

ASIC Class Order [CO 10/381]

About this compilation

Compilation No. 1

This is a compilation of ASIC Class Order [CO 10/381] as in force on 26 October 2018. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

**Australian Securities and Investments Commission
National Consumer Credit Protection (Transitional and Consequential Provisions)
Act 2009 — Item 41 of Schedule 2 — Declaration**

Enabling provision

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under item 41 of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 10/381].

Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. ASIC declares that Part 3 of Schedule 2 to the Act applies in relation to all persons as if that Part were modified or varied by, after item 19, inserting:

“19A Obligation on certain persons to give notice to ASIC

- (1) Subitem (2) applies to a person (*lender*) who is a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 if both of the following apply:

- (a) the lender is a credit provider or lessor in relation to the carried over instrument at any time after 30 June 2010;
 - (b) the lender is not any of the following persons:
 - (i) a licensee;
 - (ii) a registered person;
 - (iii) a person exempt from the requirement to hold a licence under the National Credit Act or to be a registered person under this Act.
- (2) The lender must lodge with ASIC a notice in the approved form containing the following information:
- (a) the lender's name (including the lender's principal business name if any);
 - (b) the name of:
 - (i) if the lender is a body corporate — each director or secretary of the body corporate; and
 - (ii) if the lender is a partnership or the trustees of a trust — each partner or trustee;
 - (c) the postal address of the lender;
 - (d) if the principal business address of the lender is different from the postal address — the principal business address;
 - (e) if the lender has an Australian Business Number — the Australian Business Number;
 - (f) the number of carried over instruments held by the lender and the total amount owed to the lender under the instruments;
 - (ga) whether the lender is a member of the AFCA scheme;
 - (h) an estimate of the date on which the longest running carried over instrument will be finalised, if payments are made in accordance with the terms of the instrument;
 - (i) if the lender is a prescribed unlicensed carried over instrument lender — the grounds on which the lender is a prescribed unlicensed carried over instrument lender;
 - (j) any other information requested by ASIC.

The notice must be lodged with ASIC on the first day paragraphs (1)(a) and (b) both apply in relation to the lender.

Civil penalty: 2,000 penalty units.

- (3) The lender does not have to comply with subitem (2) if the lender has lodged the notice with ASIC up to 6 weeks before it must be so lodged under that subitem.
- (4) The information contained in the notice must be current at the date the notice is lodged with ASIC.
- (5) Subitems (2) and (3) apply in relation to information contained in a notice that was lodged with ASIC before 1 July 2010 as if references to a carried over instrument in paragraphs (2)(f) and (h) were references to a contract or other instrument that:
 - (a) was in force at the time the notice is lodged; and
 - (b) the old Credit Code applied to at that time.

Offence

- (6) A person commits an offence if:
 - (a) the person is subject to a requirement under subitem (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes this requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

- (7) A person commits an offence if:
 - (a) the person is subject to a requirement under subitem (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes this requirement.

Criminal penalty: 10 penalty units

- (8) Subitem (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.’’.

Note 1: The declaration in this instrument substantially produces the effect that item 39A of Schedule 2 to the Act (as notionally inserted by regulation 16E of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*) would have had but for some drafting anomalies. As a result of those anomalies, that item does not have any operation.

Note 2: A prescribed unlicensed carried over instrument lender is defined in subsection 5(1) and section 5A of the *National Consumer Credit Protection Act 2009* (as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*).

Notes to ASIC Class Order [CO 10/381]

Note 1

ASIC Class Order [CO 10/381] (in force under Item 41 of Schedule 2 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
[CO 10/381]	24/5/2010 (<i>see</i> F2010L01428)	24/5/2010	
2018/937	25/10/2018 (<i>see</i> F2018L01466)	Sch 1: 26/10/2018	Applies on and after 1/11/2018
		Sch 2: 26/10/2018	Applies on and after 1/11/2018

Table of Amendments

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Paragraph 4 (notional paragraph 19A(2)(g))	rep. 2018/937 Sch 2
Paragraph 4 (notional paragraph 19A(2)(ga))	ad. 2018/937 Sch 1