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April 26, 2021

**VIA ELECTRONIC MAIL**

Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15th Floor  
Los Angeles, CA 90013  
[regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

RE: *Response to Invitation for Comments on Proposed Rulemaking  
Commercial Financing Disclosures (PRO 01-18)*

Dear Ms. Sandoval:

This law office, in consultation with another firm representing multiple factoring companies in the industry (“Factors”), previously submitted responses to the Department of Business Oversight’s Invitation for Comments on Proposed Rulemaking in Commercial Financing Disclosures. We have reviewed the Department of Financial Protection and Innovation’s most recent draft regulations and hereby submit this response to the Department’s Invitation for Comments.

As we previously noted, Factors finance customers on an ongoing basis similar to a bank’s line of credit where money continues to flow in and out depending on the needs of the customer. Most Factors enter one master general agreement with their customers to purchase eligible receivables over the life of the agreement, which sometimes has a set term. With this structure in mind, we request the following clarifications to the regulations.

**1. Clarify The \$500,000 Threshold In The Factoring Context.**

The new proposed regulations clarify that the term “approved advance limit” means “the maximum advance that a financier may provide to a recipient or on the

recipient's behalf in exchange for assignment of outstanding, unpaid legally enforceable claims under a factoring agreement." §2057(a)(1).

The regulation should be clarified to convey whether the "approved advance limit" in the factoring context is the maximum advance that a financier may provide in exchange for the assignment of outstanding, unpaid legally enforceable claims under a factoring agreement cumulatively over the life of the agreement, or whether it is meant to refer to the amount that is currently outstanding at any one point in time.

**2. Allow the Sample Disclosure Permitted in Factoring Contexts to Use a Sample Advance Amount Rather Than The Full Approved Advance Limit.**

Financial Code section 22803 allows a Factor to use as a disclosure "an example of a transaction that could occur under the general agreement for a given amount of accounts receivables." Cal. Fin. Code §22803. The statute indicates that the example should include "an amount financed." Cal. Fin. Code §22803(a).

The new proposed regulation defines the "amount financed" to be "the approved advance limit, less any reserve amounts that would be withheld if an amount equal to the approved advance limit were disbursed." §2057(30)(D). Because of this definition, the new proposed regulations require the "amount financed" in the sample disclosure to be "the maximum amount a financier may provide to a recipient," which could be up to \$500,000. See §2064(a)(3) (requiring the "*amount financed*" to be used in the sample); §2057(30)(D) (defining "*amount financed*" to be "*the approved advance limit, less any reserve amounts that would be withheld if an amount equal to the approved advance limit were disbursed*"; §2057(a)(1) (defining "*approved advance limit*" to mean "the maximum advance that a financier may provide to a recipient or on the recipient's behalf in exchange for assignment of outstanding, unpaid legally enforceable claims under a factoring agreement.")

Such an "example" would be misleading because the total dollar amounts would be much larger than a true "example of a transaction that could occur under the general agreement." It was not the intent of the statute in providing the option of an "example" of "an amount financed" to require a Factor to use the maximum amount that may be advanced in the sample disclosure. See Cal. Fin. Code §22803.

In addition, the regulations as written would require the sample transaction to exclude from the "amount financed" any anticipated reserve amounts, which could artificially raise the apparent cost of the financed amount. §2057(30)(D). Thus, if \$100 were the face amount of the sample invoice, \$2 were anticipated to be held in reserve but ultimately returned to the customer, and the cost of the advance is \$5, the Factor would be forced to reflect a \$5 charge on a \$98 advance, even though the true advance is \$100. This would result in a misleading example.

To resolve the foregoing problems, the regulation should be clarified to state that, in the context of an example as contemplated under Section 22803, the "amount

financed” should be a sample amount of the face value of a single invoice reasonably expected to be within the range of the face values of invoices expected to be purchased or assigned within the life of the master agreement.

**3. Clarify the Frequency of Disclosures in the Factoring Context.**

The proposed regulations have been amended to no longer require a new disclosure every time there is a new “payment amount” quoted, but requires a new disclosure any time a new “payment amount” is quoted. §2057(a)(4). This regulation remains vague as to when a new disclosure is needed in the factoring context.

We request a clause to be added specifying that where there is a sample disclosure made pursuant to a general agreement to purchase eligible current and potential future accounts receivable and purchase orders, amounts funded over time pursuant to such an agreement shall not each require a new disclosure form for each individual funding unless the terms have changed. Moreover, it should be clarified that the disclosure requirements apply to all new general agreements and shall not require the creation of a disclosure for already existing general agreements.

**4. Clarify the Finance Charge Disclosure in the Factoring Context.**

We request the following clarification regarding the finance charge disclosure:

A finance charge is:

In a factoring transaction, the difference between **(a)** the face value on the invoice and **(b)** the amount paid directly to the recipient upon assignment of the legally enforceable claim to the financier, ~~but excluding plus~~ reserve amounts, only if the financier reasonably anticipates that it will return all reserve amounts to the recipient once it has been paid for the legally enforceable claim or claims assigned by the recipient or upon termination of the contractual relationship between the financier and the recipient, properly crediting payments made by account debtors and previous collections by the financier from the recipient, all amounts held in reserve, and payments by insurers on defaulted accounts. In determining what the financier can reasonably anticipate, the financier shall consider past performance of similar contracts (both those made to the recipient and other similar recipients) and the policies and procedures of the financier.

§ 3010(a)(3).<sup>1</sup>

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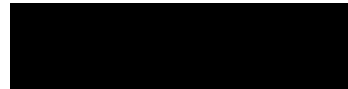
<sup>1</sup> Section 3010 also refers to a “commercial credit transaction,” a term which is neither defined nor used anywhere else in the regulations.

Without this clarification, the regulation could be read to mean that the reserve amount should not be included in the “amount paid directly to the recipient” in the calculation, which would effectively make the reserve amount part of a finance charge. That is clearly not what is intended, based on the remaining language of the clause.

In addition, the disclosure should be permitted to caution the customer that the finance charge and APR does not include potential non-finance fees such as bank charges, set-up or application fees at the outset of the factoring relationship, or actual legal or administrative fees<sup>2</sup> should they become necessary.

We appreciate this opportunity to provide feedback on the proposed regulations.

Sincerely,



Rebecca Coll

cc: Jesse Mattson



Charles Carriere



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<sup>2</sup> Factors frequently act as service companies for customers in addition to finance companies, by taking over the administrative work of accounts receivables, including handling and cashing checks, tracking payments, handling paperwork and keeping clients apprised of the status of payments. Factors absorb many of these costs (unlike other types of lenders, which provide no such services), but it sometimes becomes necessary to make separate itemized charges for administrative work. The administrative time is unrelated to the financed amount, and may continue to occur even when funds are not being advanced but payments continue to arrive. Factors will handle the accounts receivable payments and turn payments over to their customers when the customers do not require funds. Factors should be permitted to continue to charge these administrative fees without attempting to factor in unknown administrative fees unrelated to financing at the outset of the relationship.