

2 February 2023

Vickers Marketing Limited
Spicer Accounting Limited
30 Queen Street
Levin, 5540

Attention: [REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003: Warning

1. As you are aware, the Commerce Commission (Commission) has been investigating the conduct of Vickers Marketing Limited (Vickers Marketing) under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). We have now completed our investigation and are writing to inform you of the outcome.
2. In summary, the Commission considers that Vickers Marketing is likely to have breached several of its obligations under the CCCF Act, being:
 - 2.1 the initial disclosure obligations (section 17(1));
 - 2.2 the disclosure standards (sections 32(1)(c) and (d)); and
 - 2.3 the continuing disclosure obligations (section 18(1)).
3. The Commission has determined that in the circumstances of this case it is appropriate to issue Vickers Marketing with a warning letter.
4. The Commission has determined that we will resolve this investigation by issuing a warning and will not be bringing legal action against Vickers Marketing at this time.¹ We note that a warning is not a final finding of non-compliance. Only the Courts can decide whether a breach of the law has occurred.

¹ Please refer to the Commission's published *Enforcement Response Guidelines*, available [here](#).

The law

5. The CCCF Act protects consumers when they borrow money or buy goods on credit. It sets out the rules that must be followed by creditors when they provide loans to consumers in New Zealand.
6. The following provisions of the CCCF Act are relevant to the Commission's investigation into Vickers Marketing covered in this letter. Vickers Marketing has been required to comply with these obligations since 6 June 2015.

Initial disclosure and disclosure standards

7. Section 17(1) states that:

Every creditor under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every debtor under the contract before the contract is entered into.

8. Sections 32(1)(c) and (d) state that:

(1) Disclosure must—

...

(c) express the required information clearly, concisely, and in a manner likely to bring the information to the attention of a reasonable person; and

(d) not be likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract, guarantee, consumer lease, or buy-back transaction (as the case may be).

Continuing disclosure

9. Section 18(1) states that:

Every creditor under a consumer credit contract must ensure that disclosure of as much of the information set out in section 19 as is applicable to the contract is made periodically to every debtor under the contract in continuing disclosure statements.

The investigation

10. Since 1 June 2020, all credit sales entered into by mobile traders are treated as consumer credit contracts for the purposes of the CCCF Act.² This means that, in addition to their existing obligations under laws like the Fair Trading Act 1986 (FT Act) and the Consumer Guarantees Act 1993, mobile traders now have the same obligations as lenders under the CCCF Act.³
11. In October 2020, the Commission opened a monitoring project to better understand the business model of mobile traders and assess their compliance with the CCCF Act and FT Act. This project included the monitoring of all mobile traders known to the Commission across New Zealand, including those who were not subject to the CCCF Act prior to the reform of 1 June 2020.

² Refer to see section 16A of the CCCF Act.

³ Please refer to the Commission's published *Mobile Trader Guidelines* (May 2020), available [here](#).

12. Vickers Marketing was identified as a mobile trader to be monitored under the monitoring project. On 19 February 2021, Commission staff met with Vickers Marketing to discuss its operating model and lending practices.
13. In July 2021, the Commission opened an investigation into Vickers Marketing to assess its compliance with the disclosure obligations and the lender responsibility principles under the CCCF Act.
14. Throughout the course of the investigation, Vickers Marketing co-operated with the Commission, attended voluntary interviews as well as provided information and documents under statutory notice and on a voluntary basis.

Vickers Marketing is a mobile trader and a creditor under a consumer credit contract

15. Our investigation established that, in addition to being a mobile trader for the purposes of section 5 of the CCCF Act, Vickers Marketing's contracts are consumer credit contracts under section 11 of the CCCF Act. As such, Vickers Marketing is subject to obligations under the CCCF Act.

