

Attachment 1 to CP 355: Draft legislative instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2022/XX

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

Date 2022

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2022/XX*.

2 Commencement

This instrument commences on a day that is the [XX] 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 short term credit provider, has the meaning given by sections 11 and 15 of the Act.

collateral contract, in relation to a short term credit facility, means a separate contract between a retail client and a short term credit provider or an associate in relation to the short term credit facility, including (without limitation) a contract or arrangement for the short term credit provider or an associate to provide services to the retail client in relation to the short term credit facility.

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

credit fees and charges has the same meaning as in subsection 6(1) of the National Credit Code (as affected by subsections 6(2) and (3) of the National Credit Code).

interest charges include, for the avoidance of doubt, default interest charges.

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

short term credit facility means a contract, arrangement or understanding covered by both:

- (a) paragraph 12BAA(7)(k) of the ASIC Act; and
- (b) subsection 6(1) of the National Credit Code.

short term credit provider means a person who is purporting to rely on subsection 6(1) of the National Credit Code in relation to a short term credit facility.

Part 2—Order

5 Short term credit facilities

- (1) A short term credit provider must not provide credit to a retail client under a short term credit facility except in accordance with the conditions in subsections (5) and (6).
- (2) A director of a short term credit provider must not cause or authorise the provider to provide credit to a retail client under a short term credit facility except in accordance with the conditions in subsections (5) and (6).
- (3) A short term credit provider or an associate must not impose or provide for fees and charges under a collateral contract in relation to a short term credit facility except in accordance with the conditions in subsections (5) and (6).
- (4) A director of a short term 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 short term credit facility except in accordance with the conditions in subsections (5) and (6).

Conditions

- (5) The total of:
 - (a) the amount of credit fees and charges that may be imposed or provided for under the short term credit facility; and
 - (b) the amount of fees and charges (excluding interest charges) that:
 - (i) may be imposed or provided for under:
 - (A) a collateral contract; or
 - (B) a contract, arrangement or understanding that belongs to a series or combination that constitutes the short term credit facility (except for a fee or charge already counted under paragraph (a)); and
 - (ii) are paid or payable by a retail client;

must not exceed the maximum amount of credit fees and charges permitted under subsection 6(1) of the National Credit Code.

- (6) The total of:
 - (a) the amount of interest charges that may be imposed or provided for under the short term credit facility; and

- (b) the amount of interest charges that:
 - (i) may be imposed or provided for under:
 - (A) a collateral contract; or
 - (B) a contract, arrangement or understanding that belongs to a series or combination that constitutes the short term credit facility (except for an interest charge already counted under paragraph (a)); and
 - (ii) are paid or payable by a retail client;

must not exceed the maximum amount of interest charges permitted under subsection 6(1) of the National Credit Code.

6 Application

- (1) This instrument applies in relation to a short term credit facility entered into on or after the commencement of this instrument.
- (2) For the avoidance of doubt, where a short term credit provider is not purporting to rely on subsection 6(1) of the National Credit Code in relation to a short term credit facility, subsections 5(1) to (4) of this instrument do not apply in relation to the facility.

Note 1: The application of the orders in section 5 is subject to the limitations in section 1023C of the Act.

Note 2: Subject to the Court making an order staying or otherwise affecting the operation of the orders in section 5, the orders will remain in force for 18 months from the day this instrument commences: see subsection 1023G(2) of the Act.