

Australian Securities and Investments Commission
National Consumer Credit Protection Act 2009 —
Paragraphs 163(1)(a) and (d) — Exemption and Declarations
National Credit Code — Subsection 203A(1) — Exemption

Enabling power

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

Title

2. This instrument is ASIC instrument 15-1080.

Commencement

3. This instrument commences on 3 December 2015.

Exemptions

4. Wesfarmers Finance Pty Ltd ACN 601 282 455 (*Wesfarmers Finance*) does not have to comply with:
 - (a) Division 3 (other than section 132) and Division 4 of Part 3-2 of Chapter 3 of the Act; and
 - (b) for avoidance of doubt, Division 3 of Part 3-2B; and
- (b) section 16 of the National Credit Code.

Declarations

5. Subject to paragraph 4, the provisions to which Part 3-7 of Chapter 3 of the Act applies apply in relation to Wesfarmers Finance as if section 132 of the Act were varied or modified as follows:
 - (a) in paragraph 132(2)(c), omit "7 business days", substitute "15 business days"; and
 - (b) in paragraph 132(2)(d) omit "21 business days", substitute "25 business days".

6. Subject to paragraph 4, the provisions to which Part 3-7 of Chapter 3 of the Act applies apply in relation to Wesfarmers Finance as if Divisions 4 and 5 of Part 3-2B of Chapter 3 of the Act were varied or modified as follows:

- (a) after section 133BF, insert:

"133BFA For the purpose of applying subsections 133BE(1), (2) and (3) to the making of a credit limit increase invitation, it is a defence if:

- (1) the licensee either:
 - (a) is a credit provider under the credit card contract by reason of being assigned the rights of a credit provider under the contract; or
 - (b) has entered the credit card contract as the result of the novation of a previous credit card contract (the *novated contract*) with the consumer who is the debtor under the credit card contract; and
- (2) the licensee (the *first licensee*) that assigned its rights under the credit card contract to the licensee or that was the credit provider under the novated contract had, in accordance with section 133BF, obtained express consent from the consumer to the first licensee making credit limit increase invitations; and
- (3) the licensee has obtained from the first licensee records of the consent and any withdrawal kept by the first licensee in accordance with section 133BG; and
- (4) the consent has not been withdrawn.

Note 1: The licensee must keep records of consents obtained by the first licensee that have been given to the licensee as a result of the assignment of rights under the credit card contracts, or novation of credit card contracts, of the first licensee and withdrawals of those consents: see section 133BG.

Note 2: For the purposes of subsections 133BE(2) and (3), a defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*)."; and

- (b) after paragraph 133BG(1)(a), insert:

"(aa) if the licensee has either been assigned rights of a credit provider under the credit card contract or entered a credit card contract as the result of the novation of a previous credit card contract, consents that the licensee obtains under subsection 133BFA(3); and"; and

- (c) after section 133BG, insert:

"133BGA In this Division, *novation* includes replacement of a credit card contract with a new credit card contract that has the same credit limit."

Where exemptions apply

7. Subject to paragraph 8, the exemptions in paragraph 4 apply in relation to the entry into a credit contract with a consumer where:
 - (a) Wesfarmers Finance has entered an agreement with GE Capital Finance Australia ACN 008 583 588 (*GE*) to purchase a credit card portfolio (the *GE credit card portfolio*) consisting of existing credit contracts (*existing credit contracts*) under which GE is the credit provider and credit is accessed using a credit card branded as a Coles credit card; and
 - (b) the consumer has an existing credit contract; and
 - (c) as part of the purchase of the GE credit card portfolio, Wesfarmers Finance:
 - (i) makes an offer to the consumer to enter a credit contract (*new credit contract*) that is on the same terms as the existing credit contract and will:
 - (A) replace the existing credit contract; and
 - (B) have the same credit limit as the existing credit contract; or
 - (ii) enters a credit contract with the consumer as the result of acceptance by the consumer of an offer referred to in sub-subparagraph (i); and
 - (d) Wesfarmers Finance has entered an irrevocable deed poll for the benefit of, and enforceable by, both ASIC and consumers with whom Wesfarmers Finance enters a credit contract as part of the purchase of the GE credit card portfolio under which Wesfarmers Finance undertakes to compensate each consumer who:
 - (i) suffers loss or damage as a result of a contravention of any of the provisions in Division 3 or Division 4 of Part 3-2 of Chapter 3 of the Act (as modified by regulation 25K of the National Consumer Credit Protection Regulations 2010) by GE; and
 - (ii) has not recovered from GE any loss or damage that the relevant consumer has suffered as a result of that contravention that arises on or after the entry into the credit contract with Wesfarmers Finance and in relation to the credit contract with Wesfarmers Finance.
8. Where a consumer, immediately before the day on which Wesfarmers Finance sends offers to consumers as part of the purchase of the GE credit card portfolio:

