

Australian Securities and Investments Commission

National Consumer Credit Protection Act 2009—Paragraph 163(3)(d)— Declaration

National Credit Code—Subsection 203A(3)—Exemption

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under:
 - (a) paragraph 163(3)(d) of the *National Consumer Credit Protection Act 2009* (the *Credit Act*); and
 - (b) subsection 203A(3) of the National Credit Code (the *Code*).

Note: The Code is found in Schedule 1 to the Credit Act.

Title

2. This instrument is ASIC Class Order [CO 13/818].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) 1 July 2013.

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*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Chapter 3 of the Credit Act applies in relation to a relevant small amount credit contract as if the definition of *small amount credit contract* in subsection 5(1) of that Act, as it applies to references in that Chapter, were modified or varied by omitting paragraph (c) and substituting:
 - “(c) the credit limit of the contract is:
 - (i) \$2,000 (or such other amount as is prescribed by the regulations) or less; or
 - (ii) more than \$2,000 because of fees or charges included in the amount of credit provided under the contract; and”.

Note: This declaration does not affect the meaning of *small amount credit contract* in the Code or in paragraphs 8, 9 or 12.

Exemptions

5. A credit provider under a relevant small amount credit contract does not have to comply with:
 - (a) Division 3 of Part 2 of the Code; and
 - (b) Division 4A of Part 2 of the Code.
6. A relevant small amount credit contract does not have to comply with subsections 17(4), (5) and (6) of the Code.
7. A person who provides credit assistance in relation to a relevant small amount credit contract does not have to comply with subsection 32A(2) of the Code.
8. A small amount credit contract does not have to comply with subsection 31A(1) of the Code to the extent that that subsection would prohibit the contract from imposing or providing for a direct debit processing fee or charge.
9. A person who:
 - (i) is a credit provider under a small amount credit contract; or
 - (ii) has been introduced to a debtor by a credit provider under a small amount credit contract to provide a service in relation to the contract,

does not have to comply with subsection 31B(1) of the Code to the extent that that subsection would prohibit the person from requiring or accepting payment by the debtor of a direct debit processing fee or charge.

Circumstances in which declaration and exemptions apply

10. The declaration in paragraph 4 and the exemptions in paragraphs 5 and 6 apply in relation to a relevant small amount credit contract where:
 - (a) the only fees or charges imposed under or provided for in the contract are:
 - (i) a fee or charge of the kind referred to in subsection 31A(1) of the Code; or
 - (ii) a direct debit processing fee or charge;
 - (b) the contract does not:
 - (i) impose a monetary liability on the debtor in respect of an interest charge (including a default rate of interest);

- (ii) provide for the application of any part of the amount of credit provided under the contract to pay an amount to the credit provider other than an amount of a fee or charge referred to in paragraph (a);
 - (iii) provide for the recovery (whether by repayments under the contract or otherwise) by the credit provider in relation to the contract of more than an amount that is twice the adjusted credit amount in relation to the contract if there is a default in payment under the contract; and
- (c) the credit provider has not at any time required or accepted payment by a debtor of a fee or charge in relation to:
- (i) any relevant small amount credit contract (a ***post-commencement small contract***) entered into after the commencement of this instrument; or
 - (ii) the provision of an amount of credit under any post-commencement small contract; or
 - (iii) a thing that is connected with any post-commencement small contract or the provision of an amount of credit under any post-commencement small contract,
- other than a fee or charge referred to in paragraph (a).
- (d) a person who has been introduced to a debtor under a post-commencement small contract by the credit provider to provide a service in relation to the contract has not at any time required or accepted payment by a debtor of a fee or charge in relation to:
- (i) any post commencement small contract of the credit provider; or
 - (ii) the provision of an amount of credit under any post-commencement small contract of the credit provider; or
 - (iii) a thing that is connected with any post-commencement small contract of the credit provider or the provision of an amount of credit under any post-commencement small contract of the credit provider,
- other than a fee or charge referred to in paragraph (a).

11. The exemption in paragraph 7 applies where before providing any credit assistance in relation to a relevant small amount credit contract the person has taken all reasonable steps to determine that the circumstances specified in subparagraphs 10(a) and (b) are met in relation to the contract.

Definitions

12. In this instrument:

adjusted credit amount means the amount of credit that is, or is to be, provided under a credit contract, but not including any fee or charge payable in relation to the contract that forms, or is to form, part of the amount of credit.

direct debit processing fee or charge means a fee or charge that is imposed under, or provided for by, a small amount credit contract or a relevant small amount credit contract for which the following apply:

- (a) the fee or charge is charged to the debtor by a person other than the credit provider under the contract under a written agreement between the debtor and the person;
- (b) the fee or charge is for processing payments of amounts due under the contract that is charged or calculated on the same basis as for persons who are not debtors under a small amount credit contract or a relevant small amount credit contract;
- (c) the amount of the fee or charge has been clearly disclosed to the debtor in writing.

relevant small amount credit contract means a credit contract for which the following apply:

- (a) the contract is not a continuing credit contract;
- (b) the credit provider under the contract is not an ADI;
- (c) the credit limit of the contract is more than \$2,000 because fees or charges are included in the amount of credit provided under the contract;
- (d) the terms of the contract is at least 16 days but not longer than 1 year;
- (e) the debtor's obligations under the contract are not, and will not be, secured.

Dated this 28th day of June 2013

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