

Explanatory Statement for
ASIC Corporations and Credit (Amendment) Instrument 2018/937

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

National Consumer Credit Protection Act 2009

National Consumer Credit Protection Regulations 2010

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations and Credit (Amendment) Instrument 2018/937 (Instrument).

This Instrument is made under subsection 926A(2) of the *Corporations Act 2001* (Corporations Act), for the purposes of subparagraph 47(1)(e)(i) of the *National Consumer Credit Protection Act 2009* (Credit Act) (as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010* (Credit Regulations), subparagraph 47(1)(h)(i) and paragraph 109(3)(a) of the Credit Act and under item 41 of *Schedule 2 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional and Consequential Provisions Act).

- Section 926A(2) of the Corporations Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.6 of the Corporations Act, other than Divisions 4 and 8 of Part 7.6.
- Subparagraph 47(1)(e)(i) of the Credit Act (as notionally inserted by regulation 25E and Schedule 2 to the Credit Regulations) provides that an unlicensed carried over Instrument lender must have an internal dispute resolution procedure that complies with standards and requirements made or approved by ASIC in accordance with section 48 of the Credit Act.

- Paragraph 109(3)(a) of the Credit Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 2.6 of the Credit Act.
- Subparagraph 47(1)(h)(i) of the Credit Act provides that a licensee must have an internal dispute resolution procedure that complies with standards and requirements made or approved by ASIC in accordance with the regulations.
- Item 41 of Schedule 2 to the Transitional and Consequential Provisions Act provides that ASIC may declare that provisions to which Part 3 of the Schedule applies, apply in relation to a credit activity, or a class or persons or credit activities, as if specified provisions were omitted, modified or varied.

This Instrument amends:

- ASIC Class Order [CO 10/250] which approves standards and requirements for credit licensees in relation to internal dispute resolution procedure.
- ASIC Class Order [CO 10/517] which approves standards and requirements for unlicensed carried over instrument lenders in relation to internal dispute resolution procedure.
- ASIC Class Order [CO 10/381] which inserts an obligation into Part 3 of Schedule 2 of the Transitional and Consequential Provisions Act. The obligation, for a person who is a credit provider or lessor in relation to a carried over instrument, and who meets other criteria, is to provide ASIC with a notice that contains certain information, including about membership of an external dispute resolution scheme.
- ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 which provides a licensing exemption for an eligible person in relation to the provision of testing services, with conditions including membership of an approved external dispute resolution scheme.
- ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176 which provides a licensing exemption for an eligible person in relation to the testing credit services, with conditions including membership of an approved external dispute resolution scheme.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the Corporations Act because of section 5C of the Corporations Act), where an Act confers a power to make, grant or issue any Instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such Instrument.

1. Background

The *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority Act) 2018* (AFCA Act) establishes a single financial services external dispute resolution scheme: the Australian Financial Complaints Authority (AFCA). AFCA will replace the two existing ASIC-approved external dispute resolution (EDR) schemes: the Financial Ombudsman Service and the Credit and Investments Ombudsman; and the statutory Superannuation Complaints Tribunal. The AFCA scheme will commence on 1 November 2018 and will determine all complaints made on or after this date.

As a result of the AFCA Act, and associated regulations:

- From 21 September 2018, those who are currently required to be a member of an ASIC-approved external dispute resolution scheme must be a member of the AFCA Scheme, as well as to be a member of their ASIC-approved external dispute resolution scheme.
- From 1 November 2018, the AFCA scheme commences, and will determine all complaints made on or after this date.
- The requirement to be a member of an ASIC-approved external dispute resolution will be repealed no later than 1 November 2019, or before that day if the Minister specifies by notifiable instrument an earlier date pursuant to Item 72 of Schedule 1 of the AFCA Act. After this requirement is repealed, those who are currently required to be a member of an ASIC-approved external dispute scheme will be required to be a member of the AFCA scheme only.

2. Purpose of the Instrument

ASIC Corporations and Credit (Amendment) Instrument 2018/937 is intended to make technical amendments to various ASIC legislative instruments arising from the passage of the AFCA Act. The purpose of the Instrument is to amend ASIC Class Orders that include references to dispute resolution to reflect the commencement of AFCA, and the requirement to be a member of the AFCA Scheme from 1 November 2018. The Instrument also removes references to ASIC-approved external dispute resolution schemes.

3. Operation of the Instrument

This Instrument amends ASIC Class Order 10/250, ASIC Class Order 10/517, ASIC Class Order 10/381, ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 and ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176.

The amendments found in Schedule 1 to this Instrument are consequential amendments and are technical in nature. The amendments make changes to these Class Orders, so that the dispute resolution obligations found in those Class Orders reflect the commencement of the AFCA Scheme, and the requirement to be a member of that Scheme from 1 November 2018. These changes apply on and after 1 November 2018.

The amendments found in Schedule 2 to this Instrument are consequential amendments and are technical in nature. The amendments relate to no longer requiring membership of existing external dispute resolution schemes. The amendments remove the references found in these Class Orders to “approved external dispute resolution scheme”. These changes will apply on and after 1 November 2019, or before that day if the Minister specifies by notifiable instrument an earlier date pursuant to Item 72 of Schedule 1 of the AFCA Act.

4. Consultation

Given the minor and consequential nature of these amendments, ASIC considered that no consultation was necessary. Nevertheless, ASIC has contacted the persons who are relying on the exemptions in ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 and ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176 to inform them of the minor and consequential changes, and the ensure they were aware of the obligations arising from the AFCA Act 2018.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations and Credit (Amendment) Instrument 2018/Number

ASIC Corporations and Credit (Amendment) Instrument 2018/937 is compatible with the human rights and freedoms recognised or declared in the international Instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

ASIC Corporations and Credit (Amendment) Instrument 2018/937 makes technical amendments arising from the passage of the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority Act) 2018*. The purpose of the Instrument is to amend ASIC Class Orders that make references to dispute resolution to reflect the commencement of AFCA, and to remove references to ASIC-approved external dispute resolution schemes from these Class Orders.

Human rights implications

This legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission