



National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 28 May 2020

David Hurley
Governor-General

By His Excellency's Command

Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliamentary Secretary to the Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 September 2020.	1 September 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *National Consumer Credit Protection Act 2009*.

4 Simplified outline of this instrument

A person may use an exemption from the licensing requirements in Part 2-2 of the Act to test eligible credit activities.

The exemption will only become available if:

- (a) the person is an eligible person; and
- (b) the person lodges a valid notification and satisfies certain requirements (see Part 4).

The exemption will also not become available if:

- (a) ASIC is not satisfied that it will result, or be likely to result, in a net benefit to the public; or
- (b) ASIC is not satisfied that the credit activity is new, or is a new adaptation or improvement of another credit activity; or
- (c) ASIC reasonably believes that certain other circumstances exist.

Section 5

There are 2 kinds of eligible credit activities. The exemption can become available at the same time, or at different times, for those 2 kinds. However, the exemption cannot become available a second time to test the same kind of credit activity.

Each exemption lasts up to 24 months.

Each exemption is subject to conditions that limit the exposure of the person's consumers to the credit activities, including the total investment activity under the exemptions and any exemptions under the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

Each exemption will cease automatically if the person fails to meet these limits (see Division 1 of Part 3), or if the person ceases to be an eligible person.

Each exemption is also subject to other conditions (see Part 5). Failing to meet these conditions may result in ASIC cancelling the exemption or applying to the Court for an order that the person comply with the conditions.

Only one member of a group of related bodies corporate can use an exemption at any one time.

5 Definitions

In this instrument:

Act means the *National Consumer Credit Protection Act 2009*.

Chapter 5 body corporate has the same meaning as in the *Corporations Act 2001*.

eligible credit activity means a credit activity that:

- (a) is covered by item 1 or 2 of the table in subsection 6(1) of the Act; and
- (b) has a related credit contract, or proposed credit contract, (the **relevant contract**);

if each of the following paragraphs applies to the relevant contract:

- (c) the relevant contract is not a reverse mortgage or a small amount credit contract;
- (d) none of the amount of credit that may be provided under the relevant contract is secured by a charge or lien over a consumer's household property covered by subregulation 6.03(2) of the *Bankruptcy Regulations 1996* (worked out as if the consumer were a bankrupt);
- (e) the credit limit of the relevant contract is more than \$2,000 but does not exceed \$25,000;
- (f) the term of the relevant contract does not exceed 4 years.

eligible person, for an eligible credit activity, means a person who:

- (a) is none of the following:
 - (i) a person authorised by a licence to engage in the eligible credit activity;

- (ii) a credit representative of a licensee for engaging in the eligible credit activity;
 - (iii) a related body corporate of a body corporate covered by subparagraph (i) or (ii);
 - (iv) a natural person who is neither an Australian citizen, nor a permanent resident, within the meaning of the *Australian Citizenship Act 2007*; and
- (b) if the person is a foreign company—is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.

provider has the meaning given by section 6.

testing period has the meaning given by section 7.

Section 6

Part 2—Exemption from credit activity licensing requirements for testing in the FinTech sandbox

6 Exemption for testing eligible credit activities in the FinTech sandbox

For the purposes of paragraph 110(1)(a) of the Act, a person (the *provider*) is exempt from subsection 29(1) of the Act for engaging in an eligible credit activity during the period referred to in section 7 of this instrument if:

- (a) the provider is an eligible person for the eligible credit activity; and
- (b) the provider has lodged with ASIC in the approved form a notification that complies with subsection 13(1) of this instrument for the eligible credit activity; and
- (c) the 30-day period starting on the day the notification was so lodged has ended without ASIC giving the provider written notice of a decision under subsection 8(1) of this instrument relating to the notification.

Note 1: The exemption will also not be available if the provider has already been exempt for the same kind of credit activity (see paragraph (b) and paragraph 13(1)(c)).

Note 2: The provider will automatically cease to be exempt if the provider becomes licensed to engage in the eligible credit activity, or otherwise ceases to be an eligible person for the eligible credit activity (see the definition of *eligible person* in section 5).

7 Duration of the exemption

The period (the *testing period*), of the provider's exemption under section 6 for the eligible credit activity, is the 24 months starting on the day after the last day of the 30-day period referred to in paragraph 6(c).

Note: The exemption may end earlier (see Part 3).

