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CONSULTATIVE SELLING IN SMALL BUSINESS FINANCE

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Letter From the Editor

BY
SEAN MURRAY

This issue covers serious topics, from the FTC to COJs to possible broker licensing requirements. It also examines whether or not the definition of an accredited investor should change, how it might change, and the likelihood that it could change. But there's also a softer side, like how peer-to-peer business lending operates in a faraway land such as Ireland. We think you should start with the third side, the consultative side. This issue's feature story is on consultative selling and how salespeople should approach potential borrowers as a doctor would a patient. Perhaps in that context, even selling is serious business.

Typically in these letters, I try to work in a fun or witty remark to make you laugh or think. Not this time. This time I'm keeping it short, to the point, and serious.

Ok fine, maybe just one quick one.

Why were the factor and MCA happy to be working together?

Because nobody had to be a loan.

–Sean Murray

Featured Story

CONSULTATIVE SELLING IN SMALL BUSINESS FINANCE

By: Ed McKinley

> IT'S NOT SO MUCH SELLING AS BUILDING A RAPPORT WITH CLIENTS–SERVING AS A STRATEGIC ADVISOR OR FINANCIAL RESOURCE FOR THEM, IDENTIFYING THEIR NEEDS AND DIRECTING THEM TO THE RIGHT LOAN PRODUCT TO MEET THOSE NEEDS.

It's nearly impossible to teach fiscal responsibility to most consumers, according to researchers at universities and nonprofit agencies. But alternative small-business funders and brokers often manage to steer clients toward financial prudence, and imparting pecuniary knowledge can become part of a consultative approach to selling.

Still, nobody says it's easy to convince the public or merchants to handle cash, credit and debt wisely and responsibly. Consider the consumer research cited by Mariel Beasley, principal at the Center for Advanced Hindsight at Duke University and co-director of the Common Cents Lab, which works to improve the financial behavior of low- and moderate-income households.

> **CONTENT-BASED FINANCIAL EDUCATION CLASSES ONLY ACCOUNTED FOR .1 PERCENT VARIATION IN FINANCIAL BEHAVIOR.**

"For the last 30 years in the U.S. there has been a huge emphasis on increasing financial education, financial literacy," Beasley says. But it hasn't really worked. "Content-based financial education classes only accounted for .1 percent variation in financial behavior," she continues. "We like to joke that it's not zero but it's very, very close." And that's the average. Online and classroom financial education influences lower-income people even less.

The problem stems from trying to teach financial responsibility too late in life, says Noah Grayson, president and founder of Norwalk, Conn.-based South End Capital. He advocates introducing young people to finance at the same time they're learning history, algebra and other standard subjects in school.

Yet Grayson and others contend that it's never too late for motivated entrepreneurs to pick up the basics. Even novice small-business owners tend to possess a little more financial acumen than the average person, they say. That makes entrepreneurs easier to teach than the general public but still in need of coaching in the basics of handling money.

Take the example of a shopkeeper who grabs an offer of $50,000 with no idea how he'll use the funds to grow the business or how he'll pay the money back, suggests Cheryl Tibbs, general manager of One Stop Commercial Capital, Douglasville, Ga. "The easy access to credit blinds a lot of merchants," she notes.

Entrepreneurs often make bad decisions simply because they don't have a background in business, according to Jared Weitz, CEO of New York-based United Capital Source. "Many of the people who come to us are trying their hardest ," he observes.

Weitz offers the example of his own close relative who's a veterinarian. That profession attracts some of the brainiest high-school valedictorians but doesn't mean they know business. "He's the best doctor ever and he's not a great businessman because he doesn't think about those things first. What he thinks about is helping people. That's why he got into his profession."

Entrepreneurs often devote themselves to a vision that isn't businesses-oriented. "They start a business because they have a great idea or a great product, and that's what excites them," Grayson says. "They jump in with both feet and don't think much about the business side." The business side isn't as much fun.

Merchants also attend to so many aspects of an enterprise—everything from sales, production and distribution to hiring, payroll and training—that they can't afford to devote too much time to any single facet, notes Joe Fiorella, principal at Kansas City, Mo.-based Central Funding. Business owners respond to what's most urgent, not necessarily what's most important.

For whatever reason, some business owners spiral downward into financial ruin, bouncing checks, stacking merchant cash advances and continually seeking yet another merchant cash advance to bail them out of a precarious situation, says Jeremy Brown, chairman of Bethesda, Md.-based Rapid Advance.

Weitz advises sitting down with those clients

and coming to an understanding of the situation. In some cases, enough cash might be coming in but the incoming autopayments aren't timed to cover the outgoing autopayments, he says by way of example.

Informing clients of such problems makes a demonstrable difference. "We can see that it works because we have clients renewing with us," says Weitz. "We're able to swim them upstream to different products" as their finances gradually improve, he says.

The products in that stream begin with relatively higher-cost vehicles like merchant cash advances and proceed to other less-expensive instruments with better terms, says Brown. Those include term loans, Small Business Administration loans, equipment leasing, receivables factoring and, ultimately the goal for any well-capitalized small business—a relationship with the local bank.

Failing to consider those options and instead simply abetting stackers to make a quick buck can give the industry a "black eye," and it benefits none of the parties involved, Tibbs observes. But merchants deserve as much blame as funders and brokers, she maintains.

Prospective clients who stack MCAs, don't care about their credit rating and simply want to staunch their financial bleeding probably account for 35 percent to 40 percent of the applicants Tibbs encounters, she says.

Just the same, alt-funders continue to urge clients to hire accountants, consult attorneys, employ helpful software, shore up credit ratings, keep tabs on cash flow, calculate margins, improve distribution chains and outline plans for growth. It's what helps the industry rise above the "get-money quick" image that it's outgrowing, Weitz, says.

Many funders and brokers consider providing financial advice an essential aspect of consultative selling. It's an approach that begins with making sure applicants understand the debt they're taking on, the terms of the payback and how their businesses will benefit from the influx of capital. It continues with a commitment to helping clients not just with funding but also with other types of business consultation.

"It's not so much selling as building a rapport with clients—serving as a strategic advisor or financial resource for them, identifying their needs and directing them to the right loan product to meet those needs," says Grayson. "They should feel they can call you about anything specific to their business, not just their loan requests." He also cautions against providing information the client will not absorb or will find offensive.

Justin Bakes, CEO of Boston-based Forward Financing also advocates consultative selling. "It's all about questions and getting information on what's driving the business owner," he says. "It's a process."

Consultative sales hinges on knowing the customer, agrees Jason Solomon, Forward Financing vice president of sales. "Businesses are never similar in the mind of the business owner," he notes. "To effectively structure a program best-suited to the merchant's long-time business needs and set a proper path forward to better and better financial products, you need to know who the business owner is and what his long term goals are."

"It's taking an approach of actually being a consultant as opposed to a $7 an hour order taker," Tibbs says of consultative selling. "I like to teach new reps to think of it as if you were a doctor. Doctors ask questions to arrive at a final diagnosis. So if you're asking your prospective customer questions about their business, about their cash flow, about their intentions of how they're planning to get back on track."

Learning about the clients' business helps brokers recommend the least-expensive funding instrument, Tibbs says. "I really hate to see someone with a 700 credit score come in to get a merchant cash advance," she maintains. The consultative approach requires knowing the funding products, knowing how to listen to the customer and combining those two elements to make an informed decision on which product to recommend, she notes.

Consultative sales can greatly benefit clients, Weitz maintains. If a pizzeria proprietor asks for an expensive $50,000 cash advance to buy a new oven, a responsible broker may find the applicant qualifies for an equipment loan with single-digit interest and monthly payments over a five-year period that puts less pressure on daily cash flow.

It's also about pointing out errors. Brokers and funders see common mistakes when they look at tax returns and financial records, says Brown. "The biggest issue is that small-business owners—because they work so hard—make a profit of X amount of money and then take that out of the business," he notes. Instead, he advises reinvesting a portion of those funds so that they can build equity in the business and avoid the need to seek outside capital at high rates.

Another common error occurs when entrepreneurs take a short-term approach to their businesses instead of making longer-term plans, Brown says. That longer-term

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vision includes learning what it takes to improve their businesses enough to qualify for lower-cost financing.

