



**ASIC**

Australian Securities & Investments Commission

**[CO 02/264]**

## **Employee share schemes — contribution plans**

*Issued 3/3/2002*

*Class Order [CO 02/264] provides for conditional relief from some of the fundraising provisions of the Act for employees participating in share and option contributions plans under an employee share scheme. To avoid uncertainty, this class order also provides relief from the managed investment provisions and financial product disclosure requirements in the Act. This class order revokes Class Order [CO 00/224].*

***This class order comes into effect on 11 March 2002 upon commencement of Schedule 1 to the Financial Services Reform Act 2001: see paragraph 4(2A)(c) of the Acts Interpretation Act 1901.***

Australian Securities and Investments Commission  
Corporations Act 2001— Paragraphs 283GA(1)(a), 601QA(1)(a),  
741(1)(a), 911A(2)(l) and 1020F(1)(a) — Revocation and Exemption

- 1 Under paragraphs 283GA(1)(a), 601QA(1)(a) and 741(1)(a) of the *Corporations Act 2001* (the “Act”), the Australian Securities and Investments Commission (“ASIC”) hereby revokes Class Order [00/224].
- 2 Under paragraphs 283GA(1)(a) and 741(1)(a) of the Act, ASIC hereby exempts each person in the class of persons referred to in Schedule A from Parts 2L.1, 2L.2, 2L.3, 2L.4, 2L.5, 6D.2 and 6D.3 of the Act in the case referred to in Schedule B on the conditions set out in Schedule D and for so long as those conditions are met.
- 3 For the avoidance of doubt, under paragraphs 601QA(1)(a), 911A(2)(l) and 1020F(1)(a) of the Act ASIC hereby exempts each person referred to in Schedule E:

- (a) from Chapter 5C and Part 7.9 of the Act; and
  - (b) from the requirement to hold an Australian financial services licence for the provision of financial services by the person, in relation to interests in a managed investment scheme referred to in Schedule E in the case referred to in Schedule F on the conditions set out in Schedule D and for so long as those conditions are met.
- 4 For the avoidance of doubt, under paragraph 911A(2)(l) and 1020F(1)(a) of the Act, ASIC hereby exempts a person (other than a person in the class of persons mentioned in Schedule E) from:
- (a) Part 7.9 of the Act in relation to a recommendation that a retail client acquire, and an offer to arrange the issue of an interest in; and
  - (b) the requirement to hold an Australian financial services licence for the provision of financial services by the person in relation to interests in,
- a managed investment scheme referred to in Schedule E which appears to meet the conditions and requirements in Schedules D and F, except where the person is aware, or ought reasonably to be aware, that those conditions and requirements have not been met.

#### SCHEDULE A — PERSONS EXEMPTED

Any person who makes an offer of securities for issue or sale of the kind referred to in Schedule B.

#### SCHEDULE B — CASES EXEMPTED

This exemption applies to:

- (a) an offer for issue or sale of fully paid shares being shares in the same class as shares which at the time of the offer are quoted on the financial market operated by Australian Stock Exchange Limited or an approved foreign market and trading in which is not suspended (quoted shares);
- (b) an offer for issue or sale of options over fully paid shares in the same class as quoted shares where the option is offered for no more than nominal consideration;

- (c) an issue or sale of fully paid shares in the same class as shares which at the time of issue or sale are quoted shares as a consequence of an offer of the kind referred to in paragraphs (a) or (b); and
- (d) an offer for issue or sale of units of fully paid shares, or other offer, issue or sale, which is made pursuant to an employee share scheme that involves such offer, issue or sale being made through a trust and which is exempted by Class Order [00/223] dated 11 March 2000 and where the conditions of that Class Order are met;

which is made pursuant to an employee share scheme which involves a contribution plan, and which meets the further requirements set out in Schedule C, but does not apply to:

- (e) an offer or grant of options for other than nominal consideration.

