

ASIC Class Order [CO 14/1001]

About this compilation

Compilation No. 3

This is a compilation of ASIC Class Order [CO 14/1001] as in force on 20 December 2022. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

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].

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 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 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, provided the offer is made before 1 March 2023 and is only capable of acceptance until 1

April 2024.

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, provided the offer is made before 1 March 2023 and is only capable of acceptance until 1 April 2024.

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

Continuing offers

- 6A. For the purposes of paragraphs 5 and 6, if an offer is made on a continuing basis, the date that the offer is made is the date that the offer is first made.

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 comply with section 1012A of the Act 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 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 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 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 contact with the eligible participant made in connection with an employee incentive scheme covered by this instrument does not have to comply with section 992A 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 making an offer 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 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 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) no more than nominal monetary consideration is to be provided by the eligible participant for the issue or transfer of eligible products; 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) both of the following are satisfied:
 - (A) fully paid voting ordinary shares of the body are in a class of shares that 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
- (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 covered by 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 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.

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 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.

Contribution plans not permitted

21. An unlisted body or a wholly-owned subsidiary of the body that makes an offer 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) 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 unlisted 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].

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];

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 to acquire eligible products, whether made before or after the acquisition, 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 means an arrangement under which eligible products of an unlisted body are offered to eligible participants;

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);

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; 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.

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 their participation in 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:
 - (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;
- (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).

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

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 sub-subparagraphs 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;
- (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;
- (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).

Table A

Column 1 Eligible product	Column 2 Eligible participant
(a) a fully paid voting ordinary share of the body;	(a) a full-time or part-time employee (including an executive director);
(b) a unit in a financial product mentioned in paragraph (a);	(b) a non-executive director;
(c) an option to acquire, by way of issue or transfer, a financial product mentioned in paragraph (a);	(c) a contractor;
(d) an incentive right granted in relation to a financial product mentioned in paragraph (a).	(d) a casual employee;
	(e) a prospective participant.

Notes to ASIC Class Order [CO 14/1001]

Note 1

ASIC Class Order [CO 14/1001] (in force under s283GA(1), 601QA(1), 741(1), 926A(2), 992B(1), 1020F(1) and 911A(2)(1)) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
[CO 14/1001]	30/10/2014 (<i>see</i> F2006B01473)	30/10/2014	
2015/943	22/10/2015 (<i>see</i> F2015L01691)	11/11/2015	-
2015/999	10/11/2015 (<i>see</i> F2015L01772)	11/11/2015	-
2021/799	22/9/2021 (<i>see</i> F2021L01310)	5/10/2021	-
2022/1022	19/12/2022 (<i>see</i> F2022L01685)	20/12/2022	-

Table of Amendments

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para 3	rep. s48D LA
Para 4	am. 2015/943
Para 5	am. 2015/943, am. 2022/1022
Para 6	am. 2022/1022
Para 6A	ad. 2022/1022
Para 10	am. 2015/943
Para 11	am. 2015/943
Para 13	am. 2021/799
Para 12	am. 2015/943
Para 15	am. 2015/943
Para 16	am. 2015/943
Para 17	am. 2015/943
Subpara 18(b)	am. 2015/943
Subpara 18(c)(i)	am. 2015/943
Para 19	am. 2015/943
Subpara 19(b)	am. 2015/943

Subpara 20(e)	am. 2015/943
Para 21	am. 2015/943
Para 28	am. 2015/943 and 2015/999
Subpara 29(a)	am. 2015/943
Subpara 29(b)	am. 2015/943
Subpara 29(ba)	ad. 2015/943
