



**ASIC**  
Australian Securities &  
Investments Commission

---

## **ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2021/429**

---

I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 19 July 2021

Anthony Graham

---

## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument.....	3
2 Commencement .....	3
3 Authority.....	3
4 Definitions and interpretation .....	3
<b>Part 2—Protocol</b>	<b>7</b>
5 Purpose .....	7
6 Recruiting licensee—obligation to take reasonable steps to obtain reference	7
7 Recruiting licensee—obligation to seek consent of representative .....	9
8 Recruiting licensee—requesting a reference .....	10
9 Referee licensee—obligation to give reference .....	11
10 Agents .....	12
11 Use of information.....	12
12 No arrangement or agreements .....	13
13 Contact for reference checking and information sharing .....	13
14 Record-keeping.....	13
<b>Schedule 1—Template Consent Form</b>	<b>14</b>
<b>Schedule 2—Template Reference Request</b>	<b>17</b>
<b>Schedule 3—Template Reference Request</b>	<b>21</b>

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2021/429*.

### 2 Commencement

This instrument commences on the later of:

- (a) 1 October 2021; and
- (b) 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:

- (a) subsection 912A(3A) of the *Corporations Act 2001*; and
- (b) subsection 47(3A) of the *National Consumer Credit Protection Act 2009*.

### 4 Definitions and interpretation

- (1) In this instrument:

***authorised representative*** has the same meaning as in section 761A of the Corporations Act.

***clarification or update request***, in relation to a reference about a prospective representative given to a recruiting licensee by a referee licensee, means a request by the recruiting licensee to clarify specific information or provide an update on any unresolved matters mentioned in the reference.

***Corporations Act*** means the *Corporations Act 2001*.

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

***credit assistance*** has the same meaning as in section 8 of the Credit Act.

***credit licensee*** has the same meaning as ***licensee*** in subsection 5(1) of the Credit Act.

**credit representative** has the same meaning as in subsection 5(1) of the Credit Act.

**current credit licensee**, in relation to a prospective representative of a recruiting licensee, means a licensee mentioned in paragraph (b) of the definition of **current licensee**.

**current financial services licensee**, in relation to a prospective representative of a recruiting licensee, means a licensee mentioned in paragraph (a) of the definition of **current licensee**.

**current licensee**, in relation to a prospective representative of a recruiting licensee, means:

- (a) a financial services licensee in respect of which the prospective representative is currently a representative; and
- (b) a credit licensee in respect of which the prospective representative is currently a representative.

**financial services licensee** has the same meaning as in section 761A of the Corporations Act.

**former credit licensee**, in relation to a prospective representative of a recruiting licensee, means a licensee mentioned in paragraph (b) of the definition of **former licensee**.

**former financial services licensee**, in relation to a prospective representative of a recruiting licensee, means a licensee mentioned in paragraph (a) of the definition of **former licensee**.

**former licensee**, in relation to a prospective representative of a recruiting licensee, means:

- (a) a financial services licensee in respect of which the prospective representative:
  - (i) was a representative for any period of time in the 5 year period preceding a request for a reference about the prospective representative by the recruiting licensee; and
  - (ii) is no longer a representative; and
- (b) a credit licensee in respect of which the prospective representative:
  - (i) was a representative for any period of time in the 5 year period preceding a request for a reference about the prospective representative by the recruiting licensee; and
  - (ii) is no longer a representative.

**mortgage broker** has the same meaning as in section 15B of the Credit Act.

**personal information** has the same meaning as in section 6 of the Privacy Act.

**Privacy Act** means the *Privacy Act 1988*.

**prospective representative**: see the definition of **recruiting licensee**.

**recruiting credit licensee** means a recruiting licensee mentioned in paragraph (b) of the definition of **recruiting licensee**.

**recruiting financial services licensee** means a recruiting licensee mentioned in paragraph (a) of the definition of **recruiting licensee**.

