



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176**

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I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 14 December 2016

Stephen Yen

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## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument .....	3
2 Commencement .....	3
3 Authority .....	3
4 Definitions .....	3
<b>Part 2—Exemption</b>	<b>5</b>
5 Licensing exemption for testing credit services .....	5
6 Where exemption is available.....	5
7 Conditions.....	6

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under paragraph 109(3)(a) of the *National Consumer Credit Protection Act 2009*.

### 4 Definitions

In this instrument:

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

**annual cost rate** has the same meaning as in section 204 of the National Credit Code.

**control** has the same meaning in relation to an eligible person as it does in paragraph 9(11)(b) of the Regulations in relation to a licensee.

**controller**, in relation to an eligible person, means a person (either alone or together with associates of the person) who controls the eligible person.

**eligible credit contract** means a credit contract to which each of the following applies:

- (a) the credit contract is not a reverse mortgage, a small amount credit contract or a short-term credit contract;
- (b) none of the amount of credit provided under the credit contract is secured by a mortgage over residential property;
- (c) the credit limit of the contract does not exceed \$25,000;
- (d) the annual cost rate of the contract does not exceed 24%.

**eligible person** means a person who is not any of the following:

- (a) a licensee;

- (b) a related body corporate of a licensee;
- (c) a credit representative;
- (d) a foreign company that is not registered under Part 5B.2 of the *Corporations Act 2001*.

***providing a credit service to a consumer*** includes acting as an intermediary between a credit provider and the consumer.

***Regulations*** means the *National Consumer Credit Protection Regulations 2010*.

***testing period***: see subsection 6(2).

## Part 2—Exemption

### 5 Licensing exemption for testing credit services

- (1) An eligible person does not have to comply with subsection 29(1) of the Act for the provision of a credit service in relation to an eligible credit contract.
- (2) The exemption in subsection (1) does not apply to a person if ASIC has given a notice in writing to the person that the person may not rely on the exemption and has not withdrawn that notice.

### 6 Where exemption is available

- (1) The exemption in subsection 5(1) is available to an eligible person for the provision of a credit service where:
  - (a) the person has given ASIC notice in writing that they are an eligible person who wishes to rely on the exemption in subsection 5(1), together with the following information:
    - (i) the name, address and contact details of the person;
    - (ii) the website address (if any) of the person;
    - (iii) if the person is a natural person:
      - (A) the date of birth of the person; and
      - (B) whether the person is or has been declared bankrupt or insolvent under administration; and
      - (C) whether the person has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings in any country, or is currently party to any proceedings that may result in the person being the subject of such findings or judgment; and
      - (D) certified copies of a bankruptcy check and a national criminal history check for the person that are no more than 12 months old;
    - (iv) if the person is a body corporate, the following information:
      - (A) the ABN, ACN or ARBN of the person;

Note: A foreign company that is not registered under Part 5B.2 of the Act is not an eligible person.

- (B) the identity of each director and controller (if any) of the person;
  - (C) for each director and controller who is a natural person, the information referred to in subparagraph (a)(iii) in relation to the director or controller;
  - (D) the identity of a natural person who is a contact person in relation to the notice and information, together with contact details for that person;
- (v) a description of the credit services the person proposes to provide during the testing period;
  - (vi) whether there is any person, other than an employee or director of the eligible person or a related body corporate, who will be responsible for significant day-to-day decisions about the ongoing provision of the credit services and, if so, their identity and a description of their role;
  - (vii) the arrangements (including a description of systems) by which the person will comply with the conditions in subsections 7(3) and 7(4); and
- (b) following the provision of the credit service, the person will have provided credit services to no more than 100 consumers in reliance on the exemption.

*Exemption available for a single 12 month period*

- (2) The exemption in subsection 5(1) is available to an eligible person for the period (**testing period**) of 12 months starting 14 days after the person gives ASIC a notice referred to in paragraph (1)(a). A person may only give one notice.

## 7 Conditions

*Credit quotes, fee disclosure and responsible lending obligations*

- (1) An eligible person relying on the exemption in subsection 5(1) must comply with Divisions 2, 3, 4, 5 and 6 of Part 3-1 of the Act as if they were a licensee, provided that the person need not comply with those provisions to the extent they require a licensee to disclose an Australian credit licence number.
- (2) Before an eligible person relying on the exemption in subsection 5(1) provides a credit service to a consumer, the eligible person must clearly and prominently disclose to the consumer that:
  - (a) the eligible person does not hold a licence; and

- (b) the service is being tested under an exemption provided by ASIC; and
  - (c) some of the normal protections associated with receiving credit services from a licensee will not apply.
- (3) An eligible person relying on the exemption in subsection 5(1) must:
  - (a) maintain an internal dispute resolution procedure that:
    - (i) complies with standards and requirements made or approved by ASIC for the purposes of subparagraph 47(1)(h)(i) of the Act; and
    - (ii) covers disputes in relation to the credit activities engaged in by the person or its representatives; and
  - (b) be a member of an approved external dispute resolution scheme; and

Note: See section 11 of the Act and ASIC Class Order [CO 10/249].

  - (c) have arrangements for compensating other persons for loss or damage suffered because of a contravention of the Act or the conditions in this instrument by the eligible person or its representatives that:
    - (i) include holding professional indemnity insurance cover that is adequate having regard to the matters identified in paragraphs 12(1)(a) and (b) of the Regulations as if the eligible person were a licensee; or
    - (ii) are otherwise adequate arrangements having regard to those matters.
- (4) An eligible person must remain a member of an approved external dispute resolution scheme for 12 months after the end of their testing period.