

## QUESTIONS FOR SUBMISSION TO ASIC ON CLASS ORDER

ASIC Question	ASIC Sub Question	Link response
<p>A1 We propose to consult in detail on our proposed reforms to [CO 03/184], which seek to address the difficulties with the current regime and achieve our desired objectives.</p> <p>We are considering three options (see paragraph 20):</p> <ul style="list-style-type: none"> <li>(a) Option 1: Maintaining our existing approach, together with some minor updates;</li> <li>(b) Option 2: Making certain substantive changes, subject to specified conditions, to better facilitate the use of employee incentive schemes; and</li> <li>(c) Option 3: Making certain substantive changes without imposing any conditions.</li> </ul> <p>However, we recommend Option 2, and are therefore consulting in detail on this option</p>	<p>A1Q1 We are very keen to better understand the legal, administrative and compliance impediments, including the costs or benefits that you face or may face in making offers under employee share schemes, whether:</p> <ul style="list-style-type: none"> <li>(a) in compliance with the Corporations Act;</li> <li>(b) in reliance on our relief in [CO 03/184]; or</li> <li>(c) by way of having to seek individual relief.</li> </ul> <p>How do you consider these may be affected by adopting Options 1, 2 or 3, or any other alternatives you think should be considered by ASIC?</p> <p>Please be as specific and as relevant as possible, and include any estimates about the costs and resources required (e.g. time, personnel, external resources and expertise) and any other impediments.</p>	<p>In our experience, legal fees for preparation and lodgment of ASIC Class Order filings are in the range of \$700 - \$1,500 per filing. Most companies will generally make one annual ESP grant and then ad-hoc grants throughout the year as new employees commence employment. Therefore ASIC's proposal for one initial filing (until changes are made to the operation of the Plan) will reduce compliance costs for companies.</p> <p>The other significant compliance burden is the requirement to obtain individual relief for offers of Performance Rights. Link supports bringing offers of Performance Rights into the Class Order.</p>
	<p>A1Q2 In relation to Option 1, do you believe that making minor and technical changes, and updates that are mechanical in nature, to [CO 03/184] and the policy settings in RG 49 will be sufficient to alleviate the need for employers to continue to seek case-by-case relief from ASIC in relation to offers? If not, why not?</p>	<p>Link does not believe that making minor and technical changes will significantly assist our clients with the current administration and compliance burdens that the current Class Order imposes.</p>

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	<p>A1Q3 In relation to Option 2, please provide your feedback on the particular detailed proposals set out in Sections B to H of this consultation paper.</p>	<p>Our feedback is set out in detail in below responses to the consultation paper.</p>
	<p>A1Q4 In relation to Option 3, do you consider that:</p> <ul style="list-style-type: none"> <li>(a) the relationship between employers and employees means that it is unnecessary to impose any conditions because, for example, employees have adequate information about their employers; and</li> <li>(b) it is unnecessary to impose conditions on employers because employment arrangements and practices provide adequate protections for employees?</li> </ul> <p>If so, how and why?</p>	<p>We do not consider it necessary to impose additional conditions on offers of employee share plans.</p> <p>For listed companies, employees have the benefit of market disclosures in the same way as other shareholders. Additionally, employees will also have an understanding of their company's operations through their employment.</p> <p>For unlisted companies there are two types of plans:</p> <ol style="list-style-type: none"> <li>1. Those that require monetary consideration to be paid by the employee – these plans typically require the employee to choose whether to take up the plan. The plan documentation provides sufficient information for the employee to make an informed decision.</li> <li>2. Those that do not require monetary consideration to be paid – these plans are typically offered to executives or are the \$1,000 style of plan. As no consideration is payable there can be no monetary loss to the executive or employee. Also, given the knowledge of the executives about the company they are able to make an informed decision as to the benefit granted under the Plan.</li> </ol>
<p>A2 We would like to hear your views on other</p>	<p>A2Q1 Are there any other issues on which it would</p>	<p>It would be useful if ASIC provided guidance on</p>

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current and emerging issues, generally, in relation to employee offers and incentives.	be useful to have ASIC guidance? If so, please give details.	what clear, concise offer documents look like to avoid the variance of practice that will inevitably result and which could lead to documents that use unnecessarily legal language to describe a simple concept.
	A2Q2 Are there any other issues that may be appropriate for us to address through an exemption or modification by class order? Please be specific.	<p>It would helpful if there is synchronization between the tax legislation definitions and those of the class order. For example, the definition of “contractor” and the definition of a “sole purpose trust”.</p> <p>Additionally, ASIC should review its thinking such that:</p> <ul style="list-style-type: none"> <li>• \$1,000 plans are considered plans for no consideration. As outlined above these have such a low risk that the conditions imposed in the class order outweigh the risks and protection need for employees.</li> <li>• Performance Rights are not considered securities over units or derivatives. Most Plan Rules define Performance Rights as a right to receive a share, and therefore there is no clearly defined share held for each right. Few companies operate plans so that they hold actual shares for each right that are held from the start of the plan life due to the potential variance between those that are likely to vest and those that actually vest.</li> </ul>
	A2Q3 Are there any other policy considerations that may be appropriate for us to address in our regulatory guide? Please be specific.	In 2009 the Australian government amended the tax legislation for employee share plans. This has had a significant adverse impact on the operation of these plans and this legislation should be reviewed as a matter of urgency.

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<p>B1 We propose to provide relief for employee incentive schemes offered by listed bodies (or an associated body corporate of a listed body), where the body is listed on ASX or an approved foreign market.</p>	<p>B1Q1 Do you agree with our proposal to limit our class order relief for listed bodies to those listed on ASX or an approved foreign market? If not, why not?</p>	<p>Link would agree with this approach.</p> <p>However ASIC should review the list of approved foreign exchanges as many of the markets on this list have merged, or have split into a main market and sub-markets. It is difficult to determine whether a foreign company is listed on an approved foreign market. Given the significant variation in the list of markets since 2003, ASIC may instead wish to impose a general definition to capture any markets that have a similar disclosure level to Australian markets for example, (a) – (e) as set out on page 16 of the consultation document).</p> <p>With respect to the European Union, ASIC may wish to consider extending relief to all EU regulated markets. This would be consistent with the employee share plan offering laws for the European Union which also relies on this definition.</p>
<p>B2 We propose to facilitate relief for employee incentive schemes by:</p> <p>(a) clarifying that [CO 14/xx] applies to offers of, or offers to arrange for the issue of, quoted eligible products made by a listed issuer or its associated body corporate; and</p> <p>defining ‘associated body corporate’ as it is currently defined in [CO 03/184], rather than adopting the narrower definition of ‘related body corporate’ in s9 of the Corporations Act.</p>	<p>B2Q1 Do you agree with our proposal to clarify that [CO 14/xx] applies to offers of, or offers to arrange for the issue of, quoted eligible products made by an issuer or its ‘associated body corporate’, rather than only to offers made by an issuer or its ‘related body corporate’? If not, why not?</p>	<p>The extension and proposed definition appear appropriate in the circumstances.</p>
	<p>B2Q2 Do you agree with the proposed definition of ‘associated body corporate’? If not, why not?</p>	<p>Link agrees that the expanded definition, as used in the Class Order, is appropriate, to allow offers to be made in joint venture situations.</p>

