

ASIC CLASS ORDER [CO 11/760]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

National Consumer Credit Protection Act 2009

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Class Order [CO 11/760] under paragraph 163(3)(d) of the *National Consumer Credit Protection Act 2009* (the *Act*).

Paragraph 163(3)(d) of the Act provides that ASIC may declare the provisions to which Part 3-7 of the Act applies (including Chapter 3 of the Act and instruments made for the purposes of Chapter 3 of the Act), apply in relation to a class of persons as if the provisions were omitted, modified or varied in a specified way.

1. Background

Regulation 28N of the *National Consumer Credit Protection Regulations 2010* (the *Regulations*) purports to postpone the commencement of obligations to provide credit guides, proposal documents and quotes under Chapter 3 of the Act, subject to certain requirements being met.

Regulation 28N ceased to have effect at the end of 1 August 2011.

Schedule 1, item 1 in the *National Consumer Credit Protection Amendment Regulations 2011 (No.4)* (the *amending regulations*) purports to amend subregulation 28N(5) so as to further postpone the commencement of the disclosure obligations from 2 August 2011 to 2 October 2011.

There is doubt as to whether that amendment took effect, having regard to the fact that the relevant item of the amending regulations is stated to commence on the day after the amending regulations were registered on the Federal Register of Legislative Instruments (*FRLI*). The amending regulations were registered on FRLI on 2 August 2011.

2. Purpose of the class order

The purpose of the class order is to give effect to the intention of regulation 28N of the Regulations and Schedule 1, item 1 of the amending regulations.

3. Operation of the class order

This declaration replicates until 1 October 2011 the effect of the exemption under regulation 28N of the Regulations as in force immediately before 2 August 2011 as affected by ASIC Class Order [CO 10/1230].

Essentially a licensee's or credit representative's obligation to provide a credit guide, proposal disclosure document or quote will not commence until 2 October 2011 if they meet certain conditions.

4. Consultation

Before making this class order, ASIC consulted with the Department of the Treasury to confirm that this course of action is consistent with the policy as evidenced in the Regulations and the amending regulations.