



ASIC
Australian Securities &
Investments Commission

ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2020

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority.....	3
4 Definitions and interpretation.....	3
Part 2—Protocol	7
5 Purpose	7
6 Recruiting licensee—obligation to take reasonable steps to obtain reference	7
7 Recruiting licensee—obligation to seek consent of representative	9
8 Recruiting licensee—obligation to request reference.....	10
9 Referee licensee—obligation to give reference.....	10
10 Referee licensee—obligation to update reference	11
11 Agents	12
12 Use of information.....	12
13 No arrangement or agreements.....	12
14 Contact for reference checking and information sharing.....	13
15 Record-keeping.....	13
Schedule 1—Template Consent Form	14
Schedule 2—Template Reference Request	16
Schedule 3—Template Reference Request	20

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX*.

2 Commencement

This instrument commences on the later of:

- (a) 1 October 2021; and
- (b) the day after it 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:

- (a) subsection 912A(3A) of the *Corporations Act 2001*; and
- (b) subsection 47(3A) of the *National Consumer Credit Protection Act 2009*.

4 Definitions and interpretation

In this instrument:

- (a) ***authorised representative*** has the same meaning as in section 761A of the Corporations Act.

Corporations Act means the *Corporations Act 2001*.

Credit Act means the *National Consumer Credit Protection Act 2009*.

credit assistance has the same meaning as in section 8 of the Credit Act.

credit licensee has the same meaning as ‘licensee’ in subsection 5(1) of the Credit Act.

credit representative has the same meaning as in subsection 5(1) of the Credit Act.

current credit licensee means the licensee mentioned in paragraph (b) of the definition of ***current licensee***.

current financial services licensee means the licensee mentioned in paragraph (a) of the definition of ***current licensee***.

current licensee, in relation to a representative, means:

- (a) a financial services licensee in respect of which an individual described in subsection 912A(3A) of the Corporations Act is currently a representative at the time a request for a reference is made;
- (b) a credit licensee in respect of which an individual described in subsection 47(3A) of the Credit Act is currently a representative at the time a request for a reference is made.

financial services licensee has the same meaning as in section 761A of the Corporations Act.

former credit licensee means the licensee mentioned in paragraph (b) of the definition of **former licensee**.

former financial services licensee means the licensee mentioned in paragraph (a) of the definition of **former licensee**.

former licensee means:

- (a) a financial services licensee in respect of which an individual described in subsection 912A(3A) of the Corporations Act was a representative for any period of time in the 5-year period preceding a request for a reference but who is no longer a representative of that licensee;
- (b) a credit licensee in respect of which an individual described in subsection 47(3A) of the Credit Act was a representative for any period of time in the 5-year period preceding a request for a reference but who is no longer a representative of that licensee.

initial reference means a reference given to a recruiting licensee under section 9 of this instrument.

mortgage broker has the same meaning as in section 15B of the Credit Act.

personal information has the same meaning as in section 6 of the *Privacy Act 1988*.

prospective representative means an individual described in subsection 912A(3A) of the Corporations Act or subsection 47(3A) of the Credit Act that a recruiting licensee is considering employing or authorising as a representative of the recruiting licensee to provide:

- (a) personal advice to retail clients in relation to a relevant financial product; or

- (b) credit assistance in relation to credit contracts secured by mortgages over residential property where that individual will be a mortgage broker or a director, employee or agent of a mortgage broker.

Note: This Protocol only applies in the circumstances covered by:

- (a) subsections 912A(3C) and (3D) of the Corporations Act; and
- (b) subsections 47(3C) and (3D) of the Credit Act.

recruiting credit licensee means the licensee mentioned in paragraph (b) of the definition of ***recruiting licensee***.

recruiting financial services licensee means the licensee mentioned in paragraph (a) of the definition of ***recruiting licensee***.

recruiting licensee means:

- (a) a financial services licensee that is considering an individual described in paragraph 912A(3A)(a) of the Corporations Act or paragraph 47(3A)(b) of the Credit Act to be employed or authorised as a representative of the licensee to provide personal advice to retail clients in relation to a relevant financial product as provided in subsection 912A(3C) of the Corporations Act or subsection 47(3D) of the Credit Act;
- (b) a credit licensee that is considering an individual described in paragraph 47(3A)(a) of the Credit Act or paragraph 912A(3A)(b) of the Corporations Act to be employed or authorised to:
 - (i) provide credit assistance in relation to credit contracts secured by mortgages over residential property; and
 - (ii) be a mortgage broker or a director, employee or agent of a mortgage broker.

