

ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 28 September 2020

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

3 Authority

This instrument is made under item 41 of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

4 Definitions

In this instrument:

***Transitional Credit Act*** means the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

Part 2—Declaration

5 Notice requirement

(1) Part 3 of Schedule 2 to the Transitional Credit Act applies in relation to all persons as if that Part were modified or varied by, after item 19, inserting:

“**19A Obligation on certain persons to give notice to ASIC**

(1) Subitem (2) applies to a person (***lender***) who is a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 if both of the following apply:

(a) the lender is a credit provider or lessor in relation to the carried over instrument at any time after 30 June 2010;

(b) the lender is neither of the following:

(i) a licensee;

(ii) a person exempt from the requirement to hold a licence under the National Credit Act.

(2) The lender must lodge with ASIC a notice in the approved form containing the following information:

(a) the lender’s name (including the lender’s principal business name if any);

(b) the name of:

(i) if the lender is a body corporate—each director or secretary of the body corporate; and

 (ii) if the lender is a partnership or the trustees of a trust—each partner or trustee;

(c) the postal address of the lender;

(d) if the principal business address of the lender is different from the postal address—the principal business address;

(e) if the lender has an Australian Business Number—the Australian Business Number;

(f) the number of carried over instruments held by the lender and the total amount owed to the lender under the instruments;

(g) whether the lender is a member of the AFCA scheme;

(h) an estimate of the date on which the longest running carried over instrument will be finalised, if payments are made in accordance with the terms of the instrument;

(i) if the lender is a prescribed unlicensed carried over instrument lender—the grounds on which the lender is a prescribed unlicensed carried over instrument lender; and

(j) any other information requested by ASIC.

The notice must be lodged with ASIC on the first day paragraphs (1)(a) and (b) both apply in relation to the lender.

Civil penalty: 2,000 penalty units.

(3) The lender does not have to comply with subitem (2) if the lender has lodged the notice with ASIC up to 6 weeks before it must be so lodged under that subitem.

(4) The information contained in the notice must be current at the date the notice is lodged with ASIC.

*Offence*

(5) A person commits an offence if:

(a) the person is subject to a requirement under subitem (2); and

(b) the person engages in conduct; and

(c) the conduct contravenes this requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

*Strict liability offence*

(6) A person commits an offence if:

(a) the person is subject to a requirement under subitem (2); and

(b) the person engages in conduct; and

(c) the conduct contravenes this requirement.

Criminal penalty: 10 penalty units

(7) Subitem (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.”.

Note 1: The declaration in this instrument substantially produces the effect that item 39A of Schedule 2 to the Transitional Credit Act (as notionally inserted by regulation 16E of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010* as in force on 24 May 2010) would have had but for some drafting anomalies. As a result of those anomalies, that item did not have any operation.

Note 2: A prescribed unlicensed carried over instrument lender is defined in subsection 5(1) and section 5A of the *National Consumer Credit Protection Act 2009* (as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*).