

# Global Equity Organization

## Australia Regional Events

PLATINUM SPONSORS

BAKER & MCKENZIE

**Deloitte.**

GOLD SPONSOR

Solium

BRONZE SPONSORS



*Welcome*

**Danyle Anderson**

Executive Director  
Global Equity Organization

## Who We Are

- Member-driven, member-run, not-for-profit international organization dedicated to providing education and networking opportunities to share plan professionals world-wide
- Fostering engagement with a truly global audience
- Founded in 1999
- Governed by a Board of Directors of 22 industry professionals
- GEO members receive resources, education and networking opportunities through conferences, local chapters and web-based information and events

# Our Membership



*Community of almost 5,000 individuals and  
1,420 organizations*

# Meet the Team



**Danyle Anderson,**  
**CEP, CPA, CGMA**  
Executive Director  
1.5 years with GEO  
24 years industry experience



**Dedicated Team  
of GEO Volunteers**



**Pam Stetson, CMP**  
Managing Director, Events  
10+ years with GEO  
20+ years industry experience



**Robyn Shutak, CEP**  
Sr. Director, Programs/Member Services  
>1 year with GEO  
12+ years industry experience



**Michele Holly**  
Operations Director  
14+ years with GEO  
20+ years industry experience

## GEO Events

- Annual GEO Conferences
  - 13<sup>th</sup> Annual (2012) – Washington, D.C., USA
  - 14<sup>th</sup> Annual (2013) – Munich, DE
  - 15<sup>th</sup> Annual – 7-9 May 2014, Miami, FL, USA
- National Equity Compensation Forum (NECF)
  - Held in 2011, 2012 and 2013 (Arizona and California)
- Once Day Events
  - 1<sup>st</sup> Annual European One Day, Paris (2012)
  - 2<sup>nd</sup> Annual European One Day, Amsterdam (2013)
  - Chapter Sponsored One Day Events (Northern Calif, DACH, UK, Australia, etc.)

# GEO Chapters

## North America



Canada



US - Atlanta

US - Boston

US - Dallas

US - East Bay, Nor California

US - Houston

US - Los Angeles

US - Midwest

US - New York Area

US - Pacific Northwest

US - San Francisco

US - Silicon Valley

US - Washington D.C.

## Europe



DACH  
Germany, Austria  
Switzerland



France



Ireland, Dublin



Italy, Milan



Netherlands



NORDIC  
Denmark, Finland,  
Norway, Sweden



Spain



United Kingdom

## Australia



Melbourne  
Sydney

## Asia



Hong Kong



## Member Services - Webcasts

- Global Long-Term Incentives: Trends and Predictions (17 October 2013)
- The Survey Says...? Highlights from GEO's 2013 Global Equity Insights Survey (17 September 2013)
- Everything You Need to Know (in 75 Minutes) About Offering Equity in Israel (10 September 2013)
- Outsource, Cosource or Insource - The Primer (22 August 2013)
- Current Issues Around Operating Incentive Plans in Australia (11 July 2013)
- Turning Up the Heat on Data Privacy Rules and Penalties (27 June 2013)

# Member Services – Website Content

## ASIA PACIFIC

-  Australia
-  China
-  Guyana
-  Hong Kong
-  India
-  Indonesia
-  Japan
-  Malaysia
-  North Korea
-  New Zealand
-  Philippines
-  Singapore
-  South Korea
-  Sri Lanka
-  Taiwan
-  Thailand
-  Vietnam












## AFRICA

-  Cameroon
-  Ghana
-  Kenya
-  Madagascar
-  Namibia
-  Niger
-  Senegal
-  Sierra Leone
-  South Africa
-  Swaziland
-  Zimbabwe

## EUROPE AND MIDDLE EAST

-  Austria
-  Bahrain
-  Belgium
-  Bulgaria
-  Croatia
-  Cyprus
-  Czech Republic
-  Denmark
-  Egypt
-  Estonia
-  European Union
-  Finland
-  France
-  Georgia
-  Germany
-  Greece
-  Hungary
-  Iceland
-  Iran
-  Ireland
-  Israel
-  Italy

