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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

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

Dear Ms. Sandoval:

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.

1. The Regulations Contradict the Statute.

Finance Code section 22803 states that the "example transaction" disclosure made by a Factor should reflect "the total dollar cost" (section 22803(a)(2)) in addition to "the total cost of the financing expressed as an annualized rate" (section 22803(a)(6)).

The "example transaction" disclosure set forth in Section 913 of the proposed regulations does not provide for disclosure of the "total dollar cost" of the proposed transaction. (*See* §913.) Moreover, Section 913 requires the Factor to use the phrase "Annual Percentage Rate" in the example disclosure instead of the term used in the statute, "Cost of Financing Expressed as an Annualized Rate." (Fin. Code 22803(a)(6).)

The "example transaction" disclosure should include a row for "Total Dollar Cost" immediately under the "Funding Provided," and the title of the row "Annual Percentage Rate (APR)" should be changed to "Total Cost of Financing Expressed as Annualized Rate." These changes are necessary to track the language of the statute.

2. Allow the “Example Transaction” Disclosure (Per Section 913) to Use a \$10,000 Sample Advance Amount Instead Of The Full “Approved Advance Limit.”

The proposed regulations allow the Factor to set forth an approved advance limit in its master agreement. However, if the Factor does so, then the “example transaction” disclosure provided by the Factor per Section 913 of the proposed regulations must use the total approved advance limit as the “amount financed.”¹

For example, if a Factor has a total advance limit of \$400,000 that can be outstanding at any given time over the life of the agreement, the Factor would need to use \$400,000 as the “amount financed” in its sample disclosure, rather than a true example of a single transaction. 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.” See Cal. Fin. Code §22803. 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 outstanding at any given time in the sample disclosure. See *id.*

A Factor should be permitted to use the \$10,000 sample transaction even where the Factor states in its general agreement that its approved advance limit is higher than \$10,000. Doing so would create more transparency for the consumer, who would understand the comparison with other similar advances.

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

We previously requested, and renew here our request, that a clause be added specifying that where there is a sample disclosure made pursuant to a general agreement to purchase 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 advance 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.

Financial Code Section 22802 provides that a provider must make a disclosure under Section 22802 or 22803, if applicable, “to a recipient at the time of extending a

¹ See §913(a)(3)(b) (requiring the “*amount financed*” to be used in the sample); §900(30)(E) (defining “*amount financed*” to be “*the approved advance limit, minus any prepaid finance charge*”); §900(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, not including any previous distributions advanced to a recipient or on the recipient’s behalf, to the extent those distributions have been repaid;*” §951(b)(requiring approved advance limit to be used in example transaction disclosure).

specific commercial financing offer to that recipient, and shall obtain the recipient's signature on such a disclosure before consummating the commercial financing transaction.”

As currently written, the regulations provide:

“Specific commercial financing offer” means a written communication to a recipient, based upon information from, or about, the recipient, of a (i) periodic payment amount, irregular payment amount, or financing amount, and (ii) any rate, price, or cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing. Information “about the recipient” includes information about the recipient that informs the provider’s quote to the recipient, such as the recipient’s financial or credit information, but not the recipient’s name, address, or general interest in financing.

(Section 900(a)(4).)

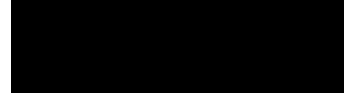
These regulations could be read to mean that a Factor must make a disclosure and obtain a recipient’s signature each time a Factor offers to purchase an account receivable. The terms “irregular payment amount” and “financing amount” are undefined, and could be read to mean an offer to purchase individual accounts receivable pursuant to a master agreement. Moreover, the “cost of financing” varies depending on the amount of the account receivable purchased. To clarify that a new disclosure need not be signed with every purchase of accounts receivable made pursuant to a master agreement, the regulation should be modified as follows:

“Specific commercial financing offer” means a written communication to a recipient, based upon information from, or about, the recipient, of a (i) periodic payment amount, irregular payment amount, or financing amount, and (ii) any rate, price, or cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing. Information “about the recipient” includes information about the recipient that informs the provider’s quote to the recipient, such as the recipient’s financial or credit information, but not the recipient’s name, address, or general interest in financing. Where a disclosure is made pursuant to California Financial Code section 22803, a new disclosure is only required where the general terms and conditions of the commercial financing agreement are changed.

This new language is appropriate because California Finance Code section 22803 specifically references “an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement.” Therefore, reference to such “general terms and conditions of the commercial financing agreement” is appropriate.

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

Sincerely,

A black rectangular redaction box covering the signature of Rebecca Coll.

Rebecca Coll

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