Good afternoon,

I am writing today regarding SB 1235, as amended, Glazer. Commercial financing: disclosures. An act to add Division 9.5 (commencing with Section 22800) to the Financial Code, relating to commercial financing which

This is set to take effect January 2019.

I am primarily concerned about the requirement for these disclosures for our type of industry. Such disclosures are not relevant to our type of financing and would be impossible to summarize. Our loans are not for specific terms, fixed rate loans or amortized loans. The proposed disclosures leave a big margin for error and this can potentially put us at risk of violations. What is the allowance for margin of error that would be acceptable on these disclosures for our type of loans?

I'd like to discuss the possibility of our Industry being excluded from the need of these amended disclosures, workout alternative disclosures that would apply to our type of financing. Or, can you show us the methods and calculations of how to properly implement these changes on our type of loans?

Our Company is an Asset-Based Lender. Our loans vary between $5,000 - $1,000,000. These loans are revolving lines of credit based on the accounts receivable of a company. These loans are self-liquidating from the collections of those accounts receivable. Our interest charges are similar to how credit cards operate where interest is calculated and charged monthly based on the average daily loan balance (credit card charges by user vary by user through the month). Similarly, any changes occurring through the month will affect the fluctuation in the daily loan balances of each client. Such activity in our financing that cause fluctuations in the loan balances relate to: Advances-our clients borrowing, deductions-payments from their account debtors. We apply the interest to the loans every month for the previous month, on the daily average loan balance of the previous month.

Like the way a credit card operates, our interest charges are applied monthly to the loan, based on the average daily loan balance of the loan. If a loan is paid down in full the following day after funding, the loan is charged interest for one day. As a loan is paid down by the client's receivables' (payments from their account debtors), the client can borrow again on the freed-up availability, up to their credit line. Our clients operate their businesses with the daily use of a revolver loan with us. Some of our clients may collect and borrow on a daily-basis (at times, up to their limit, and other times only what is needed for their daily operating business expenses). Other clients may do weekly assignment of sales, requiring borrowing only on a weekly basis. It all depends on the size and nature of the business we are financing.

Our loans renew on an annual basis, but the length of the loan is undetermined at the time of establishment. Some of our clients can be with us for one month, six months, one year, or ongoing. There is no control or possible way of determining, predicting or estimating how much our clients will borrow, or how much in collections from each of their account debtors will be received on any given day, week, month or year. Also, our clients can have between 5-200 customers with varied payments terms per customer (between 10-90 days).

A client can also request a line increase based on increase of sales through the life of the loan. Our clients' loans can fluctuate drastically as a decrease or increase in loan balance due to all these factors and it would be impossible to calculate "Total of Payments", "Term or Estimated Term", "Estimated Annualized Cost of Capital", or "Total Dollar Cost of Financing".

Typical scenario:

Prospective client is currently doing 20K month in sales. In my discretion, I want to set them up with a 50K line (allows for roughly 2 billing cycles of sales). What disclosure do we issue? Cost of 20K? Cost of 50? Cost only on capital? Based on account debtor payment terms, on 30 days? 60 days? During the cycle, one invoice might get paid in 20 days rather than 30 days. Calculate the cost of financing disclosures on the total loan limit regardless of the fluctuations in loan balance?

I also want to take the opportunity to request that changes be made to the California Finance Law that would help designate ABL Lenders as a separate entity of financing with regulations more specific to our loan structures. ABL Lenders make up a significant number of the Finance Industry in California.

Thank you for your consideration of my viewpoint on this matter. I believe it is an important issue, and I would like to see the bill be amended to ensure effective financial services for our clients.

SB 1235 addressing Sections *22802 & 22803*

(***22802)***

(2) The total amount of funds to be paid by the recipient of the commercial financing pursuant to the financing agreement, assuming all payments are made when required. This amount shall include all unavoidable fees and charges, including, if applicable, any fees or charges due at the time the financing is retired or paid in full. For a commercial open-end credit plan the Total of Payments shall include the total dollar costs to be charged to a borrower, based on the maximum draw amount of credit available under the open-end credit plan, assuming the borrower repays the commercial loan according to its original payment schedule, plus all required periodic and nonperiodic fees and charges that cannot be avoided by a borrower. This shall be labeled "Total of Payments." This disclosure shall clarify that "Total of Payments" does not include fees the recipient may avoid, such as late fees or returned payment fees.

(3) The total dollar cost of the commercial financing transaction, which shall be calculated by subtracting the amount of funds provided from the total of payments. This shall be labeled "Total Dollar Cost of Financing."

4) For commercial financing with fixed periodic payments, the term of the financing in total calendar days, and for commercial financing with variable payments and no fixed term, the estimated term of the financing in total calendar days as assumed by the provider in the underwriting process. This shall be labeled "Term" or "Estimated Term."

(5) For commercial financing that has fixed, non-variable period payment amounts: the frequency and amount of each payment. For commercial financing that has variable periodic payment amounts: a description of the method by which payments are calculated and the frequency of those payments. This disclosure shall be labeled "Payments."

(22803)

In addition to the disclosures required in 22802, the following shall be disclosed by a provider of a commercial loan, commercial open-end credit plan, or accounts receivable purchase transaction *that requires a recipient to forward or otherwise sell to the provider a portion of receipts that are collected by the recipient during a specified period or in a specified amount. This section shall not apply to an accounts receivable purchase transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods supplied or services rendered, which have been ordered but for which payment has not yet been made.*

(a) "Estimated Annualized Cost of Capital," which is the total cost of the capital expressed as a percentage of the amount financed and presented as an annual equivalent.

(b) The "Estimated Annualized Cost of Capital" shall be rounded to the nearest whole number and shall include the following disclosure: "This estimate includes all charges and fees incurred for the financing, assuming you make all payments when scheduled and adhere to the terms of the agreement. This number is based on the estimated term. If the actual term is shorter than estimated, the annualized cost of capital may be higher than shown. If the actual term is longer than estimated, the annualized cost of capital may be lower. This is not an Annual Percentage Rate (APR)."

This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

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