## LATIN AMERICA

-  Argentina
-  Brazil
-  Chile
-  Columbia
-  Cuba
-  Falkland Islands
-  Mexico
-  Panama
-  Peru
-  Puerto Rico
-  Venezuela

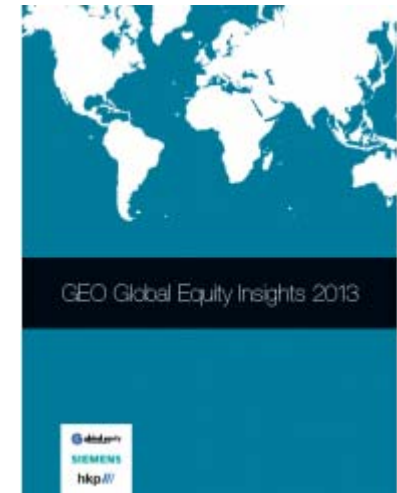
## NORTH AMERICA

-  Bahamas
-  Bermuda
-  Canada
-  Cayman Islands
-  Jamaica
-  Trinidad and Tobago
-  United States

## WORLDWIDE

## Member Services – Other Services

- Blog
  - Executive Reward 2.0 – An Alternative Form of Variable Compensation (6 November 2013)
  - Dutch Change of Control Gain Capping Rule Ineffective (30 October 2013)
  - French Obligations for Dividends Paid Through Foreign Banks/ Brokers (23 October 2013)
  - Is your company challenged by the global movement of funds in connection with its global employee stock plan? (16 October 2013)
  - Can your equity plans weather the unexpected? To help ensure they can, keep them flexible! (6 October 2013)
- GEO News Weekly Newsletter
- Global Equity Insights Survey
- GEO Connected Community *(COMING SOON!)*



For More Information Visit GEO at  
[www.globalequity.org](http://www.globalequity.org)

The screenshot shows the homepage of the Global Equity Organization. At the top, there is a navigation bar with the logo, a user greeting 'Welcome Danyle Anderson', and links for 'Update My Account', 'Update My Biography', and 'LOG OUT'. Below the navigation bar are buttons for 'Home', 'Join', 'Learn', and 'Share', along with a search bar and a 'SEARCH HELP' button.

The main content area is divided into several sections:

- Left Sidebar:** A vertical menu with icons and text links: 'About GEO', 'Become a GEO Member', 'Member Directory', 'Articles & Updates', 'GEO Chapters', and 'Upcoming GEO Events'. Below this is a 'Chapter Meetings' section with a list of events: 'East Bay - 20 November 2013', 'DAI & DACH Konferenz - 20 November 2013', and 'New York - 3 December 2013'. There is also a 'Webcasts' section with a link: 'Incentives are Good, Clawbacks Make them Better - 21 November'. At the bottom of the sidebar is a 'Regional Events' section.
- Center:** A large promotional banner for the '15th ANNUAL CONFERENCE GEO MIAMI 2014' held from '7-9 MAY | EDEN ROC'. The banner includes the text 'SAVE THE DATE!' and 'IMPORTANT DATES'. Below the banner are two boxes: 'Speaker Submissions' (opened on 1 October and closed on 8 November) and 'GEO Award Submissions' (open on 16 December and close on 14 February). Below these are two smaller boxes: 'Did you miss the last webcast? Visit GEO's Webcast Library.' with a 'WEBCAST LIBRARY' button, and 'Test Drive A GEO Conference Session for FREE.' with a 'LEARN MORE' button.
- Right Side:** A 'REGIONAL EVENTS' section with the text: 'Visit GEO at one of our three upcoming regional events for practical guidance on the latest in global share plans - right in your backyard!'. It lists three events: 'European One-Day Event' (15 November 2013), 'Melbourne' (19 November 2013), and 'Sydney' (21 November 2013). Below this is a 'GEO is Made Possible by Members Like You!' section with a gear icon and the text 'Renew Your 2014 Membership Today!' and a 'MORE INFORMATION' button. At the bottom right is a 'GEOblog' section with a question mark icon and the text 'Read what's HOT at GEO!' and a 'LEARN MORE' button.

