

Dear Sir/Madam

We welcome the opportunity to make a submission on the recently updated draft ASIC Corporations (Product Intervention – Continuing Credit Contracts) Instrument 2020/XXX (being part of CP 330) (Revised Draft PIP). We note that submission closed earlier this week and appreciate your accommodation of this late submission (in emails with King & Wood Mallesons, who sought that extension on our behalf).

Diners Club Pty Ltd (Diners) is a member of the global Citigroup Group which carries on financial services and banking business through Citigroup Pty Ltd in Australia.

Diners is a member of AFCA, and offers Diners branded business and consumer credit products, including charge card products.

As ASIC set out in its recent Report 672, there has been significant growth in the market for BNPL products, which shows significant consumer demand for such products.

As Diners and/or Citi considers entry in to the BNPL market, one model that is under consideration is a BNPL product that does not rely on direct agreements or arrangements between each merchant and the BNPL provider. Instead, a product of this nature will operate using the infrastructure of regulated card scheme(s) (e.g. a scheme such as Visa or Mastercard) so that consumers and retailers will have greater access to the product. Greater access will enhance competition between BNPL products, ultimately leading to better consumer outcomes. In addition, in general, would mean the costs of offering the service for a merchant would be lower than that under direct arrangements.

In relation to ASIC's Revised Draft PIP, the effect of the current drafting of clause (b) of the definition of BNPL Arrangement is that scheme dependent products such as the product described above will be subject to the Revised Draft PIP. This effectively places BNPL products where there is no direct merchant agreement between the provider and merchants at a comparative disadvantage compared to other BNPL products that do rely on direct merchant arrangements.

Further, we believe that scheme dependent BNPL products (ie, where there are no direct merchant agreements) should also be excluded from the PIP's scope as a matter of principle – we see no material differences between the consumer outcomes between the two types of products and for this reason believe that the regulatory position should be the same for the two types of products. Specifically, we believe that excluding this type of BNPL product does not increase regulatory concern for the similar reasons to those cited by ASIC in revising the draft PIP, for example:

- This type of BNPL product does not give rise to the type of detriment described in CP 330.
- To the extent that the merchant is seen as a third party charging additional fees, existing regulatory arrangements regarding card schemes and surcharges should be sufficient to protect consumers;
- Diners/Citi is a member of AFCA which provides further comfort that consumers will have avenues to seek remedy, and any entity which also issued debit or credit cards in

the scheme would also likely be an AFCA member, so there is likely to be a review function available.

We think the exclusion can be achieved by adding a further alternative under clause (b) as clause (b)(iii) of the definition of BNPL Arrangement under the Revised Draft PIP that reads as follow:

(iii) a series of arrangements between the merchant, a person (the BNPL provider), and one or more participants in a card scheme subject to the regulation by the Reserve Bank of Australia, in relation to which the effect is that BNPL provider pays and the merchant receives payment for the supply of those goods or services to the retail client (less any relevant fees);

We would be pleased to discuss this further with ASIC. Please contact me on [REDACTED] if you would like to do so.

Regards

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[REDACTED] | Head of Consumer Bank Legal Australia | Citigroup Pty Ltd

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