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	<p>B2Q3 How common is it for companies to rely on the 20–50% thresholds in paragraphs (b) and (c) of the definition of ‘associated body corporate’ in [CO 03/184]? Please provide examples.</p>	<p>Yes, from our experience it is.</p>
	<p>B2Q4 Do you consider there is a sufficient level of interdependence between the employer and employee where the employee receives eligible products in a body:</p> <p>(a) with voting power of 20% in its employer; or</p> <p>in which its employer has voting power of 20%?</p>	<p>Yes. Employee share plans are commonly used by companies to align the interests of employees with shareholders. In a situation involving various levels of ownership, the Company will decide the most appropriate share (or mix of shares) to offer to executives so that their interests are aligned.</p>
<p>B3 We propose to facilitate relief for employee incentive schemes by extending its scope to cover offers of, or offers to arrange for the issue of, certain financial products made by an unlisted issuer or its wholly owned subsidiary.</p> <p>Note: See Section G for our proposals relating to the types of financial products issued by an unlisted body that may be offered under an employee incentive scheme and the relevant conditions of our relief.</p>	<p>B3Q1 Do you agree with our proposal to provide class order relief to offers of, or offers to arrange for the issue of, certain financial products made by an unlisted issuer or its wholly owned subsidiary? If not, why not?</p>	<p>Link agrees that this is appropriate, whilst there are some very specific challenges with unlisted companies the financial and employee participation and control can often be greater in smaller companies.</p> <p>Link suggests that the relief be extended to “phantom awards” where the employee is granted a right to cash where the amount payable is determined with respect to the company’s share price/valuation.</p>
<p>C1 We propose that [CO 14/xx] will cover the offer or issue of eligible products to contractors and casual employees of issuers (and associated bodies corporate of listed issuers or wholly owned subsidiaries of unlisted issuers) where the additional conditions in Table 2 are met.</p>	<p>C1Q1 Do you agree with our proposal to extend our class order to offers of eligible products to contractors? If not, why not?</p>	<p>Link agrees that this proposal is helpful. A number of Link’s clients currently grant share awards to contractors. However the expansion should be discretionary only, allowing companies to choose whether to extend eligibility to contractors.</p> <p>Note that section 83A-325 of the Income Tax</p>

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		<p>Assessment Act 1997 allows contractors to defer taxation on employee share awards. Link would suggest that ASIC adopts the same definition as the tax legislation so that companies are not required to meet two different conditions for a grant to contractors.</p>
	<p>C1Q2 Do you agree that offers to contractors should include individual contractors engaged personally, or through a company (whether controlled by the individual contractor or a third-party professional services contractor that provides the services of many individual contractors)? If not, why not?</p>	<p>The extension to contractors should apply equally to contractors employed in a personal capacity as to those employed through a company. This allows greatest freedom for employees to choose how they wish to be engaged.</p> <p>Companies can then choose and set their eligibility criteria appropriately.</p>
	<p>C1Q3 Do you agree with our proposal that our new class order should cover offers of eligible products to casual employees? If not, why not? Are there any other conditions or requirements that may be appropriate?</p>	<p>Link agrees that this proposal is helpful and is something that our clients in the current environment would utilize. However the expansion should be discretionary only, allowing companies to choose whether to extend eligibility to casual employees.</p> <p>Link notes that Division 83A of the <i>Income Tax Assessment Act 1997</i> allows companies to include casual employees in their employee share plans, for the purposes of the tax legislation. Amending the Class Order to expressly include casuals and contractors would therefore be consistent with the tax legislation.</p>

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	<p>C1Q4 Do you agree with the work history criteria applying to contractors and to casual employees, as outlined in our proposal? If not, why not? Are there other criteria that may be more appropriate?</p>	<p>We do not agree with the work history criteria.</p> <p>Companies are best able to set the eligibility criteria for those that they make offers to under the Plan. However, we understand that ASIC requires some link to employment to ensure the contractor provisions are not abused. Therefore, potentially ASIC could:</p> <ul style="list-style-type: none"> <li>• require that the service contract have a life after the vesting date of the share award;</li> <li>• require that there be an intention to employ the service contractor for more than 12 months.</li> </ul> <p>However we do not support the requirement that the contractor must be engaged for more than 12 months before an award can be made. Companies may wish to make an award to bring on a contractor or casual employee with specific skills.</p>
<p>C2 We propose that [CO 14/xx] will cover offers of eligible products made to prospective employees (or an associated body corporate of a listed issuer or a wholly owned subsidiary of an unlisted issuer) on the conditions that the offer:</p> <p>(a) is made at the same time as an offer of full-time or part-time employment;</p> <p>(b) can only be accepted if the offer of full-time or part-time employment is also accepted; and</p> <p>(c) is made under an existing employee incentive scheme of the issuer.</p>	<p>C2Q1 Do you agree with our proposal to extend our class order relief to cover offers to prospective employees? If not, why not?</p>	<p>In principle the idea to extend the Class Order to prospective employees makes sense so that any discussion pre-employment is not caught by the anti-hawking provisions. Link understands that most legal advisors do not consider that a contractual right to securities takes effect until the conditions precedent have been met, in this case, accepting the offer of employment.</p> <p>Additionally, practically an employer is unlikely to provide the level of information that is required under the Class Order to a prospective employee. Generally the information is about the quantum and general terms and is subject to the formal offer of employment. Most companies do not consider the</p>

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		<p>current situation to fall within the anti-hawing provisions in any event. Additionally there is a concern that by including this in the class order it may create a right for the non-employee that would not otherwise exist contractually.</p>
	<p>C2Q2 Do you agree with the proposed conditions for this relief? If not, why not?</p>	<p>Link agrees with conditions (a) and (b).  However, there are situations where companies may wish to make a bespoke share award to a particular executive/CEO. Therefore we do not support condition (c).</p>
<p>C3 We propose to expressly exclude non-executive directors from the general class of persons eligible to receive offers, and instead provide limited relief for participation by non-executive directors in employee incentive schemes of an issuer (or an associated body corporate of a listed issuer or a wholly owned subsidiary of an unlisted issuer), where the conditions in Table 3 are met.</p> <p>Note: For a discussion of the term 'non- executive director', as it relates to our proposed relief, see paragraphs 64–71</p>	<p>C3Q1 Do you agree with our proposal to only provide limited conditional relief for non-executive directors? If not, why not?</p>	<p>The current exemption that is included within the proposal relates to NED plans where the NED fee sacrifices or contributes post tax with the company facilitating the purchase for them. In most instances the company would not be relying on the class order because the shares are purchased on market and are usually subject to minimum holding periods, so the prospectus filing issues do not apply. Note also there is a Class Order that has previously been issued that includes NEDs in the senior management exemption within section 708 of the Corporations Act. Link does not believe this extension is required.</p>
	<p>C3Q2 Do you agree with the proposed specific conditions in Table 3 for offers to non-executive directors? If not, why not?</p>	<p>Please see our response above.</p>
	<p>C3Q3 Do you agree with our proposal to impose</p>	<p>Please see our response above.</p>



