

# save my bacon

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18 March 2020

Enquiries team  
Commerce Commission  
PO Box 2351  
WELLINGTON 6140

Via email: fitandprobersubmissions@comcom.govt.nz

Dear Sir/Madam,

## Submission on Criteria for Certification

This submission is on behalf of Save My Bacon Ltd (**SMB**). Our comments on the Consultation Document are very brief as we are in broad agreement with the Commission's proposed approach.

The "fit and proper" certification requirements are, in our view, analogous to the requirements imposed on markets services licensees under the Financial Markets Conduct Act 2013. Accordingly, we consider it appropriate to replicate these requirements as far as the context permits: a consistent approach will promote better understanding and uniform standards across financial markets and services.

Q1	<p>What do you think of the proposed fit and proper criteria in Table 1 and Table 2 of this consultation document and why?</p> <p><i>NOTE: If you have comments regarding a specific criterion please provide the reference number with your feedback.</i></p>
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With respect to reference numbers 5 and 6 in Table 1, investigations by the Commission and other regulators are often disputed on points of law and fact. If such matters are not resolved through the courts, then the correct or better view may never be determined. Settlements are commonly reached on a commercial basis because the cost of further litigating the dispute is greater than any consequences of an agreed settlement or warning. For instance, the commercial cost arising from the issuance of disputed warning letters is normally far less than the cost of further litigation. Only matters that have been subject to a determination by an independent tribunal or where an admission of guilt has been obtained should be relevant to the Certification inquiries.

Q2	<p>What sorts of change in circumstances do you think could affect the Commission's assessment of whether directors and senior managers of a lender or mobile trader are 'fit and proper'?</p>
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In our view, the ongoing notification requirements should be modelled on those provided in regulation 191 of the Financial Markets Conduct Regulations 2014 as far as they relate to changes to corporate

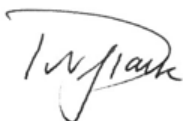
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structure of the entity or directors and senior managers<sup>1</sup>. However, outside of a full licensing regime, the following provisions would not be relevant:

- (a) Regulation 191(b) regarding proceedings or actions, but being limited to proceedings or actions that are required to be disclosed under the fitness and propriety of the directors and senior managers in Table 1;
- (b) Regulation 191(d) regarding auditors, although this disclosure might be relevant if the entity was required to have an audit; and
- (c) Regulation 191(f) regarding major transactions.

Thank you for the opportunity to submit on these proposals. If you require any further comments or clarification, then we would be pleased to do so.

Yours sincerely  
**SAVE MY BACON LIMITED**

A handwritten signature in black ink, appearing to read 'Paul Park', written in a cursive style.

Paul Park  
*Director*

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<sup>1</sup> “Senior manager” should take the same definition as in the Financial Markets Conduct Act 2013.