referee licensee, in relation to a prospective representative, means a current licensee or former licensee from whom a reference about the prospective representative, is sought by a recruiting licensee.

reference, in relation to a prospective representative, includes information about the prospective representative.

relevant financial product has the same meaning as in section 910A of the Corporations Act.

representative:

- (a) a ***representative*** of a financial services licensee has the same meaning as in section 910A of the Corporations Act;
- (b) a ***representative*** of a credit licensee has the same meaning as in subsection 5(1) of the Credit Act.

template consent form means the form in Schedule 1 to this instrument.

template reference request means the applicable template in:

- (a) if the prospective representative is neither a financial services licensee nor a credit licensee—Schedule 2 to this instrument;
- (b) if the prospective representative is a financial services licensee or a credit licensee—Schedule 3 to this instrument.

updated reference means information given to a recruiting licensee by a referee licensee under section 10 of this instrument;

- (b) a reference to a reference, consent, notice, request, explanation or record is a reference to those things in writing.

Part 2—Protocol

5 Purpose

This Protocol is made for the purposes of:

- (a) paragraph 912A(1)(cc) of the Corporations Act; and
- (b) paragraph 47(1)(ea) of the Credit Act.

6 Recruiting licensee—obligation to take reasonable steps to obtain reference

- (1) A recruiting licensee that is considering employing or authorising an individual as a prospective representative of the recruiting licensee must take reasonable steps to obtain a reference about the individual from:
 - (a) where the individual:
 - (i) is a representative of a current financial services licensee and has been a representative of that licensee for 12 months or more—that licensee;
 - (ii) is a representative of a current financial services licensee and has been a representative of that licensee for less than 12 months—that licensee and the most recent former financial services licensee (if any) of which the individual was a representative;
 - (iii) is not a representative of a current financial services licensee but was a representative of the most recent former financial services licensee for a period of 12 months or more—that most recent former financial services licensee;
 - (iv) is not a representative of a current financial services licensee but was a representative of the most recent former financial services licensee for less than 12 months—the two most recent former financial services licensees (if applicable) of which the individual was a representative;
 - (v) is a current financial services licensee—that licensee.
 - (b) where the individual:
 - (i) is a representative of a current credit licensee and has been a representative of that licensee for 12 months or more—that licensee;
 - (ii) is a representative of a current credit licensee and has been a representative of that licensee for less than 12 months—that licensee and the most recent former credit licensee (if any) of which the individual was a representative;

- (iii) is not a representative of a current credit licensee but was a representative of the most recent former credit licensee for a period of 12 months or more—that most recent former credit licensee;
- (iv) is not a representative of a current credit licensee but was a representative of the most recent former credit licensee for less than 12 months—the two most recent former credit licensees (if applicable) of which the individual was a representative;
- (v) is a current credit licensee—that licensee.

Note 1: Where an individual is a representative of two or more current licensees, this subsection applies in relation to each current licensee.

Note 2: This subsection sets out minimum requirements. A recruiting licensee may seek additional references: see subsection 8(5).

Reasonable steps

- (2) For the purposes of this section, taking **reasonable steps** to obtain a reference about an individual as a prospective representative includes:
 - (a) seeking the consent of the individual in accordance with section 7 of this Protocol; and
 - (b) if the consent is obtained—requesting a reference from a referee licensee in accordance with section 8 of this Protocol.

Sub-authorisations

- (3) For the purposes of this section:
 - (a) a recruiting licensee that gives consent or is considering giving consent in relation to:
 - (i) a specified individual for the purposes of subsection 916B(3) of the Corporations Act to provide personal advice to retail clients in relation to a relevant financial product; or
 - (ii) a specified natural person for the purposes of section 65 of the Credit Act to provide credit assistance in relation to credit contracts secured by mortgages over residential property where that natural person will be a mortgage broker or a director, employee or agent of a mortgage broker;

is taken to be considering authorising the specified individual or natural person as a prospective representative of the recruiting licensee;

- (b) a recruiting licensee that gives consent or is considering giving consent in relation to:
 - (i) a specified class of individuals (the membership of which might change from time to time) for the purposes of subsection 916B(3) of the Corporations Act to provide the personal advice specified in subparagraph (a)(i); or
 - (ii) a specified class of natural persons (the membership of which might change from time to time) for the purposes of section 65 of the Credit Act to provide the credit assistance specified in subparagraph (a)(ii);

is taken to be considering authorising each individual or natural person that, from the day of commencement of this instrument, will fall within the applicable class for the first time.