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	<p>four of the general conditions of our new class order relief (set out in Table 3) on offers to non-executive directors? If not, why not?</p>	
	<p>C3Q4 To what extent is the small-scale offerings disclosure exemption in s708(1) or 1012E relied on for offers to non-executive directors? Is this exemption useful for such offers? Please give reasons. Are any other exemptions relied on?</p>	<p>Please see our response above.</p>
<p>D1 We propose to widen the scope in [CO 14/xx] to include offers under an employee incentive scheme of:</p> <p>(a) depository interests that are:</p> <p>(i) Australian CDIs, quoted on ASX, where the underlying security is a share or stock; or</p> <p>(ii) UK CDIs and ADRs, quoted on an approved foreign market, where the underlying security is a share or stock;</p> <p>Note: Our relief for ADRs is limited to Level II and Level III ADRs. This is because Level I ADRs are not able to be traded on a recognised exchange and there are very limited filing requirements. Levels I, II and III are defined under the Rules of the US Securities and Exchange Commission.</p> <p>(b) the underlying security of these depository</p>	<p>D1Q1 Do you agree with our proposal to extend relief in our new class order to cover offers of Australian CDIs where the underlying security is a share or stock? If not, why not?</p>	<p>Link agrees with the proposal. It is common for international companies to grant share awards over ADRs rather than shares. Therefore we support extending relief to ADRs.</p>

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<p>interests, where that underlying security is a share or stock; and</p> <p>options over, or units in, these depository interests or their underlying securities.</p>		
	<p>D1Q2 Do you agree with our proposal to extend our class order to cover offers of certain UK CDIs and ADRs where the underlying security is a share or stock and the UK CDIs or ADRs are quoted on an approved foreign market? If not, why not?</p>	<p>Link agrees with this proposal. ASIC should also ensure that all other like products are included as the current list is not comprehensive of these instruments.</p>
	<p>D1Q3 Do you agree with our proposal to extend our class order to cover offers of underlying securities of depository interests? If not, why not?</p>	<p>Yes. Relief should extend to options / rights and other types of securities with an underlying ADR.</p>
	<p>D1Q4 Do you agree with our proposal to extend our class order to cover offers of options over, or units in, depository interests or their underlying securities? If not, why not?</p>	<p>Link agrees that these proposals are helpful and they are something that our clients would utilize.</p>
<p>D2 We propose to extend [CO 14/xx] to include offers of options over, and units in, fully paid stapled securities quoted on ASX.</p>	<p>D2Q1 Do you agree with our proposal to extend relief in our class order to cover offers of options over, and units in, fully paid stapled securities? If not, why not?</p>	<p>Link agrees that this proposal is helpful and is something that our clients in the current environment would utilize. ASIC should also consider stapled securities that only have trusts as part of the stapling. These securities are listed on the ASX and should be in principle no different from the other securities allowed relief.</p>

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<p>D3 To facilitate offers under employee incentive schemes, we propose to:</p> <ul style="list-style-type: none"> <li>(a) retain class order relief in relation to options offered for no more than nominal monetary consideration;</li> <li>(b) provide class order relief for offers of performance rights for no more than nominal monetary consideration; and</li> <li>(c) define a 'performance right' as a right to receive: <ul style="list-style-type: none"> <li>(i) fully paid shares quoted on ASX;</li> <li>(ii) fully paid shares or stock quoted on an approved foreign market;</li> <li>(iii) depository interests;</li> <li>(iv) fully paid stapled securities quoted on ASX;</li> <li>(v) a cash amount that is equivalent to the value of a financial product in D3(c)(i)–D3(c)(iv) and/or any increase in their value;</li> <li>(vi) a cash amount that is equivalent to the dividends or distributions paid to holders of a financial product in D3(c)(i)–D3(c)(iv); and/or</li> <li>(vii) the value of the dividends or distributions paid to holders of a financial product in D3(c)(i)–D3(c)(iv),</li> </ul> </li> </ul> <p>which automatically vests in the recipient for no monetary consideration if conditions</p>	<p>D3Q1 Do you agree with our proposal to extend our class order to cover offers of performance rights offered for no more than nominal monetary consideration? If not, why not?</p>	<p>Link agrees that this proposal is helpful and is something that our clients in the current environment would utilize. The previous position that an ASIC waiver was required has caused considerable cost and complexity for our clients.</p>

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<p>are met which relate to:</p> <p>(viii) the length of service of the recipient; and/or</p> <p>(ix) the performance of the recipient, the issuer or an associated body corporate of the issuer.</p>		
	<p>D3Q2 Do you consider the proposed definition of 'performance right' is broad enough to cover the conditional rights usually offered under an employee incentive scheme? If not, what other rights do you think should be included in the definition? Please provide a detailed explanation of the nature of these rights and why they should be included.</p>	<p>We do not agree with the proposed definition of 'Performance Right'. The definition should include the eligible product element only (i.e. the D3(c) definition). The performance element is a business decision and should not be included within the Class Order.</p> <p>Link defines a right as "a right to receive a security on the vesting date". Compare this to the definition of an Option, which is "a right to receive shares during the exercise period, by paying the exercise price set on the grant date'.</p> <p>Therefore, the difference between a right and an option (under this definition) is the exercise price and ability to choose when to exercise. To be consistent therefore, performance conditions should not be applied to the grant of rights. Otherwise, companies could offer nil cost options (which do not have an exercise price) and which are automatically exercised on a certain day, in compliance with the Option provisions under the Class Order.</p> <p>Additionally, almost all Link's clients do not specify whether rights (or options) will be settled with new issue or market purchase shares, or shares from a trust. This is decided shortly before the</p>

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		<p>exercise/vesting date and is a business decision (for example, taking in liquidity, number of shares, share price, etc). Therefore the definition of Rights should include rights to receive shares, however settled by the company on the vesting date. This would in part make the definition consistent with proposal E1. If the definition remains in its current form we do not see any usefulness from the definition as most companies will continue to seek specific relief (or classify their Plan as a nil cost option).</p> <p>We do not consider it necessary to impose additional conditions on the grant of rights than those applying to the grant of options (e.g. D3(viii) and (iv)). Both are different ways of granting a right to a security. Therefore, the performance element should not apply to the grant of rights. Companies should be free to decide the conditions (if any) that apply to the grant of rights in the same way that they decide these in relation to options. The conditions that apply should be left as a business decision and should not be legislated as a requirement for the offer of securities.</p> <p>There is already adequate disclosure/requirements for performance conditions s, e.g. disclosure in the remuneration Report, under the Listing Rules, and the deferral requirements in the taxation legislation. Performance Conditions do not relate to the offer of securities and therefore should not form part of the Class Order. This should be left to companies to decide, having regard to existing requirements.</p>