Initial disclosure

16. Our investigation established that, between 6 June 2015 and May 2022, Vickers Marketing failed to provide initial disclosure to its customers before entering into a consumer credit contract, as prescribed by section 17 of the CCCF Act.
17. Our review of 22 customer files found a total of 13 instances where Vickers Marketing failed to provide adequate initial disclosure before entering into the consumer credit contracts with the customers, in circumstances where:
 - 17.1 a new customer made a purchase with Vickers Marketing and no consumer credit contract and/or initial disclosure statement was provided to the customer; and/or
 - 17.2 an existing customer made new purchases with Vickers Marketing at a time when they did not have an existing active consumer credit contract with it. Vickers Marketing did not provide a new consumer credit contract or initial disclosure to the customer.
18. Vickers Marketing updated its initial disclosure processes in May 2022.

Disclosure standards

19. Our review of Vickers Marketing's standard form *Credit Contract Agreement and Disclosure Form, Terms & Conditions of this Agreement* and *Vickers Marketing Ltd Terms & Conditions 2020* (together: the initial disclosure statement) found that, between 6 June 2015 and February 2022, even though all Schedule 1 key information was disclosed in the initial disclosure statement, some key information was not consistently disclosed across all three documents. This information was in relation to:
 - 19.1 the annual interest rate or rates under the contract;
 - 19.2 the customer's cancellation rights; and

- 19.3 the timing at which continuing disclosure will be provided throughout the life of the contract.
20. The fact that Vickers Marketing inconsistently disclosed the key information listed at paragraph [20] above across the three documents that make up the initial disclosure statement resulted in Vickers Marketing's initial disclosure statement being unclear and misleading as to key information regarding the contract in likely breach of the disclosure standards.
21. Our review of the 22 customer files established that all customers from the sample who received an initial disclosure statement from Vickers Marketing were impacted by Vickers Marketing's likely breach of the disclosure standards.
22. Vickers Marketing updated its initial disclosure statement in February 2022.

Continuing disclosure

23. Our investigation found that, between 6 June 2015 and May 2022, Vickers Marketing failed to provide continuing disclosure to its customers as prescribed by section 18 of the CCCF Act.
24. Our review of the 22 customer files identified 108 instances whereby customers did not receive any continuing disclosure statements throughout the life of their contract/s with Vickers Marketing. This was confirmed by Vickers Marketing, which stated at interview that it was not providing continuing disclosure.
25. Vickers Marketing introduced standard form continuing disclosure in May 2022.
26. We note that in the future, Vickers Marketing's continuing disclosure obligations might change from what they are as at the date of this letter if:
- 26.1 Vickers Marketing uses a revolving credit contract, in which case the timing at which continuing disclosure will need to be provided will change from every six months to every 45 days;⁴ and/or
- 26.2 Vickers Marketing's customers have access to the information required at section 19 of the CCCF Act via a website that allows the customer to access the information such as by way of an individual online customer account. Then, under section 21 of the CCCF Act, Vickers Marketing will be exempt from providing continuing disclosure under section 18.

The Commission's view

27. In this case, having fully considered the relevant information and documents received, the Commission's view is that it is likely that Vickers Marketing breached several of its disclosure obligations under the CCCF Act, being:
- 27.1 the initial disclosure obligations under section 17(1) for the period 6 June 2015 to May 2022 by failing to provide initial disclosure of as much of the key

⁴ Refer to s 18 of the CCCF Act

information set out in Schedule 1 as is applicable to the contract to its customers before the contract is entered into;

- 27.2 the disclosure standards under section 32(1)(c) and (d) during the period 6 June 2015 to February 2022, by failing to consistently disclose some of the key information across the three documents that form Vickers Marketing's standard form initial disclosure statement, which resulted in the initial disclosure statement being unclear and misleading as to the key information regarding the contract; and
- 27.3 the continuing disclosure obligations under section 18(1) by failing to provide continuing disclosure to its customers during the period 6 June 2015 to May 2022.