7 Recruiting licensee—obligation to seek consent of representative

- (1) A recruiting licensee must seek the consent, using the template consent form, of a prospective representative to:
 - (a) undertake reference checking and information sharing in accordance with this Protocol for the purposes of considering their employment or authorisation as a representative in accordance with:
 - (i) for a recruiting financial services licensee—paragraph 912A(1)(cc) of the Corporations Act;
 - (ii) for a recruiting credit licensee—paragraph 47(1)(ea) of the Credit Act; and
 - (b) collect, use, disclose and store personal information about the prospective representative from a referee licensee for the purposes described in paragraph (a).
- (2) A recruiting licensee that has not obtained the consent of a prospective representative, or had obtained the consent but which has been subsequently withdrawn by the prospective representative, must not request a reference from a referee licensee about the prospective representative.
- (3) If, after a recruiting licensee has requested a reference about a prospective representative from a referee licensee, the prospective representative withdraws their consent, the recruiting licensee must give a notice to the referee licensee stating that the prospective representative has withdrawn their consent.

8 Recruiting licensee—obligation to request reference

- (1) This section applies if a recruiting licensee has obtained the consent of a prospective representative to request a reference from a referee licensee about the prospective representative.
- (2) A recruiting licensee must:
 - (a) make a request, using the template reference request, to a referee licensee;
 - (b) give a copy of the consent of the prospective representative to any referee licensee at the time of making a request for a reference.
- (3) A recruiting licensee may make minor amendments to the form of the questions in the template reference request when requesting a reference from a referee licensee, provided that the request for a reference includes all the information that is required by the questions.

Additional requests

- (4) A recruiting licensee may make more than one request to a referee licensee for a reference about a prospective representative in accordance with this Protocol.

Additional references

- (5) A recruiting licensee may seek additional references from a referee licensee in relation to a prospective representative in accordance with this Protocol.

No limitation

- (6) Nothing in this Protocol limits or prevents a recruiting licensee from requesting additional information (for example, background checking) about a prospective representative from a referee licensee, provided the additional information requested does not reduce the scope of any of the questions in the template reference request.

9 Referee licensee—obligation to give reference

- (1) A referee licensee that receives a request for a reference about a prospective representative from a recruiting licensee in accordance with section 8 of this Protocol must give a reference to the recruiting licensee that:
 - (a) includes all information of which the referee licensee is aware and reasonably considers to be relevant to answer the questions in the template reference request;
 - (b) is complete, accurate and based on documented facts; and

- (c) if a question cannot be answered—includes an explanation as to why the question cannot be answered.
- (2) The reference must be given to the recruiting licensee:
- (a) subject to paragraph (b)—within 10 business days beginning on the day after the date of receipt of the request;
 - (b) within such longer period as agreed between the recruiting licensee and the referee licensee, provided the period is no longer than 20 business days beginning on the day after the date of receipt of the request.

Note: For the avoidance of doubt, a referee licensee that has received information from ASIC under section 916G of the Corporations Act or section 73 of the Credit Act in relation to the prospective representative is not required to share this information with another licensee in the performance of their reference checking and information sharing obligations under section 9 of this Protocol.

- (3) The referee licensee is not obliged to give information in relation to conduct of the prospective representative that occurred more than 5 years before the reference is given to the recruiting licensee.
- (4) A referee licensee must not give a reference about a prospective representative to the recruiting licensee if the recruiting licensee has given a notice to the referee licensee stating that the prospective representative has withdrawn their consent.

10 Referee licensee—obligation to update reference

- (1) This section applies where a referee licensee has given a reference to a recruiting licensee about a prospective representative which includes information to the effect that:
- (a) there are outstanding compliance audit issues identified in the last or previous audits for the prospective representative; or
 - (b) there are unresolved client complaints recorded in relation to the prospective representative; or
 - (c) there is an ongoing investigation by the referee licensee in relation to the prospective representative.
- (2) The referee licensee must give the recruiting licensee an updated reference by way of updated answers to the questions in the template request form:
- (a) as soon as reasonably practicable following resolution of a matter mentioned in paragraphs (1)(a), (b), or (c); or
 - (b) where the matter has not been resolved within 6 months of the date on which the initial reference was given by the referee licensee to the recruiting licensee—at the end of that 6-month period.

