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Mr. Christopher S. Shultz  
Acting Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90013  
Email: regulations@dfpi.ca.gov

Re: PRO 01/18 Commercial Financing Disclosure Regulations

Dear Mr. Shultz,

The California Department of Financial Protection and Innovation's Notice of Second Modifications to Proposed Regulations Under Division 9.5 of the California Financial Code with respect to Commercial Financing Disclosure Regulations (PRO 01/18) invited written comments to the proposed changes to the draft regulations. As stated in our prior comment letters, we recognize and appreciate how much attention the Department has given to the careful crafting of these regulations and its very complex subject matter and appreciate the opportunity to provide further comments. We have again attempted to provide practical and specific input that is consistent with the intent of providing meaningful disclosures to commercial financing customers while also providing the practical flexibility needed by commercial customers and financiers to efficiently negotiate and execute commercial financing transactions important to the success of California businesses.

1. Timing of Disclosures. The modifications made to section 2057(a)(4)(A) take into account situations where the financier and the recipient may consider multiple alternative financing offers and the common back-and-forth negotiation process. From a practical perspective, though, a provider may need a day or two to prepare the disclosure for the financing offer preferred by the recipient. We recommend the following revision to the second sentence of section 2057(a)(4)(A):

“However, if a provider simultaneously presents multiple periodic payment amounts, irregular payment amounts, or financing amounts, and rates, prices, or costs of financing

(including, without limitation, any total repayment amounts) to the recipient, representing different financing offers and allows the recipient to select from among those options, then “at the time of extending a specific commercial financing offer” occurs **within two business days of the time** the recipient selects a preferred option **and before the commercial financing transaction is consummated.**”

In addition, the timing of when a broker is required to provide disclosures under section 3023 should be consistent with the timing in this definition. We would recommend a revision to section 3023(a)(4) as follows:

“Develop procedures reasonably designed to ensure that brokers provide the disclosures **at the time of extending a specific commercial financing offer.** These procedures shall include....”

and a revision to section 3023(b) as follows:

**(b) At the time of extending a specific commercial financing offer, a broker shall provide the recipient the disclosure required by subdivision (a)(1) of this section, unaltered.** After a broker transmits disclosures to the recipient....”

2. Recipient’s Business Address. Section 3025(b) permits a provider to rely on the business address provided by the recipient for purposes of determining whether a recipient’s business is “principally directed or managed from California.” In many commercial financing transactions, the application is provided to the broker, rather than to the multiple financiers competing for a particular commercial financing transaction. We request that the financiers be allowed to rely on the recipient’s statement of business address and, to that end, propose the following revision to clause (ii) of section 3025(b): **“the business address provided by the recipient in the application for financing.”**

3. Broker Definition. The definition of “broker” in section 2057(a)(6) is overly broad and could encompass a financier’s or recipient’s outside counsel, employee, or other representative. We recommend that section 2057(a)(6) be revised as follows: **““Broker” means any person other than a financier, recipient, or representative, employee, or agent of such financier or recipient,** who does any of the following...”

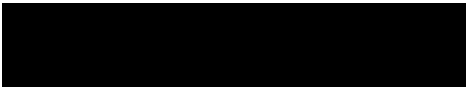
4. Average and Estimated Monthly Cost. The definitions of “average monthly cost” and “estimated monthly cost” refer to the “amount paid.” Although we believe these terms are referring to the average monthly payment and estimated monthly payment, the defined terms suggest that they may just be finance charges. To avoid ambiguity, we recommend a replacement of “payment” for “cost” in both definitions and where such defined terms are used in the regulations.

5. Delayed Effectiveness. The Notice of Notice of Second Modifications to Proposed Regulations noted that the modifications to the proposed regulations would not be effective until approved by the


Office of Administrative Law and filed with the Secretary of State, and the Initial Statement of Reasons published by the Department in September 2020 advised that the effective date of these regulations will be approximately six months after the final regulations are issued. As we have previously advised, we anticipate that significant time and effort will be required to modify our agreements, processes, procedures, and systems of record to accommodate these regulations and to communicate and explain necessary changes to our customers. It is our view that the full 6-month delay in effectiveness will be needed to implement these changes.


We welcome any questions you may have with respect to our comments and the practical application of these regulations to our commercial financing customers and businesses. Please feel free to contact me by email (Christine.G.Hamm@WellsFargo.com) or phone ((312) 920-3543) at your convenience.

Sincerely,

A black rectangular redaction box covering the signature of Christine Gould Hamm.

Christine Gould Hamm  
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Wells Fargo Bank, N.A.

cc: Charles Carriere, Senior Counsel, Department of Financial Protection and Innovation  
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