

**Australian Securities and Investments Commission
National Consumer Credit Protection (Transitional and Consequential
Provisions) Act 2009 — Item 41 of Schedule 2 — Declaration**

Enabling provision

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under item 41 of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 10/381].

Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. ASIC declares that Part 3 of Schedule 2 to the Act applies in relation to all persons as if that Part were modified or varied by, after item 19, inserting:

“19A Obligation on certain persons to give notice to ASIC

- (1) Subitem (2) applies to a person (*lender*) who is a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 if both of the following apply:
 - (a) the lender is a credit provider or lessor in relation to the carried over instrument at any time after 30 June 2010;
 - (b) the lender is not any of the following persons:
 - (i) a licensee;
 - (ii) a registered person;
 - (iii) a person exempt from the requirement to hold a licence under the National Credit Act or to be a registered person under this Act.

- (2) The lender must lodge with ASIC a notice in the approved form containing the following information:
- (a) the lender's name (including the lender's principal business name if any);
 - (b) the name of:
 - (i) if the lender is a body corporate — each director or secretary of the body corporate; and
 - (ii) if the lender is a partnership or the trustees of a trust — each partner or trustee;
 - (c) the postal address of the lender;
 - (d) if the principal business address of the lender is different from the postal address — the principal business address;
 - (e) if the lender has an Australian Business Number — the Australian Business Number;
 - (f) the number of carried over instruments held by the lender and the total amount owed to the lender under the instruments;
 - (g) if the lender is a member of an approved external dispute resolution scheme — the name of the scheme;
 - (h) an estimate of the date on which the longest running carried over instrument will be finalised, if payments are made in accordance with the terms of the instrument;
 - (i) if the lender is a prescribed unlicensed carried over instrument lender — the grounds on which the lender is a prescribed unlicensed carried over instrument lender;
 - (j) any other information requested by ASIC.

The notice must be lodged with ASIC on the first day paragraphs (1)(a) and (b) both apply in relation to the lender.

Civil penalty: 2,000 penalty units.

- (3) The lender does not have to comply with subitem (2) if the lender has lodged the notice with ASIC up to 6 weeks before it must be so lodged under that subitem.
- (4) The information contained in the notice must be current at the date the notice is lodged with ASIC.

- (5) Subitems (2) and (3) apply in relation to information contained in a notice that was lodged with ASIC before 1 July 2010 as if references to a carried over instrument in paragraphs (2)(f) and (h) were references to a contract or other instrument that:
- (a) was in force at the time the notice is lodged; and
 - (b) the old Credit Code applied to at that time.

Offence

- (6) A person commits an offence if:
- (a) the person is subject to a requirement under subitem (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes this requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subitem (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes this requirement.

Criminal penalty: 10 penalty units

- (8) Subitem (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.”.

Note 1: The declaration in this instrument substantially produces the effect that item 39A of Schedule 2 to the Act (as notionally inserted by regulation 16E of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*) would have had but for some drafting anomalies. As a result of those anomalies, that item does not have any operation.

Note 2: A prescribed unlicensed carried over instrument lender is defined in subsection 5(1) and section 5A of the *National Consumer Credit Protection Act 2009* (as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*).

Dated this 21st day of May 2010

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission