

913A.

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

### COMMONWEALTH BANK OF AUSTRALIA

ABN 48 123 123 124

#### 1 DEFINITIONS

1.1 In addition to terms defined elsewhere in this undertaking, the following definitions are used:

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**NCCP Act** means the *National Consumer Credit Protection Act 2009* (Cth).

1.2 Except so far as the contrary intention appears in this undertaking the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this undertaking as if the provisions of those acts were provisions of this undertaking.

#### 2 BACKGROUND

##### ASIC's role

2.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2 From 1 July 2010 ASIC's responsibilities were expanded to include the administration and enforcement of the NCCP Act which regulates consumer credit in Australia.

##### Commonwealth Bank of Australia

2.3 Commonwealth Bank of Australia (**CBA**) operates a financial services business, including engaging in credit activities.

2.4 Since 1 March 2011, CBA has held an Australian Credit Licence (No. 234945) (**ACL**) which authorises CBA to provide credit cards and related services.

##### ASIC's Views

2.5 On 1 July 2012 changes to the NCCP Act governing how credit providers can invite their customers to apply for increases to their credit card limits will

come into effect. The purpose of this reform is to assist consumers to actively choose whether to increase their credit limit, rather than being prompted to do so by unsolicited letters from their credit provider.

- 2.6 The changes to the NCCP Act include the following.
- (a) Credit providers will be prohibited from sending invitations to credit card holders inviting them to apply for a credit limit increase (ss133BE(1) of the NCCP Act which comes into effect on 1 July 2012).
  - (b) However, it will be a defence to a breach of s133BE(1) if the credit provider has obtained express consent from the credit card holder to make credit limit increase invitations (ss133BF(1) of the NCCP Act which comes into effect on 1 July 2012).
- 2.7 In December 2011 ASIC approached CBA and notified it of certain concerns relating to the approach CBA had taken with respect to seeking consents from its credit card customers to receive credit limit increase invitations from 1 July 2012.
- 2.8 On the 12<sup>th</sup> and 13<sup>th</sup> of December 2011 CBA had sought, through electronic messages transmitted to its credit card customers (**Electronic Messages**), to obtain consents from those customers to receive credit limit increase invitations for the purposes of:
- (a) s133BF of the National Consumer Credit Protection Act 2009 (which comes into effect 1 July 2012); and
  - (b) the transitional provisions set out in Schedule 4, Part 1, section 3, of the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009, which permit credit providers to rely on consents obtained prior to the commencement of s133BF subject to certain conditions.
- 2.9 ASIC's view is that the Electronic Messages were misleading. ASIC is of the view that the messages:
- (a) suggested that if CBA's customers did not respond to the Electronic Messages they would lose the chance to receive credit limit increase offers;
  - (b) suggested that if CBA's customers did not respond to the Electronic Messages they could miss out on opportunities to access extra funds should they need them; and
  - (c) created the impression that customers would miss out on the opportunity to access extra funds if they did not act urgently, which may have lead customers to respond without properly considering their options.
- 2.10 In fact, under the changes to the law customers can provide their consent to receive credit limit increase invitations at any time. Further, nothing in the

legislation prevents customers from requesting credit limit increases from their financial institutions at any time, nor are these applications assessed differently to those made in response to invitations.

- 2.11 Further, ASIC's view is that the approach taken to obtaining the consents may not satisfy the applicable legislative requirements. As a result, ASIC considers that if CBA:
- (a) does not address these concerns and obtain new consents from customers who elected to opt-in in response to its Electronic Messages; and
  - (b) CBA relies on the consents obtained to send out credit limit increase invitations after 1 July 2012,

CBA's actions could then amount to a breach of s133BF of the NCCP Act.

### **Acknowledgement of Views**

- 2.12 CBA acknowledges ASIC's views, and that those views are reasonably held, and will take steps to address those views.
- 2.13 CBA is committed to fully complying with the new credit card reforms, including the safeguards afforded to customers against receiving unsolicited credit limit increase invitations.
- 2.14 ASIC notes that CBA has fully co-operated and worked constructively with ASIC in the matter.