Marc Bosotti, PwC

Mathew Ronald, Link Market Services

# LESSONS FROM THE LATEST EMPLOYEE SHARE SCHEME REPORTING

# Temporary resident employees and resident employees engaged in foreign service

- Employees who are temporary residents or residents engaged in foreign service may be assessable on only a portion of the employee share scheme (ESS) interests acquired
- For the year ended 30 June 2012
  - Report the gross discount amount (disregarding any period of foreign service) to the employee and to the Australian Taxation Office (ATO)
  - Income mismatches
- Changes for the year ended 30 June 2013
  - To facilitate administration
  - To facilitate correct tax treatment for employees

# Temporary resident employees and resident employees engaged in foreign service

- Changes for the year ended 30 June 2013
- Employer to do one of two things for employees who are temporary residents or residents engaged in foreign service
  1. Report the actual assessable amount of the discount after taking into account foreign service
  2. If the actual amount cannot be reported by the due date, report the gross amount by the due date. Then when known, report the actual amount on an amended ESS statement to the employee and send an amended ESS report to the ATO
- The employer may choose to advise employees whether the actual amount or the gross amount has been reported
  - Where the gross amount has been reported, the employer should advise employee to seek independent taxation advice



# Mobile employees

- Mobility creates challenges
  - Keeping up-to-date for global tax and sourcing rules
  - Tracking employee movement
  - What information does local payroll need and when
  - Are there separate non-payroll equity award filings
  - What year-end steps may be needed
  - System and report limitations



PLATINUM SPONSORS

BAKER & MCKENZIE

**Deloitte.**

GOLD SPONSOR

Solium

BRONZE SPONSORS



Marc Bosotti, PwC  
Sandra Buth, Deloitte  
Erica Kidston, Baker & McKenzie  
Matthew Reed, Computershare  
Chris Galway, Ernst & Young

# **GLOBAL EQUITY UPDATE: DESIGN TRENDS, COUNTRY TRICKS AND TAX TRAPS**

# Global equity update: design trends, country tricks and tax traps

- How are companies structuring global share plans?

# Global equity update: design trends, country tricks and tax traps

- Given the different tax treatment and employer obligations in different jurisdictions, how do companies manage the tax withholding and compliance side of global share plans?

# Global equity update: design trends, country tricks and tax traps

- Many global plans attempt to have a consistent approach to design/implementation across the various jurisdictions. What are some of the ‘problem’ countries and how do companies manage risks?

# Global equity update: design trends, country tricks and tax traps

- Have you seen any tailoring of plans to take advantage of tax concessions? How has that worked in your experience?

# Global equity update: design trends, country tricks and tax traps

- What approaches are we seeing in terms of communicating plans to employees?

# Global equity update: design trends, country tricks and tax traps

- How do companies manage the movement of plan participants across jurisdictions?



PLATINUM SPONSORS

BAKER & MCKENZIE

**Deloitte.**

GOLD SPONSOR

Solium

BRONZE SPONSORS



Michael Michalandos, Baker & McKenzie

Maria Pawelek, Baker & McKenzie

Leon Mazarakis, Link Market Services

# **LEGAL DEVELOPMENTS: APPROVALS, EXEMPTIONS AND ALL THINGS NEW**

# Overview

- ASIC's review of CO 03/184 – new proposed relief
- Corporations Act Part 2D.2 - Termination benefits approvals

# Corporate & Securities

## ASIC's review of Class Order relief

# Corporate & Securities Regulation

Equity Incentive Schemes attract a broad range of regulation including:

1. Securities and financial product disclosure
2. Secondary sale restrictions
3. Financial services licensing
4. Managed investments scheme regulation
5. Regulation of Termination Benefits
6. ASX Listing Rules

The first 4 of these have been addressed to a limited extent by ASIC Class Order 03/184 for the past 10 years.

# ASIC Class Order 03/184

- Has provided limited relief for Employee Share Schemes, primarily from disclosure and hawking regulation.
- Primarily of benefit for companies listed on ASX or approved foreign exchanges.
- Unlisted companies - must have a prospectus available during the exercise period of options - therefore relief is often unhelpful.