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	<p>D3Q3 Do you agree with our proposal to define 'performance right' as a right offered for no more than nominal monetary consideration? If not, why not? Is it more reflective of market practices to define 'performance right' as a right offered for no monetary consideration? If so, please provide details and examples.</p>	<p>Link agrees with the wording of no or nominal consideration as it is common practice for clients to use no or small monetary consideration for a right.</p>
	<p>D3Q4 Do you agree with our proposal to include dividend equivalent rights in the definition of 'performance right'? If not, why not?</p>	<p>Link agrees with the proposal, Link's clients have sought relief to provide dividend equivalents alongside their existing share plans.</p>
	<p>D3Q5 Do you agree with our proposal to include as a component of the definition of 'performance right' the ability to receive the cash amount equivalent to the relevant financial product? If not, why not?</p>	<p>Link agrees with the proposal to allow the ability to receive a cash amount equivalent to the relevant financial product. However we do not support this being defined as a "Performance Right" as we consider that performance rights should be offers over securities only.</p> <p>ASIC may wish to consider terming cash based awards as "phantom awards" which is the term commonly used in the industry.</p>
	<p>D3Q6 Do you consider that paragraphs D3(c)(v)–D3(c)(vi) adequately capture the ability for some performance rights to be cash settled? If not, why not?</p>	<p>Link believes that the definition is wide enough for the plans that it commonly sees amongst its clients.</p>
<p>D4 We propose to provide guidance (including</p>	<p>D4Q1 Do you agree with our proposal to provide</p>	<p>Link believes this proposal would be helpful to</p>

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<p>potentially issuing, for the avoidance of doubt, a separate class order declaration under s765A(2) of the Corporations Act) that employment or employment-like remuneration arrangements, under which commissions or bonuses may be payable, are not financial products for the purposes of Ch 7. This would ensure that such arrangements are not regulated as derivatives for the purposes of Ch 7.</p>	<p>guidance (and to potentially issue a separate class order declaration) that employment or employment-like remuneration arrangements, under which commissions or bonuses may be payable, are not financial products for the purposes of Ch 7? If not, why not?</p>	<p>clarify this situation.</p>
<p>D5 We propose to continue to consider on a case-by-case basis applications for relief for other financial products, such as interests in a managed investment scheme offered under an employee incentive scheme (other than those stapled to a share).</p>	<p>D5Q1 Do you agree with our proposal to continue to consider on a case-by-case basis applications for relief for other financial products? If not, why not?</p>	<p>Most clients that Link manages do not use a MIS in conjunction with an employee share incentive plan so this proposal seems appropriate. ASIC should review items like this on a regular basis to ensure that if there is an increase in usage they are not excluded from the provision of the Class Order if appropriate.</p>
	<p>D5Q2 Are there other financial products that we should consider including in [CO 14/xx]? If so, what are they, and in what circumstances are they offered?</p>	<p>There are none that Link is aware of.</p>
<p>E1 We propose:</p> <p>(a) that [CO 14/xx] will provide relief to cover offers of underlying eligible products (i.e. eligible products excluding options and performance rights) under employee incentive schemes that use a trust structure where the relevant conditions in Table 4 are met. The conditions that apply</p>	<p>E1Q1 Do you agree with our proposal to extend our new class order to include offers of underlying eligible products, regardless of whether a trustee holds specific products on trust for specific participants, or the trustee holds underlying eligible products in a pool on trust for participants generally? If not, why not?</p>	<p>Link agrees with the proposal. Link acts as trustee for over 100 companies for their employee share plans, and the majority of these trusts use an unallocated pool.</p> <p>ASIC should be aware that most clients do not specify whether Awards will be settled with new issue or market purchase shares, or shares from a trust. This is decided shortly before the</p>

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<p>will depend on whether the trustee holds:</p> <ul style="list-style-type: none"> <li>(i) specific underlying eligible products on trust for, and allocated to, specific participants (allocated products); or</li> <li>(ii) underlying eligible products in a pool on trust for participants generally (unallocated products); and</li> </ul> <p>(b) to remove from the current conditions relating to trusts the ability for the trust deed to expressly exclude the beneficiary from having the capacity to authorise the trustee to sell at or above the current market price the shares to which they are entitled.</p> <p>Note: For our proposed disclosure and on-sale relief for the issue of underlying eligible products to trustees of trusts used for employee incentive schemes, see proposal H2.</p>		<p>exercise/vesting date and is a business decision (for example, taking in liquidity, number of shares, share price, etc).</p>
	<p>E1Q2 Are there other ways of using a trust structure to offer underlying eligible products to participants that we should expressly include in [CO 14/xx]? Please provide examples.</p>	<p>Generally an Employee Share Trust is structured as a discretionary trust with an unallocated pool and an allocated pool. Employees are beneficiaries of the trust, and obtain a fixed entitlement upon allocation of shares by the Trustee.</p> <p>The definition of Employee Share Trust in the tax legislation (which exempts the trust from capital gains tax) is very restrictive and allows the trust to hold shares and cash only.</p>
	<p>E1Q3 Do you agree with the proposed conditions of relief in respect of allocated products? If not, why not?</p>	<p>Link does not consider that the general conditions are necessary. The tax legislation already imposes the Sole Purpose Test on Employee Share Trusts</p>



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		<p>(which must be met to exempt the trust from Capital Gains Tax). Additional general requirements are not required.</p> <p>Specific conditions for allocated products:</p> <p>(A) The Class Order should still allow companies the choice to settle awards from the allocated pool in the trust, or from some other method (new issue or market purchase) where the Plan utilizes a trust.</p> <p>(B) Trust law already imposes a requirement that trust records be written. Therefore we do not consider this condition necessary.</p> <p>(C) Link undertakes share trading on behalf of Employee Share Trust beneficiaries. Further guidance is required on the requirement to allow above market share sales. For example, how long must these be open for, and when can the order be cancelled? This will add significant burden to the administration of the employee share plan, as well as add risk to the administration of the trust by the trustee. We believe the trustee, by proxy, will perform a broker like role, having to control individual sales regimes set by employees.</p> <p>In practice, employees are not disadvantaged by the trustee’s current powers to sell securities at market price. If the employees wishes to place a specific sale regime, they have the right to have securities transferred from the trustee to their individual name, from which point they can select a broker to trade shares at a specific rate. Further, the trustee has a fiduciary duty to employees to ensure it achieves best applicable market price (as opposed to shares being dumped on market).</p>