8 Grounds for ASIC deciding that the exemption is not available

- (1) ASIC may, after considering the notification lodged under paragraph 6(b) by the provider for the eligible credit activity, decide that:
 - (a) it is not satisfied that both paragraphs 6(a) and (b) are met for the provider and the credit activity; or
 - (b) it is not satisfied that exempting the credit activity will result, or be likely to result, in a benefit to the public that will outweigh the detriment to the public that will result, or be likely to result, from exempting that credit activity; or
 - (c) it is not satisfied that the credit activity:
 - (i) is new; or
 - (ii) is a new adaptation, or new improvement, of another credit activity; or
 - (d) it reasonably believes that a condition in section 14, 15, 16, 17 or 18 is not met for another eligible credit activity for which the provider has or has had an exemption under section 6; or
 - (e) if the assumption were made that the credit activity is covered by a licence—it reasonably believes that the requirement in section 37A of the

Act (about the fit and proper person test) would not be satisfied in relation to the provider and the licence; or

- (f) it reasonably believes that the provider has failed to act fairly, efficiently or honestly in engaging in credit activities or in providing financial services (within the meaning of the *Corporations Act 2001*); or
- (g) it reasonably believes that a purpose for seeking the provider's exemption under section 6 for the credit activity was to continue or recommence an exemption under section 6 that was earlier obtained by another person; or
- (h) it reasonably believes that engaging in the eligible credit activity is likely to result in significant detriment to one or more consumers; or
- (i) any exemption of the provider under the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* is or has been cancelled under section 14 of those Regulations.

- (2) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by ASIC under subsection (1).

Note: This subsection is made for the purposes of paragraph 327(1)(i) of the Act.

Part 3—When exemption ceases before the end of the testing period

Division 1—When exemption ceases automatically

9 Not meeting certain limits will cause the exemption to cease automatically

Each of the provider's exemptions under section 6 for eligible credit activities ceases to apply if (and when) the provider fails to meet:

- (a) the condition in section 10 for any of those eligible credit activities; or
- (b) a condition in a section of Division 1 of Part 3 of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* for an eligible financial service (within the meaning of those Regulations) for which the provider has an exemption under those Regulations.

10 Exposure limits for exempt credit activities—total limit for all activities etc.

- (1) The provider meets the condition in this section for an eligible credit activity if the provider ensures that no more than a total of \$5 million made up of the following:
 - (a) the value of credit contracts entered into in relation to eligible credit activities;
 - (b) gross written premiums for eligible general insurance products;
 - (c) gross written premiums for eligible life risk insurance products;
 - (d) contributions in eligible superannuation products;
 - (e) commitments to other kinds of financial product;arises for consumers, retail clients and wholesale clients as the result of the matters referred to in subsections (2) and (3).
- (2) For the purposes of paragraph (1)(a), the matters are the engaging in of eligible credit activities if:
 - (a) either the provider, or a related body corporate of the provider, has or has had an exemption under section 6 for each of the eligible credit activities; and
 - (b) each eligible credit activity was engaged in, by the person with that exemption for that credit activity, during the testing period of that person's exemption for that credit activity.
- (3) For the purposes of paragraphs (1)(b) to (e), the matters are the provision of eligible financial services if:
 - (a) either the provider, or a related body corporate of the provider, has or has had an exemption under section 6 of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* for each of the eligible financial services; and
 - (b) the provision of each of the eligible financial services, by the person with that exemption for that service, happened during the testing period (within

the meaning of those Regulations) of that person's exemption for that service.

(4) In this section:

eligible financial service has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

eligible general insurance product has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

eligible life risk insurance product has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

eligible superannuation product has the same meaning as in the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

financial product has the same meaning as in the *Corporations Act 2001*.

retail client has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

wholesale client has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

Division 2—Other ways exemption can cease

11 Exemption ceases because of ASIC decision

- (1) ASIC may, by written notice given to the provider, cancel the provider's exemption under section 6 for an eligible credit activity if:
 - (a) one or more of paragraphs 8(1)(c) to (i) now apply for the provider and the credit activity; or
 - (b) a condition in section 14, 15, 16, 17 or 18 is not met for the credit activity; or
 - (c) ASIC reasonably believes that engaging in the credit activity has resulted in significant detriment to one or more consumers.

Note 1: Before, or instead of, acting under this section for a failure to meet a condition in paragraph (b), ASIC could seek an order for the provider to comply with the condition (see subsection 110(3) of the Act).

