

**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* (the *Code*).

**Title**

2. This instrument is ASIC Instrument 24-0492.

**Commencement**

3. This instrument commences on 14 June 2024.

**Exemptions**

4. Latitude Finance 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;
  - (b) Division 3 of Part 3-2B of the Act; and
  - (c) sections 14, 16 and 17 of the Code.

**Declarations**

5. The provisions to which Part 3-7 of Chapter 3 of the Act applies apply in relation to Latitude Finance 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”; and
  - (c) after subsection 132(6), insert:
    - “(7) If the licensee has:
      - (a) been assigned rights of a credit provider (*previous credit provider*) under an original credit contract; or

- (b) entered into a new credit contract in connection with an original credit contract with another licensee (*previous credit provider*),

a reference to an assessment includes an assessment made by the previous credit provider under paragraph 128(c) in relation to its entry into the original credit contract.

### **Where exemptions apply**

6. The exemptions in paragraph 4 apply in relation to the offering of or entering into by Latitude Finance of a credit contract with a consumer where each of the following is satisfied:
  - (a) the credit contract is a Transferred AMEX Card; and
  - (b) Latitude Finance has entered into the Irrevocable Deed Poll.
7. If, immediately before the day on which Latitude Finance sends offers to consumers in connection with a Transferred AMEX Card, a consumer:
  - (a) has been in default under an AMEX David Jones Card for 90 days or more; or
  - (b) has an agreement with AMEX Australia 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 Transferred AMEX Card with the consumer if under the terms of the Transferred AMEX Card the consumer will not be able to access or draw down credit to incur a liability under the contract until the consumer is able to meet their obligations under the contract.

### **Where declarations apply**

8. The declaration in paragraph 5 applies in relation to Latitude Finance in relation to a consumer if:
  - (a) the consumer and Latitude Finance have entered into a Transferred AMEX Card or the consumer and Latitude Finance would have entered into a Transferred AMEX Card had the consumer taken up an offer by Latitude for a new credit contract described in paragraph (c) of the definition of Transferred AMEX Card; and
  - (b) the consumer requests from Latitude Finance a written copy of the assessment prepared by AMEX Australia under paragraph 128(c) of the Act in relation to the relevant AMEX David Jones Card.

### **Conditions**

9. The exemptions in paragraph 4 are subject to the condition that if Latitude Finance relies on an exemption in paragraph 4 in relation to a particular credit contract or offer of a credit contract with a particular consumer, Latitude Finance must provide the

following information to the consumer at the same time as any offer or invitation to apply is made to the consumer in relation to a Transferred AMEX Card:

- (a) a statement that the consumer may accept the offer by ‘activating’ the card (which may include activating the physical card or adding the card electronically to a digital wallet or by the consumer approving the activation of an additional cardholder’s card with a one time pin (or similar code)); and
- (b) a statement that the making of a payment under a direct debit or other third party recurring debit arrangement using the credit card issued under the AMEX David Jones Card will not constitute acceptance of the offer or result in entry into a credit contract with Latitude Finance; and
- (c) a statement that recurring debit arrangements with retailers will stop working when the credit card issued under the AMEX David Jones Card is cancelled and information will be provided to the consumer about how to update or reestablish equivalent debit arrangements under the Transferred AMEX Card; and
- (d) where the AMEX David Jones Card is known as a David Jones Storecard, a statement that the David Jones Storecard can only be used at David Jones and certain authorised merchants. However, the credit card issued under the Transferred AMEX Card is a general purpose credit card, and can be used for purchases everywhere a Mastercard is accepted, including overseas and online; and
- (e) the following information in relation to the Irrevocable Deed Poll referred to in paragraph 6(b):
  - (i) that Latitude Finance has entered into a deed poll that gives consumers rights to recover any loss or damage:
    - (A) that arises as a result of a contravention by AMEX Australia of Division 3 or Division 4 of Part 3-2 of Chapter 3 of the Act or sections 14,16 or 17 of the Code in relation to the relevant AMEX David Jones Card; and
    - (B) that the consumer has not recovered from AMEX Australia; and
    - (C) that arises on or after the entry into the Transferred AMEX Card; and
  - (ii) a statement that upon request by the consumer Latitude Finance will provide a copy of the Irrevocable Deed Poll to the consumer free of charge;
- (f) details of who the consumer should contact if the consumer suffers loss or damage after a Transferred AMEX Card has been entered into with Latitude Finance; and
- (g) a statement that:

