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October 28, 2020

Via email to* [redacted] *@dbo.ca.gov
Charles Carriere
Senior Counsel
Department of Financial Protection and Innovation
One Sansome Street, Suite 600
San Francisco, CA 94104-4448
Tel: 415-972-8570

Dear Charles Carriere:

Stripe appreciates the opportunity to provide input on the Department of Financial Protection and Innovation's (**DPFI**) notice of rulemaking action proposing regulations (the **Proposed Regulations**) to implement Sections 22800–22805 of the California Financial Code. Stripe supports measures to help recipients understand the terms of their commercial financing arrangements and comparison shop between products. We thank the DPFI for its efforts to give providers of commercial financing products certainty with respect to the content, timing, and format of required disclosures.

Stripe is a technology company that builds economic infrastructure for the internet. Businesses of every size, from new startups to public companies, use our software to accept payments and manage their businesses online. In addition to our payments infrastructure, we provide our users with access to business financing made available through bank partners. Stripe Capital helps our users access flexible loans that they can pay back as they make money rather than on a rigid, fixed payment schedule. Users are only charged a single upfront fixed fee—they are never charged prepayment fees, late fees, or interest charges. To obtain repayment, Stripe withholds a percentage of a user's payment processing volume until the loan amount and fee is paid down, with minimum amounts due every 60 days. Stripe Corporate Card and Issuing allow businesses to create, manage, and distribute virtual and physical cards and manage spending and expenses in real-time. Stripe Corporate Card users are not charged fees of any kind, and Stripe Issuing users are charged card creation and transaction-based fees—in both cases, there are no prepayment fees, late fees, or interest charges applied to periodic balances.

These products were designed with our users in mind, as one-third of Stripe merchants cite access to capital as their biggest inhibitor to growth. We survey our users on a regular cadence to gauge their satisfaction and to create a feedback loop we can use to improve their experience. Transparent and simple disclosures are key to customer satisfaction, and we consider these concepts to be core elements of our product design. Stripe therefore appreciates the DPFI's efforts in the notice of rulemaking action. Stripe also recognizes the challenges in applying consumer financing disclosure concepts to commercial financing products, which were developed for a market with different needs. With these challenges in mind, this letter offers recommendations for the DPFI to consider when developing final regulations based on the following three principles: (1) final regulations should promote use of best available information to generate estimates, (2) final regulations should promote simplification of disclosure, and (3) final regulations should reflect that they are creating a novel framework for commercial financing disclosures.

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1. *Final regulations should promote use of best available information to generate estimates*

In mandating estimation methods for sales-based financing disclosures, final regulations should adopt as a guiding principle the requirement in § 2060(9)(A) of the Proposed Regulations to base estimates or assumptions on the best information reasonably available. As a consequence of this principle, final regulations should promote the use of the underwriting method prescribed by § 2092 of the Proposed Regulations for estimations of annual percentage rate (**APR**) for sales-based financing.

The underwriting method would allow providers to disclose what they actually expect the annualized cost of financing will be. This information is important to a recipient when deciding whether or not a financing offer is appropriate to meet their needs. Where a provider uses underwriting methods that consider information other than just historical revenue, the historical method prescribed by § 2091 would require disclosure of an annualized cost of financing that could be arbitrarily unrelated to the actual expected annualized cost of financing because. Use of the historical method could therefore lead to disclosure of information that is misleading and not helpful to recipients comparison shopping between financing offers.

To encourage useful and meaningful disclosure, the DPFI should cautiously consider the appropriate audited APR spreads generated by the audit prescribed in § 2092(4) of the Proposed Regulations that would result in a provider being disallowed from using the underwriting method. The DPFI should determine the maximum allowable audited APR spreads by weighing the expected benefit to a recipient that is given the estimated APR based on the historical method against the cost to a recipient of not having access to what a provider actually expects the estimated APR to be.

