

Monteiro, Yeolanda

From: Monteiro, Yeolanda on behalf of Foord, Yolande
Sent: Wednesday, 29 January 2014 4:11 PM
To: policy.submissions@asic.gov.au
Cc: Foord, Yolande; Standen, Sarah
Subject: ASIC Consultation Paper 218: Employee Incentive Schemes
Attachments: Letter to P Lee Sr Mgr Corporations ASIC Consultation Paper 218 Employee Incentive Scheme.pdf

Importance: High

Dear Sir

Thank you for giving Telstra the opportunity to make a submission on ASIC's consultation paper 218 relating to Employee Incentive Schemes, which is attached.

Please do not hesitate to contact me on [redacted] if you have any queries or if you wish to discuss it further.

Kind regards
Yolande



Yolande Foord Executive Director
Remuneration & Benefits | Human Resources

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29 January 2014

Peng Lee
Senior Manager Corporations
Australian Securities and Investments Commission
Level 24, 120 Collins Street
Melbourne VIC 3000

✓ By email: policy.submissions@asic.gov.au

Dear Sir

ASIC Consultation Paper 218: Employee incentive schemes

Thank you for the opportunity to make a submission on ASIC's consultation paper 218 relating to employee incentive schemes.

Please find attached Telstra's submission.

If you have any queries or would like to discuss further, please contact me on 03 8649 3744.

Yours sincerely



Yolande Foord
Executive Director
Remuneration & Benefits
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ASIC Consultation Paper 218: Employee incentive schemes

Submission by Telstra Corporation Limited

1 General comments

- 1.1 We are generally supportive of the Australian Securities and Investment Commission's (**ASIC**) proposals to facilitate further relief for employee incentive schemes offered by entities in Australia through revising Class Order [CO 03/184] *Employee share schemes (Class Order)*.
- 1.2 Over recent years there has been significant development in the types of financial products offered by Australian companies under employee incentive schemes to provide appropriate incentives to attract and reward employees. We believe that the proposed revisions to the Class Order reflect those changes and will provide entities with flexibility to continue to develop and update the incentive schemes they offer to ensure that they are in line with international best practice.
- 1.3 In particular, we are highly supportive of the proposals that will make it clear that:
- (a) offers of performance rights by listed issuers fall within the scope of the revised Class Order; and
 - (b) the relief provided by the revised Class Order will cover unallocated financial products held on trust on behalf of those participants generally.
- 1.4 Our submission will focus on those proposals and the proposed new conditions to the relief provided by the revised Class Order.
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2 Performance Rights

ASIC's proposal

- 2.1 ASIC proposes to make it clear that the following types of performance rights offered for no more than nominal monetary consideration are covered by the relief in the Class Order:
- (a) rights to underlying eligible products;
 - (b) rights to a cash amount that is equivalent to the value of underlying financial products and/or the increase in the value of those products;
 - (c) rights to a cash amount that is equivalent to the dividends or distributions paid to holders of the underlying products; and
 - (d) rights to the number of underlying eligible products that is equivalent to the value of the dividends or distributions paid to holders of the underlying eligible products.
- 2.2 Additionally, to be covered by the revised Class Order the product or cash amount must vest automatically for no monetary consideration on the satisfaction of conditions that relate to:
- (a) the employee's length of service; and/or
 - (b) the performance of the employee, the issuer or an associated body corporate of the issuer.



Our submission

- 2.3 As noted above, we strongly support ASIC's proposal to extend the Class Order to cover offers under employee incentive schemes of rights that meet ASIC's definition of "performance right" to the extent that such rights are not already covered by the Class Order.
- 2.4 Performance rights, as defined in the revised Class Order, align the interests of the issuer and its performance right holders/employees as they ultimately provide an ownership interest in the issuer (or the cash equivalent of an ownership interest) to the employee if the vesting conditions are met.
- 2.5 We do not agree with all aspects of the legal characterisation of performance rights described in the Consultation Paper however, as noted above, we strongly support the scope of relief proposed for performance rights to avoid any uncertainty as to the scope of the Class Order relief.

3 Cash bonuses

- 3.1 To clarify any ambiguity that currently exists in the market, we support ASIC's proposal to provide guidance (and to potentially issue a separate class order declaration) that cash payments, offered in the context of employment or employment-like remuneration arrangements, where the cash payable is determined by a measure other than an underlying eligible product, are not financial products for the purposes of Chapter 7 of the Corporations Act.

4 Use of trusts

- 4.1 We, like many other listed entities, use employee share trusts in the operation of our employee incentive schemes. While we do not agree with certain statements in the Consultation Paper in relation to trusts that hold unallocated products, we support ASIC's proposal to make it clear that the relief in the revised Class Order covers offers of underlying eligible products in circumstances where the trustee holds underlying eligible products in a pool on trust for participants generally. Generally, we agree with the proposed conditions of relief in respect of both allocated and unallocated products.
- 4.2 We do not believe that it is appropriate to prevent a trustee from exercising the voting rights attached to shares in a trust that are held on an unallocated basis. In our view, the trustee should have the right to determine how those shares are voted. Similarly, we believe that a trustee should have the right to vote shares held on trust in circumstances where the beneficiary fails to direct the trustee how to vote. At all times, a trustee voting shares held in trust would be required to act in accordance with its fiduciary obligations, which include acting in the best interests of the beneficiaries.



5 General conditions

12 month holding

- 5.1 It is proposed that a further condition of relief will be imposed under the revised Class Order which requires 25% or more of an employee's entitlement under an employee incentive scheme to be subject to a restriction on vesting or disposal for a period of at least 12 months.
- 5.2 We support the policy objective behind the proposed new condition and agree that such a condition would help to ensure that an incentive scheme aligns the interests of the issuer and the employee. For that reason, we already include "restriction periods" in all of our employee incentive schemes which prevent our employees from dealing with securities granted to them for periods ranging from 12 months for short term incentive plans to 3 years for long term incentive plans.
- 5.3 However:
- (a) we submit that the 25% requirement should not prohibit the release of shares/entitlements from restriction in 'involuntary' or extreme circumstances (eg upon cessation of employment or a change in the control of the issuer). In this regard, we note that the statutory conditions outlined in the *Income Tax Assessment Act 1997* attaching to certain schemes, such as a "\$1,000 Exemption Plan", require that a restriction period end when a participating employee ceases their relevant employment for any reason even if that employment ceases within 12 months of allocation of the shares; and
 - (b) clarity will need to be provided as to how the 25% requirement will be calculated for other entities with shorter restriction periods (eg does it apply in aggregate across all offers under a scheme or on an offer by offer basis).
- 5.4 We would not support a minimum holding period of longer than 12 months. Employee incentive plans aim to provide employees with incentives to promote both the short and long term interests of their employer. Enforcing a holding period of greater than 12 months would affect the utility of short term incentive plans offered by entities and would force Australian entities to reconsider their general remuneration plans.

Providing offer documents to ASIC

- 5.5 As a company that offers a number employee incentive schemes each year, both to employees in Australia and overseas, we appreciate any proposal which has the effect of reducing our administrative burden associated with offering those schemes. As such, we strongly support the proposal to remove from the Class Order the condition which requires entities to lodge with ASIC all offer documents provided to participating employees and replace it with a requirement to notify ASIC of offers under a scheme using a specific form.

Telstra Corporation Limited