Sometimes, small merchants also make the mistake of blending their personal finances and their business dealings. Some do it out of necessity because they're launching an enterprise on their personal credit cards, and others act of ignorance. "They don't necessarily know they're doing something wrong," Grayson observes. "There are tax ramifications."

Some just don't look at their businesses objectively. Take the example of a company that approached Central Funding for capital to buy inventory in Asia. Fiorella studied the numbers and then informed the merchant that it wasn't a money problem—it was a margins problem. "You could sell three times what you're wanting to buy, and you still won't get to where you want to be," he reports telling the potential customer.

Consultative selling also means establishing a long-term relationship. Forward Financing uses technology to keep in contact with clients regularly, not just when clients need capital, Bakes notes. That cultivates long-lasting relationships and shows the company cares. As the relationship matures it becomes easier to maintain because the customers want to talk to the company. "They're running to pick up the phone."

The conversations that don't hinge on funding usually center on Forward Financing learning more about the customer's business, says Solomon. That include the client's needs and how they've used the capital they've received.

"We have our own internal cadence and guidelines for when we reach out and how often and what happens," says Solomon. Customer relationship management technology provides triggers when it's time for the sales team or the account-servicing team to contact clients by phone or email.

Do small-business owners take advice on their finances? Some need a steady infusion of capital at increasingly higher cost and simply won't heed the best tips, says Solomon. "It's certainly a mix," he says. "Not everybody is going to listen."

Paradoxically, the business owners most open to advice already have the best-run companies, says Fiorella. Those who are closed to counseling often need it the most, he declares.

Moreover, not everybody is taking the consultative approach. "New brokers are so excited to get a commission check they throw the consultative approach out the window," Tibbs says.

Yet many alt-funders bring consultative experience from other professions into their work with providing funds to small business. Tibbs, for example, previously helped home buyers find the best mortgage.

Consultative selling came naturally to Central Funding because the company started as a business and analytics consultancy called Blue Sea Services and then transformed itself into an alternative funding firm, says Fiorella. Central Funding reviews clients' financial statements and operations between rounds of funding, he notes.

Consultations with borrowers reach an especially deep level at PledgeCap, a Long Island-based asset-based lender, because clients who default have to forfeit the valuables they put up a collateral—anything from a yacht to a bulldozer—says Gene Ayzenberg, PledgeCap's chief operating officer. Conversations cover the value of the assets and the risk of losing them as well as the reasons for seeking capital, he notes.

No matter how salespeople arrive at their belief in the consultative approach, they last much longer in the business than their competitors who are merely seeking a quick payoff, Tibbs says. Others contend that it's clearly the best way to operate these days.

"The consultative approach is the only one that works," says Weitz. "Today, everything is about the customer experience. People are making more-educated, better-informed decisions." What's more, with the consultative approach clients just keep getting smarter, he adds.

The days of the hard sell have ended, Grayson agrees. Customers have access to information on the internet, and brokers and funders can prosper by helping customers, he says. "Our compensation doesn't vary much depending upon which product we put a client in so we can dig deeper into what will fit the client without thinking about what the economic benefit will be to us."

Even though the public has become familiar with alternative financing in general, most haven't learned the nuances. That's where consultative selling can help by outlining the differing products now available for businesses with nearly any type of credit-worthiness. "It's for everybody," Weitz says of today's alternative small-business funding, "not just a bank turn-down."

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Is the Definition of Accredited Investor Ripe for Change?

By: CHERYL WINOKUR MUNK

The definition of accredited investor, which the SEC is tackling this year, is causing a fair amount of debate.

At issue is the fact that under federal securities laws only persons who are accredited investors may participate in certain types of securities offerings.

As it now stands, to be deemed an accredited investor, a person needs to earn income of more than $200,000 ($300,000 with a spouse) in each of the prior two years and reasonably expect to earn the same for the current year. Alternatively, the person needs to have a net worth of $1 million or more (alone or with a spouse), excluding the value of a primary residence.

The goal of these rules, of course, is investor protection. In theory, the rules are supposed to ensure investors are sophisticated enough to invest in riskier investments and, on top of that, have adequate cushioning against the risk of financial loss.

