

Global Rewards Update: Australia – Securities law – new Class Order

April 2014

Background

Securities laws in Australia are administered by the Australian Securities and Investments Commission (ASIC). An offer under an employee share plan would generally need to be accompanied by a disclosure document to ASIC, unless the offer is exempt under either a statutory or administrative exemption.

If the shares offered under a plan are shares quoted on a foreign stock exchange and are offered only to employees, the plan would normally be exempt from these filing requirements under the ASIC Class Order 03/184. In order to benefit from this exemption, the company would still be required to meet certain conditions.

New class order

ASIC is in the process of updating Class Order 03/184 with a proposed new Class Order and has stated that it intends to adopt the new Class Order in May 2014.

It is anticipated that the requirements that a plan must meet in order to be exempt under the new Class Order will replicate those under Class Order 03/184, summarised below. In addition:

- at least 25% of the awards must not vest for at least 12 months; and
- instead of requiring a copy of the offer document to be filed with ASIC, a form setting out limited details in relation to the offer must be lodged with ASIC within 7 days from the date on which the offer documents were first provided to an employee in Australia.

The requirements that must be met under both the existing and the proposed new Class Order are:

- the offer under the plan must be in writing and be accompanied by a copy or summary of the plan rules (the 'offer document');
- the offer document must specify the offer price (in Australian currency) of the shares to which the offer relates. The document must also include an undertaking that the employer will provide the employee with information relating to shares in the same class as those offered and the market price of the shares within a reasonable time;
- the offer must be for the issue of fully-paid shares in an issuer in the same class as shares which have been quoted on an approved exchange throughout the 12 month period immediately before the offer without suspension for more than a total of 2 trading days during that period; and
- the total number of shares in the same class issued under employee share plans during the previous five years must not exceed 5% of the total number of issued shares in that class.

Action

If you have previously relied on the exemption under Class Order 03/184 then you should review your plan rules to check if they will meet the new requirement (i.e. 25% of awards will not vest in the first 12 months). If they do not, then alternative approaches are available.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte adviser or email us at globalequity@deloitte.com, and we will contact you.

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