- (a) is in default under the existing credit contract for 90 days or more; or
- (b) has an agreement with GE for changes to be made to the existing credit contract as a result of a hardship notice or hardship application under section 72 of the National Credit Code,

the exemptions in paragraph 4 apply where:

- (c) the circumstances specified in paragraph 7 are met; and
- (d) under the terms of the existing credit contract, the consumer is not able to access or draw down credit to incur a further liability under the existing credit card contract until the consumer is able to meet their obligations under the contract; and
- (e) under the terms of the new credit contract, the consumer will not be able to access or draw down credit to incur a liability under the new credit card contract until the consumer is able to meet their obligations under the contract.

Where declarations apply

9. The declaration in paragraph 5 applies in relation to a consumer where:
 - (a) the circumstances specified in paragraph 7 are met; and
 - (b) the consumer:
 - (i) was a debtor under an existing credit contract; and
 - (ii) requests from Wesfarmers Finance a written copy of the assessment prepared by GE under paragraph 128(c) of the Act.
10. The declaration in paragraph 6 applies where:
 - (a) the credit contract is:
 - (i) an existing credit contract in relation to which GE has assigned to Wesfarmers Finance all of its rights as credit provider; or
 - (b) a credit contract entered as the result of acceptance by a consumer of an offer referred to in subparagraph 7(c); and
 - (b) the consent from the consumer obtained by GE under section 133BF or section 133BI of the Act was not obtained in the manner that was the subject of consideration in *Australian Securities and Investments Commission v GE Capital Finance Australia, in the matter of GE Capital Finance Australia* [2014] FCA 701.

Conditions

11. The exemptions in paragraph 4 are subject to the condition that if Wesfarmers Finance relies on the exemptions in relation to the entry into a credit contract with a particular consumer, Wesfarmers Finance must provide the following information to the consumer at the same time as the offer is made to the consumer as a part of the purchase of the GE credit card portfolio:
 - (a) a statement that the consumer may accept the offer and enter a credit contract with Wesfarmers Finance by undertaking positive action in relation to the account that demonstrates an intention to access or draw down credit at a future date, together with a list of the conduct that will be taken as acceptance of the offer; and
 - (b) a statement that the making of a payment under a direct debit arrangement using the existing credit card will not constitute acceptance of the offer or result in entry into a credit contract with Wesfarmers Finance; and
 - (c) the following information in relation to the deed poll referred to in subparagraph 7(d):
 - (i) that Wesfarmers Finance has entered into a deed poll that gives consumers rights to recover any loss or damage that has not been recovered from GE that arises as a result of a breach of any of the provisions in Division 3 or Division 4 of Part 3-2 of Chapter 3 of the Act by GE, where the loss or damage arises on or after the entry into, and in relation to, the replacement credit contract with Wesfarmers Finance; and
 - (ii) a statement that upon request by the consumer Wesfarmers Finance will provide a copy of the deed poll to the consumer free of charge; and
 - (d) details of who the consumer should contact if the consumer suffers loss or damage after a credit contract has been entered into with Wesfarmers Finance as part of the purchase of the GE credit card portfolio; and
 - (e) if the consumer has given a consent to GE under section 133BF of the Act in relation to an existing credit contract and that consent has not subsequently been withdrawn, a statement that:
 - (i) such a consent will continue to operate in relation to the new credit contract; and
 - (ii) the consumer may withdraw such a consent by contacting Wesfarmers Finance; and
 - (f) a statement that:

- (i) the new credit contract will operate under the same terms and conditions as the existing credit contract; and
 - (ii) the consumer can obtain a copy of the terms and conditions on request at no cost to the consumer; and
- (g) if, as at the date of the offer the consumer had:
- (i) been in default under the existing credit contract for 60 days or more; or
 - (ii) notified GE or Wesfarmers Finance of the consumer's inability to meet the consumer's obligations under the existing credit contract within the period from 1 April 2015 to the date of the offer;
- an explanation of the consumer's rights under section 72 of the National Credit Code.

Interpretation

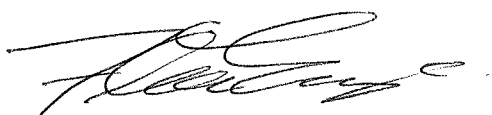
12. In this instrument:

consumer has the meaning given in section 5 of the Act.

credit provider has the meaning given in section 5 of the Act.

provisions to which Part 3-7 of Chapter 3 of the Act applies are the provisions referred to in section 162 of the Act.

Dated this 3rd day of December 2015



Signed by Fleur Grey
as a delegate of the Australian Securities and Investments Commission