**recruiting licensee** means:

- (a) a financial services licensee that is considering employing or authorising an individual (**prospective representative**) who is:
  - (i) a financial services licensee or a credit licensee; or
  - (ii) a former or current representative of a financial services licensee or a credit licensee;

as a representative of the licensee, where there are reasonable grounds to suspect that, if the individual becomes a representative of the licensee, the individual will provide personal advice to retail clients in relation to a relevant financial product; and

- (b) a credit licensee that is considering employing or authorising an individual (**prospective representative**) who is:
  - (i) a credit licensee or a financial services licensee; or
  - (ii) a former or current representative of a credit licensee or a financial services licensee;

as a representative of the licensee, where there are reasonable grounds to suspect that, if the individual becomes a representative of the licensee, the individual will:

- (iii) provide credit assistance in relation to credit contracts secured by mortgages over residential property; and
- (iv) be a mortgage broker or a director, employee or agent of a mortgage broker.

**referee licensee**, in relation to a prospective representative of a recruiting licensee, means:

- (a) a credit licensee or a financial services licensee from whom subsection 6(1) requires the recruiting licensee to take reasonable steps to obtain a reference in relation to the prospective representative; and
- (b) any other former licensee from whom the recruiting licensee requests a reference under subsection 8(3) in relation to the prospective representative.

**reference**, in relation to a prospective representative, includes information about the prospective representative.

**relevant financial product** has the same meaning as in section 910A of the Corporations Act.

**representative**:

- (a) a **representative** of a financial services licensee has the same meaning as in section 910A of the Corporations Act; and
- (b) a **representative** of a credit licensee has the same meaning as in subsection 5(1) of the Credit Act.

**template consent form** means the form in Schedule 1 to this instrument.

**template reference request** means, in relation to a prospective representative, the applicable template in:

- (a) if a reference is being sought from a licensee who is not the prospective representative—Schedule 2 to this instrument; and
- (b) if a reference is being sought from the prospective representative themselves as a licensee—Schedule 3 to this instrument.

- (2) In this instrument, a reference to a reference, consent (given or withdrawn), notice, request, clarification or update, explanation or record is a reference to those things in writing.

## Part 2—Protocol

### 5 Purpose

This Protocol is made for the purposes of:

- (a) paragraph 912A(1)(cc) of the Corporations Act; and
- (b) paragraph 47(1)(ea) of the Credit Act.

### 6 Recruiting licensee—obligation to take reasonable steps to obtain reference

(1) A recruiting licensee that is considering employing or authorising an individual as a prospective representative of the recruiting licensee must take reasonable steps to obtain a reference about the individual from:

- (a) where the individual:
  - (i) is a representative of a current financial services licensee and has been a representative of that licensee for 12 months or more—that licensee; and
  - (ii) is a representative of a current financial services licensee and has been a representative of that licensee for less than 12 months—that licensee and the most recent former financial services licensee (if any) of which the individual was a representative; and
  - (iii) is not a representative of a current financial services licensee, but was a representative of the most recent former financial services licensee for 12 months or more—that licensee; and
  - (iv) is not a representative of a current financial services licensee, but was a representative of the most recent former financial services licensee for less than 12 months—that licensee and the next most recent former financial services licensee (if any) of which the individual was a representative; and
  - (v) is a financial services licensee—that licensee; and
- (b) where the individual:
  - (i) is a representative of a current credit licensee and has been a representative of that licensee for 12 months or more—that licensee; and
  - (ii) is a representative of a current credit licensee and has been a representative of that licensee for less than 12 months—that

licensee and the most recent former credit licensee (if any) of which the individual was a representative; and

- (iii) is not a representative of a current credit licensee, but was a representative of the most recent former credit licensee for 12 months or more—that licensee; and
- (iv) is not a representative of a current credit licensee but was a representative of the most recent former credit licensee for less than 12 months—that licensee and the next most recent former credit licensee (if any) of which the individual was a representative; and
- (v) is a credit licensee—that licensee.

Note 1: Where an individual is a representative of two or more current licensees, this subsection applies in relation to each current licensee.

Note 2: This subsection sets out minimum requirements. A recruiting licensee may seek additional references from other former licensees: see subsection 8(3) of this Protocol.

### *Reasonable steps*

- (2) For the purposes of this section, taking *reasonable steps* to obtain a reference from a referee licensee about an individual as a prospective representative includes:
  - (a) seeking the consent of the individual in accordance with section 7 of this Protocol; and
  - (b) if the consent is obtained—requesting a reference from the referee licensee in accordance with section 8 of this Protocol.

### *Sub-authorisations*

- (3) For the purposes of this section:
  - (a) a recruiting licensee that gives consent or is considering giving consent in relation to a specified individual:
    - (i) for the purposes of subsection 916B(3) of the Corporations Act to provide personal advice to retail clients in relation to a relevant financial product; or
    - (ii) for the purposes of section 65 of the Credit Act to provide credit assistance in relation to credit contracts secured by mortgages over residential property where that individual will be a mortgage broker or a director, employee or agent of a mortgage broker;

is taken to be considering authorising the specified individual as a prospective representative of the recruiting licensee; and



- (b) a recruiting licensee that gives, has given, or is considering giving, consent in relation to a specified class of individuals (the membership of which might change from time to time):
  - (i) for the purposes of subsection 916B(3) of the Corporations Act to provide the personal advice specified in subparagraph (a)(i); or
  - (ii) for the purposes of section 65 of the Credit Act to provide the credit assistance specified in subparagraph (a)(ii);

is taken to be considering authorising each individual that, on or after the day of commencement of this instrument, will fall within the specified class for the first time.

## 7 Recruiting licensee—obligation to seek consent of representative

- (1) A recruiting licensee must seek the consent, using the template consent form, of a prospective representative to undertake reference checking and information sharing in accordance with this Protocol for the purposes of:
  - (a) considering their employment or authorisation as a representative; and
  - (b) complying with the general conduct obligations of a licensee in accordance with:
    - (i) for a recruiting financial services licensee—section 912A of the Corporations Act;
    - (ii) for a recruiting credit licensee—section 47 of the Credit Act;if the prospective representative becomes employed or authorised by the recruiting licensee as a representative; and
  - (c) collecting, using, disclosing and storing personal information about the prospective representative from a referee licensee for the purposes described in paragraphs (a) and (b).
- (2) A recruiting licensee that:
  - (a) has not obtained the consent of a prospective representative; or
  - (b) has obtained a consent that has subsequently ceased, or been withdrawn by the prospective representative;

must not request a reference from a referee licensee about the prospective representative.

Note: Unless withdrawn earlier, a consent will cease at the end of the period of 12 months commencing the day after it is given: see paragraph 5 of the template consent form.

- (3) If, after a recruiting licensee has requested a reference, or made a clarification or update request in relation to a reference, about a prospective representative from a referee licensee:
  - (a) the prospective representative withdraws their consent or the consent ceases; and
  - (b) the referee licensee has not given a reference or a clarification or update (as the case may be);

the recruiting licensee must give a notice to the referee licensee stating that the prospective representative has withdrawn their consent or the consent has ceased (as the case may be).

## **8 Recruiting licensee—requesting a reference**

- (1) This section applies if:
  - (a) a recruiting licensee has obtained the consent of a prospective representative to request a reference from a referee licensee about the prospective representative; and
  - (b) the consent has not ceased or been withdrawn by the prospective representative.
- (2) A recruiting licensee must:
  - (a) make a request, using the template reference request, to each referee licensee from whom subsection 6(1) requires the recruiting licensee to take reasonable steps to obtain a reference; and
  - (b) give a copy of the consent of the prospective representative to the referee licensee at the time of making a request for a reference.

### *Additional references from other former licensees*

- (3) A recruiting licensee may request a reference, using the template reference request, in relation to a prospective representative from a former licensee other than those from whom subsection 6(1) requires the recruiting licensee to take reasonable steps to obtain a reference, in accordance with this Protocol.

### *Changes to format of template reference request*

- (4) A recruiting licensee may make minor amendments to the format of the template reference request when requesting a reference from a referee licensee, provided that the request includes all the information that is required by the template reference request.

### *Clarification or update requests*

- (5) A recruiting licensee who is given a reference about a prospective representative from a referee licensee may make a clarification or update request within a period of 6 months commencing after the day on which the reference is given.

*No limitation*

- (6) Nothing in this Protocol limits or prevents a recruiting licensee from requesting additional information about a prospective representative from a referee licensee, provided the additional information requested does not reduce the scope of any of the questions in the template reference request.

## **9 Referee licensee—obligation to give reference**

- (1) A referee licensee that receives a request for a reference about a prospective representative from a recruiting licensee in accordance with section 8 of this Protocol must give a reference to the recruiting licensee that:
  - (a) includes all information of which the referee licensee is aware and reasonably considers to be relevant to answer the questions in the template reference request; and
  - (b) is complete, accurate and based on documented facts; and
  - (c) if a question cannot be answered—includes an explanation as to why the question cannot be answered.
- (2) The reference must be given to the recruiting licensee:
  - (a) subject to paragraph (b)—within 10 business days beginning on the day after receiving the request; or
  - (b) within such longer period as agreed between the recruiting licensee and the referee licensee, provided the period is no longer than 30 business days beginning on the day after receiving the request.

Note: For the avoidance of doubt, a referee licensee that has received information from ASIC under section 916G of the Corporations Act or section 73 of the Credit Act in relation to the prospective representative is not required to share this information with another licensee in the performance of their reference checking and information sharing obligations under section 9 of this Protocol.

*Clarification or update requests*

- (3) A referee licensee that receives a clarification or update request in relation to a reference must give a clarification or update that:
  - (a) includes all information of which the referee licensee is aware and reasonably considers relevant to the request; and
  - (b) is complete, accurate and based on documented facts; and

- (c) if a request cannot be answered in any respect—includes the reasons why it cannot be answered.
- (4) The clarification or update must be given to the recruiting licensee:
  - (a) subject to paragraph (b)—within 10 business days beginning on the day after receiving the clarification or update request; or
  - (b) within such longer period as agreed between the recruiting licensee and the referee licensee, provided the period is no longer than 30 business days beginning on the day after receiving the clarification or update request.

#### *Limitation*

- (5) The referee licensee is not required to give information in relation to conduct of the prospective representative that occurred more than 5 years before the reference is given to the recruiting licensee.
- (6) A referee licensee must not give a reference (including a clarification of, or update to, a reference) about a prospective representative to the recruiting licensee if the recruiting licensee has given a notice to the referee licensee stating that the prospective representative has withdrawn their consent or that the consent has ceased.

## **10 Agents**

- (1) The obligations imposed on a financial services licensee or credit licensee in accordance with this Protocol also apply in respect of any agent authorised by the licensee to collect, use, disclose and store personal information on its behalf in respect of a prospective representative for the purposes of reference checking and information sharing in accordance with this Protocol.
- (2) The licensee is responsible for the acts or omissions of its agents in relation to this Protocol.

## **11 Use of information**

Information collected by a financial services licensee or a credit licensee in accordance with this Protocol:

- (a) must only be collected, used, disclosed or stored for the purpose of reference checking and information sharing in accordance with this Protocol; and
- (b) must not be collected, used, disclosed or stored for a purpose other than that for which it was collected unless the individual has consented to that use or disclosure or another exception under the Privacy Act applies.

## **12 No arrangement or agreements**

A financial services licensee or a credit licensee must not enter into any arrangements or agreements with any person that limits its ability to share and disclose information in accordance with this Protocol.

## **13 Contact for reference checking and information sharing**

A financial services licensee or a credit licensee must have in place adequate arrangements to ensure that a recruiting licensee can readily identify how to contact them for the purposes of reference checking and information sharing in accordance with this Protocol.

## **14 Record-keeping**

- (1) A financial services licensee or a credit licensee must keep records which demonstrate compliance with the requirements of this Protocol, including but not limited to records of the following matters:
  - (a) consents given, requested, refused, withdrawn or ceased;
  - (b) references given, received or requested;
  - (c) clarification or update requests, and clarifications or updates;
  - (d) any agreement with any agent in relation to reference checking and information sharing in accordance with this Protocol;
  - (e) any policies and processes for handling personal information of individuals obtained in accordance with this Protocol;
  - (f) complaints received in relation to the Protocol.
- (2) The records must be complete and accurate.
- (3) The records required to be kept by this section must be retained for 5 years after the day on which the last entry was made in the record.

