

Attachment to CP 330: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Product Intervention Order—Continuing Credit Contracts) Instrument 2020/XX

Date

[Name]

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Product Intervention Order—Continuing Credit Contracts) Instrument 2020/XX*.

2 Commencement

This instrument commences on a day that is the second day after the instrument is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 1023D(3) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

associate, in relation to a primary person that is a continuing credit provider, has the meaning given by sections 11 and 15 of the Act.

collateral contract, in relation to a continuing credit contract, means a separate contract between a retail client and a continuing credit provider or an associate in relation to the continuing credit contract, including a contract or arrangement to provide services in relation to the continuing credit contract.

continuing credit contract means a contract, arrangement or understanding covered by paragraph 12BAA(7)(k) of the ASIC Act under which:

- (a) multiple advances of credit are contemplated; and
- (b) the amount of available credit ordinarily increases as the amount of credit is reduced.

continuing credit provider means a person who is purporting to rely on subsection 6(5) of the National Credit Code in relation to a continuing credit contract.

contract includes a series or combination of contracts, or contracts, arrangements and understandings.

National Credit Code has the same meaning as in subsection 5(1) of the *National Consumer Credit Protection Act 2009*.

Part 2—Order

5 Continuing credit contracts

- (1) A person that is a continuing credit provider must not provide credit to a retail client under a continuing credit contract except in accordance with the condition in subsection (5).
- (2) A person that is a director of a continuing credit provider must not cause or authorise the provider to provide credit to a retail client under a continuing credit contract except in accordance with the condition in subsection (5).
- (3) A person that is a continuing credit provider or an associate must not impose or provide for fees and charges under a collateral contract in relation to a continuing credit contract except in accordance with the condition in subsection (5).
- (4) A person that is a director of a continuing credit provider or of an associate must not cause or authorise the provider or associate to impose or provide for fees and charges under a collateral contract in relation to a continuing credit contract except in accordance with the condition in subsection (5).

Condition

- (5) The total of:
 - (a) the amount of fees and charges that may be imposed or provided for under the continuing credit contract; and
 - (b) the amount of fees and charges that may be imposed or provided for under:
 - (i) a collateral contract; or
 - (ii) a contract, arrangement or understanding that belongs to a series or combination that constitutes the continuing credit contract (except for a fee or charge already counted under paragraph (a));

must not exceed the maximum charge permitted under subsection 6(5) of the National Credit Code or regulations made for the purposes of that subsection.

6 Application

This instrument applies in relation to a continuing credit contract entered into on or after the commencement of this instrument.