ASIC Question	ASIC Sub Question	Link response
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	<p>E1Q4 Do you agree with the proposed conditions of relief in respect of unallocated products? If not, why not?</p>	<p>Although some trusts are structured as discretionary trusts, some are also established as fixed trusts only. Therefore we do not support the class order requiring trusts to have an unallocated pool and consider this as limiting.</p> <p>There is one condition that only brokerage and tax can meet through unallocated trust income. In Link's experience this can be very limiting.</p> <p>Companies tend to build up unallocated shares to meet future obligations under the plan and this can lead to dividend income accruing to the Trust. The Trust can not return this income to the company and generally does not distribute the income to employees (as no employees are beneficially entitled to the unallocated shares/income on those shares until vesting ). Companies tend to use this income to offset costs. Therefore the current proposal to limit expenses to brokerage and tax only is very limiting on the use for the accrued unallocated income. It would not be practical for most companies. Link would suggest that any definition at a minimum includes administration costs associated with running the plan or Trust, external consulting fees, the cost of creation of the financials, the cost of the creation of income tax returns and the cost of the audit.</p> <p>It has always been common practice within the industry (and often described in the Trust Deeds</p>

ASIC Question	ASIC Sub Question	Link response
		<p>governing the trust) that legitimate third party costs incurred in the administration of the trust were allowed.</p> <p>ASIC should note that trust law imposes conditions on trustees to account to beneficiaries and to act in their best interests.</p> <p>It is also important that this definition does not prevent companies using unallocated share income to purchase further shares for the plan.</p>
	<p>E1Q5 Do you agree with our proposal to remove from the conditions relating to trusts the ability for the trust deed to expressly exclude the beneficiary from having the capacity to authorise the trustee to sell at or above the current market price the shares to which they are entitled? If not, why not?</p>	<p>The current definition is a helpful guide to a Trustee that sets the parameters about what the Trustee is and isn't responsible for to an employee. Commonly an employee should only be allowed to sell at or above the market price.</p> <p>Removing this condition does add significant burden on the administration of the trust. If this proposal is implemented, we suggest that the ability to enter an above market offer be allowed for a period of 1 day only. Otherwise significant tracking of sale orders will be required over multiple days/months, adding a regulatory burden on trustees.</p> <p>In practice, employees are not disadvantaged by the trustee's current powers to sell securities at market price. If the employees wishes to place a specific sale regime, they have the right to have securities transferred from the trustee to their individual name, from which point they can select a broker to trade shares at a specific rate. Further,</p>

ASIC Question	ASIC Sub Question	Link response
		<p>the trustee has a fiduciary duty to employees to ensure it achieves best applicable market price (as opposed to shares being dumped on market). Thus, removal of this condition would not add significant value.</p>
	<p>E1Q6 [CO 03/184] currently provides licensing relief for associates of issuers. Do you consider that other types of trustees (that may not be associates of issuers) also require licensing relief in the context of employee incentive schemes? If so, please provide examples and explain why such relief is needed.</p>	<p>Link supports the current definition which extends relief only to associates of the issuer. Any external trustees used should be appropriately licensed.</p>
	<p>E1Q7 Are there other trust structures, including those involving the offers of units in a trust that we should give guidance on or that should be covered in our new class order? Please provide details, including details of the trust structure, the nature of the financial product offered, the terms of the offer, the reason for making offers in this way and how our key policy objectives are satisfied.</p>	<p>Link agrees that the current trust structures proposed in the Class Order would cover most of the scenarios that are common practice.</p>
<p>E2 We propose to:</p> <p>(a) impose a condition in [CO 14/xx] that the number of underlying eligible products to which voting rights attach that are held on trust for participants as unallocated products must not exceed 5% of the total voting rights attaching to eligible products</p>	<p>E2Q1 Do you agree with our proposal to impose a new condition in our new class order relief to limit the number of eligible products that may be held by a trustee of an employee incentive scheme trust at any given time? If not, why not?</p>	<p>The 5% limit is very similar to the limit imposed by the previous class order but it has been adapted and updated to include all of the new securities. In principle this is welcomed for listed companies and the extension of the calculation and clarity around how it is calculated is helpful. However, for unlisted companies and companies with lower liquidity the</p>

ASIC Question	ASIC Sub Question	Link response
<p>on issue at any point in time; and</p> <p>specify that the 5% limit be calculated as the number of underlying eligible products held on trust as unallocated products as a percentage of the total number of those eligible products combined with any other class of voting financial product on issue at any point in time.</p>		<p>5% limitation may have an impact on the ability of these companies to offer a wide reaching employee ownership structure. The amount that can be offered to a broad based employee group is minimal. In the UK worthwhile ownership is considered to be 10% or more so the 5% limit will limit inhibit this.</p> <p>There are also certain contexts where the trust may need to exceed the 5% limit, for example in conjunction with a corporate action.</p>
	<p>E2Q2 Do you agree with our proposal about how the 5% limit would be calculated? If not, why not?</p>	
<p>E3 We propose to:</p> <p>(a) include in [CO 14/xx] offers under an employee incentive scheme that involve a contribution plan where the conditions in Table 5 are met; and</p> <p>(b) redefine 'contribution plan' to mean:</p> <p>A plan under which a participant may make monetary contributions towards the acquisition of eligible products (other than performance rights or options) offered under an employee incentive scheme from earned, or future entitlements to, wages, salary or bonus payments or from their own funds.</p>	<p>E3Q1 Do you agree with the proposed new definition of 'contribution plan'? If not, why not?</p>	<p>Link believes that the broader definition proposed is helpful as it includes pre and post tax and bonus payments</p>
	<p>E3Q2 In particular, do you consider that the proposed new definition of 'contribution plan' includes both deductions made from earned salary (described as an 'ineffective salary sacrifice' arrangement in Income Tax Ruling</p>	<p>Please see our above response.</p>

ASIC Question	ASIC Sub Question	Link response
	<p>TR 2001/10 (TR 2001/10)) and agreements to take future salary in the form of eligible products (described as an 'effective salary sacrifice' arrangement in TR 2001/10)? If not, why not?</p>	
	<p>E3Q3 Do you agree with the proposed conditions for how contributions are to be held? If not, why not?</p>	<p>The broadening of this process is welcomed as it practically reflects market practice. I.e. that most companies transfer any salary contributions to their administrator to hold until purchase. It also creates greater flexibility about the appropriate holding arrangements.</p>
	<p>E3Q4 Do you agree with our proposal to change the timing for the opt-out requirement from 'any time' under [CO 03/184] to 'a notice period of no more than one month', with all money deposited for that participant at that time with an Australian ADI, including any accumulated interest, to be transferred to that participant as soon as practicable? If not, why not?</p>	<p>In our opinion this update reflects what companies practically need to do, i.e. any opt out is reflected in the next pay cycle for the employee.</p> <p>However, the requirement to repay accrued interest is problematic. This is because interest accrues daily, is paid monthly or quarterly, and individual contributions may be in the account for periods of up to one month. This makes reconciliation of the interest and payments to be made difficult (particularly given interest payment dates and monthly opt-out).</p>
	<p>E3Q5 Are there any other conditions that should be imposed in respect of employee incentive schemes involving contribution plans?</p>	<p>Link believes the proposed conditions are sufficient.</p>

