

ASIC Class Order [CO 10/1230]

Clarification of credit disclosure obligations - including commencement

Issued 16/12/2010
Registered 21/12/2010
Effective 1/1/2011

Class Order [CO 10/1230] varies the National Consumer Credit Protection Regulations 2010 to clarify the postponement of commencement of certain credit disclosure obligations and the provision relating to the manner in which a credit disclosure document can be given.

This instrument has effect under s163(3)(d) of the *National Consumer Credit Protection Act 2009* and s203A(3) of the National Credit Code.

This compilation was prepared on 24 December 2010 taking into account amendments up to [CO 10/1269]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission

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

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

Enabling provision

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

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

Title

2. This instrument is ASIC Class Order [CO 10/1230].

Commencement

3. This instrument commences on the later of:
 - (a) the day it is registered under the *Legislative Instruments Act 2003*; and
 - (b) 1 January 2011.

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

Declaration

4. The provisions to which Part 3-7 of the Act applies apply in relation to all persons as if provisions of the *National Consumer Credit Protection Regulations 2010* (the *Regulations*) were omitted, modified or varied as follows:
 - (a) in regulation 26, in the definition of *disclosure document*, omit paragraph (e);
 - (b) omit paragraph 28L(1)(m);
 - (c) in subregulation 28N(1) omit “a relevant provision of the Act, other than section 114 or 137,”, substitute “section 113, 121, 126, 127, 136, 144, 149, 150, 158 or 160 of the Act (which deal with credit guides and proposal disclosure documents)”;
 - (d) in paragraph 28N(2)(b) omit “Act.”, substitute “Act or section 16 of the Code.”.

[*Historical note:* Subparagraph 4(c) replaced 1/1/2011 [CO 10/1269]. Subparagraph 4(c) previously read:

“(c) in subregulation 28N(1) omit “a relevant provision of the Act, other than section 114 or 137,”, substitute “section 113, 126, 127, 136, 149, 150, 158 or 160 of the Act (which deal with credit guides)”.”.]

Exemption

5. A credit provider does not have to comply with subsection 16(1) of the Code in relation to a debtor where both of the following apply:
 - (a) the credit provider has given to the debtor in accordance with paragraph 6:
 - (i) a precontractual statement (*disclosure document*) setting out the matters required by section 17 of the Code to be included in a contract document; and
 - (ii) an information statement (*disclosure document*) of the debtor’s statutory rights and statutory obligations in the

form required by the regulations made for the purposes of paragraph 16(1)(b) of the Code;

- (b) the precontractual statement contains the financial information specified by and in the form prescribed by the regulations made for the purposes of subsection 16(4) of the Code.
6. For the purposes of paragraph 5:
- (a) A credit provider may, with the consent of a debtor, give a disclosure document to the debtor by:
 - (i) making the document available for a reasonable period on the credit provider's information system for retrieval by electronic communication by the debtor; and
 - (ii) promptly notifying the debtor by electronic communication that the document is available for retrieval on that information system and the nature of the document; and
 - (iii) providing the debtor with the ability to retrieve the document by electronic communication.
 - (b) A debtor may consent to the giving of disclosure documents by electronic communication only after being told that, if consent is given:
 - (i) paper documents may no longer be given; and
 - (ii) electronic communications must be regularly checked for documents; and
 - (iii) consent to the giving of documents by electronic communication may be withdrawn at any time.
 - (c) If a disclosure document is given by sending it to a nominated electronic address or in a manner described in this paragraph:
 - (i) it must be in a format that allows it to be saved to an electronic file and to be printed; and
 - (ii) at the time it was sent or was made available on the credit provider's information system, it would have been reasonable to expect that the intended recipient would be able to save it to an electronic file and print it.
 - (d) If a disclosure document is not given to a debtor personally, or to a person acting on debtor's behalf, the credit provider must be reasonably satisfied that the debtor has received the disclosure document before engaging in further credit

activities in relation to the debtor's credit contract. A person is not acting on the debtor's behalf if the person is engaging in credit activities.

- (e) A credit provider may be reasonably satisfied that a debtor has received a disclosure document (unless the debtor advises the credit provider otherwise) if the disclosure document was properly addressed to the debtor and sent to that address (including an electronic address or fax number).
- (f) A disclosure document may be combined in a single document with another disclosure document and/or one or more disclosure documents within the meaning of regulation 26 of the Regulations (as affected by this instrument) only if all requirements of the Act and the Regulations that relate to the documents are met.

Dated this 16th day of December 2010

Signed by Stephen Yen PSM

as a delegate of the Australian Securities and Investments
Commission

Notes to ASIC Class Order [CO 10/1230]**Note 1**

ASIC Class Order [CO 10/1230] (in force under s163(3)(d) of the *National Consumer Credit Protection Act 2009* and s203A(3) of the National Credit Code) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

| Instrument number | Date of FRLI registration | Date of commencement | Application, saving or transitional provisions |
|--------------------------|--------------------------------------|-----------------------------|---|
| [CO 10/1230] | 21/12/2010 (<i>see</i> F2010L03310) | 1/1/2011 | |
| [CO 10/1269] | 24/12/2010 (<i>see</i> F2010L03429) | 1/1/2011 | - |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|---------------------|
| Subpara 4(c) | rs. [CO 10/1269] |