#### SCHEDULE C — FURTHER REQUIREMENTS

An offer, issue or sale to which this exemption applies must, insofar as it constitutes, includes or may result in the transfer of shares (for example, through the exercise of an option), meet the following requirements:

- 1 The shares the subject of the offer or option are of a body (the issuer) securities of which have been quoted on:
  - (a) the financial market operated by Australian Stock Exchange Limited throughout the 12 month period immediately preceding the offer, without suspension during that period exceeding in total 2 trading days; or
  - (b) an approved foreign market throughout the 36 month period, immediately preceding the offer, without suspension during that period exceeding in total 5 trading days.
- 2 The offer must be extended only to persons (offerees) who at the time of the offer are full or part-time employees or directors of the issuer or of associated bodies corporate of the issuer.
- 3 The offer must be in writing (the offer document) and:
  - (a) the offer document must include or be accompanied by a copy, or a summary, of:
    - (i) the rules of the employee share scheme pursuant to which the offer is made; and
    - (ii) the terms and conditions of the contribution plan;

- (b) if the offer document includes or is accompanied by a summary (rather than a copy) of the rules, terms and conditions referred to in paragraph (a), the offer document must include an undertaking that during the period or periods during which the offeree may acquire the shares offered or subject to the option (the offer period), the issuer (or, in the case of an issuer which does not have a registered office in this jurisdiction, an associated body corporate of the issuer which does so have a registered office) will, within a reasonable period of the offeree so requesting, provide the offeree without charge with a copy of those rules, terms and conditions;
- (c) the offer document must specify in respect of the shares offered or subject to the option:
- (i) the acquisition price in Australian dollars of the shares;
  - (ii) where the acquisition price of the shares is denominated in a foreign currency, the Australian dollar equivalent of the acquisition price as at the time of the offer; or
  - (iii) where the acquisition price of the shares is determinable at some future time by reference to a formula, the Australian dollar or Australian dollar equivalent of the acquisition price were that formula applied as at the date of the offer;
- (d) the offer document must include an undertaking that, and an explanation of the way in which, the issuer (or in the case of an issuer which does not have a registered office in this jurisdiction, an associated body corporate of the issuer which does so have a registered office) will, during the offer period, within a reasonable period of the offeree so requesting, make available to the offeree the following information:
- (i) the current market price (or, where that price is denominated in a foreign currency, the Australian dollar equivalent of that price) of shares in the same class as the shares offered or subject to the option; and
  - (ii) where either paragraph (c)(ii) or (iii) applies, the

information referred to in that paragraph as updated to that date; and

- (e) the offer document must also state:
  - (i) the Australian ADI where contributions are held;
  - (ii) the length of time they may be held; and
  - (iii) the rate of interest payable (if any) on the contributions held in the account.

4 In the case of an offer of shares or options for issue, the number of shares the subject of the offer or to be received on exercise of an option when aggregated with:

- (a) the number of shares in the same class which would be issued were each outstanding offer or option to acquire unissued shares, being an offer made or option acquired pursuant to an employee share scheme extended only to employees or directors of the issuer and of associated bodies corporate of the issuer, to be accepted or exercised (as the case may be); and
- (b) the number of shares in the same class issued during the previous 5 years pursuant to the employee share scheme or any other employee share scheme extended only to employees or directors of the issuer and of associated bodies corporate of the issuer;

but disregarding any offer made, or option acquired or share issued by way of or as a result of:

- (c) an offer to a person situated at the time of receipt of the offer outside this jurisdiction; or
- (d) an offer that was an excluded offer or invitation within the meaning of the Corporations Law as it stood prior to the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*; or
- (e) an offer that did not need disclosure to investors because of section 708 of the Act;

must not exceed 5% of the total number of issued shares in that class of the issuer as at the time of the offer.

## SCHEDULE D — CONDITIONS

- 1 The person making the offer (the offeror) must provide to ASIC a copy of the offer document (which need not contain details of the offer particular to the offeree such as the identity or entitlement of the offeree) and of each accompanying document not later than 7 days after the provision of that material to the offeree.
- 2 The offeror must ensure that the issuer (or, in the case of an issuer which does not have a registered office in this jurisdiction, an associated body corporate of the issuer which does so have a registered office), complies with any undertaking required to be made in the offer document by reason of this instrument.
- 3 Neither the issuer nor any associated body corporate of it offers the offeree any loan or other financial assistance for the purpose of, or in connection with, the acquisition of the shares to which the offer relates.

