Australian Securities and Investments Commission

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 – Paragraph 41(1)(a) of Schedule 2 – National Consumer Credit Protection Act 2009 – Paragraph 109(1)(a) – National Credit Code – Subsection 203A(1) – Exemptions

Enabling legislation

1. The Australian Securities and Investments Commission (***ASIC***) makes this instrument under:

   (a) paragraph 41(1)(a) of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (the ***Transitional Credit Act***);

   (b) paragraph 109(1)(a) of the *National Consumer Credit Protection Act 2009* (the ***Credit Act***); and

   (c) subsection 203A(1) of the National Credit Code (the ***Code***).

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

Title

2. This instrument is ASIC Instrument [11-0167].

Commencement

3. This instrument commences on 24 May 2011.

Exemption

4. Sydney Legacy ACN 000 048 868 does not have to comply with:

   (a) subitems 6(1) and (2) of Schedule 2 to the Transitional Credit Act;

   (b) subsections 29(1) and (2) of the Credit Act;

   (c) the provisions of the Code (other than Division 3 of Part 2, Division 3 of Part 4, and Part 5);

   (d) section 93 of the Code to the extent that it prevents Sydney Legacy from enforcing an acceleration clause in a credit contract or mortgage because of the occurrence of any of the following events:

      (i) a debtor or mortgagor that is a registered dependant dies, marries or enters into a de facto relationship

(ii) a debtor or mortgagor that is a registered dependant sells the property in which they reside, or ceases to reside in the property in which they resided at the time of entering into the credit contract.

Note 1: Subitem 6(4) of Schedule 2 to the Transitional Credit Act may provide a defence to a person who engages in a credit activity on behalf of another person that is exempt from subitems 6(1) and (2) of Schedule 2 to the Transitional Credit Act in relation to the credit activity under paragraph 41(1)(a) of Schedule 2 to the Transitional Credit Act.

Note 2: Subsection 29(4) of the Credit Act may provide a defence to a person who engages in a credit activity on behalf of another person that is exempt from subsections 29(1) and (2) of the Credit Act in relation to the credit activity under paragraph 109(1)(a) of the Credit Act.

Where the exemptions apply

5. The exemptions in subparagraphs 4(a) and (b) apply to charitable credit activities engaged in by Sydney Legacy.

6. The exemptions in subparagraphs 4(c) and (d) apply in relation to the provision of credit by Sydney Legacy to a registered dependant.

7. The exemptions in paragraph 4 apply for so long as Sydney Legacy:

(a) is a member of an external dispute resolution scheme specified in ASIC Class Order [CO 10/249] or any instrument that replaces that Class Order; and

(b) has an internal dispute resolution procedure that:

(i) complies with the standards and requirements specified in ASIC Class Order [CO 10/250] or any instrument that replaces that Class Order; and

(ii) covers disputes in relation to charitable credit activities engaged in by Sydney Legacy or its representatives; and

(c) does not engage in a credit activity other than a charitable credit activity.

Conditions

8. In relation to a credit contract or mortgage under which the debtor or mortgagor is a registered dependant, Sydney Legacy must not:

(a) enforce an acceleration clause as the result of the occurrence of an event referred to in sub-subparagraph 4(d)(i) or (ii) unless Sydney Legacy has given to the debtor and any guarantor, or to the mortgagor, a written notice that specifies:

(i) the event that has occurred; and

(ii) how the operation of the acceleration clause will affect the liabilities of the debtor or mortgagor under the contract or mortgage; and

(iii) the amount required to pay out the contract (as accelerated); and

(iv) the date, which must be at least 30 days after the notice is given, for payment of the amount required to pay out the contract; and

(v) the date after which enforcement proceedings and, if relevant, repossession of mortgaged property may begin if the amount required to pay out the contract is not paid as referred to in sub-subparagraph (iv); and

(vi) that, if the debtor or mortgagor is unable to pay the amount required to pay out the contract by the date referred to in sub-subparagraph (iv), the debtor or mortgagor should contact Sydney Legacy immediately to make a request (***hardship request***) that Sydney Legacy not enforce, or postpone enforcing, the acceleration clause; and

(vii) the name and contact details of the person at Sydney Legacy to contact to make a hardship request; and

(viii) that Sydney Legacy may agree to, or refuse, the hardship request but, in any event, Sydney Legacy will provide a response to the request within 21 days of receiving it; and

(ix) that if Sydney Legacy refuses the hardship request, or does not respond to the request within 21 days of receiving it, the debtor or mortgagor can refer the matter to the approved external dispute resolution scheme of which Sydney Legacy is a member; and

(x) the name and contact details of the approved external dispute resolution scheme of which Sydney Legacy is a member; and

(b) enforce an acceleration clause that has been the subject of a hardship request unless Sydney Legacy has given the request due consideration and has given to the debtor or mortgagor a written notice that specifies:

(i) that Sydney Legacy has refused the hardship request and the reasons for the refusal; and

(ii) the name and contact details of the approved external dispute resolution scheme of which Sydney Legacy is a member.

Interpretation

9. In this instrument:

(a) ***charitable credit activity*** means a credit activity within the meaning given by items 1, 2, 4 and 5 of the table in subsection 6(1) of the Credit Act engaged in in relation to a registered dependant.

de facto relationship has the same meaning as in section 4AA of the *Family Law Act 1975*.

registered dependant means a person who satisfies the eligibility requirements to receive benefits of Sydney Legacy as set out in Annex B to The Code of Legacy, version June 2008 (updated May 2009).

(b) sections 195 and 196 of the Code apply to notices that are required or permitted to be given under this instrument.

Dated this 24th day of May 2011

Signed by Felicity Natoli
as a delegate of the Australian Securities and Investments Commission