



Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Solium Capital (Australia) Pty Ltd) Instrument 2022 (No. 4)

I, Kathryn Miller, make the following instrument as a delegate of the AUSTRAC CEO.

Dated 18 March 2022

Kathryn Miller
National Manager, Legal and Enforcement
AUSTRAC

Contents

1 Name.....	1
2 Commencement	1
3 Cessation.....	1
4 Authority.....	1
5 Definitions	1
6 Application	2
7 Exempt provisions	2
8 Conditions.....	2
Schedule 1—Categories of Employee Share Schemes	4

1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Solium Capital (Australia) Pty Ltd) Instrument 2022 (No. 4)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Cessation

This instrument ceases to have effect on 30 June 2027.

4 Revocation

This instrument revokes Exemption 6 of 2020 made on 31 July 2020 in respect of Solium Capital (Australia) Pty Ltd ABN 86 162 553 808.

5 Authority

This instrument is:

- (1) made under paragraph 248(1)(a) of the Act; and
- (2) subject to conditions as authorised under paragraph 248(2)(b) of the Act.

6 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) designated business group;
- (b) designated service; and
- (c) reporting entity.

In this instrument:

Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Australian Stock Exchange means a financial market in Australia operated by a person who has an Australian market licence or an exemption from the licensing requirement, granted by the Australian Securities and Investments Commission.

employee share scheme means:

- (a) in relation to a scheme administered in Australia, has the same meaning given by subsection 83A-10(2) of the *Income Tax Assessment Act 1997* (Cth); or
- (b) in relation to a scheme administered in New Zealand, has the meaning defined in the *Income Tax Act 2007* (NZ).

employee stock ownership scheme means a scheme that complies with the *Companies Act* (Act No.86 of 2005) (Japan), the *Trust Act* (Act No.108 of 15 December 2006) (Japan) and the *Financial Instruments and Exchange Act* (Act No.25 of 1948) (Japan).

employee incentive scheme has the same meaning as defined in the *Securities and Futures Act* (Cap 289, 2006) of Singapore.

Employee share scheme or equivalent means an employee share scheme or an employee stock ownership scheme or an employee incentive scheme.

Participants, in relation to a company that offers an employee share scheme or equivalent administered by Solium, or a Solium partner, means the directors or employees of the company participating in the employee share scheme or equivalent.

Solium means the members of Designated Business Group 2943.

Solium partner means Mitsubishi UFJ Trust and Banking Corporation incorporated in Japan, Japan registration number 0100-01-008770.

Solium Capital means Solium Capital (Australia) Pty Ltd ABN 86 162 553 808.

7 Application

This instrument applies to Solium Capital in respect of the provision of the designated services described in items 33 and 54 of table 1 in subsection 6(2) of the Act.

8 Exempt provisions

Solium Capital is exempt from sections 28–35 and 36 of the Act.

9 Conditions

This instrument is subject to the following conditions:

- (1) the employee share scheme must:
 - (a) be administered by Solium for a listed public company that is listed in Australia or is listed in New Zealand (or listed in both Australia and New Zealand); and
 - (b) fall under one or more of the categories listed in Schedule 1 to this instrument; and
 - (c) if in Australia, operate in accordance with ASIC Regulatory Guide 49 or, if in New Zealand, the *Financial Markets Conduct Act 2013* (New Zealand).
- (2) the employee stock ownership scheme must:
 - (a) be administered by a Solium partner for a public company listed in Japan; and
 - (b) fall under one or more of the categories listed in Schedule 1 to this instrument; and
 - (c) operate in accordance with the regulations and guidelines set by the Financial Services Agency in the Cabinet Office Ordinance of the Financial Instruments and Exchange Act of Japan, and the Japan Securities Dealers Association.
- (3) the employee incentive scheme must:
 - (a) be administered by Solium for a public company listed in Singapore; and

