

**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 [17-1134].

**Commencement**

- 3 This instrument commences on 19 December 2017.

**Exemptions**

- 4 Citigroup Pty Ltd ACN 004 325 080 (*Citi*) 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 of the Act; and
  - (c) 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 Citi 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”;
  - (b) in paragraph 132(2)(d) omit “21 business days”, substitute “25 business days”;
  - (c) after subsection 132(6), insert:
    - “(7) If the licensee has:
      - (a) been assigned rights of a credit provider (*previous credit provider*) under the credit contract; or

- (b) entered into the credit contract as a result of the novation of:
  - (i) a previous credit card contract with another licensee (*previous credit provider*); or
  - (ii) an offer to enter into a credit card contract made by another licensee (*previous credit provider*);

a reference to an assessment includes an assessment made by the previous credit provider under paragraph 128(c).

- (8) In this section:
  - (a) *novation* includes replacement of a credit card contract or offer to enter into a credit card contract with a new credit card contract or offer to enter into a credit card contract that has the same credit limit; and
  - (b) *previous credit card contract* means a credit card contract in respect of which rights were assigned to the licensee.”.

6 Subject to paragraph 4, the provisions to which Part 3-7 of Chapter 3 of the Act applies apply in relation to Citi as if Division 4 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:

- (a) the licensee either:
  - (i) is a credit provider under the credit card contract by reason of being assigned the rights of a credit provider under the contract; or
  - (ii) has entered into the credit card contract as the result of the novation of a previous credit card contract or offer to enter into a credit card contract with the consumer who is the debtor under the credit card contract; and
- (b) a licensee under the previous credit contract or offer (the *earlier licensee*) had, in accordance with section 133BF, obtained express consent from the consumer to the earlier licensee making credit limit increase invitations; and
- (c) the licensee has obtained from the earlier licensee records of the consent and any withdrawal kept by the earlier licensee in accordance with section 133BG; and
- (d) the consent has not been withdrawn.

Note 1: The licensee must keep records of consents obtained by the earlier 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 or offers, of the earlier 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 a result of the novation of a previous credit card contract or offer to enter into a credit card contract, consents that the licensee obtains under subsection 133BFA(3); and”; and

(c) after section 133BG, insert:

“133BGA In this Division:

(a) **novation** includes replacement of a credit card contract or offer to enter into a credit card contract with a new credit card contract or offer to enter into a credit card contract that has the same credit limit; and

(b) **previous credit card contract** means a credit card contract in respect of which rights were assigned to the licensee (whether directly, or whether by more than one assignment to and from intermediate licensees).”.

### 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 who is a novation offer debtor.

8 If, immediately before the day on which Citi sends offers to consumers as part of the purchase of the Coles credit card portfolio, a consumer who is a novation offer debtor:

(a) has been in default under the existing credit contract for 90 days or more;  
or

(b) has an agreement with Wesfarmers Finance for changes to be made to the existing credit contract as a result of hardship notice or hardship application under section 72 of the National Credit Code,

the exemptions in paragraph 4 only apply in relation to the entry into the credit contract with the consumer if:

(c) 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

- (d) 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 Citi in relation to a consumer if:
- (a) the consumer is an assignment debtor or a novation offer debtor; and
  - (b) the consumer requests from Citi a written copy of the assessment prepared by a previous credit provider under paragraph 128(c) of the Act.
- 10 Subject to paragraph 11, the declaration in paragraph 6 applies in relation to Citi in relation to a credit contract if the credit contract is:
- (a) an existing credit contract; or
  - (b) a credit contract entered as the result of acceptance by a novation offer debtor of an offer of a new credit contract.
- 11 The declaration in paragraph 6 ceases to apply if the defence in section 133BF of the Act (as at the date of this instrument) is repealed.

Note: If enacted, the *Treasury Laws Amendment (Banking Measures No. 1) Bill 2017* will repeal the defence in section 133BF of the Act.