- (3) The referee licensee is not required to give the recruiting licensee an updated reference where any of the following apply:
 - (a) the licence of the recruiting licensee has been suspended or cancelled;
 - (b) the recruiting licensee has given a notice to the referee licensee that it is no longer proposing to employ or authorise the prospective representative;
 - (c) the prospective representative is no longer employed or authorised by the recruiting licensee.
- (4) The referee licensee must not give the recruiting licensee an updated reference if the recruiting licensee has given notice to the referee licensee that the prospective representative has withdrawn their consent.

11 Agents

- (1) The obligations imposed on a financial services licensee or credit licensee in accordance with this Protocol also apply in respect of any agent authorised by the licensee to collect, use, disclose and store personal information on its behalf in respect of a prospective representative for the purposes of reference checking and information sharing in accordance with this Protocol.
- (2) The licensee is responsible for the acts or omissions of its agents in relation to this Protocol.

12 Use of information

Information collected by a financial services licensee or a credit licensee, or their agents, in accordance with this Protocol:

- (a) must only be collected, used, disclosed or stored for the purpose of reference checking and information sharing in accordance with this Protocol; and
- (b) must not be collected, used, disclosed or stored for a purpose other than that for which it was collected unless the individual has consented to that use or disclosure or another exception under the Privacy Act applies.

13 No arrangement or agreements

A financial services licensee or a credit licensee must not enter into any arrangements or agreements with any individual that limits its ability to share and disclose information in accordance with this Protocol.

14 Contact for reference checking and information sharing

A financial services licensee or a credit licensee must have in place adequate arrangements to ensure that a recruiting licensee can readily identify how to contact them for the purposes of reference checking and information sharing in accordance with this Protocol.

15 Record-keeping

- (1) A financial services licensee or a credit licensee must keep records which demonstrate compliance with the obligations of this Protocol, including but not limited to records of the following matters:
 - (a) consents given, requested, refused or withdrawn;
 - (b) references requested by a recruiting licensee;
 - (c) references and updated references given by a referee licensee;
 - (d) any agreement with any agent in relation to reference checking and information sharing in accordance with this Protocol;
 - (e) any policies and processes for handling personal information of individuals obtained in accordance with this Protocol.
- (2) The records must be complete and accurate.
- (3) The records required to be kept by this section must be retained for 5 years after the day on which the last entry was made in the record.

Schedule 1—Template Consent Form

Prospective Representative Consent to the collection, use, disclosure and storage of information to conduct reference checks

[name of prospective representative] (*Prospective Representative/You*)

We, [insert recruiting licensee name and licensee number], our related entities and any agent(s) acting on our behalf (*Us/We*), request your consent to collect, use, disclose and store your personal information for the purposes of Us considering your suitability for employment/authorisation by Us, and complying with the ASIC Reference Checking and Information Sharing Protocol under the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX* (the **Protocol**).

The personal information (**Information**) that may be collected, used, disclosed and stored by Us is likely to include, but is not limited to, information in relation to:

- (i) the scope and length of your employment or authorisation;
- (ii) your compliance audit record, including any remedial action by the licensee;
- (iii) compensation that was given to a client either as a financial payment offered to a client and/or any other non-financial remedy given to a client, as a result of your activities;
- (iv) ASIC reportable breaches caused or contributed to by you;
- (v) details of any inquiry, investigation or complaint concerning your conduct in progress at the time that the reference is given and any findings relating to these ongoing matters for a period of up to six months from the date that the reference is given; and
- (vi) conduct in relation to the financial services laws or the credit legislation while employed or authorised by, and circumstances surrounding your departure from, the referee licensee.

We will collect this Information from referee licensees, being one or more of the current and/or former licensees to whom you were/are a representative in the preceding five years (see subsection 6(1) and subsection 8(5) of the Protocol).

Information collected by Us will be collected, used, disclosed and stored by Us for the purposes described above, unless use or disclosure is required or authorised by law, including the *Privacy Act 1988* (Cth), or you consent to collection, use, disclosure or storage for a different purpose.

Declaration of Prospective Representative

I declare that I have read and understood the content of this consent form and consent to the collection, use and disclosure of this Information for a period of up to six months by [insert name of recruiting licensee].

I understand that the Information collected will be stored for five years in accordance with the Protocol.

I understand that this Consent and Declaration will continue in force for six months or until you are notified in writing that I have withdrawn it, whichever occurs earlier.