Warning

- 28. After weighing up the factors set out in our *Enforcement Response Guidelines*, the Commission has decided it is appropriate to conclude our investigation into Vickers Marketing in relation to the likely breaches of sections 17, 18 and 32 of the CCCF Act by issuing this warning letter.
- 29. The Commission has taken the following key factors into account:
 - 29.1 Vickers Marketing cooperated with the Commission's investigation;
 - 29.2 Vickers Marketing has updated its documents and processes following engagement with the Commission and sought, and continues to seek, external legal advice;
 - 29.3 we consider that there is a low risk of ongoing or future harm to consumers given Vickers Marketing's active steps to ensure compliance with the disclosure obligations under the CCCF Act going forward; and
 - 29.4 we consider the potential financial harm to customers to be low given the limited costs of borrowing charged to customers.
- 30. This warning represents our view that the conduct which Vickers Marketing has engaged in is likely to have breached the CCCF Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
- 31. We may draw this warning letter to the attention of the courts in any subsequent proceedings brought by the Commission against Vickers Marketing.
- 32. This warning letter is public information and will be published on the Commission's case register on our website. We will be making public comment about our investigation into Vickers Marketing and the conclusions we have reached, including issuing a media statement.
- 33. Finally, we note that the Commission's certification team will be given a copy of this warning letter for it to consider and determine whether it remains satisfied that Vickers Marketing's directors and senior managers are fit and proper persons to hold their respective positions.

Penalties for breaching the CCCF Act

34. As indicated above, only the Courts can decide if there has been a breach of the CCCF Act. The potential penalties for each of the likely breaches are set out below.

Initial disclosure and disclosure standards

35. Where a lender fails to comply with sections 17 or 32, it may:
- 35.1 In the case of a breach of section 17:
- 35.1.1 Be required to refund the costs of borrowing paid by borrowers during the period in which the lender failed to comply with section 17 in accordance with sections 48 and 99(1A).
- 35.1.2 Be issued with an infringement notice and required to pay an infringement fee of \$1,000 per notice⁵ where a lender has failed to include all the key information in the initial disclosure statement in breach of section 17.
- 35.1.3 Be found in breach of an infringement offence and fined in accordance with sections 102A to 105F (up to \$10,000 in the case of an individual and \$30,000 in the case of a company) where a lender has failed to include all the key information in the initial disclosure statement in breach of section 17.
- 35.2 In the case of a breach of sections 17 and/or 32:
- 35.2.1 Be required to pay statutory damages to borrowers in accordance with sections 88 to 92.
- 35.2.2 Commit an offence and be liable on conviction in the case of an individual to a fine not exceeding \$200,000 and in the case of a company of up to \$600,000 if there is a complete failure to provide initial disclosure or a failure to meet the disclosure standards.⁶

Continuing disclosure

36. Where a lender fails to comply with section 18 by not providing continuing disclosure, it may:
- 36.1 Be required to pay statutory damages to borrowers in accordance with sections 88 to 92.
- 36.2 Commit an offence and be liable on conviction in the case of an individual to a fine not exceeding \$200,000 and in the case of a company of up to \$600,000 if there is a complete failure to provide the continuing disclosure.⁷

⁵ Refer to Reg 4 of the Credit Contracts and Consumer Finance (Infringement Offences) Regulations 2015

⁶ A complete failure to give or send a disclosure statement to a debtor in accordance with s 17 is an offence under s 103 of the CCCF Act

⁷ A complete failure to give or send a continuing disclosure statement to a debtor in accordance with s 18 is an offence under s 103 of the CCCF Act.

37. Please note that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the Courts.

Further information

38. We recommend that Vickers Marketing seeks legal advice and encourage it to regularly review its compliance procedures and policies.
39. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act as well as other legislation we enforce. These are available on our website at: www.comcom.govt.nz. We encourage you to visit our website to better understand Vickers Marketing's obligations and the Commission's role in enforcing the CCCF Act.
40. You can also view the CCCF Act and other legislation at www.legislation.govt.nz
41. We thank you again 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

[REDACTED]

[REDACTED]

Credit Investigations and Compliance Manager
Credit Branch - Auckland