

# Attachment to CS 14: Draft instrument



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (Employee Incentive Schemes—Ongoing Relief) Instrument 2025/XX**

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I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2025

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument.....	3
2 Commencement .....	3
3 Authority.....	3
4 Interpretation.....	3
<b>Part 2—Exemptions</b>	<b>9</b>
5 Disclosure relief.....	9
6 Licensing and other incidental relief .....	9
7 Conditions.....	10
<b>Part 3—Declaration</b>	<b>14</b>
8 Section 708—small scale offer exclusion.....	14
<b>Part 4—Repeal</b>	<b>14</b>
9 Repeal .....	14

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Employee Incentive Schemes—Ongoing Relief) Instrument 2025/XX*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

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

### 3 Authority

This instrument is made under subsections 283GA(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001*.

### 4 Interpretation

(1) In this instrument:

*Act* means the *Corporations Act 2001*.

*associate* has the meaning given by Division 2 of Part 1.2 of the Act (except sections 12 and 16).

*associated body corporate* means:

- (a) in relation to a listed body:
  - (i) a body corporate of that is a related body corporate of the body;
  - (ii) a body corporate that has voting power in the body of not less than 20%; or
  - (iii) a body corporate in which the body has voting power of not less than 20%, and
- (b) in relation to an unlisted body—a wholly owned subsidiary of the body.

*ASX Market* means the financial market operated by ASX Limited (ACN 008 624 691) under *Australian Market Licence (ASX Limited) 2002*.

*casual employee*, in relation to a body or an associated body corporate, 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 or associated body corporate.

**contractor**, in relation to a body (**principal**) or an associated body corporate (**principal**), means:

- (a) an individual with whom the principal has entered into a contract for the provision of services under which the individual performs work for the principal; or
- (b) a company with whom the principal 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 principal;

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 principal.

**contribution plan**, in relation to an employee incentive scheme of a body, means a plan under which an eligible participant may make monetary contributions to acquire underlying 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.

**eligible financial market** means the ASX Market or an approved foreign market (see section 9 of the Act as notionally modified or varied by *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*).

**eligible participant**, in relation to a body, means:

- (a) a full-time or part-time employee (including an executive director) of the body or an associated body corporate;
- (b) a non-executive director of the body or an associated body corporate;
- (c) a contractor of the body or an associated body corporate;
- (d) a casual employee of the body or an associated body corporate; or
- (e) a person who was offered an eligible product and who could only accept the offer if an arrangement was entered into that would result in the person becoming a person covered by paragraphs (a) to (d).

**eligible product** means:

- (a) in relation to a listed body—any of the following:
  - (i) a fully paid share of the body that is in a class of shares able to be traded on an eligible financial market;
  - (ii) a beneficial interest in a fully paid share of the body where the interest is in a class of interests that is able to be traded on an eligible financial market;
  - (iii) a fully paid share of the body in relation to which both of the following apply:
    - (A) a beneficial interest in a share of that class is in a class of interests that is able to be traded on an eligible financial market;
    - (B) the share is convertible into the beneficial interest without charge or for a nominal fee;
  - (iv) a beneficial interest in a fully paid share of the body in relation to which both of the following apply:
    - (A) the fully paid share is in a class of shares that is able to be traded on an eligible financial market;
    - (B) the beneficial interest is convertible into the share without charge or for a nominal fee;
  - (v) a fully paid stapled security of the body that is in a class of stapled securities that is able to be traded on the ASX Market;
  - (vi) where the listed body is a registered scheme—an interest in the body that is in a class of interests that is able to be traded on the ASX Market;
  - (vii) a unit in a financial product mentioned in subparagraphs (i) to (vi);
  - (viii) an option to acquire, by way of issue or transfer, a financial product mentioned in subparagraphs (i) to (vi);
  - (ix) an incentive right granted in relation to a financial product mentioned in subparagraphs (i) to (vi); and
- (b) in relation to an unlisted body—any of the following:
  - (i) a fully paid voting ordinary share of the body;
  - (ii) a unit in a financial product mentioned in subparagraph (i);

- (iii) an option to acquire, by way of issue or transfer, a financial product mentioned in subparagraph (i);
- (iv) an incentive right granted in relation to a financial product mentioned in subparagraph (i).

***employee incentive scheme*** means:

- (a) an arrangement under which eligible products of a body were offered to eligible participants in reliance on:
  - (i) ASIC Class Order [CO 14/1000]; or
  - (ii) ASIC Class Order [CO 14/1001]; or
  - (iii) an individual instrument that is not a legislative instrument but which is in terms similar to ASIC Class Order [CO 14/1000] or ASIC Class Order [CO 14/1001]; and
- (b) for the avoidance of doubt, includes the issue or transfer of eligible products to eligible participants under an arrangement mentioned in paragraph (a), including as the result of the exercise or vesting of an overlying eligible product.

***incentive right*** means a conditional right:

- (a) to acquire underlying eligible products; or
- (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; or
  - (ii) a change in the price or value over a given period of the underlying eligible product to which the right relates; or
  - (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).