Full name (print):

ASIC reference number:

Signature:

Date:

Schedule 2—Template Reference Request

Reference Request

[name of prospective representative being recruited] (the *representative*)

[insert recruiting licensee name and licensee number] requests a reference for the representative for the purposes of the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX* (the **Protocol**).

Questions

1. Background information

- (a) Please confirm the representative's role(s) and period of employment or authorisation.
- (b) Please provide a brief description of the representative's main responsibilities.
- (c) Please advise the ASIC reference number (if known) in relation to the representative.
- (d) Please provide details of your work relationship with the representative (include name of organisation, your role in the organisation and period of time known).

2. Compliance audits

Note: Question 2 only applies to a representative that is or was a financial adviser or mortgage broker.

- (a) Have you conducted a compliance audit for this representative?
 Yes Please go to paragraphs (b)–(e) of this question
 No Please go to Question 3
- (b) For the representative's last compliance audit undertaken please provide the following information:
 - (i) date of the compliance audit
 - (ii) did the last compliance audit findings lead to remedial action by the licensee?
 Yes Please provide details below
 No Please go to Question 3

- (iii) Indicate whether the remedial action was a result of:
- non-compliance with financial services laws or credit legislation
 - non-compliance with licensee processes
- (iv) Indicate type of remedial action
- representative remedial action
 - client remedial action
- (c) If there was representative remedial action indicate what type(s) of remedial action:
- additional training
 - increased monitoring and supervision
 - consequence management (including performance management, financial consequence, formal warnings)
 - suspension of authorisation
 - other (please provide details)
- (d) If there was client remedial action indicate what type(s) of remedial action:
- instructed to provide corrective disclosure to client
 - compensation was given to a client either as a financial payment offered to a client and/or any other non-financial remedy given to a client
 - other (please provide details)

3. Conduct of the representative

- (a) Did you report a breach to ASIC (whether under section 912DAA of the *Corporations Act 2001*, section 50B of the *National Consumer Credit Protection Act 2009* or otherwise) in respect of the representative?
[Yes/No]
- If you answered Yes, provide details on the relevant date, type and nature of the breach.
- (b) Did (or does) the representative's conduct in relation to the financial services laws or the credit legislation whilst employed with, or authorised under, your licence, or circumstances surrounding the representative's departure from your licence, concern the representative's involvement in:
- (i) dishonesty [Yes/No]

- (ii) unprofessional conduct [Yes/No]
- (iii) conduct justifying instant dismissal or immediate termination of representative status [Yes/No]
- (iv) refusal, failure or deliberate non-compliance in relation to the financial services laws or the credit legislation [Yes/No]
- (v) gross incompetence or gross negligence [Yes/No]
- (vi) a breach of the Financial Planners and Advisers Code of Ethics 2019 made by Financial Adviser Standards and Ethics Authority Ltd [Yes/No]

Note: The conduct need not involve a contravention of law.

- (c) If you answered Yes to any of the questions in paragraph (b), please provide details, including but not limited to, all internal assessments, external notifications or complaints against the representative in connection with the provision of financial services or credit assistance, about or arising from the representative's conduct or performance (including any act or omission), recorded by the licensee.

4. Ongoing matters

- (a) Is there an inquiry or investigation in progress by your organisation in relation to the conduct of this representative? [Yes/No]

If Yes:

- (i) please provide:
 - (A) a brief description of the nature of the circumstances that triggered the inquiry/investigation (for example a breach, complaint, compliance audit or other circumstance); and
 - (B) details of the progress and status of the inquiry/investigation;
- (ii) was the representative made aware of the inquiry/investigation? [Yes/No]

- (b) Are there any client complaints recorded by your organisation relating to this representative that remain unresolved? [Yes/No]

If Yes:

- (i) please provide brief details of the relevant circumstances of the unresolved complaints and their status;
- (ii) was the representative made aware of the complaints? [Yes/No]

- (c) Are there any matters arising from a compliance audit relating to this representative that remain unresolved? [Yes/No]

If Yes:

- (i) please provide brief details of the relevant circumstances of the unresolved compliance audit matters and their status.
- (ii) was the representative made aware of these compliance audit matters? [Yes/No]

Interpretation

In this request, a word or an expression that is defined in section 5 of the Protocol has the same meaning in this request.