The DPFI should also consider that sales-based financing products are attractive to businesses because of their flexible nature—recipients are given more time to repay a financing if their business slows, and only have to repay a financing more quickly than expected if their business does better than expected. Some resulting variation between the retrospective APR and estimated APR for sales-based financing products is therefore a feature of their design rather than a bug. The DPFI should consider allowing providers of sales-based financing products to provide an estimated APR range that shows, for example, the estimated APRs in multiple repayment scenarios, including the estimated APR if a recipient uses the maximum term length to repay a loan. In the alternative, any penalty for excessive audited APR spreads over time should apply only where the audited APR spread is positive, meaning that the disclosed APR is consistently lower than the retrospective APR and that providers would not be penalized for disclosing APRs in excess of retrospective APRs.

Finally, the DPFI should consider in setting any maximum allowable audited APR spreads that the application of mandatory APR disclosure to sales-based commercial financing products is entirely novel. The Truth in Lending Act's implementing regulation (**Regulation Z**) contains a requirement identical to § 2060(9)(A) to use the best information reasonably available when information necessary for accurate disclosure is unknown.[1] The DPFI may be able to better ground the appropriate audited APR spread cap

[1] Truth in Lending Act, Regulation Z, 12 C.F.R. part 1026.5(c).

in the future when the effects of the required disclosures and the benefits and costs to recipients are better understood. We believe that it would therefore be appropriate for the DPFI to phase in determination of maximum allowable audited APR spreads or penalties for excessive audited APR spreads some time after final regulations go into effect.

2. ***Final regulations should promote simplification of disclosure***

Final regulations should permit simplification of the mandatory disclosures where such simplification has the effect of making the cost of financing easier to understand. The prescribed formats in §§ 2061–68 of the Proposed Regulations contemplate many possible variations and complex features of commercial financing products. Final regulations should provide pathways to simplify required disclosures where a product's pricing or other terms can be more simply explained.

For example, although the Proposed Regulations import Regulation Z's definition of a finance charge from 12 C.F.R. part 1026.4, they do not cross-reference to other provisions of Regulation Z that provide guidance on how to disclose transaction-based finance charges for open-end credit plans that cannot be known in advance. Under the Proposed Regulations, providers of open-end credit plans may be required to estimate transaction-based finance charges by making arbitrary card usage assumptions. It would be more helpful to recipients to have clear, plain-language disclosure of how such transaction-based finance charges would be applied. This approach would mirror Regulation Z's provisions specific to account-opening disclosures in 12 C.F.R. part 1026.6. Stripe recommends that final regulations make reference to those provisions of Regulation Z in prescribing required disclosures for open-end credit plans.

In addition, where mandatory disclosure is inapplicable, providers should be permitted to exclude inapplicable rows rather than trying to shoehorn their product into a concept. For example, the Proposed Regulations introduce the concept of a "draw period" for open-end credit plans. The DPFI states in its Initial Statement of Reasons that while "term" "is designed to reflect the length of time it will take for a financier to be repaid in connection with a specific advance," it "recognizes that… there may also be a time period during which a recipient may make draws under the agreement." Final regulations should clarify that where a draw period does not differ from a term, separately describing a draw period is optional.

3. ***Final regulations should reflect that they are creating a novel framework for commercial financing disclosures***

The Proposed Regulations take on the task of applying concepts developed for consumer financing products to a novel context. California is on the cutting edge in this space, and the DPFI has done an admirable job of responding to prior stakeholder feedback in developing the Proposed Regulations. We expect that the learning process for providers, recipients, and regulators will continue. As some of the examples in this letter demonstrate, there are scenarios in which the contemplated disclosures may upset market expectations and cause confusion. Final regulations should balance these risks with safe harbors for providers that adhere to their requirements. For example, final regulations should provide that calculations based on specified assumptions shall not be used as the basis for any civil claim as long as the assumptions are disclosed in the manner required by the regulations. Final regulations should also build in phase-in periods that allow the DPFI to study their effects, and should include enough time before becoming fully effective for providers to prepare to comply and seek clarifying guidance from the DPFI where necessary.

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We thank the DPFI for its consideration of the views expressed in this letter. Should you have any questions or require any additional information, please do not hesitate to contact me at nuveen@stripe.com.

Respectfully submitted,

/s/

Nuveen Dhingra
Regulatory Counsel