”

**8 Paragraph 15**

Omit “in relation to offers of eligible products to eligible participants”

**9 Paragraph 16**

Omit “relying on this instrument in relation to making an offer of an eligible product”, substitute “making an offer”

**10 Paragraph 17**

Omit “relying on the instrument”

**11 Paragraph 18**

Omit “of an eligible product to an eligible participant”

**12 After paragraph 18**

Insert:

*Offers of overlying eligible products*

18A. A listed body, an associated body corporate or a trustee that makes an offer of an overlying eligible product under an employee incentive scheme must ensure that, if the overlying eligible product is not able to be traded on an eligible financial market, the offer is for no more than nominal monetary consideration.

Note: This paragraph 18A does not prohibit an offer for more than nominal monetary consideration of an underlying eligible product held or to be held by a trustee under a trust in relation to which the eligible participant acquires or will acquire a unit in the underlying eligible product because it is or will be held by the trustee under the trust.

**13 Paragraph 19**

Omit “of an eligible product under an employee incentive scheme in reliance on this instrument”, substitute “covered by this instrument”

**14 Subparagraph 19(b)**

Omit, substitute:

- (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 or like scheme of the listed body or an associated body corporate, where the offers were covered by this instrument or an individual instrument made by ASIC in terms similar to this instrument; or
  - (ii) an employee incentive scheme or employee share scheme of the listed body or an associated body corporate, where the offers were covered by ASIC Class Order [CO 03/184] or an individual instrument made by ASIC in terms similar to that class order.

**15 Subparagraph 20(e)**

Omit, substitute:

- (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 calculated by reference to all employee incentive schemes or like schemes of the listed body or an associated body corporate in relation to which offers were covered by this instrument or an individual instrument made, on or after the commencement of this instrument, by ASIC in terms similar to this instrument.

**16 Paragraph 21**

Omit “of an eligible product to an eligible participant”

**17 Subparagraph 21(b)**

Omit, substitute:

- (b) must not allow an eligible participant to participate in the contribution plan to acquire an overlying eligible product that is not able to be traded on an eligible financial market;

Note: This subparagraph (b) does not prohibit an eligible participant from participating in a contribution plan to acquire an underlying eligible product held or to be held by a trustee under a trust in relation to which the eligible participant acquires or will acquire a unit in the underlying eligible product because it is or will be held by the trustee under the trust.

**18 Subparagraph 21(d)**

Omit “using contributions made by an eligible participant”, substitute “by the trustee for a specified eligible participant on an allocated basis using contributions made by the eligible participant”

**19 Sub-subparagraph 21(d)(i)**

Omit “holder”, substitute “trustee”

**20 Subparagraph 21(e)**

Omit “must”, substitute “unless the eligible participant (or a person covered by one of the sub-subparagraphs in subparagraph 29(c)) has already acquired the eligible products under the employee incentive scheme— must”

**21 Paragraph 28**

Omit, substitute:

28. The relief in paragraph 25, 26 and 27 applies in relation to:

- (a) offers and conduct in respect of an employee share scheme or employee incentive scheme, or like scheme which, as at the day immediately before the day of commencement of this instrument, were covered by ASIC Class Order [CO 03/184] or an individual instrument made by ASIC in terms similar to this instrument or that class order (including, for the avoidance of doubt, in relation to offers made under the employee share scheme, employee incentive scheme, or like 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 under which offers and conduct would have been covered by ASIC Class Order

[CO 03/184].

**22 Subparagraph 29(a)**

Insert the following definitions in alphabetical order:

**contribution**, in relation to a contribution plan, does not include:

- (a) nominal monetary consideration; or
- (b) a monetary contribution as consideration for an issue, transfer or grant of an eligible product to the eligible participant without undue delay (including a monetary contribution made to exercise an eligible product or cause an eligible product to vest);

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

**overlying eligible product** means an eligible product specified in any of paragraphs (g) to (i) in column 2 of Table A;

**23 Subparagraph 29(a) (definition of *ASIC exempt arrangement of a similar kind*)**

Omit

**24 Subparagraph 29(a) (definition of *contribution plan*)**

Omit “towards the acquisition of underlying eligible products”, substitute “to acquire eligible products, whether made before or after the acquisition,”

**25 Subparagraph 29(a) (definition of *employee incentive scheme*)**

Omit, substitute:

**employee incentive scheme** means an arrangement under which eligible products of a listed body are offered to eligible participants;

**26 Subparagraph 29(a) (definition of *offer*)**

At the end of the definition, insert on a new line:

“but does not include an issue, grant or transfer of an underlying eligible product made by reason of the exercise or vesting of an overlying eligible product in circumstances where an offer to issue or transfer the overlying eligible product had been previously made.”