### Conditions

- 12 If Citi relies on an exemption in paragraph 4 in relation to the entry into a new credit contract with a particular consumer, Citi must provide the following information to the consumer at the same time as the offer of the new credit contract is made to the consumer as a part of the purchase of the Coles credit card portfolio:
- (a) a statement that the consumer may accept the offer and enter a credit contract with Citi by:
    - (i) express consent; or
    - (ii) undertaking positive action in relation to the account, or future account in the case of in-flight offers, that demonstrates the 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 to credit contract with Citi; and
- (c) the following information in relation to the deed poll referred to in subparagraph (c) of the definition of *novation offer debtor* contained in paragraph 13:
  - (i) that Citi has entered into a deed poll that gives consumers rights to recover any loss or damage that has not been recovered from previous credit providers or any person who has undertaken liability in place of one of them, that arises as a result of breach of any of the provision in Division 3 or Division 4 of Part 3-2 of Chapter 3 of the Act by a previous credit provider, where the loss or damage arises on or after the entry into, and in relation to, the replacement credit contract with Citi; and
  - (ii) a statement that upon request by the consumer Citi 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 Citi as part of the purchase of the Coles credit card portfolio; and
- (e) if the consumer has given a consent to a previous credit provider under section 133BF of the Act in relation to an existing credit contract or a credit contract to which an in-flight offer related 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 Citi; and
- (f) a statement that:
  - (i) the new credit contract will operate under the terms and conditions (*Citi terms and conditions*) that apply to Citi card contracts; and
  - (ii) the Citi terms and conditions differ from the terms and conditions of the existing credit contract, including different fees and charges; and
  - (iii) a copy of the Citi terms and conditions is included with the offer; and
  - (iv) the consumer should carefully review the Citi terms and conditions before making a decision whether to accept the offer made by Citi; and

- (g) if, as 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 Citi or Wesfarmers Finance of the consumer's inability to meet the consumer's obligations under the existing credit contract within the period of 90 days up to the date of the offer,
- an explanation of the consumer's rights under section 72 of the National Credit Code.

### Interpretation

13 In this instrument:

**assignment agreement** means the agreement dated 16 November 2016 entered into by Citi with Wesfarmers Finance Pty Ltd ACN 601 282 455 (**Wesfarmers Finance**) to purchase a credit card portfolio (the **Coles credit card portfolio**) consisting of:

- (a) existing credit contracts (**existing credit contracts**) under which Wesfarmers Finance is the credit provider (whether as original credit provider or by way of legal assignment) and credit is accessed using a credit card branded as a Coles credit card; and
- (b) offers (**in-flight offers**) to enter credit contracts:
  - (i) under which a consumer has been provided by Wesfarmers Finance a credit card branded as a Coles credit card; and
  - (ii) which the consumer may accept by using the credit card to obtain credit or activating the credit card by arrangement with Citi or Wesfarmers Finance.

**assignment debtor** means a consumer where:

- (a) the consumer has an existing credit contract and is notified under the assignment agreement that the existing credit contract has been assigned to Citi, and
- (b) the consumer is not a novation offer debtor.

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

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

**existing credit contract**: see the definition of **assignment agreement**.

**in-flight offer**: see the definition of **assignment agreement**.

**new credit contract**: see the definition of **novation offer debtor**.

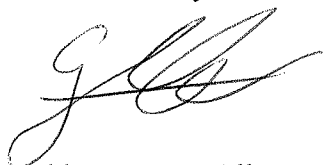
*novation offer debtor* means a consumer where:

- (a) the consumer has either an existing credit contract or an unaccepted in-flight offer; and
- (b) as part of the purchase the Coles credit card portfolio under the assignment agreement, Citi:
  - (i) makes an offer to the consumer to enter a credit contract (*new credit contract*) that is on similar terms to Citi's standard credit card terms and conditions and that will:
    - if the consumer has an existing credit contract, replace the existing credit contract; and
    - have the same credit limit as the existing credit contract or in-flight offer; 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
- (c) Citi has entered an irrevocable deed poll for the benefit of, and enforceable by, both ASIC and consumers with whom Citi enters a new credit contract as referred to in paragraph (b) under which Citi undertakes to compensate each such consumer who:
  - (i) suffers loss or damage as a result of 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 a previous credit provider of the Coles credit card portfolio; and
  - (ii) has not recovered from a previous credit provider 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 Citi and in relation to the credit contract with Citi.

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

*previous credit provider* means Wesfarmers Finance or Latitude Finance Australia ACN 601 282 455, previously GE Capital Finance Australia.

Dated this 19<sup>th</sup> day of December 2017



Signed by Gemma Allan  
as a delegate of the Australian Securities and Investments Commission