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Submission to the Commerce Commission Criteria for Certification under the Credit Contracts and Consumer Finance Act 2003

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Introduction

In principle, FinCap supports the introduction of the requirement that the Commerce Commission must certify a director or senior manager of a lender or mobile trader as a fit and proper person to hold their respective positions before they are able to be registered on the Financial Service Provider Register (FSPR). However, FinCap believes that the "Probity, reputation and financial integrity" criteria are at too high a threshold. We also believe that the "Competency and capability" criteria, without any associated thresholds, do not determine whether a person is competent to be a director or senior manager of a lender or mobile trader.

‘Fit and Proper’ assessment criteria (Section 131F)

What is ‘fit and proper’

We support the definitions of ‘fit and proper’ as a person who is financially sound; honest, reputable and reliable; and competent to perform the role in question.

Probity, reputation and financial integrity

We support the criteria on probity, reputation and financial integrity. However, we note that these criteria are a high threshold and will only catch directors and senior managers of lenders who have been convicted of a crime, bankrupt or otherwise insolvent, been subject to disciplinary action, or been prohibited from providing credit. This means that most directors and senior managers will meet the requirements without them necessarily being appropriate people to operate in the consumer credit industry.

Although these criteria are necessary to consider when deciding whether someone should be certified as fit and proper, these criteria should be limited by the “Competency and Capability” criteria.

Competency and capability

The criteria to determine whether a person is competent and capable are factual and do not actually determine whether someone is competent. For example, gathering information on a person’s qualification (criterion 19) and professional body memberships (criterion 20) does not determine whether someone is competent because the individual may still lack the knowledge that is required for them to be competent as a director or senior manager in a lender or mobile trader.

Knowledge that an individual should have before they are deemed to be competent is an understanding of CCCFA obligations, including how to undertake a sufficient affordability assessment; personal finances; and financial accounts. A specific training course or qualification that an individual must undertake before they are deemed to be a fit and proper person would be a better determinant of whether a person is competent and capable of being a director or senior manager of a lender or mobile trader.

We would like the opportunity to give our feedback on how the Commerce Commission intends to apply the criteria and what thresholds a person would have to meet to be considered competent and capable and therefore fit and proper.

Change in circumstances (Section 131R)

We support the requirement under s 131R of the CCCFA that a lender or mobile trader that has fit and proper person certification must notify the Commerce Commission about any prescribed change in circumstances. We support the listed changes that a lender or mobile trader should notify the Commerce Commission about including new directors or senior managers; changes in roles of directors or senior managers; and changes that would affect a director or senior managers' answer to the 'fit and proper' person criteria.