# A New (class) Order

- ASIC Consultation Paper 218 released last Thursday.
- Proposes rewrite of CO 03/184 and expansion of relief provided by ASIC.

|                |                               |  |
|----------------|-------------------------------|--|
| <b>Stage 1</b> | 14 November 2013              | Release of ASIC consultation paper and draft updated RG 49   |
| <b>Stage 2</b> | 31 January 2014<br>April 2014 | Comments due on the consultation paper<br>Final drafting of new class order and updated regulatory guide |
| <b>Stage 3</b> | May 2014                      | Class order and updated RG 49 released   |

## Listed Entities



# Instruments which attract relief

| Existing Relief   | Proposed Relief  |
|---|--|
| Fully paid shares quoted on ASX or approved foreign markets                       | No change  |
| Fully paid ASX stapled securities (comprising at least a fully paid share)        | No change  |
|   | CHESS Depository Interests<br>CREST Depository Interests<br>American Depository Interests<br>(equity-based and all listed) |
| Options over / or units in fully paid shares listed above (nominal consideration) | Options over / units in <u>the other items above in this table</u> (nominal consideration)                                 |
|   | Performance rights over the above  |

# Performance rights

Expansion of relief to performance rights is significant for a number of reasons:

1. Explicitly allows cash-out and phantom-equity style plans
2. Explicitly allows rights over unissued securities, securities held in a pooled trust, settlement by delivery of securities purchased on-market, and cashless exercise
3. Assists by recognising and allowing US-style RSUs (which can be derivatives according to ASIC)
4. Removes regulatory hurdles such as specific relief applications and AFSL licensing requirements for these plans

# Performance rights

But, the proposal does not currently cover:

1. Performance rights involving a loan
2. Contribution plans
3. Offers for more than nominal consideration
4. Interests in managed investment schemes – in some cases

## Incentive Plan Trusts - Increased Flexibility

- ASIC Proposes to extend relief to incentive plan trusts that are operated on an allocated and a pooled (unallocated) basis
- Unallocated trusts - apply a 5% limit to holdings by the trust
- Annual audit of trust records
- No fees payable from assets of trust – other than brokerage and tax (does not allow operating expenses)
- Unallocated trusts must not exercise voting rights

## Incentive Plan Trusts - Increased Flexibility

This will explicitly enable issuers to obtain a range of benefits such as:

1. Ability to buy securities on market rather than diluting holders with new issues
2. Ability to spread buying to avoid moving the market
3. Cost-averaging of purchases for the plan
4. Warehousing of unvested securities
5. Reduced insider trading risk (by using third party trustee)
6. Tax benefits associated with use of incentive plan trusts

# Relief for loan plans

- ASIC proposes to exclude loan plans in respect of options and performance rights
- To qualify for relief, loan plans over other interests will need to be:
  1. no recourse or limited recourse
  2. interest free
  3. repayable at end of loan period.

# Unlisted Entities

# Relief for unlisted bodies

- CO 03/184 has limited benefit for unlisted entities due to requirement to keep a prospectus available during exercise period - unless a listing occurs.
- ASIC is proposing additional relief as part of the new class order.



# General relief

Enhanced general relief which enables offers of options and performance rights:

1. **Listing Exemption** : at the time of vesting, the underlying shares are continuously quoted on ASX or approved foreign market (3 months listing and 5 trading days suspension rule)
2. **Trade Sale Exemption** : (i) All shares in issuer are disposed of in one transaction; (ii) same monetary consideration per ordinary share as substantial holders; and (iii) independent expert's report on value of shares.
3. **Disclosure Document Exemption** : Prospectus or Offer Information Statement current at exercise and provided 14 days prior to vesting or exercise.

# General relief

But...significant limitations:

1. does not cover unlisted shares – only options and performance rights
2. only one class of ordinary shares on issue
3. no loan, contribution plan or trust
4. 5% limit
5. no more than 25% vesting in first 12 months

# \$1000 of shares

- Relief for \$1000 of shares per participant, per year, up to a 5% cap.
- Various restrictions which reduce benefit of exemption:
  1. body can only have ordinary shares on issue;
  2. \$1000 value based on audited accounts or independent expert's valuation (which is provided to recipient);
  3. no loan, contribution plan or trust.