ASIC Question	ASIC Sub Question	Link response
<p>E4 We propose to:</p> <p>(a) limit the circumstances in which a loan or similar financial assistance may be provided to participants for acquiring underlying eligible products under an employee incentive scheme that qualifies for class order relief to loans that are:</p> <p>(i) either no recourse arrangements or limited recourse arrangements, with recourse limited to the forfeiture of the underlying eligible products issued under the loan arrangement;</p> <p>(ii) not repayable for the duration of the loan; and</p> <p>(iii) interest free; and</p> <p>provide class order relief so that an offer under an employee incentive scheme can involve both a loan and a contribution plan.</p>	<p>E4Q1 Do you agree with the proposed limited or no recourse limitation on loans offered for acquiring underlying eligible products (i.e. eligible products excluding options and performance rights) under an employee incentive scheme that qualifies for class order relief? If not, why not?</p>	<p>Link agrees with the proposal. There should also be some allowance for the repayment of the loan through dividend streams. This is very common practice amongst our clients that operate these types of plan and the current proposal should be amended so it is clear this type of repayment is not excluded.</p> <p>ASIC should ensure that the Class Order works consistently with the tax legislation.</p>
	<p>E4Q2 Do you agree with permitting employee incentive schemes that involve a loan as well as a contribution plan? If not, why not?</p>	<p>In principle Link agrees with this. However as noted above the most common repayment type for loans is through after tax dividends. So any final drafting should include this.</p> <p>As loan plans involve actual shares, this provides the best link between employees and shareholders. Therefore loan plans are supported.</p>
<p>F1 We propose to provide disclosure relief under [CO 14/xx] for an issuer to make offers under an employee incentive scheme of eligible products that have been quoted, at the time of the offer, on ASX or an approved foreign market for a period of at least three months without suspension for more than five</p>	<p>F1Q1 Do you agree with our proposal to change the quotation period required under our class order to a period of at least three months without suspension for more than five trading days in the shorter of the period in which the</p>	<p>Link agrees that this is a practical and useful reduction in the continuous listing condition. The current requirements can be prohibitive for companies that do not consider an employee share plan at the IPO. They are currently</p>

ASIC Question	ASIC Sub Question	Link response
trading days in the shorter of the period in which the products have been quoted or the 12 months before the offer is made.	products have been quoted or 12 months? If not, why not?	restricted in what they can offer for 12 months.
<p>F2 We propose to:</p> <p>(a) specify that the 5% share capital limit for the purposes of our new class order relief must be calculated based on the relevant type and class of eligible product, as set out in Table 6; and</p> <p>give guidance clarifying that all offers made under an employee share scheme in reliance on [CO 03/184] and under an employee incentive scheme in reliance on [CO 14/xx] in the past five years are to be included in the calculation of the 5% share capital limit of the current offer.</p>	<p>F2Q1 Do you agree with our proposal for calculating a 5% share capital limit for employee incentive schemes? If not, why not? Please give details of any alternatives that you consider to be appropriate.</p>	<p>Please see our answer above in relation the 5% issue.</p>
<p>F3 In [CO 14/xx], we propose to use the term 'nominal monetary consideration' rather than 'nominal consideration' when referring to offers of options and performance rights.</p>	<p>F3Q1 Do you agree with our proposed use of the term 'nominal monetary consideration'? If not, why not? Please provide details of alternative definitions that you consider appropriate.</p>	<p>In principle Link agrees with this concept. Link is aware that some advisors take the view that "consideration" includes continuing to provide employment services. Therefore clarifying this through "monetary" is supported.</p> <p>Additionally, as noted elsewhere Link would like ASIC to extend the concept of no consideration to employee share incentive grants. Where there is a \$1,000 plan or a plan with minimal costs or risks Link believes that there is no consideration offered for the plan. The fact that an employee is employed by the company is not in itself consideration. \$1,000 plans tend to be regarded by both the Company and the employee as an additional benefit above and beyond their salary and it is not seen as part of their employment contract for this reason it is hard to associate the plan as part of their consideration.</p>



ASIC Question	ASIC Sub Question	Link response
	<p>F3Q2 Do you consider that the definition of 'nominal consideration' in [CO 03/184], which sets a limit of one cent per option, is appropriate? If so, why?</p>	<p>Link agrees with the concept but would advise rather than be set at 1cent per option this should be within the ambit of the company. Link has seen different practices for different companies based on external legal advice. Having a specific rate or limit may be unduly prohibitive.</p>
	<p>F3Q3 Do you consider that it would be preferable for our new class order relief to require that options and performance rights be offered for 'no monetary consideration' instead of for 'no more than nominal monetary consideration'? Please explain your answer.</p>	<p>The proposed definition is encouraged as it is more flexible and reflective of differing company practice.</p>
<p>F4 Consistent with what we understand to be the current market practice, we propose:</p> <p>(a) to impose a further condition in [CO 14/xx] that each offer of eligible products under an employee incentive scheme must not result in the participant receiving a significant portion of their entitlements under the offer as cash or shares (which are not subject to restrictions from disposal) until the expiry of a minimum 12-month period commencing on the granting of the eligible products; and</p> <p>that a significant portion of a participant's entitlements would mean 25% or more of their entitlements under each offer.</p>	<p>F4Q1 Do you agree with the proposed new condition to impose a partial 12-month holding requirement? If not, why not?</p>	<p>Link does not support this proposal.</p> <p>Consistent with our view on performance rights, the conditions applying to awards should be left to company discretion and should not be legislated. Conditions applying to awards are already disclosed in the Remuneration Report, and under the Listing Rules. We do not see the benefit in imposing additional conditions or why this is necessary in the current context.</p> <p>If implemented as proposed, Link can see some practical issues with this new condition. The principle one is that most employee plans operate so that the employee can access the shares at 3 years or cessation of employment. The employee will have a taxation point at cessation which is why</p>

ASIC Question	ASIC Sub Question	Link response
		<p>the tax legislation and most plans allow employees to have access to their shares at this point. The ASIC class order condition would run contrary to this and potentially create a tax liability for the employee without the ability for them to access the shares and sell them.</p> <p>Link has numerous clients with large employee populations that offer the \$1,000 plan. This plan is taxed immediately but can be accessed by employee if they leave. If 25% were to be restricted commonly this would be a very small amount of shares and may be less than a marketable parcel size. This would cause an incredible administration burden on a company to manage for a relatively small benefit.</p> <p>In our experience it is very difficult to manage former employees of plans as they don't necessarily update their information regularly and this can lead to unclaimed monies and lost shareholders which creates a cost and administrative burden for a company.</p> <p>Additionally Link would stress that for rights and options plans this 12 month period should be imposed on the right or option. Currently the proposal appears to impose it on the underlying shares post vesting. There is very wide variance at a company level between companies that have restrictions post vesting and those that do not. Most commonly post 2009 there is less likely to be restrictions post vesting (save for key personnel).</p>
	F4Q2 Do you agree with our proposal that the	Please see our answer above. We do not consider