***ineligible employee incentive scheme*** means:

- (a) an arrangement:

- (i) under which eligible products of a body are or were offered to eligible participants; and
- (ii) that is not an employee incentive scheme; and
- (b) for the avoidance of doubt, includes the issue or transfer of eligible products to eligible participants under an arrangement mentioned in paragraph (a), including as the result of the exercise or vesting of an overlying eligible product.

**listed body** means a body that is listed on an eligible financial market.

**overlying eligible product** means:

- (a) for a listed body—an eligible product specified in any of subparagraphs (a)(vii) to (ix) of the definition of **eligible product**; and
- (b) for an unlisted body—an eligible product specified in any of paragraphs (b)(ii) to (iv) of the definition of **eligible product**.

**stapled security** means two or more eligible products which, under the terms on which each is traded, must be transferred together.

**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:

- (a) for a listed body—an eligible product specified in any of subparagraphs (a)(i) to (vi) of the definition of **eligible product**; and
- (b) for an unlisted body—an eligible product specified in subparagraph (b)(i) of the definition of **eligible product**.

**unlisted body** means a body that is not listed on an eligible financial market.

- (2) In this instrument:
  - (a) in relation to a listed body that is a registered scheme:
    - (i) the conferral of relief on the listed body is taken to be the conferral of relief on the responsible entity of the scheme; and

- (ii) a requirement imposed on the listed body is taken to be a requirement imposed on the responsible entity of the scheme; and
  - (iii) a reference to occupying a position or role with the listed body is taken to be a reference to occupying a position or role with the responsible entity of the scheme; and
  - (iv) the definition of *associated body corporate* is to be applied as if the body were either the registered scheme or the responsible entity of the scheme; and
- (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 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 a self-managed superannuation fund (within the meaning of the Superannuation Industry (Supervision) Act 1993) where the eligible participant is a director of the trustee; and
- (c) 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; and
- (d) an individual instrument is not in terms dissimilar to ASIC Class Order [CO 14/1000] or ASIC Class Order [CO 14/1001] merely because it applies in relation to bodies, markets, participants or products that do not satisfy the definitions relating to those concepts in ASIC Class Order [CO 14/1000] or ASIC Class Order [CO 14/1001].



## Part 2—Exemptions

### 5 Disclosure relief

#### *Subsequent sale offers*

- (1) 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 7.9 of the Act in relation to the sale offer where the product was issued by reason of the exercise or vesting of an eligible product issued or otherwise granted to:
  - (a) an eligible participant under an employee incentive scheme; or
  - (b) a trustee in connection with an employee incentive scheme.

#### *Advisers and Product Disclosure Statements*

- (2) 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 underlying 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.

### 6 Licensing and other incidental relief

#### *General advice*

- (1) A body or an associated body corporate that provides a financial service consisting of general advice in connection with the acquisition of an underlying eligible product under an employee incentive scheme does not have to comply with subsection 911A(1) of the Act in relation to that advice.

#### *Dealing*

- (2) A body or an associated body corporate that provides any of the following financial services in connection with an employee incentive scheme does not have to comply with subsection 911A(1) of the Act in relation to that financial service:
  - (a) issuing an underlying eligible product;
  - (b) dealing in an underlying eligible product where any acquisition by purchase or disposal of the underlying eligible product by the body or an associated body corporate occurs either through a financial services licensee or 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*

- (3) A body or an associated body corporate that provides any of the following financial services in connection with an employee incentive scheme 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).

*Advertising*

- (4) A body, an associated body corporate or a trustee that advertises, or publishes a statement that is reasonably likely to induce eligible participants to acquire, an underlying eligible product under an employee incentive scheme does not have to comply with section 1018A of the Act in relation to the advertisement or publication.

*Incidental managed investment scheme*

- (5) A listed body, an associated body corporate of the listed body or a trustee that operates a managed investment scheme only by reason of operating a contribution plan in connection with an employee incentive scheme does not have to comply with section 601ED of the Act in relation to the operation of that managed investment scheme.

## **7 Conditions**

*Contribution plans*

- (1) A listed body, an associated body corporate or a trustee that relies on an exemption in section 6 in relation to an employee incentive scheme must only operate a contribution plan in relation to the scheme if the contribution plan was disclosed in the offer document (within the meaning of ASIC Class Order [CO 14/1000]) in relation to the scheme.
- (2) If a listed body, an associated body corporate or a trustee operates a contribution plan in relation to an employee incentive scheme pursuant to subsection (1), the listed body or associated body corporate that makes an offer under the scheme:
- (a) must not allow an eligible participant to participate in the contribution plan unless the eligible participant has agreed in writing to the terms of the contribution plan; and

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

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

- (c) must ensure that any contributions (other than contributions in the form of future gross (before-tax) salary or wages or from a loan from the body or an associated body corporate to an eligible participant) under the terms of the contribution plan which are to be used but have not yet been used to acquire underlying eligible products are held by or on behalf of the listed body or an associated body corporate on trust for eligible participants, in an account with an Australian ADI that is used solely in connection with employee incentive schemes of the listed body or an associated body corporate (whether or not the other employee incentive schemes are covered by this instrument), whether the account is maintained in this jurisdiction or elsewhere; and

- (d) must ensure that if underlying eligible products have been acquired by the trustee for a specified eligible participant on an allocated basis using contributions made by the eligible participant under a contribution plan, the eligible participant has the right to:

- (i) exercise, or to direct the trustee of the underlying eligible products to exercise on their behalf, any voting rights attaching to the underlying eligible products; and
- (ii) receive income deriving from the underlying eligible products, including dividends and distributions; and

Note: The right to receive dividends or distributions may be subject to terms that the dividends or distributions are to be applied to repay a loan from the body or an associated body corporate to the eligible participant in connection with the employee incentive scheme.

