Australian Securities and Investments Commission
National Consumer Credit Protection Act 2009 — Paragraphs 109(1)(a) and (c) — Paragraph 163(1)(c) - National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 — Paragraph 41(1)(a) of Schedule 2 — Exemption and Declaration

Enabling provisions

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

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

   (b) paragraph 163(1)(c) of the National Credit Act; and

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

Title

2. This instrument is ASIC Instrument [11-1003].

Commencement and cessation

3. This instrument:

   (a) commences on 24 October 2011; and

   (b) ceases to have effect on 18 November 2011.

Exemptions

4. Musicorp Australia Pty Ltd ACN 066 641 325 (the ***unlicensed lender***) is exempt from subsections 29(1) and (2) of the National Credit Act.

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

5. The unlicensed lender is exempt from section 19A of the Transitional Credit Act (as notionally inserted by ASIC Class Order [10/381]).

Declarations

6. The provisions to which Part 2-6 of the National Credit Act applies:

   (a) apply in relation to the unlicensed lender as if Chapter 2 of the National Credit Act applied; and

   (b) apply in relation to the unlicensed lender as if those provisions were omitted, modified or varied as set out in Schedule 1.

7. The provisions to which Part 3-7 of the National Credit Act applies:

(a) apply in relation to the unlicensed lender as if Part 3-4 of Chapter 3 of the National Credit Act applied; and

(b) apply in relation to the unlicensed lender as if those provisions were omitted, modified or varied as set out in Schedule 2.

Where declarations and exemptions apply

8. The exemption in paragraph 4 and the declarations in paragraphs 6 and 7 apply in relation to credit activities specified in items 2 and 3 of the table in subsection 6(1) of the National Credit Act engaged in by the unlicensed lender as a lessor until 18 November 2011.

9. The exemption in paragraph 5 applies where:

(a) the exemption in paragraph 4 applies to the unlicensed lender; and

(b) the unlicensed lender has not:

(i) been granted an Australian credit licence; or

(ii) ceased to carry on credit activities in relation to consumer leases that were entered on or after 1 July 2010.

Dated this 24th day of October 2011

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

SCHEDULE 1 – MODIFICATIONS TO CHAPTER 2

1. **Subsection 5(1), after definition of *tribunal***
insert
"***unlicensed lender***" means a lessor who is exempt from the requirement to hold a licence under this Act under paragraph 109(1)(a)."

2. **Chapter 2, heading**
substitute
"**Chapter 2- Unlicensed lenders**"

3. **Subsection 31(1)**
omit "A licensee"
insert "An unlicensed lender"

4. **Sections 32**
omit

5. **Part 2-2, heading**
substitute "Part 2-2 – Obligations of unlicensed lenders"

6. **Part 2-2, Divisions 1 to 4**
omit

7. **Part 2-2, Division 5, heading**
substitute "Division 5 - General obligations"

8. **Section 47, heading**
substitute "General conduct obligations of unlicensed lender"

9. **Subsection 47(1)**
substitute
"An unlicensed lender must:
(a) do all things necessary to ensure that the credit activities engaged in by the unlicensed lender are engaged in efficiently, honestly and fairly; and
(b) have in place adequate arrangements to ensure that clients of unlicensed lender are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the unlicensed lender or its representatives; and
(c) comply with the credit legislation; and
(d) take reasonable steps to ensure that its representatives comply with the credit legislation; and
(e) have an internal dispute resolution procedure that:
(i) complies with 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 the credit activities engaged in by the unlicensed lender or its representatives; and
(f) be a member of an approved external dispute resolution scheme specified in ASIC Class Order [CO 10/249] or any instrument that replaces that Class Order; and
(g) have compensation arrangements in accordance with section 48."

10. **Subsection 47(2)**
substitute

"For the purposes of paragraph (1)(b), in considering whether a matter is adequate, the nature, scale and complexity of the credit activities engaged in by the licensee must be taken into account."

11. Subsection 47(3), including subsection heading
omit

12. Subsection 48(1)
(a) omit "A licensee"
insert "An unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

13. Subsections 48(2) to (4), including subsection heading
omit

14. Subsection 49(1), subsection heading
omit "licensee"
insert "unlicensed lender"

15. Subsection 49(1)
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit each mention of "the licensee"
insert "the unlicensed lender"

16. Subsection 49(2)
(a) omit each mention of "licensees"
insert "unlicensed lenders"
(b) omit "each licensee"
insert "each unlicensed lender"

17. Subsection 49(3), subsection heading
omit "licensee"
insert "unlicensed lender"

18. Subsection 49(3)
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

19. Subsection 49(5), subsection heading
omit "licensee"
insert "unlicensed lender"

20. Subsection 49(5)
omit each mention of "licensee"
insert "unlicensed lender"

21. Subsection 49(6)
omit "licensee"
insert "unlicensed lender"

22. Section 50
omit

23. Subsection 51(1)
(a) omit each mention of "a licensee"
insert "an unlicensed lender"
(b) omit each mention of "the licensee"
insert "the unlicensed lender"

24. Section 52
omit

25. Section 53
substitute
"Where a person that has been an unlicensed lender ceased to be an unlicensed lender by reason that it has ceased to be a lessor under any consumer leases, the person must, within 15 business days, lodge with ASIC a notice that it is no longer an unlicensed lender."