## **3 UNDERTAKINGS**

### **Acceptance of Enforceable Undertaking**

- 3.1 Under s93AA of the ASIC Act CBA has offered the undertakings in paragraphs 3.2 to 3.3 and ASIC has agreed to accept those undertakings as an alternative to commencing civil proceedings or pursuing administrative action.

### **Obtaining new consents**

- 3.2 CBA will not rely in any way on the credit limit increase invitation consents that it obtained from customers who opted-in in response to the Electronic Messages (**Message Recipients**).
- 3.3 CBA will not, on or after 1 July 2012, send any credit limit increase invitations to a Message Recipient unless it has first obtained a new consent from that customer (whether before or after 1 July 2012) in a form that addresses ASIC's concerns.
- 3.4 CBA will as soon as practicable and, in any event, not later than 21 days after the date of this enforceable undertaking, send to each Message Recipient a notice in the form of Annexure A.

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## 4 ACKNOWLEDGEMENTS


- 4.1 CBA acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution; and
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
- 4.2 Further CBA acknowledges that:
- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this undertaking or arising from future conduct; and
  - (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 4.3 CBA undertakes that it will pay the costs of its compliance with this undertaking.
- 4.4 CBA will, within a reasonable period after receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing compliance with this undertaking, including any information or messages sent to customers relating to the changes to NCCP Act governing credit card limit increase invitations, subject to legal professional privilege.
- 4.5 Nothing contained in this undertaking constitutes an admission by CBA.
- 4.6 CBA acknowledges that this undertaking has no operative force until accepted by ASIC, and CBA and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Executed by and on behalf of  
**COMMONWEALTH BANK OF  
AUSTRALIA** (ABN 48 123 123 124) by its duly  
authorised representative:

  
.....  
Signature of Authorised Representative

David Lindberg  
.....

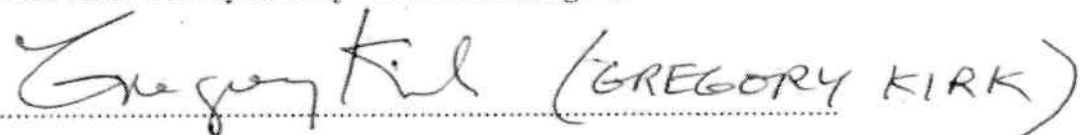
Print name

  
.....  
Signature of Witness

Jeffrey Rebel  
.....

Print name

Accepted by the Australian Securities and Investments Commission under  
s93AA of the ASIC Act by its duly authorised delegate:

  
.....  
(GREGORY KIRK)

Delegate of Australian Securities and Investments Commission

Date: 6 MARCH 2012

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## ANNEXURE A – COMMUNICATION TO EACH MESSAGE RECIPIENT

### **Important notice about your recent consent to receive credit card limit increase invitations**

We apologise for any inconvenience, but we are unable to process your recent consent to receive credit card limit increase invitations.

### **What's happened?**

In December 2011, we sent you an electronic message asking if you wanted to consent to receiving credit card limit increase invitations from us from time to time and you responded to that message.

However, in discussions with the Australian Securities and Investments Commission (ASIC), they questioned whether we did this effectively. ASIC considers that our message may not have met applicable legislative requirements in relation to validly obtaining your consent to receive credit card limit increase invitations from us. They also believe our message was misleading because it suggested that if you did not provide consent in response to our message you:

- would lose the chance to receive credit limit increase invitations in future; and/or
- could miss out on the opportunity to access extra funds.

### **What the law says**

From 1 July 2012 we can only send you credit card limit increase invitations if you consent to receive them. However:

- you can give us your consent at any time (before or after 1 July 2012); and
- in any case, you can apply for an increase to your credit limit at any time.

### **How This Affects You**

As a result of our discussions with ASIC, we have agreed with them to disregard the consent you provided in December 2011.

If you do not want to receive credit card limit invitations in the future you do not need to do anything. You can still apply for a credit card limit increase at any time.

To provide your consent to receive credit limit increase invitations at any time, click [here](#)

If you have any queries please contact us on [insert telephone number].