## Other Changes

# Other changes

| CO 03/184  | New Class Order  |
|--|--|
| Broader categories of offerees   | In addition to full time and part time employees (including executive directors), listed and unlisted bodies can now make offers to certain contractors, casuals, prospective employees and non-executive directors (under specific, separate offers). |
| Required to be listed for 12 months with no more than 2 trading days suspension. | Required to be listed for 3 months and no more than 5 trading days suspension in last 12 months.   |
| No more than nominal consideration   | No more than nominal <u>monetary</u> consideration   |
| -  | No more than 25% of underlying cash or shares (not subject to disposal) to be received in first 12 months  |
| -  | Offer documents to be clear, concise and effective <b><u>with adequate disclosure of risks</u></b>   |
| Required to provide offer documents to ASIC within 7 days of first offer         | ASIC Form filing only – not to appear on ASIC public register  |
| -  | ASIC power to exclude bodies from relying on relief  |

## Link Market Services

## The Practical Aspects of the Class Order

## Termination Benefits – Part 2D.2



## The Context

- Related Party Benefits (public companies)
- ASX Listing rules (listed companies)
- Part 2D.2 of the Corps Act - termination benefits (all companies)





## Corporations Amendment (Improving Accountability on Termination Payments) Act 2009

- Empowering shareholders to reject excessive termination benefits;
- Improving accountability of company management in setting remuneration;
- Promoting responsible remuneration practices.



## Key Changes – 24 November 2009

- Expansion of what constitutes a “managerial or executive office”
- Anti-avoidance provisions
- More definition of what constitutes a termination benefits (and potentially an expansion)
- Reduction of the salary cap in certain exemptions (max 7 years to one)
- Significant increase in penalties



## Consequence of breach

- \$19,800 and/or six months' imprisonment for individuals
- \$99,000 for corporations
- Any amount paid in breach is held in trust for the company
- The retiree is obliged to repay the money

## How does s200B work?

It restricts the giving or receiving of a termination benefit in relation to the “**retirement**” from an office or employment in a company or related body corporate, where:

- (a) the office or position is a “managerial or executive office”; or
- (b) the person held such an office period of three years prior to the “retirement” (Note: previously 12 mths)

UNLESS THE REQUISITE SHAREHOLDER APPROVAL IS OBTAINED

# What is “managerial or executive” office?

## Listed Australian companies

- Directors of the company
- any other person named in the company’s director’s report for the previous financial year as being:
  - its key management personnel; or
  - among its five most highly remunerated employees

## Non-listed companies

- A director of the company
- A holder of any other position or office in connection with the company’s management who also is a director of the company or a related body corporate

# Substance over form

- S200

“For the purposes of this Division, in determining whether a benefit is given:

- (a) Give a broad interpretation to benefits being given, even if criminal or civil penalties may be involved; and
- (b) The economic and commercial substance of conduct is to prevail over its legal form”



# What are benefits and termination benefits?

## **BASICALLY ANY BENEFIT**

- A payment or any other valuable consideration
- Any legal or equitable right
- **The automatic or accelerated vesting of shares** or bonuses
- Payments in lieu of notice
- Payments in exchange for a release or post-employment restrictions
- Out of court settlements
- Dodgy contractor agreements

## What are not termination benefits

- genuine accrued benefits under an Australian law or a law of another country.
  - Statutory leave benefits
  - Statutory notice period
  - Statutory redundancy benefits
- Where the failure to pay the benefit would breach a law (but not a breach of contract)
- Benefits given under Court order
- Deferred Bonuses  
(but if automatic / accelerated vesting subject to payment limit)
- Genuine superannuation payments
- Certain reasonable redundancy benefits



## Key exemptions subject to Payment Limits

- A genuine payment by way of damages for breach of contract (s200F(a)(i))
- A benefit given as **consideration** or part consideration for a person to agree to hold an office/position made under an agreement BEFORE the person took the office or position (s200F(a)(ii))
- A payment that is for **past services** rendered to the company / relate body corporate (includes a pension or lump sum payment, superannuation retiring allowance, superannuation gratuity, or similar payment) (s200G)
- Restraint Payments (Reg 2D.2.02)