26. Part 2-2, Division 6
omit

27. Part 2-3, heading
substitute "Part 2-3 – Representatives of unlicensed lenders"

28. Part 2-3, Divisions 1 and 2
omit

29. Section 73, heading
omit "licensee"
insert "unlicensed lender"

30. Section 73
(a) omit each mention of "a licensee"
insert "an unlicensed lender"
(b) omit each mention of "the licensee"
insert "the unlicensed lender"
(c) omit each mention of "A licensee"
insert "An unlicensed lender"

31. Part 2-3, Division 4, heading
omit "licensees"
insert "unlicensed lenders"

32. Section 74
omit "a licensee"
insert "an unlicensed lender"

33. Section 75, heading
omit "licensee"
insert "unlicensed lender"

34. Section 75
(a) omit "one licensee"
insert "one unlicensed lender"
(b) omit each mention of "the licensee"
insert "the unlicensed lender"

35. Section 76, including heading
omit

36. Section 77
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

37. Subsection 78(1)
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

38. Subsection 78(2)
substitute
"The unlicensed lender and the representative are jointly and severally liable to the client in relation to those remedies."

39. Subsection 78(3)
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

40. Subsection 78(4)
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

41. Subsection 78(5)
omit ", 76"

42. Subsection 78(6)
substitute
"However, subsection (5) does not apply to the extent that the agreement provides for a representative of an unlicensed lender to indemnify the lender for a liability of the lender in relation to the representative."

43. Subsection 78(7)
omit "A licensee"
insert "An unlicensed lender"

44. Part 2-4
omit

45. Part 2-5, Division 1
omit

46. Part 2-5, Division 2, heading
omit "licensees"
insert "unlicensed lenders"

47. Section 88

(a) omit each mention of "A licensee"
insert "An unlicensed lender"
(b) omit each mention of "the licensee"
insert "the unlicensed lender"

48. Subsection 88(2)
omit "; and
(c) any trust account statement or trust account report required under section 100."
insert "."

49. Subsection 90(2)
omit "licensee"
insert "unlicensed lender"

50. Section 91
omit "licensee"
insert "unlicensed lender"

51. Section 92
omit each mention of "licensee"
insert "unlicensed lender"

52. Subsection 92(b)
omit

53. Section 93
omit

54. Section 94, heading
omit "licensee's"
insert "unlicensed lender's"

55. Section 94
omit "licensee"
insert "unlicensed lender"

56. Subsection 95(1)
omit "A licensee"
insert "An unlicensed lender"

57. Subsection 96(2)
(a) omit "a licensee"
insert "an unlicensed lender"
(b) omit "the licensee"
insert "the unlicensed lender"

58. Part 2-5, Division 3
omit

59. Subsection 102(1), including heading
substitute
"Auditor is entitled to access and assistance etc. from unlicensed lender
(1) An auditor (the ***auditor***) who prepares an audit report required under subsection 49(3) in relation to an unlicensed lender has a right of access at all reasonable times to the financial records or other credit books of the lender for purposes relating to the audit report."

60. Subsections 102(2) and (3)
omit each mention of "licensee"
insert "unlicensed lender"

61. Section 103
omit each mention of "licensee"
insert "unlicensed lender"

62. Paragraph 104(1)(b)
omit "licensee"
insert "unlicensed lender"

63. Paragraph 104(2)(a)
omit "licensee to meet the licensee's obligations as a licensee; or"
insert "unlicensed lender to meet its obligations under section 47; or"

64. Paragraph 104(2)(b)
substitute "(b) constitutes or may constitute a contravention of section 47 or Division 2; or"

65. Section 105
omit each mention of "licensee"
insert "unlicensed lender"

66. Section 106
omit

SCHEDULE 2 – MODIFICATIONS TO PART 3-4 OF CHAPTER 3

1. **Part 3-4, heading**
   substitute "Part 3-4 – Unlicensed lenders that are lessors under consumer leases"

2. **Part 3-4, Division 1**
   omit

3. **Subsection 149(1) to (4)**
   substitute

   " (1) An unlicensed lender must, as soon as practicable after it becomes apparent to the unlicensed lender that it is likely to enter a consumer lease with a consumer who will be the lessee under the lease, give the consumer the unlicensed lender's credit guide in accordance with subsection (2).

   Civil penalty: 2,000 penalty units.

   (2) The unlicensed lender's credit guide must:
   (a) be in writing; and
   (b) specify the unlicensed lender's name and contact details; and
   (c) give information about the unlicensed lender's procedure for resolving disputes with a consumer, including contact details for a consumer to access:
   (i) the unlicensed lender's internal dispute resolution procedure; and
   (ii) the approved external dispute resolution scheme of which the unlicensed lender is a member; and
   (d) give information about the unlicensed lender's obligations under section 155 and 156."

4. **Section 150**
   omit

5. **Section 151**
   (a) *omit* "A licensee"
   insert "An unlicensed lender"
   (b) *omit* "the licensee"
   insert "the unlicensed lender"

6. **Section 152**
   omit "licensee"
   insert "unlicensed lender"

7. **Subsection 153**
   omit "licensee"
   insert "unlicensed lender"

8. **Section 154**
   omit each mention of "licensee"
   insert "unlicensed lender"

9. **Section 155**
   omit each mention of "licensee"
   insert "unlicensed lender"

10. Section 156

(a) omit "A licensee"
insert "An unlicensed lender"

(b) omit each mention of "the licensee"
insert "the unlicensed ender"