Note 2: Before, or instead of, acting under this section because of paragraph (c), ASIC could consider making a make-good order (see section 18).

- (2) The cancellation takes effect on the day specified in the notice, which must not be a day before the notice is given to the provider.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by ASIC under subsection (1).

Note: This subsection is made for the purposes of paragraph 327(1)(i) of the Act.

12 Exemption ceases if provider notifies ASIC

- (1) The provider's exemption under section 6 ceases to apply for an eligible credit activity if the provider lodges with ASIC a written notice to that effect.
- (2) The cancellation takes effect on the day specified in the notice, which must not be a day before the notice is lodged with ASIC.

Part 4—Requirements for the exemption to exist

13 Lodging a valid notification for eligible credit activities

- (1) The provider's notification complies with this subsection for an eligible credit activity (the *current credit activity*) if:
- (a) the notification includes the matters in subsection (2); and
 - (b) the notification states that the provider is proposing to use the exemption under section 6 for the current credit activity; and
 - (c) if the provider, or a related body corporate of the provider, has earlier obtained an exemption under section 6 for another eligible credit activity—that other credit activity is not covered by the same item of the table in subsection 6(1) of the Act as the current credit activity; and
 - (d) no related body corporate of the provider currently has:
 - (i) an exemption under section 6 for an eligible credit activity; or
 - (ii) an exemption under section 6 of the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*; and
 - (e) no related body corporate of the provider has lodged with ASIC:
 - (i) a notification under this instrument that includes the matters in subsection (2); or
 - (ii) a notification under the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* that includes the matters in subsection 16(2) of that instrument;
 during the 30-day period ending on the day the notification referred to in paragraph (a) of this subsection is lodged with ASIC.

Note: A consequence of this subsection is that only one member of a group of related bodies corporate can ever use the exemption to test credit activities at any one time.

- (2) The matters to include in the notification are as follows:
- (a) the provider's name, address and contact details;
 - (b) the address of the provider's website (if any);
 - (c) if the provider is a natural person—the person's date of birth;
 - (d) if the provider is a body corporate:
 - (i) the provider's ABN, ACN and ARBN, (within the meaning of the *Corporations Act 2001*) if any; and
 - (ii) the name and contact details of a contact person who is a natural person who can be contacted in relation to the notice;
 - (e) if the provider is:
 - (i) a licensee; or
 - (ii) a credit representative of a licensee; or
 - (iii) a related body corporate of a person referred to in subparagraph (i) or (ii);
 that licensee's Australian credit licence number;

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- (f) a description of each eligible credit activity for which the provider is proposing to use the exemption under section 6;
- (g) a justification of why exempting each eligible credit activity covered by paragraph (f) will result, or be likely to result, in a benefit to the public that will outweigh the detriment to the public that will result, or be likely to result, from exempting that credit activity;
- (h) a justification of why each eligible credit activity covered by paragraph (f):
 - (i) is new; or
 - (ii) is a new adaptation, or new improvement, of another credit activity;
- (i) the name of any person (including any related body corporate of the provider), other than an employee or director:
 - (i) of the provider; or
 - (ii) of any related body corporate of the provider;
whose role includes being responsible for making significant decisions about the ongoing engaging in of each eligible credit activity covered by paragraph (f), and a description of that role;
- (j) if the assumption were made that each eligible credit activity covered by paragraph (f) is covered by a licence—information for the purposes of ASIC making a decision about whether the requirement in section 37A of the Act (about the fit and proper person test) would be satisfied in relation to the provider and the licence;
- (k) a description of the procedures, memberships and arrangements by which the provider will meet the condition in section 16 (about dispute resolution and compensation) for each eligible credit activity covered by paragraph (f).

Note 1: The same notification may specify 2 eligible credit activities. If it does, each of them will be the subject of a separate exemption under section 6 (assuming the other eligibility criteria are satisfied).

Note 2: Paragraph (j) is relevant for decisions by ASIC under paragraph 8(1)(e).

Note 3: Since paragraph 6(b) requires the notification to be lodged with ASIC in the approved form, the notification must include any information, statements, explanations or other matters required by the form (see section 217 of the Act).