ASIC Question	ASIC Sub Question	Link response
	<p>relevant minimum period be 12 months? If not, why not? Would your response be different if the proposed minimum period were three years to further support our policy objective of ensuring offers are made for the purposes of creating a relationship of interdependence? If so, why?</p>	<p>the proposal necessary.</p>
	<p>F4Q3 Do you agree with our proposal that a significant portion of a participant's entitlements means 25% or more of their entitlements under each participant's offer? If not, why not?</p>	<p>25% is considered a reasonable amount to be restricted for at least 12 months. However, as noted above this should not apply if an employee ceases to be employed by the Company.</p>
<p>F5 We propose to:</p> <ul style="list-style-type: none"> <li>(a) include requirements in [CO 14/xx] that: <ul style="list-style-type: none"> <li>(i) the offer document should be worded and presented in a clear, concise and effective manner, with a brief summary of the key risks; and</li> <li>(ii) the offer document and all other accompanying documents given to participants in connection with an offer under an employee incentive scheme must be made available to ASIC on request; and</li> </ul> </li> <li>(b) replace the current requirement for the body relying on our relief to provide offer documents to ASIC with the requirement that the body notify us, using Form XX,</li> </ul>	<p>F5Q1 Do you agree with our requirement that the offer document should be clear, concise and effective, and include a brief summary of the key risks? If not, why not?</p>	<p>Link agrees in principle with this requirement. It would be helpful if examples of what this could look like would be helpful guidance for companies.</p>

ASIC Question	ASIC Sub Question	Link response
<p>within seven days of making its first offer under an employee incentive scheme made in reliance on our new class order relief. Form XX would contain the following information:</p> <ul style="list-style-type: none"> <li>(i) the identity of the issuer;</li> <li>(ii) the identity of the employer (if not the issuer);</li> <li>(iii) the date of the first offer under the employee incentive scheme;</li> <li>(iv) the duration, and tranches (if any), of the employee incentive scheme;</li> <li>(v) whether there are performance hurdles;</li> <li>(vi) the type(s) of eligible product being offered;</li> <li>(vii) the type(s) of participant to whom the offers are made;</li> <li>(viii) the identity of the trustee, if any, if any, and the trust structure used (allocated or unallocated);</li> <li>(ix) whether a contribution plan is offered;</li> <li>(x) whether a loan facility is offered; and</li> <li>(xi) an acknowledgement of compliance with the relevant conditions of</li> </ul> <p>[CO 14/xx].</p>		
	<p>F5Q2 Do you agree with our proposal to replace the current requirement to provide offer</p>	<p>Link agrees with this change as the documents themselves were not necessarily reviewed by ASIC</p>

ASIC Question	ASIC Sub Question	Link response
	documents to ASIC with a requirement to notify us of an offer using Form XX? If not, why not?	previously. ASIC and companies are commonly interested in whether the Company is relying on the class order and which element of it. Practically as well most companies have the same offer year on year for a continuous period of at least 3 years, and sometimes for many years, so the filing for the initial offer only is much more practical and helpful as the subsequent filing has commonly been a repeat of the documentation already provided.
	F5Q3 Do you agree with including the information at F5(b)(i)–F5(b)(ix) in Form XX? If not, why not?	As long as the form is clear, has a simple tick box system and is not too onerous this should not in principle be a difficult task to complete.
	F5Q4 Is there any other information that ASIC should be made aware of in this notification?	The current list appears to Link to be very comprehensive.
	F5Q5 Do you agree that some or all of this information should not be made public? If not, why not?	Most of this information will be public already as the Plan Rules are commonly reviewed and agreed to by Shareholders either because it is a senior manager plan, it is disclosed in the Annual Report or it approved by shareholders for good governance reasons. Link therefore does not see any issues with the information being made public as a collated set of data (i.e. without revealing company details). Link believes provision of statistical information yearly would be helpful.
F6 We intend to include a condition in [CO 14/xx] that enables ASIC to determine and notify a	F6Q1 Do you agree with our proposal to provide a determination process? If not, why not?	Link suggests that ASIC provides guidance on the circumstances in which it may determine that a body

ASIC Question	ASIC Sub Question	Link response
body in writing that it may not rely on this relief (which we may then subsequently revoke or vary).		cannot rely on the relief.
G1 We propose that [CO 14/xx] will facilitate offers of ordinary shares for no monetary consideration, without providing disclosure prescribed by the Corporations Act to participants of the issuer, where these shares are valued at no more than \$1,000 per offer, and the conditions in Table 7 are met.	G1Q1 Do you agree with our proposal to provide class order relief to cover annual offers for no monetary consideration of ordinary shares valued at no more than \$1,000 per participant? If not, why not?	<p>The current proposal is a useful addition but in its current form will not be used as the condition that there is only one class of shares would make this prohibitive for most companies as they commonly have different classes of shares.</p> <p>Unlisted companies are likely to use a trust to hold shares on behalf of participants. This is so they can reduce share registry administration.</p>
	G1Q2 Do you agree that unlisted bodies should only be entitled to relief to make these offers where they prepare and provide current audited accounts? If not, why not?	Link believes that this condition will create additional cost and complexity for smaller companies. In essence the \$1,000 is no or little risk for employees because the offer itself is for free, has no contribution from the employees and is in addition to salary. Link believes because of the nature of the plan this condition is too onerous.
	G1Q3 Do you agree with the proposed risk disclosure statement? If not, why not?	In principle the disclosure statement should be included for offers for unlisted companies.
	G1Q4 Do you agree with our proposal about how the \$1,000 value of the ordinary shares is to be calculated? If not, why not?	The current valuation is quite specific in nature (NTA) and requires audit financials or an independent experts report. Again given the nature of the plan, the fact it is low risk and the limitation that this valuation will place on most companies we do not believe the valuation methodology should be defined so specifically.

ASIC Question	ASIC Sub Question	Link response
		<p>Previous the tax legislation required a valuation to be based on an independent experts report or a valuation approved by the ATO. The cost associated with both of those options meant cost for unlisted companies and prevented them using these types of plans. The legislation has subsequently been amended and relaxed to a broader definition that should be mirrored in the class order.</p> <p>Additionally offshore unlisted companies (or those not on a regulated exchange) should not be required to prepare audited accounts in accordance with AASB requirements given the significant cost involved in this.</p>
<p>G2 We propose to:</p> <ul style="list-style-type: none"> <li>(a) provide class order relief to include offers of options and performance rights by unlisted bodies to participants provided that the conditions in Table 8 are met; and</li> <li>(b) define a 'performance right' for the purposes of this relief as a right to receive: <ul style="list-style-type: none"> <li>(i) fully paid voting ordinary shares (ordinary shares); and/or</li> <li>(ii) a cash amount that is equivalent to the value of such shares,</li> </ul> <p>which vests automatically for no monetary consideration if conditions are met relating to:</p> <ul style="list-style-type: none"> <li>(iii) the length of service of the recipient; and/or</li> </ul> </li> </ul> <p>the performance of the recipient or the issuer.</p>	<p>G2Q1 Do you agree with the proposed definition of 'performance rights' for the purposes of this relief? If not, why not?</p>	<p>The definition should also relate to offers over other types of securities, rather than just shares. E.g. stapled securities, ADRs, etc.</p>
	<p>G2Q2 Do you agree with our proposal that offers</p>	<p>In the unlisted environment most companies have</p>

ASIC Question	ASIC Sub Question	Link response
	<p>by unlisted bodies of options and performance rights should relate only to ordinary shares? If not, why not?</p>	<p>a more complex structure that often deals with minority shareholder issues, tax complexities and preferences of the majority shareholders this condition will be prohibitive for many companies.</p> <p>The definition should also relate to offers over other types of securities, rather than just shares. E.g. stapled securities, ADRs, etc. This would allow offers by unlisted property REITS that are intending to list.</p>
	<p>G2Q3 Do you agree that the provision of an independent expert report at the unlisted body's expense if there is a sale of all of the ordinary shares in the issuer is appropriate? If not, why not?</p>	<p>If there is going to be a sale, then the market price for the body has been determined. We do not see what an independent expert's report will add.</p> <p>As noted above this will add additional cost and complexity for companies and will inhibit the use of plan in this sector. It also makes the current exemption more restrictive rather than the broader (which appears to be the original intent).</p>
	<p>G2Q4 Do you consider class order relief should be provided if there is a sale of less than 100% of the ordinary shares in the issuer, or where there is a disposal of the business/assets of the issuer? If so, please provide details, addressing our concerns discussed in paragraph 219.</p>	<p>Again the nature of unlisted companies means that 100% is common but not always the sale down process. Link believes that the key principles should be reciprocity with other shareholders, information about price at the point of sale and sale on the same terms and conditions as the major shareholder. The sale of 100% is not the key element and should not be included in our opinion.</p> <p>Recent IPO practice has been for the seller to maintain a holding in the company so that the sell-down percentage is less than 100%. Also, class order relief should apply for an asset sale. Otherwise transferring employees may continue to hold awards</p>



ASIC Question	ASIC Sub Question	Link response
		<p>over shares in a company which is no longer their employer.</p>
	<p>G2Q5 Do you agree that unlisted bodies should only have one class of ordinary shares on issue (to which the options and performance rights relate) to qualify for relief? If not, why not?</p>	<p>See our response above. Link would suggest this is too prohibitive and will make the current class order more restrictive.</p>
	<p>G2Q6 Do you consider that offers using a trust should be permitted under [CO 14/xx] for unlisted bodies? If so, please give a detailed explanation of your reasons, including how the nature and terms of the trust arrangement would meet our policy considerations, and what would be the benefits of a trust over a direct contract with participants.</p>	<p>For most unlisted companies the key issue is management of minority shareholder interests. Most companies use a trust to avoid having large number of employees on name on register (because of the administration burden). This condition will be a further restriction on those companies and will mean that the \$1,000 is unlikely to be used (where Link has worked with clients in this area 100% of companies that operate this type of plan for broad based employees would use a trust on place).</p>
	<p>G2Q7 Are there other offers under employee incentive schemes for unlisted bodies that ASIC should facilitate that are consistent with our policy parameters and proposed conditions? If so, please provide full details.</p>	<p>A requirement in table 8 is that the options/rights can only be exercised following listing. In many IPO situations a new company is established as the listing vehicle. Upon the IPO, all existing shareholders sell their interests into the IPO. For this, the options and rights must be disposed of. Therefore the requirement that vesting/exercise can only occur once listed is too prohibitive and does not recognize market practice. It also does not recognize other exit events, for example trade sale to another company of all the shares (including options/rights).</p> <p>Some unlisted companies use loan plans at the broad based level (so that any gain falls within CGT), to</p>

ASIC Question	ASIC Sub Question	Link response
		ensure employees contribute to the plan and to assist employees with a mechanism to buy into the company. This type of plan should be included in the class order exemption.
<p>H1 We propose that [CO 14/xx] will provide licensing, hawking and advertising relief to a listed issuer and its associated bodies corporate, and an unlisted issuer and its wholly owned subsidiaries, where those bodies are relying on [CO 14/xx] for disclosure relief to make their offers under an employee incentive scheme.</p>	<p>H1Q1 Do you agree with our proposal to limit the persons who can rely on relief in relation to licensing, hawking and advertising to listed issuers and their associated bodies corporate, and to unlisted issuers and their wholly owned subsidiaries? If not, why not?</p>	<p>The conditions that are agreed for the class order generally should apply to this exemption specifically. The current proposal mirrors the general requirements of the class order and Link considers this appropriate.</p>
	<p>H1Q2 Do you agree with our proposal to extend our licensing and hawking relief where an employee incentive scheme involves a managed investment scheme only by reason of operating a contribution plan? If not, why not?</p>	<p>As a rule, the relief applying to listed entities should also apply to unlisted entities. Therefore licensing and hawking relief should be extended to contribution plans operated by unlisted entities.</p> <p>The current Class Order does not apply to MISs and the extension will only provide very limited relief to these types of arrangements. Link is uncertain of the value of the extension for this reason.</p>
<p>H2 In [CO 14/xx], we propose to:</p> <ul style="list-style-type: none"> <li>(a) extend the on-sale relief currently provided under Class Order [CO 04/671] Disclosure for on-sale of securities and other financial products to cover offers under employee incentive schemes of all eligible products to all participants;</li> <li>(b) provide on-sale relief to cover depository interests that may be offered under our new class order relief; and</li> </ul>	<p>H2Q1 Do you agree with our proposal to extend our on-sale relief to cover offers of all eligible products to all participants under [CO 14/xx]? If not, why not?</p>	<p>Link agrees with this proposal.</p>

ASIC Question	ASIC Sub Question	Link response
provide disclosure relief and additional on- sale relief for offers of eligible products to the trustee of an employee incentive scheme.		
	H2Q2 Do you agree with our proposal to extend our on-sale relief to cover depository interests that may be offered under our new class order relief? If not, why not?	Link agrees with this proposal.
	H2Q3 Do you agree with our proposal to provide on-sale relief where we have provided disclosure relief to facilitate the use of trusts? If not, why not?	Link agrees with this proposal.
	H2Q4 Do you consider there are other forms of on-sale relief that are necessary in the context of employee incentive schemes? If so, please provide details.	