## Schedule 1—Template Consent Form

### Prospective Representative Consent to the collection, use, disclosure and storage of information to conduct reference checks

[name of prospective representative] (*Prospective Representative/You*)

1. We, [Insert recruiting licensee name and licensee number], our related entities and any agent(s) acting on our behalf (*Us/We*), request your consent to collect, use, disclose and store your personal information for the purposes of Us considering your suitability for employment / authorisation by Us in relation to:
  - (a) complying with the ASIC Reference Checking and Information Sharing Protocol under the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2021/429* (the **Protocol**);
  - (b) should You be employed or authorised by Us—complying with the general conduct obligations of a licensee under section 912A of the *Corporations Act 2001* or subsection 47(1) of the *National Consumer Credit Protection Act 2009* which include, taking steps to ensure that a licensee’s representatives comply with financial services laws or credit legislation and ensuring that representatives are adequately trained, and are competent, to provide financial services or credit activities.
2. The personal information (**Information**) that may be collected, used, disclosed and stored by Us is likely to include, but is not limited to, information in relation to:
  - (a) the scope and length of your employment or authorisation;
  - (b) your compliance audit record, including the results or outcomes of compliance audits;
  - (c) compensation that was given to a client either as a financial payment offered to a client or any other non-financial remedy given to a client, as a result of your activities;
  - (d) ASIC reportable breaches caused or contributed to by You;
  - (e) your conduct in relation to financial services or credit activities while you were employed or authorised by, and circumstances surrounding your departure from, the referee licensee;

- (f) details of any unresolved inquiry or investigation concerning your conduct in progress at the time that the reference is given;
  - (g) any clarification or updates relating to the matters reported in the reference for a period of up to 6 months commencing after the day on which the reference is given.
3. We will collect this Information from referee licensees, being one or more of the current and/or former licensees to whom You were/are a representative in the preceding 5 years and only in relation to the 5-year period preceding the day the reference was given.
  4. Information collected by Us will be collected, used, disclosed and stored by Us for the purposes described above, unless use or disclosure is required or authorised by law, including the *Privacy Act 1988* (Cth), or You consent to the collection, use, disclosure or storage for a different purpose.
  5. Information collected by Us will be collected, used and disclosed for a period of 12 months commencing after the day You give consent, for the purposes described above, unless You have notified Us in writing that You withdraw this Consent. Unless it is withdrawn earlier, this Consent will cease at the end of that 12 month period.
  6. Information collected by Us will be stored for 5 years in accordance with the Protocol.

## Declaration of Prospective Representative

I declare that I have read and understood the content of this consent form and consent to the collection, use and disclosure of this Information for a period of up to 12 months by **[insert name of recruiting licensee]**, or until you are notified in writing that I have withdrawn it, whichever occur earlier.

I acknowledge that the defence of qualified privilege applies when a referee licensee shares Information about a representative in accordance with the Protocol. Licensees have a defence of qualified privilege against a defamation action or a breach of confidence action resulting from information shared about a representative in the course of complying with their obligations under the Protocol.

Note: This defence does not apply to any information a referee licensee shares with Us that they are not obliged to give under the Protocol (e.g. information about conduct that occurred more than 5 years before the reference was given or information that is additional to that required under the Protocol, including any further background checking we may undertake on You).

I understand that the Information collected will be stored for 5 years in accordance with the Protocol.

Full name (print):

---

Date of birth:

---

ASIC reference number:

---

Signature:

---

Date:

---



## Schedule 2—Template Reference Request

### Reference Request

[name of prospective representative being recruited] (the *representative*)

[Insert recruiting licensee name and licensee number] requests a reference for the representative under the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2021/429* (the **Protocol**) for the purposes of:

- considering the representative’s employment or authorisation as a financial adviser or mortgage broker; and
- complying with the general conduct obligations of a licensee under section 912A of the *Corporations Act 2001* and section 47 of the *National Consumer Credit Protection Act 2009* (where the representative becomes employed or authorised by the recruiting licensee).

### Questions

#### 1. Background information

- (a) Provide the name of the organisation, the person(s) who completed the reference and the date of completion of the reference.
- (b) Confirm the representative’s role(s) and period of employment or authorisation.
- (c) Provide a brief description of the representative’s main responsibilities.
- (d) Advise the ASIC reference number (if applicable) in relation to the representative.