-
- (b) fall under one or more of the categories listed in Schedule 1 to this instrument; and
 - (c) comply with the requirements of the *Securities and Futures Act* (Cap 289, 2006) of Singapore as amended from time to time.
- (4) the company that offers an employee share scheme or an equivalent must be listed on the Australian Stock Exchange or be listed on a foreign stock exchange that is equivalent to the Australian Stock Exchange in relation to listing and disclosure rules.
- (5) Solium Capital only provides the designated services to Participants in the following circumstances:
- (a) Solium Capital conducts the on-market disposals of shares that were either:
 - (i) acquired by the Participant under an employee share scheme or equivalent; or
 - (ii) acquired through a corporate action and the entitlement to participate in the corporate action was ultimately derived from the Participant's securities acquired under an employee share scheme or equivalent; or
 - (b) Solium Capital conducts the on-market acquisitions of shares under a corporate action and the entitlement to participate in the corporate action was ultimately derived from the Participant's securities acquired under an employee share scheme or equivalent; or
 - (c) Solium Capital arranges for the on-market disposals of shares that were either:
 - (i) formerly held by the Participant under an employee share scheme or equivalent; or
 - (ii) acquired through a corporate action and the entitlement to participate in the corporate action was ultimately derived from the Participant's securities acquired under an employee share scheme or equivalent; or
 - (d) Solium Capital arranges the on-market acquisitions of shares that were acquired through a corporate action and the entitlement to participate in the corporate action was ultimately derived from the Participant's securities acquired under an employee share scheme or equivalent; or
 - (e) For each employee share scheme or equivalent where the company is not an Australian listed company, Solium Capital has obtained an assurance in writing from a Solium partner or a company that offers the employee share scheme or equivalent administered by Solium that the company has, in relation to each Participant:
 - (i) collected information about the Participant's full name, date of birth, residential address and a government-issued identification number; and
 - (ii) using a government-issued identification document, verified information about the Participant's full name, government-issued identification number and either the Participant's date of birth or residential address; and
- (6) Solium Capital must, in writing, notify the AUSTRAC CEO within 14 days of any event that may affect its ability to comply with this instrument.
-

Schedule 1—Categories of Employee Share Schemes

Type of plan	Description	Held on trust or in a custody account	Vesting conditions	Movement of funds
Gift	The client will gift the participant securities to the value of \$1,000.	Either	3 years. Will vest earlier if the employee leaves employment.	None
Contribution plan (usually deferred plan)	The client will allow the employee to purchase securities, usually from pre-tax contributions for a deferred plan. The client may offer a matching component. There is usually a cap on employee contributions of between 30-50%, although some clients allow 100% salary deduction.	Either	The contributed component usually vests after 12 months, or earlier if the employee leaves employment. The matching component usually vests after 2 years or more, but will be forfeited if the employee leaves employment. Employees are unable to sell securities received based on contributions until 12 months after the date of contribution, unless the employee leaves employment. There is one client that does allow an employee to access securities earlier, but their contributions are capped at \$5,000 and if employees do access within 12 months of purchase then they forfeit their matching component of up to \$5,000.	Contributions are commonly made out of salary in payroll cycles.
Partially paid shares	The employee has a window twice a year to make a call and pay all or part of the balance remaining on the shares. If the employee leaves employment, a call is placed automatically on the balance. Solium does not currently have this type of plan in place, but may provide it in the future.	Either	All outstanding entitlements have vested.	Calls are paid directly to the Share Issuer.
Performance rights	Zero priced options that are usually reserved for relatively senior executives and potentially of high value.	Either	Vesting usually takes place after 3 years or more with stringent performance hurdles determining the number of rights which may be exercised. Options are forfeited if employee leaves employment earlier.	No funds are payable.
Deferred share grants	The client makes grants of shares for nil consideration usually as a long-term incentive to more senior management. The employee has immediate entitlement to dividends.	Trust	Vesting usually takes place after 2 years, with shares being forfeit if the employee leaves employment earlier.	No funds are involved.
Options	Less common now due to accounting treatment.	Name on register	Exercise period of at least 2 years. Options generally have performance hurdles and will lapse if the employee leaves employment before the option can be exercised.	Exercise price can be funded through a cashless exercise where the broker sells the shares and remits the proceeds, net of exercise price, to the employee. If the employee pays the funds, then it must do so directly to the Share Issuer. No funds are paid to Solium.

Important Notice to the person named in this instrument

1. Under subsection 248(3) of the Act, a person granted an exemption subject to one or more conditions must comply with the conditions specified in the instrument. Failure to comply with subsection 248(3) is a civil penalty provision and may result in any or all of the following:
 - the exemption ceasing to apply to the person during any period in which the person does not comply with the relevant condition/s;
 - the exemption being revoked;
 - the AUSTRAC CEO applying to the Federal Court of Australia for a civil penalty order requiring the person to pay a pecuniary penalty in respect of the breach.
2. Under sections 136 and 137 of the Act, it is an offence to provide false or misleading information or documents. If any of the information submitted by the applicant or its representatives is found to be false or misleading, the exemption may be revoked and action initiated against the applicant.
3. The person granted the exemption may request the AUSTRAC CEO to revoke or vary the exemption at any time.
4. Any request to vary or extend this exemption must be submitted to the AUSTRAC CEO or an approved delegate no later than 90 days before the date the change is requested to commence.
5. This exemption does not preclude the person from making communications or disclosures that are otherwise permitted by law.