Part 5—Conditions for the exemption

14 Condition—notifying all consumers before engaging in an exempt credit activity

The condition in this section is met for an eligible credit activity if, before engaging in the credit activity with a consumer, the provider clearly and prominently discloses to the consumer that:

- (a) the provider is not authorised by an Australian credit licence to engage in the credit activity; and
- (b) the provider is not a credit representative of a licensee for engaging in the credit activity; and
- (c) the credit activity is being provided under an exemption provided under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020*; and
- (d) some of the normal protections associated with receiving credit activities or credit services from a licensee will not apply; and
- (e) the provider will notify the consumer in writing if any of the events referred to in paragraph 15(a) (which the provider must list) happens.

15 Condition—notifying consumers while engaging in an exempt credit activity

The condition in this section is met for an eligible credit activity if, when engaging in the credit activity with one or more consumers, the provider:

- (a) notifies each of those consumers in writing within 10 business days after the happening of any of the following events:
 - (i) the provider has ceased to engage in credit activities;
 - (ii) the provider has become a Chapter 5 body corporate, or under a foreign law has started to be in a similar position to a Chapter 5 body corporate;
 - (iii) the provider has become bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (iv) the provider has compounded with the provider's creditors, or has made an assignment of the provider's remuneration for the benefit of the provider's creditors;
 - (v) the provider has become authorised by an Australian credit licence to engage in the credit activity;
 - (vi) the provider has become a credit representative of a licensee for engaging in the credit activity;
 - (vii) the provider has ceased to rely on an exemption provided under the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020*;
 - (viii) the credit activity has materially changed;
 - (ix) the credit activity is no longer being offered to new consumers; and

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- (b) notifies ASIC in writing within 10 business days after the happening of any of the events referred to in paragraph (a) (other than the events in subparagraphs (a)(v) and (vi)).

16 Condition—maintaining certain procedures, memberships and arrangements

The condition in this section is met for an eligible credit activity if the provider:

- (a) establishes and maintains an internal dispute resolution procedure that:
 - (i) complies with the standards, and requirements, made or approved for the purposes of subparagraph 47(1)(h)(i) of the Act; and
 - (ii) covers disputes in relation to the engaging in of the credit activity; and
- (b) is a member of the AFCA scheme for the purposes of dealing with complaints against the provider made by consumers in connection with the engaging in of the credit activity; and
- (c) establishes and maintains arrangements that:
 - (i) include holding adequate professional indemnity insurance; or
 - (ii) are approved by ASIC in writing as adequate; for compensating the provider's consumers for loss or damage suffered because of breaches of the Act, or of the conditions in this instrument by the provider or its representatives; and
- (d) continues the memberships referred to in paragraph (b), and the arrangements referred to in paragraph (c), for at least 12 months after the end of the credit activity's testing period.

17 Condition—other obligations

The condition in this section is met for an eligible credit activity if the provider complies with:

- (a) Chapter 3 of the Act (other than paragraphs 113(2)(d), 126(2)(d) and 127(2)(d), section 124A and Part 3-2C), as if the provider were a licensee for the purposes of that Chapter; and
- (b) section 124A and Part 3-2C of the Act, to the extent that those provisions relate to short-term credit contracts, as if the provider were a licensee for the purposes of those provisions; and
- (c) Division 4A of Part 2, and Division 3 of Part 4, of the National Credit Code, as if the provider were a credit provider; and
- (d) Subdivision BA of Division 2 of Part 2 of the ASIC Act, as if the relevant contract (see paragraph (b) of the definition of *eligible credit activity* in section 5 of this instrument) for the credit activity were a consumer contract (within the meaning of subsection 12BF(3) of that Act);

in relation to engaging in the credit activity during the testing period for the eligible class of credit activities that includes the credit activity.

18 Condition—make-good orders

- (1) The condition in this section is met for an eligible credit activity if, when an order under subsection (2) has been given to the provider for the credit activity, the provider:

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- (a) complies with the order within the 30-day period starting on the day after the provider was given the order; and
 - (b) lodges with ASIC, during that 30-day period, a notice in an approved form stating that the provider has complied with the order.
- (2) ASIC may, by written notice given to the provider, order that the provider ensures that specified conduct:
- (a) is engaged in in relation to an eligible credit activity; or
 - (b) is not engaged in in relation to an eligible credit activity;
- if:
- (c) the provider has an exemption under section 6 for the credit activity; and
 - (d) ASIC is satisfied that engaging in the credit activity has resulted, or is likely to result, in significant detriment to one or more consumers.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by ASIC under subsection (2).

Note: This subsection is made for the purposes of paragraph 327(1)(i) of the Act.