

22 August 2018

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Attention: [REDACTED]

By email only to: [REDACTED]

Dear [REDACTED]

### **Credit Contracts and Consumer Finance Act 2003: Warning**

We are writing to you in regards to your client Seed Credit Limited (**Seed Credit**) t/a both Advanced Cash and Seed Cash. As you know, the Commerce Commission (**Commission**) has been investigating the disclosure provided under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) by Seed Credit. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that Seed Credit is likely to have breached section 17 of the CCCFA by failing to disclose to Advanced Cash and Seed Cash borrowers key information applicable to their consumer credit contracts as set out in Schedule 1 of the CCCFA.

After weighing up the factors set out in our Enforcement Response Guidelines<sup>1</sup> we have decided to conclude this investigation by issuing this warning letter.

#### **The investigation**

On 24 April 2017 the Commission obtained a copy of the Advanced Cash Standard Terms and Conditions for Personal Loans and Loan Disclosure Statement (Loan Disclosure Statement) as part of Seed Credit's response to the Commission's request for documents dated 13 April 2017.

We decided to investigate Seed Credit after reviewing the Advanced Cash Loan Disclosure Statement because it appeared not to comply with the CCCFA requirements.

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<sup>1</sup> The Enforcement Response Guidelines are available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

During our investigation, the Commission considered information provided by Seed Credit and reviewed sample copies of Advanced Cash and Seed Cash contracts for consumer loans (**consumer credit contracts**).

The information we gathered established to our satisfaction that:

- Seed Credit only operates online, via websites at [www.advancedcash.co.nz](http://www.advancedcash.co.nz) and [www.seedcash.co.nz](http://www.seedcash.co.nz).
- Seed Credit offers short term loans for between two and 12 weeks.
- Between 6 June 2015 and 25 May 2017 (**relevant period**) there were 1,804 Advanced Cash consumer credit contracts entered into (**relevant consumer credit contracts**).<sup>2</sup>
- The Advanced Cash and Seed Cash Loan Disclosure Statements provided to borrowers when entering into the relevant consumer credit contracts did not include all the key information applicable to contracts as set out in Schedule 1 of the CCCFA.
- Seed Credit revised both the Advanced Cash and Seed Cash Loan Disclosure Statements to include the missing information from 26 May 2017.

### **The Commission's view**

In this case, the Commission's view is that Seed Credit was likely to be in breach of section 17 of the CCCFA during the relevant period.

Section 17 of the CCCFA requires lenders to provide borrowers with disclosure of as much of the key information as is applicable to the loan before the loan is entered into. A list of potentially applicable key information is set out in Schedule 1 to the CCCFA.

The disclosure statements in the relevant Advanced Cash and Seed Cash consumer credit contracts that we reviewed did not comply with section 17 because they did not disclose an accurate statement of the borrower's right to cancel under section 27 (as required by Schedule 1(s) of the CCCFA). Seed Credit incorrectly disclosed to borrowers that they had 3, 5, and 7 days to cancel depending on the method of disclosure (in person, electronically, or by post, respectively), as opposed to the 5, 7, and 9 days required by the CCCFA (sections 27 and 35).

In addition we understand that Seed Credit operates exclusively online; so only the electronic disclosure time period of 7 days will be relevant. In these circumstances we suggest that Seed Credit refer to this time period.

Therefore the Commission considers that the Advanced Cash and Seed Cash initial disclosure was non-compliant during the relevant period.

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<sup>2</sup> We were not provided with the corresponding information in respect of Seed Cash branded contracts.

## Warning

While we will not be taking any further action against Seed Credit at this time, we will take this warning into account if such conduct were to continue or if Seed Credit was to engage in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Seed Credit.

This warning letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

## The Commission's role

The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the CCCFA. The CCCFA is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

## Penalties for breaching the CCCFA

Only a court can decide if there has actually been a breach of the CCCFA and a court can impose penalties where it finds the law has been broken.

If a court finds that a lender has breached s 17 of the CCCFA by omitting one or more items required to be disclosed, it may make orders including:

- orders that costs of borrowing must be refunded;
- orders for statutory damages; and
- orders for fines of up to \$30,000 per offence for companies and \$10,000 for individuals.<sup>3</sup>

Seed Credit should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the court.

## Further information

We have published a series of fact sheets and other resources to help businesses comply with the CCCFA and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage Seed Credit to visit our website to better understand its obligations and the Commission's role in enforcing the CCCFA.

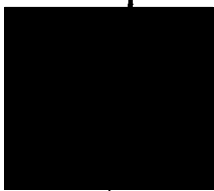
Seed Credit can also view the CCCFA and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

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<sup>3</sup> Note that higher penalties apply to a complete failure to give disclosure.

Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

A large black rectangular redaction box covering the signature of the sender.

Consumer Manager