

**Australian Securities and Investments Commission
National Consumer Credit Protection Act 2009 —
Paragraph 163(3)(d) — Declaration**

Enabling provision

1. The Australian Securities and Investments Commission (**ASIC**) makes this instrument under paragraph 163(3)(d) of the *National Consumer Credit Protection Act 2009* (the **Act**).

Title

2. This instrument is ASIC Class Order [CO 11/760].

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. The provisions to which Part 3-7 of the Act applies apply in relation to all persons as if Part 3.6 of the *National Consumer Credit Protection Regulations 2010* (the **Regulations**) were modified or varied by, after regulation 28M, inserting:

“28NA Exemption — requirement to provide disclosure documents

- (1) A person who is a licensee or a credit representative engaging in a credit activity is exempted from section 113, 121, 126, 127, 136, 144, 149, 150, 158 and 160 of the Act (which deal with credit guides and proposal disclosure documents) if:
 - (a) the person gives the consumer information, in writing, about the contact details for a consumer to access the approved external dispute resolution scheme of which the person is a member; or
 - (b) the person has given the information mentioned in paragraph (a) to the consumer within the previous 90 days.
- (2) The information mentioned in paragraph (1)(a) may be given to the consumer as follows:
 - (a) in the manner set out in regulation 28L;

- (b) together with some or all of the information mentioned in a relevant provision of the Act or section 16 of the Code.
- (3) A person who is a credit representative to whom regulation 28 applies is exempted from a relevant provision of the Act.

Note: Regulation 28 sets out circumstances where a credit representative is not required to give contact details for a consumer to access an approved external dispute resolution scheme.

Quotes

- (4) A licensee providing credit assistance to a consumer is exempted from sections 114 and 137 of the Act if:
- (a) before the licensee provides credit assistance to a consumer, the licensee has entered into a written contract with the consumer setting out the maximum amount that will be payable by the consumer to the licensee in relation to the licensee's credit assistance and other services; or
 - (b) both the following apply:
 - (i) before the licensee provides credit assistance to a consumer, the licensee does not intend to impose a fee or charge on the consumer for providing the credit assistance or other services;
 - (ii) the licensee does not impose a fee or charge on the consumer for the licensee's credit assistance and other services.
- (5) This regulation ceases to have effect on 1 October 2011."

Note: 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]. It has been made to remove doubt about whether that exemption continues in force on and after that date. Such doubt may arise from the fact that an amendment expressed to extend the operation of regulation 28N came into force after it ceased to have effect.

Dated this 2nd day of August 2011

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