# The Payment Limit

- Calculated on TOTAL TERMINATION BENEFITS
- Up to 12 month's "base salary"
- Calculated on the period of time during which the retiree held a managerial or executive office.
- Calculated on average "Base Salary"
  - **In:** Fixed Salary. Fixed short term benefits. Non-monetary benefits. Share based payments. Superannuation
  - **Out:** Discretionary / variable incentives subject to a performance condition

# EMPLOYEE INCENTIVE SCHEMES

## Are they affected by termination ?

- Is there an acceleration of the entitlement ?
- Are you waiving a performance condition ? (eg continued employment) ?
- Are you vesting the incentive on termination ?
- Are you exercising a discretion in favour of the executive ?  
- the problem with forfeiture
- Are you tweaking Good Leaver / Bad Leaver definitions ?
- Are you valuing the benefit more favourably ?

## Shareholder approval

- Disclosure of the value of the benefit or (where it cannot be ascertained) the manner of calculation and any matter or event that is likely to affect its calculation.
- Need Shareholder approval in general meeting of the following:
  - The Company
  - Any listed domestic corporation of which the Company is a subsidiary
  - Any holding company of the Company which is:
    - a non-listed domestic corporation; and
    - does not itself have a subsidiary of a domestic corporation

The Retiree or any associate or representative of the retiree or any person whose independence may be compromised – cannot vote

PLATINUM SPONSORS

BAKER & MCKENZIE

**Deloitte.**

GOLD SPONSOR

Solium

BRONZE SPONSORS



Matthew Reed, Computershare

Benjamin Morris, Hay Group

Michael Robinson, Guerdon Associates

# **INTRODUCING AN EQUITY INCENTIVE PLAN FOR AN AUSTRALIAN COMPANY: MORE THAN JUST ABOUT TAX**

# Introducing an equity incentive plan for an Australian company

More than just about tax

# Introducing an Equity Incentive Plan for an Australian Company

The logo for Computershare, featuring a stylized purple 'C' icon composed of three curved lines, followed by the word 'Computershare' in a bold, purple, sans-serif font.



# Computershare Limited

- Deferred Long Term Incentive Plan
- Deferred Short Term Incentive Plan
- Exempt/Deferred Plans

## Deferred Long Term Incentive Plan (DLI)

- Eligible KMPs and select senior executives
- Performance Rights
- 50% EPS hurdle/50% time-based (5 years)

## Deferred Short Term Incentive Plan (DSTI)

- KMPs and other employees on a discretionary basis
- Two-year minimum restriction but can choose longer
- Hurdles for KMPs 50% EPS/50% strategic, cultural and organisational matters

## Exempt/Deferred Employee Share Plan

- Offered to eligible staff since 2002
- Offered twice a year
- Historically 60% participation rates
- Derivative of these plans available to employees in NZ, HK, UK, Ireland, Germany, Canada, South Africa and USA

## Exempt/Deferred Employee Share Plan

- Exempt \$500 contribution/\$500 match
- Deferred
  - Up to \$5,000 contribution pre-tax with 1 year restriction
  - Match \$ for \$ up to \$3,000 restricted for 2 years
- Since 2002 lowest price paid \$1.51, highest \$12.61
- \$3,000 annual contribution to Deferred since 2002 with match is now worth approx. \$145k

## Exempt/Deferred Plan Communications

- Email
- Employee booklet
- Videos
- Face to face presentations
- SMS
- Targeted hard-copy mailings for staff on long-term leave
- Leveraging existing employee comms e.g. blogs

# Communications

**SIX MONTHS SERVICE**

Full-time or part-time employee with six months' continuous service

**DEFERRED SHARE PLAN >**   **EXEMPT SHARE PLAN >**

**Securityholder Reference Number (SRN)**

CERTAINTY   INGENUITY   ADVANTAGE

Computershare

00:02

# Closing Comments



PLATINUM SPONSORS

BAKER & MCKENZIE

**Deloitte.**

GOLD SPONSOR

Solium

BRONZE SPONSORS

**LINK**  
MARKET SERVICES

PACIFIC CUSTODIANS