## SCHEDULE E — FURTHER PERSONS EXEMPTED

Any person who:

- (a) operates, or is involved in operating, a managed investment scheme by reason of operating an employee share scheme with a contribution plan; or
- (b) offers, issues or sells or is involved in offering, issuing or selling interests in a managed investment scheme arising by reason of an employee share scheme with a contribution plan.

## SCHEDULE F — FURTHER CASES EXEMPTED

This exemption applies to an employee share scheme which involves the making of offers, issues or sales which meet the requirements in Schedule B.

**Interpretation**

For the purposes of this instrument:

- 1 A contribution plan is a plan under which a participating offeree may save money by regular deductions from wages or salary towards paying for shares offered for issue or sale under an employee share scheme where the terms and conditions of the contribution plan include terms and conditions to the effect that:

- (a) all deductions from wages or salary made in connection with participation in the contribution plan must be authorised by the offeree on the same form of application which is used in respect of the offer, or on a form which is included in or accompanies the offer document;
  - (b) any contributions made by an offeree as part of the contribution plan must be held by the issuer in trust for the offeree in an account of an Australian ADI which is established and kept by the issuer solely for the purpose of depositing contribution moneys and other money paid by employees for the shares on offer under the employee share scheme;
  - (c) the offeree may elect to discontinue their participation in the contribution plan at any time and as soon as practicable after that election is made all money deposited with the Australian ADI in relation to that offeree, including any accumulated interest, must be repaid to that offeree.
- 2 A body corporate is an associated body corporate of an issuer if:
- (a) the body corporate is a related body corporate of the issuer; or
  - (b) the body corporate has voting power in the issuer of not less than 20%; or
  - (c) the issuer has voting power in the body corporate of not less than 20%,
- (applying the definition of “voting power” contained in section 610 of the Act).
- 3 The Australian dollar equivalent of a price shall be calculated by reference to the relevant exchange rate published by an Australian bank on the previous business day.
- 4 An offer under a scheme shall not be regarded as extended to a person other than an employee or director of the issuer or an associated body corporate of the issuer merely because such an employee or director may renounce an offer of shares made to them under the scheme in favour of their nominee.
- 5 An option shall be taken to have been offered or granted for nominal consideration if and only if the monetary consideration payable upon the issue of the option is not more than the lesser of:

- (a) 1 cent per option; or
  - (b) 1% of the exercise price in respect of the option.
- 6 Securities shall be taken to be quoted on an approved foreign market if and only if quoted on:
- (a) American Stock Exchange, Deutsche Borse, Euronext Amsterdam, Euronext Paris, Italian Exchange, Kuala Lumpur Stock Exchange (Main and Second Boards), London Stock Exchange, New York Stock Exchange, New Zealand Stock Exchange, Singapore Exchange, Stock Exchange of Hong Kong, Swiss Exchange, Tokyo Stock Exchange or Toronto Stock Exchange, provided that:
    - (i) unless otherwise expressly stated, if any such market involves more than one board on which securities are quoted, securities shall only be taken to be quoted on that market if quoted on the main board of that market; and
    - (ii) where any such market was known by another name during a past period of time, securities shall not be taken not to have been quoted on the market during that period merely because the market was then known by that other name; or
  - (b) NASDAQ National Market.
- 7 The current market price of a share shall be taken as the price published by the operator of the principal financial market on which the share is quoted as the final price for the previous day on which the share was traded on that financial market.

*Note:* In this instrument, “this jurisdiction” means Australia, ss 5 and 9 (definition of “this jurisdiction”).

### **Commencement**

This instrument takes effect on the commencement of Schedule 1 to the *Financial Services Reform Act 2001*.

Dated the 3rd day of March 2002

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments Commission