- (i) the Transferred AMEX Card will operate under the Latitude terms and conditions that apply to Latitude Finance card contracts; and
  - (ii) the Latitude terms and conditions differ from the terms and conditions of the AMEX David Jones Card, including different fees and charges; and
  - (iii) a copy of the Latitude terms and conditions is included with the offer; and
  - (iv) the consumer should carefully review the Latitude terms and conditions before making a decision whether to accept the offer made by Latitude; and
- (h) if, as the date of the offer the consumer had:
- (i) been in default under the AMEX David Jones Card for 60 days or more; or
  - (ii) notified Latitude Finance or AMEX Australia of the consumer's inability to meet the consumer's obligations under the existing credit contract within the period of 60 days up to the date of the offer,
- an explanation of the consumer's rights under section 72 of the National Credit Code.

10. The exemptions in paragraph 4 are subject to the condition that if Latitude Finance relies on an exemption in paragraph 4 in relation to a particular credit contract or offer of a credit contract with a particular consumer, Latitude Finance must provide the following information to the consumer prior to allowing any act that accepts any offer or takes up any invitation to apply for the Transferred AMEX Card:
- (a) information about how to update or reestablish equivalent recurring debit arrangements with retailers in place of those referred to in paragraph 9(c); and
  - (b) a statement noting that the AMEX David Jones Card was subject to protections in the ePayments Code and that the Transferred AMEX Card will not be as Latitude Finance is not a subscriber to the ePayments Code; and
  - (c) where the AMEX David Jones Card is known as a David Jones Storecard, information about the additional risks posed to customers of a general purpose scheme credit card of the type proposed as compared to a Storecard, including the potential for unauthorised transactions with a much broader range of businesses, including online and overseas.

### **Interpretation**

11. In this instrument:

*AMEX Australia* means American Express Australia Limited (ABN 92 108 952 085, Australian Credit Licence number 291313).

**AMEX David Jones Card** means a credit contract relating to a credit card issued by a AMEX Australia and known as a David Jones American Express Platinum Card, a David Jones American Express Card or a David Jones Storecard.

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

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

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

**entering into**, in relation to a credit contract, includes being assigned the rights of a credit provider under the credit contract.

**Irrevocable Deed Poll** means the irrevocable deed poll dated 13 June 2024 which was provided to ASIC on or before the date of this instrument, for the benefit of, and enforceable by, ASIC and consumers which gives consumers a right to recover from Latitude Finance certain loss or damage that arises in relation to the Transferred AMEX Card where the relevant loss or damage is loss or damage:

- (a) arising as a result of a contravention by AMEX Australia of Division 3 or Division 4 of Part 3-2 of Chapter 3 of the Act or sections 14, 16 or 17 of the Code in relation to the relevant AMEX David Jones Card; and
- (b) that the consumer has not recovered from AMEX Australia; and
- (c) that arises on or after the entry into the Transferred AMEX Card.

**Latitude Finance** means Latitude Finance Australia (ABN 42 008 583 588, Australian Credit Licence Number 392145).

**Latitude terms and conditions** means the terms and conditions that apply to the applicable Latitude Finance credit card contracts.

**Transferred AMEX Card** means a credit contract or credit contracts between a consumer and Latitude Finance where:

- (d) the consumer was a party to an AMEX David Jones Card;
- (e) Latitude Finance has entered into a credit contract with the consumer in connection with an assignment of the AMEX David Jones Card; and
- (f) Latitude Finance has entered into a new credit contract with the consumer that has the same credit limit as the AMEX David Jones Card, and is on similar terms to Latitude's standard credit card terms and conditions,

and also includes all rights under the AMEX David Jones Card that have been assigned to Latitude Finance.

Dated this 13<sup>th</sup> day of June 2024

A handwritten signature in black ink, appearing to be 'Nathan Bourne', with a long horizontal stroke extending to the right.

Signed by Nathan Bourne

as a delegate of the Australian Securities and Investments Commission