**27 Subparagraph 29(a) (definition of *offer document*)**

Omit paragraph (d) of the definition, substitute:

- (d) if:

- (i) a trustee will hold underlying eligible products for specified eligible participants on an allocated basis in connection with the employee incentive scheme; and
- (ii) those eligible participants will have the right to:
  - (A) exercise, or direct the trustee to exercise on their behalf, any rights (including voting rights) attaching to the underlying eligible products; or
  - (B) receive income deriving from the underlying eligible products, including dividends or distributions;

either:

- (iii) a copy of the trust deed; or
- (iv) 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;

**28 Subparagraph 29(c)**

Omit “following paragraphs”, substitute “following sub-subparagraphs”

**29 After subparagraph 29(c)**

Insert:

- (ca) an employee incentive scheme, employee share scheme, or like scheme, is ***covered by*** an instrument to the extent that offers are made, or other conduct is carried out, in reliance on the instrument;

**ASIC Class Order [CO 14/1001]**

**30 Paragraph 4**

Omit “(an ***employee incentive scheme***)”

**31 Paragraph 5**

Omit “of an eligible product to an eligible participant”

**32 Paragraph 9**

Omit “give the participant a Product Disclosure Statement for the product”, substitute “comply with section 1012A of the Act”

**33 Paragraph 10**



Omit “of an eligible product to an eligible participant”

**34 Paragraph 11**

Omit “of an eligible product to an eligible participant”

**35 Paragraph 12**

Omit “in relation to an offer of an eligible product to an eligible participant”

**36 Paragraph 12**

Omit “depository” (twice occurring), substitute “depository”

**37 Paragraph 15**

Omit “relying on this instrument in relation to making an offer of an eligible product”, substitute “making an offer”

**38 Paragraph 16**

Omit “relying on the instrument”

**39 Paragraph 17**

Omit “of an eligible product to an eligible participant”

**40 Subparagraph 18(b)**

Omit, substitute:

- (b) no more than nominal monetary consideration is to be provided by the eligible participant for the issue or transfer of the eligible products; and

**41 Sub-subparagraph 18(c)(i)**

Omit, substitute:

- (i) both of the following are satisfied:
- (A) fully paid voting ordinary shares of the body are in a class of shares have been 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] for a period of at least 3 months;
  - (B) trading in that class of shares was not suspended for more than a total of 5 days during:
    - (I) if the class of shares have been able to be traded for a period of at least 12 months—the most recent period of 12 months during which the class of shares have been

able to be traded;

- (II) if the class of shares have been able to be traded for a period of less than 12 months—that period; or

**42 Paragraph 19**

Omit “of an eligible product under an employee incentive scheme in reliance on this instrument”, substitute “covered by this instrument”

**43 Subparagraph 19(b)**

Omit, substitute:

- (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 or like scheme of the unlisted body or a wholly-owned subsidiary of the body, where the offers were covered by this instrument or an individual instrument made by ASIC in terms similar to this instrument; or
  - (ii) an employee incentive scheme or employee share scheme of the unlisted body or a wholly-owned subsidiary of the body, where the offers were covered by ASIC Class Order [CO 03/184] or an individual instrument made by ASIC in terms similar to that class order.

**44 Subparagraph 20(e)**

Omit, substitute:

- (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 calculated by reference to all employee incentive schemes or like schemes of the unlisted body or a wholly-owned subsidiary of the body in relation to which offers were covered by this instrument or an individual instrument made, on or after the commencement of this instrument, by ASIC in terms similar to this instrument.

**45 Paragraph 21**

Omit “of an eligible product”

**46 Paragraph 28**

Omit, substitute:

28. The relief in paragraph 25, 26 and 27 applies in relation to:

- (a) offers and conduct in respect of an employee share scheme or employee incentive scheme, or like scheme which, as at the day

immediately before the day of commencement of this instrument, were covered by ASIC Class Order [CO 03/184] or an individual instrument made by ASIC in terms similar to this instrument or that class order (including, for the avoidance of doubt, in relation to offers made under the employee share scheme, employee incentive scheme, or like 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 under which offers and conduct would have been covered by ASIC Class Order [CO 03/184].

**47 Subparagraph 29(a)**

Insert the following definition in alphabetical order:

*overlying eligible product* means an eligible product specified in any of paragraphs (b) to (d) in column 1 of Table A;

**48 Subparagraph 29(a) (definition of *ASIC exempt arrangement of a similar kind*)**

Omit

**49 Subparagraph 29(a) (definition of *contribution plan*)**

Omit “towards the acquisition of underlying eligible products”, substitute “to acquire eligible products, whether made before or after the acquisition,”

**50 Subparagraph 29(a) (definition of *employee incentive scheme*)**

Omit, substitute:

*employee incentive scheme* means an arrangement under which eligible products of an unlisted body are offered to eligible participants;

**51 Subparagraph 29(a) (definition of *minimum quotation period*)**

Omit

**52 Subparagraph 29(a) (definition of *offer*)**

At the end of the definition, insert on a new line:

“but does not include an issue, grant or transfer of an underlying eligible product made by reason of the exercise or vesting of an overlying eligible product in circumstances where an offer to issue or transfer the overlying eligible product had been previously made.”

**53 Subparagraph 29(a) (definition of *offer document*)**

In subparagraph (b)(iii) of the definition omit “the operation of”, substitute “their participation in”

**54 Subparagraph 29(a) (definition of *offer document*)**

Omit paragraph (f) of the definition, substitute:

- (f) if:
- (i) a trustee will hold underlying eligible products for specified eligible participants on an allocated basis in connection with the employee incentive scheme; and
  - (ii) those eligible participants will have the right to:
    - (A) exercise, or direct the trustee to exercise on their behalf, any rights (including voting rights) attaching to the underlying eligible products; or
    - (B) receive income deriving from the underlying eligible products, including dividends or distributions;

either:

- (iii) a copy of the trust deed; or
- (iv) 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;

**55 Subparagraph 29(b)**

Omit “following paragraphs”, substitute “following sub-subparagraphs”

**56 After subparagraph 29(b)**

Insert:

- (ba) an employee incentive scheme, employee share scheme, or like scheme, is ***covered by*** an instrument to the extent that offers are made, or other conduct is carried out, in reliance on the instrument;