Additional definitions

In this request:

complaint means a “complaint” as defined in Australian / New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014.

compliance audit, in relation to a representative, means an audit, review or observation by a financial services licensee or credit licensee of the representative’s compliance with financial services laws, credit legislation and licensee policies and procedures as part of the licensee’s monitoring and supervision obligations under paragraphs 912A(1)(ca) and (f) of the *Corporations Act 2001* or paragraphs 47(1)(e) and (g) of the *National Consumer Credit Protection Act 2009*.

unprofessional conduct of a representative includes the following kinds of conduct of the representative:

- (a) conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to retail clients or the public;
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and
- (c) conduct which is, or could reasonably be considered as likely to be, prejudicial to the interests of a financial services licensee or a credit licensee or retail clients,

and need not involve a contravention of any law.

Schedule 3—Template Reference Request

[name of licensee being recruited] (the *licensee*)

[insert recruiting licensee name and licensee number] requests a reference for the licensee for the purposes of the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX* (the **Protocol**).

Questions

1. Background information

- (a) Please provide a brief description of your main responsibilities.
- (b) Please advise the ASIC reference number in relation to your licence, and if applicable, the adviser number.

2. Compliance audits

Note: Question 2 only applies if you are or were a financial adviser or mortgage broker.

- (a) Has a compliance audit been conducted on your activities as a licensee?

Yes Please go to paragraphs (b)–(e) of this question

No Please go to Question 3

- (b) For the last compliance audit undertaken, please provide the following information:

- (i) date of the compliance audit

- (ii) did the last compliance audit findings lead to remedial action?

- Yes Please provide details below

- No Please go to Question 3

- (iii) Indicate whether the remedial action was a result of:

- non-compliance with financial services laws or credit legislation

- non-compliance with licensee processes

- (iv) Indicate type of remedial action

- client remedial action

- other remedial action

- (c) If there was client remedial action indicate what type(s) of remedial action:
- corrective disclosure was given to client
 - compensation was given to a client either as a financial payment offered to a client and/or any other non-financial remedy given to a client
 - other (please provide details)
- (d) If there was other remedial action indicate what type(s) of remedial action:
- additional training
 - increased monitoring and supervision
 - other (please provide details)

3. Conduct of the licensee

- (a) Did you report a breach to ASIC (whether under section 912DAA of the *Corporations Act 2001*, section 50B of the *National Consumer Credit Protection Act 2009* or otherwise) in respect of your conduct as a licensee? [Yes/No]

If you answered Yes, provide details on the relevant date, type and nature of the breach.

- (b) Did (or does) your conduct in relation to the financial services laws or the credit legislation involve:
- (i) dishonesty [Yes/No]
 - (ii) unprofessional conduct [Yes/No]
 - (iii) refusal, failure or deliberate non-compliance in relation to the financial services laws or the credit legislation [Yes/No]
 - (iv) gross incompetence or gross negligence [Yes/No]
 - (vi) a breach of the Financial Planners and Advisers Code of Ethics 2019 made by Financial Adviser Standards and Ethics Authority Ltd [Yes/No]

Note: The conduct need not involve a contravention of law.

- (c) If you answered Yes to any of the questions in paragraph (b), please provide details, including but not limited to, all internal assessments, external notifications or complaints in connection with the provision of financial services or credit assistance, about or arising from your conduct or performance (including any act or omission).

4. Ongoing matters

- (a) Are there any client complaints relating to your conduct as a licensee that remain unresolved? [Yes/No]

If Yes:

- (i) please provide brief details of the relevant circumstances of the unresolved complaints and their status;

- (b) Are there any matters arising from a compliance audit relating to your conduct as a licensee that remain unresolved? [Yes/No]

If Yes:

- (i) please provide brief details of the relevant circumstances of the unresolved compliance audit matters and their status.

Interpretation

In this request, a word or an expression that is defined in section 5 of the Protocol has the same meaning in this request.

Additional definitions

In this request:

complaint means a “complaint” as defined in Australian / New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014.

compliance audit, means an audit, review or observation of the licensee’s compliance with financial services laws, credit legislation and licensee policies and procedures as part of the licensee’s obligations under paragraph 912A(1)(c) of the *Corporations Act 2001* or paragraph 47(1)(d) of the *National Consumer Credit Protection Act 2009*.

unprofessional conduct of a licensee includes the following kinds of conduct of the licensee:

- (a) conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to retail clients or the public;
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and
- (c) conduct which is, or could reasonably be considered as likely to be, prejudicial to the interests of a financial services licensee or a credit licensee or retail clients,

and need not involve a contravention of any law.