- (e) unless the eligible participant (or a person covered by subparagraphs 4(2)(b)(i) to (iii) of this instrument) has already acquired the eligible products under the employee incentive scheme— must ensure that an eligible participant may, by giving a notice to the body, discontinue their participation in the contribution plan, the discontinuance to take effect no more than 45 days after the giving of the notice; and

- (f) must ensure that if an eligible participant has discontinued their participation in the contribution plan, any contributions (other than contributions in the form of future gross (before-tax) salary or wages or from a loan from the body or an associated body corporate to an eligible participant) under the terms of the contribution plan that have not been used to acquire underlying eligible products, are repaid to or as directed by the participant as soon as practicable after

the participant has discontinued their participation in the contribution plan (such repayment including any accumulated interest (if any), less any tax).

- (3) An unlisted body or an associated body corporate that relies on an exemption in section 6 in relation to an employee incentive scheme must ensure that the terms of the scheme do not involve a contribution plan.

*Trusts*

- (4) A body or an associated body corporate that:

- (a) relies on an exemption in section 6 in relation to an employee incentive scheme; and
- (b) has made an offer under the scheme of an underlying eligible product which a trustee holds or will hold;

must ensure:

- (c) the activities of the trustee of the trust in that capacity are limited to employee incentive schemes and ineligible employee incentive schemes of the body or the associated body corporate; and
- (d) 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; and

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.

- (e) 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; and
- (f) if the trustee is the 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
- (g) the trustee, either alone or together with one or more other trustees, does not hold more than:
  - (i) if the body is a listed body—more than 5% of the voting shares or voting interests in the listed body calculated by reference to all employee incentive schemes or like schemes of the listed body or an associated body corporate in relation to which offers were covered by ASIC Class Order [CO 14/1000] or an individual instrument made, on or after the

commencement of ASIC Class Order [CO 14/1000], by ASIC in terms similar to ASIC Class Order [CO 14/1000]; and

- (ii) if the body is an unlisted body—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 an associated body corporate in relation to which offers were covered by ASIC Class Order [CO 14/1001] or an individual instrument made, on or after the commencement of ASIC Class Order [CO 14/1001], by ASIC in terms similar to ASIC Class Order [CO 14/1001].

### *Loans*

- (5) A listed body or an associated body corporate that relies on an exemption in section 6 of this instrument in relation to an employee incentive scheme:
  - (a) must not provide any loan to an eligible participant to acquire an eligible product under the scheme other than as the result of an offer of a loan that was made before commencement of this instrument in accordance with ASIC Class Order [CO 14/1000] or an individual instrument made, on or after the commencement of ASIC Class Order [CO 14/1000], by ASIC in terms similar to ASIC Class Order [CO 14/1000]; and
  - (b) must if the listed body or associated body corporate provides such a loan ensure that under the terms of the loan:
    - (i) no fees or interest is payable; and
    - (ii) either the lender has no recourse against the participant in relation to the repayment of the loan or the recourse is limited to forfeiture of the eligible products issued or transferred to, or held on behalf of, the participant in connection with the scheme.
- (6) An unlisted body or an associated body corporate of the unlisted body that relies on an exemption in section 6 in relation to an employee incentive scheme must ensure that the terms of the scheme do not involve a loan to an eligible participant to acquire eligible products.

### *Continuing operation of conditions under ASIC Class Orders [CO 14/1000] and [CO 14/1001]*

- (7) This section and the repeal of ASIC Class Orders [CO 14/1000] and [CO 14/1001] by *ASIC Corporations (Repeal) Instrument 2025/XX* do not, by implication, limit the application of subsection 7(2) of the *Acts Interpretation Act 1901* to ASIC Class Orders [CO 14/1000] and [CO 14/1001].

Note: Subsection 7(2) of the *Acts Interpretation Act 1901* applies as a result of section 13 of the *Legislation Act 2003*.

## **Part 3—Declaration**

### **8 Section 708—small scale offer exclusion**

Chapter 6D applies to all persons as if subsection 708(5) were modified or varied by, after paragraph (a), inserting:

“(aa) do not need a disclosure document because of ASIC Class Order [CO 14/1000] or ASIC Class Order [CO 14/1001]; or”.

## **Part 4—Repeal**

### **9 Repeal**

This instrument is repealed at the start of [<insert date> / the day that is <#> years after the date this instrument commences].