#### 2. Compliance audits

Note: Question 2 only applies to a representative that is currently, or was previously, a financial adviser or mortgage broker.

Complete the table in this question by providing information about compliance audits undertaken in the 5-year period preceding the date the reference is given. In completing the table, indicate whether the compliance audit results/outcome were about non-compliance with financial services laws or credit legislation, and/or non-compliance with licensee processes. Also include a description of any remedial action (see definitions below).

Date of compliance audit	Brief description of results/outcomes	Brief description of remedial action

### 3. Conduct of the representative

Note: Question 3 is to be answered in relation to the 5-year period preceding the date the reference is given.

- (a) Did you report a breach to ASIC (whether under former section 912D or section 912DAA of the *Corporations Act 2001* or section 50B of the *National Consumer Credit Protection Act 2009*) in respect of the representative? [Yes/No]
- (b) If you answered Yes to Question 3(a), provide details on the relevant date, type and nature of the breach. Also include details of remedial action.
- (c) Did (or does) the representative’s conduct or performance (including acts or omissions) in relation to the provision of financial services or engaging in credit activities while employed with, or authorised under, your licence, or the circumstances surrounding the representative’s departure from your licence, concern the representative’s involvement in any of the following:
  - (i) dishonesty [Yes/No]
  - (ii) unprofessional conduct [Yes/No]
  - (iii) conduct justifying instant dismissal or immediate termination of representative status [Yes/No]
  - (iv) refusal or deliberate non-compliance in relation to the financial services laws or the credit legislation [Yes/No]
  - (v) gross incompetence or gross negligence [Yes/No]
  - (vi) a breach of the Financial Planners and Advisers Code of Ethics 2019 [Yes/No]

Note: The conduct need not involve a contravention of the law.

- (d) If you answered Yes to any of the matters in Question 3(c), provide a brief summary of the details, including relevant information in relation to internal assessments, external notifications or complaints against the representative in connection with the provision of financial services or engaging in credit activities, and any remedial action.

### 4. Unresolved matters

- (a) Is there an inquiry or investigation in progress by your organisation in relation to this representative in connection with the provision of financial

services or engaging in credit activities, in relation to the 5 year period preceding the date the reference is given? [Yes/No]

- (b) If you answered Yes to Question 4(a), provide:
- (i) a brief description of the nature of the circumstances that triggered the inquiry/investigation (for example a breach, complaint, compliance audit, external notification, internal assessment/review or other circumstance); and
  - (ii) details of the progress and status of the inquiry/investigation.
- (c) If you answered Yes to Question 4(a), was the representative made aware of the inquiry/investigation? [Yes/No]

### **Interpretation**

In this request, a word or an expression that is defined in section 4 of the Protocol has the same meaning in this request.

#### Additional definitions

In this request:

**client remedial action** includes:

- (a) the representative being instructed to provide corrective disclosure to a client; and
- (b) compensation being given to a client either as a financial payment or other non-financial remedy.

**complaint** means a “complaint” as defined in Australian / New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014.

**compliance audit**, in relation to a representative, means an audit or review by or on behalf of a financial services licensee or credit licensee of the representative’s compliance with financial services laws, credit legislation and licensee policies and procedures as part of the licensee’s monitoring and supervision obligations under paragraphs 912A(1)(ca) and (f) of the *Corporations Act 2001* or paragraphs 47(1)(e) and (g) of the *National Consumer Credit Protection Act 2009*.

**remedial action** includes representative remedial action or client remedial action.

**representative remedial action** includes:

- (a) additional training of the representative;
- (b) increased monitoring and supervision of the representative;

- (c) consequence management for the representative (including performance management, financial consequence or formal warnings); and
- (d) suspension of the authorisation of the representative.

**unprofessional conduct** of a representative includes the following kinds of conduct of the representative:

- (a) conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to retail clients or the public;
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and
- (c) conduct which is, or could reasonably be considered as likely to be, prejudicial to the interests of a financial services licensee or a credit licensee or retail clients,

and need not involve a contravention of any law.

