

ASIC Corporations (Amendment) Instrument 2017/1049

Explanatory Statement

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Corporations (Amendment) Instrument 2017/1049 under subsections 601QA(1), 741(1) and 1020F(1) of the *Corporations Act 2001 (Act)*.

1. Background

ASIC Corporations (Amendment) Instrument 2017/1049 (*Instrument 2017/1049*) makes amendments to ASIC Class Order [CO 14/1000].

[CO 14/1000] provides conditional relief from a range of statutory obligations that apply in relation to employee incentive schemes offered by listed entities. ASIC may also grant individual relief to a listed entity where they cannot comply with all the requirements of [CO 14/1000] if to do so complies with our policy in Regulatory Guide 49 *Employee Incentive Schemes (RG 49)*.

Our general approach to granting individual relief is to limit the relief to that required for the particular transaction. Our individual relief for listed entities that could not rely on [CO 14/1000] was therefore restricted to the applicant's specific employee incentive scheme and only gave the relief required for that scheme. The disadvantage of this approach is that the entity must apply for further relief each time they make significant changes to their scheme and when they adopt a new scheme.

We consider that there are regulatory benefits and efficiencies with granting broader individual relief on terms that are substantially similar to the class order where we are satisfied that the entity should be able to rely on [CO 14/1000]. The amendments made to the class order by Instrument 2017/1049 facilitate this broader approach.

2. Purpose of Instrument 2017/1049

ASIC can grant broad individual relief to a named entity and to persons associated with the named entity without creating a legislative instrument under the *Legislation Act 2003*: item 9 of the table in regulation 7 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. [CO 14/1000] also provides relief for trustees and financial advisers who are not

necessarily associated with the listed entity and who are not specified by name. Although we can grant individual relief for trustees and financial advisers we cannot do so using the same style of drafting in [CO 14/1000] without creating a legislative instrument. The purpose of Instrument 2017/1049 is therefore to amend [CO 14/1000] to provide relief for trustees and financial advisers where the relevant employee incentive scheme is covered by individual relief on terms that are similar to the class order.

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3. Operation of Instrument 2017/1049

If we determine that a listed entity should have the benefit of the relief for employee incentive schemes in [CO 14/1000], notwithstanding an inability to comply with a requirement or condition of the class order, we provide the specific entity and its related bodies corporate with individual relief on terms that are as close as possible to [CO 14/1000] (*individual relief instrument*).

Instrument 2017/1049 amends [CO 14/1000] to provide relief for trustees and financial advisers where an employee incentive scheme is covered by an individual relief instrument. As a result of these amendments, [CO 14/1000] provides:

- (a) disclosure relief to trustees who make an offer of units in underlying eligible products in connection with an employee incentive scheme that is covered by an individual relief instrument: paragraph 28A of [CO 14/1000];
- (b) advertising relief to trustees who advertise or publish a statement that is reasonably likely to induce eligible participants to acquire an eligible product under an employee incentive scheme that is covered by an individual relief instrument: paragraph 28B of [CO 14/1000];
- (c) relief from the registration requirements in s601ED where a trustee operates a managed investment scheme only by reason of a contribution plan in connection with an employee incentive scheme that is covered by an individual relief instrument: paragraph 28C of [CO 14/1000]; and
- (d) relief to financial services licensees or an authorised representative of a financial services licensee from the PDS requirement in s1012A for advice relating to the acquisition of an eligible product in connection with an employee incentive scheme covered by an individual relief instrument.

4. Consultation

ASIC did not conduct any public consultation on *ASIC Corporations (Amendment) Instrument 2017/1049* because the substantive effect of the instrument is replicate the relief that [CO 14/1000] gives for trustees and financial advisers in a form that will

extend to employee incentive schemes covered by an individual relief instrument. The instrument is therefore consistent with ASIC's policy in RG 49.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of this legislative instrument is to add a definition to section 9 of the Act of 'approved foreign market'.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.