Australian Securities and Investments Commission
National Credit Code – Subsection 203A(1) – Exemption

Enabling power

1. The Australian Securities and Investments Commission (***ASIC***) makes this instrument under subsection 203A(1) of the National Credit Code (the ***Code***).

   Note: The Code is found in Schedule 1 to the *National Consumer Credit Protection Act 2009* and has effect as a law of the Commonwealth.

Title

2. This instrument is ASIC Instrument [11-0523].

Commencement

3. This instrument commences on 1 July 2011.

Exemption

4. ASIC exempts an equity finance contract entered into by Permanent Custodians Limited ACN 001 426 384 as trustee for Rismark International Funds Management Limited ACN 114 530 139 (the ***credit provider***) from subsection 23(1) of the Code to the extent the contract provides for a credit fee or charge covered by subregulation 79A(1) of the *National Consumer Credit Protection Regulations 2010* of the following kind to be paid on or in relation to the termination of the contract:

   (a) a credit fee or charge (the ***appreciation payment***) that is calculated by reference to a percentage of any increase, over the term of the contract, in the market value of the residential property that secures obligations under the contract; or

   (b) a credit fee or charge (the ***minimum cost payment***) that is calculated by reference to a percentage rate, the amount of credit and the number of years the contract remains in force.

Where this exemption applies

5. The exemption in paragraph 4 applies for so long as the credit provider:

   (a) ensures that the terms of the contract that specify the method of calculation of the appreciation payment and minimum cost payment cannot be varied during the term of the contract; and

   (b) prominently discloses the following matters in the precontractual statement and the contract document:

      (i) the basis on which the appreciation payment and minimum cost payment are calculated; and

      (ii) a warning that the appreciation payment and minimum cost payment may constitute a significant lump sum amount in the event of a significant increase in the value of the residential property or if the contract remains in force for a lengthy period of time; and

(iii) worked dollar examples of how the appreciation payment and minimum cost payment are calculated, including the effect on the amount of the payment of variations to the time of termination of the contract and changes to the value of the residential property.

Interpretation

6. In this instrument:

equity finance contract means a credit contract, under which any of the amount of credit is secured over residential property, for a fixed term that does not expire later than the 25^{th} anniversary of the contract, and which:

(a) contains each of the following terms:

(i) no periodic interest charges apply to the credit provided under the contract unless the debtor is in default; and

(ii) the debtor is not required to make periodic repayments under the contract; and

(iii) the method of calculating the appreciation payment and minimum cost payment is the same at the expiry of the term of the contract, or on termination of the contract at a date earlier than the expiry of the term of the contract; and

(b) contains at least one of the following terms:

(i) the credit provider is entitled to charge, and the debtor is obliged to pay, the appreciation payment, on or in relation to the termination of the contract; or

(ii) the credit provider is entitled to charge, and the debtor is obliged to pay, the greater of the appreciation payment or minimum cost payment, on or in relation to the termination of the contract.

precontractual statement means the statement specified in paragraph 16(1)(a) of the Code.

Dated this 30^{th} day of June 2011

Signed by Amney Elkontar
as a delegate of the Australian Securities and Investments Commission