

August 8, 2022

Department of Financial Protection and Innovation
Attn: Sandra Navarro
2101 Arena Boulevard
Sacramento, CA 95834

By Electronic Mail: regulations@dfpi.ca.gov
With Copies To: **Samuel Park, Senior Counsel**
Samuel.Park@dfpi.ca.gov

Re: **[Comments on Proposed Rulemaking Under the California Consumer Financial Protection Law Regarding Commercial Financial Products and Services \(PRO 02-21\)](#)**

Dear Ms. Navarro:

On behalf of Strategic Funding Source, Inc., doing business as Kapitus ("Kapitus"), we would like to thank the Department of Financial Protection and Innovation (DFPI) for the opportunity to provide the following comments on the proposed regulations regarding commercial financial products and services under the California Consumer Financial Protection Law.

Kapitus provides capital to small businesses through technology-enabled underwriting and currently offers two products in California. First, Kapitus originates commercial loans under a CFL license. In addition, Kapitus enters into contracts with small businesses where it purchases a percentage of a small business's future income. Unlike business loans provided by many traditional lenders and the Small Business Administration, Kapitus's business financing options allow business owners to use their funds for any business purpose. This flexibility has been particularly helpful to business owners during the COVID-19 pandemic in addressing disruptions in cash flow and liquidity.

As an initial matter, Kapitus would like to thank the DFPI for providing clarity to the language of the initial draft of the regulations. We very much appreciate the DFPI's efforts in this regard. We write now to propose revisions to three of the defined terms in the draft regulations – "covered consumer," "covered provider," and "financial product or service" – which we submit should be adopted for clarity and to ensure consistency with the California Consumer Financial Protection Law.

Section 1060(c)(1) – Definition of “Covered Consumer”

As currently drafted, we believe it is confusing to use the term “consumer” when describing “a small business, nonprofit, or family farm” since these are commercial entities, and this regulation is intended to regulate commercial financial products and services. To eliminate this confusion, we recommend changing “covered consumer” to “covered entity” and replacing “covered consumer” with “covered entity” throughout the regulations. This is a more accurate term to describe “small business, nonprofit, or family farm.”

Section 1060(d) – Definition of “Covered Provider”

Financial Code section 90002(b) makes clear that the California Consumer Financial Protection Law does not apply to certain persons already subjected to licensing and DFPI regulation, including per subsection (b)(2) persons licensed as a finance lender, broker, program administrator, or mortgage loan originator under Division 9 of the Financial Code. To add clarity to the regulations and ensure consistency with the Financial Code, we recommend that the definition of “covered provider” be changed as follows:

“Covered provider” means any person engaged in the business of offering or providing financing or another financial product or service to a covered entity [changed from consumer to entity for reasons noted above], except for persons exempt from these regulations pursuant to Section 90002 of the Financial Code.

Section 1060(f) – Definition of “Financial product or service”

The definition of “financial product or service” defines consumer to include commercial entities. We believe it is confusing to conflate the definitions of consumer and commercial, especially when this regulation is intended to regulate commercial entities. To provide clarity and reflect the intent of the regulations, we recommend the following revision:

“Financial product or service” has the same meaning as in Financial Code section 90005, subdivision (k), except that “consumer” in such definition should be replaced with “covered entity.” [Delete rest of definition.]

In sum, Kapitus supports fair practices to small businesses. In support of these small businesses, Kapitus is continuing to provide innovative and flexible financial products and services and requests regulatory certainty to ensure that it can continue to do so.

Kapitus would like to thank the DFPI for taking the time to receive and review its comments. Kapitus looks forward to working with the DFPI on this proposed



rulemaking. If the DFPI has any questions or needs additional information, please feel free to contact me.

Sincerely,

MICHAEL JESSE CARLSON

Senior Vice President and General Counsel