## Schedule 3—Template Reference Request

### Reference Request

[name of prospective representative licensee being recruited]

[insert recruiting licensee name and licensee number] requests a reference from you under the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/429* (the **Protocol**) for the purposes of:

- considering your employment or authorisation as a financial adviser or mortgage broker; and
- complying with the general conduct obligations of a licensee under section 912A of the *Corporations Act 2001* and section 47 of the *National Consumer Credit Protection Act 2009* (where you become employed or authorised by the recruiting licensee).

### Questions

#### 1. Background information

- (a) Provide your name and the date of completion of the reference.
- (b) Provide the ASIC reference number in relation to your licence and the adviser number (if applicable).
- (c) Provide a brief description of your main responsibilities and licence authorisations.

#### 2. Compliance audits

Note : Question 2 only applies if you are currently a financial adviser or mortgage broker.

Complete the table in this question by providing information about compliance audits undertaken in relation to the provision of financial services or engaging in the credit activities under your licence in the 5-year period preceding the date the reference is given. In completing the table, indicate whether the compliance audit results/outcome were about non-compliance with financial services laws or credit legislation, and/or non-compliance with licensee processes. Also include a description of any remedial action (see definitions below).

Date of compliance audit	Brief description of results/outcomes	Brief description of remedial action

### 3. Your conduct

Note: Question 3 is to be answered in relation to the 5-year period preceding the date the reference is given.

- (a) Did you report a breach to ASIC (whether under former section 912D or section 912DAA of the *Corporations Act 2001* or section 50B of the *National Consumer Credit Protection Act 2009*) in respect of your conduct in relation to the provision of financial services or engaging in the credit activities under your licence? [Yes/No]
- (b) If you answered Yes to Question 3(a), provide details on the relevant date, type and nature of the breach. Also include details of remedial action.
- (c) Did (or does) your conduct or performance (including acts or omissions) in relation to the provision of financial services or engaging in credit activities under your licence involve any of the following:
  - (i) dishonesty [Yes/No]
  - (ii) unprofessional conduct [Yes/No]
  - (iii) refusal or deliberate non-compliance in relation to the financial services laws or the credit legislation [Yes/No]
  - (iv) gross incompetence or gross negligence [Yes/No]
  - (v) a breach of the Financial Planners and Advisers Code of Ethics 2019 [Yes/No]

Note: The conduct need not involve a contravention of the law.

- (d) If you answered Yes to any of the matters in Question 3(c), provide a brief summary of the details, including relevant information in relation to, internal assessments, external notifications or complaints in connection with the provision of financial services or credit assistance, about or arising from your conduct or performance (including any act or omission).

### 4. Unresolved matters

- (a) Is there an inquiry or investigation in progress relating to your conduct in connection with the provision of financial services or engaging in credit activities under your licence, in relation to the 5-year period preceding the date the reference is given? [Yes/No]
- (b) If you answered Yes to Question 4(a), provide:

- (i) a brief description of the nature of the circumstances that triggered the inquiry/investigation (for example a breach, complaint, compliance audit, external notification, internal assessment/review or other circumstance); and
- (ii) details of the progress and status of the inquiry/investigation.

## Interpretation

In this request, a word or an expression that is defined in section 4 of the Protocol has the same meaning in this request.

### Additional definitions

In this request:

**client remedial action** includes:

- (a) corrective disclosure being given to a client; and
- (b) compensation being given to a client either as a financial payment or other non-financial remedy.

**complaint** means a “complaint” as defined in Australian / New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014.

**compliance audit**, means an audit or review of a licensee’s compliance with financial services laws, credit legislation and licensee policies and procedures as part of the licensee’s obligations under paragraphs 912A(1)(c) of the *Corporations Act 2001* or paragraphs 47(1)(d) of the *National Consumer Credit Protection Act 2009*.

**other remedial action** includes additional training.

**remedial action** includes client remedial action or other remedial action.

**unprofessional conduct** of a licensee includes the following kinds of conduct of the licensee:

- (a) conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to retail clients or the public;
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and
- (c) conduct which is, or could reasonably be considered as likely to be, prejudicial to the interests of a financial services licensee or a credit licensee or retail clients,

and need not involve a contravention of any law.