The trouble, critics say, is that the rules aren't doing a very good job of achieving these objectives. There's widespread agreement that the current definition is flawed. Where it gets trickier is in deciding how it should be fixed.

There are some who say the current bar is too high, others who say it's too low. Some contend that the wealth-based test should be scrapped altogether in favor of a sophistication test. Others promote a sliding scale approach to investing in riskier offerings. This would allow all investors to participate, but in increments that are proportional to their wealth—similar to what happens in the crowdfunding arena today. Some industry players support a combination of measures, a sophistication test in connection with a sliding scale, to maximize investor protection and still open the playing field for others who can't participate today based on their income or net worth.

The varying opinions are likely to be debated by the SEC as it reviews the accredited investor definition, which it's required to do every four years by a provision in the Dodd-Frank Act. The SEC is taking the opportunity to do a broad-based review of the regulatory framework for investing in alternative assets; the accredited investor definition is just one of the areas on its docket to examine. The comment period for this review ended on August 30th.

At this point, what the SEC actually decides to do about the accredited investor definition is anybody's guess. The thrust of these conversations is likely to focus on what constitutes an appropriate degree of protection, which is where many of the disagreements—and alternative suggestions on how to best accomplish this—come into play.

VETTING THE VARIOUS OPINIONS

On one hand, consumer advocates want to maintain the highest degree of investor protection possible. The concern is that consumers generally don't have enough prowess or information to safely invest in unregistered offerings, which can carry more risk than registered investments.

"We don't want the definition to be any weaker than it is now because that would do the vast majority of consumers a disservice," says Brian Young, public policy manager at the National Consumers League. "With these exempt products, there are a lot of unknown variables and there's a lot more vulnerability," he says.

One suggestion that's being proposed is to raise the wealth and income levels to adjust for inflation. It's a step in the right direction because it would further limit who is eligible to be considered an accredited investor, says Barbara Roper, director of investor protection for the Consumer Federation of America. "The levels haven't kept pace with inflation since they were set," she says.

This alone, however, wouldn't be sufficient to protect investors, consumer advocates say, since there are plenty of wealthy people who have little to no investment prowess.

"Just changing it to correct for inflation doesn't change it to correct for sophistication and still places investors at risk," says Ed Mierzwinski, who oversees U.S. PIRG's federal consumer program, helping to lead national efforts to improve consumer credit reporting laws, identity theft protections, product safety regulations and more.

On this point consumer advocates and industry professionals seem to agree: that limits based on income or net worth aren't all that useful.

Roper of the Consumer Federation of America gives the example of a 64-year-old who has $200k in income or $1 million of assets in his or her retirement accounts. This doesn't mean he or she is financially literate, let alone sophisticated enough to take part in certain types of riskier alternative investments, she says. "That would be an inappropriate investment recommendation if it were made by your broker or investment advisor," she says.

Some industry professionals also find fault with the wealth test, but, unlike consumer advocates, they'd like to see more investors allowed to participate, not fewer. It's not right, they contend, that a wide range of highly educated people are prevented from investing in certain offerings because of arbitrary limits on net worth and income.

Many promising investment opportunities are not even being offered to a huge majority of American investors, based on the standards that exist today, according to Nat Hoopes, executive director of the Marketplace Lending Association, an industry trade organization.

"By harmonizing and simplifying complex rules and adjusting the current accredited investor standards, my hope is that the SEC will find that they can permit many more Americans to gain access to a wider range of well-regulated investment opportunities, without leaving those


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citizens exposed to fraud or abuse. Done right, changes from the SEC in this area will help to promote more equality of opportunity in our economy, without adding new red tape," he says.

Brew Johnson, co-founder and chief executive of PeerStreet, an online platform for investing in real estate debt, says it's "crazy" that people who are highly educated—such as MBAs, accountants, attorneys and other businesspersons can't invest in certain offerings simply because they don't have the income or wealth levels. He takes issue with the fact that he didn't qualify to invest on his own platform when it was first getting off the ground. Some of his employees today also don't qualify to invest in the platform they are helping to build, which is troubling, he says.

"You don't want people to make terrible decisions. But the idea that the average person is too dumb to make decisions with their money…is offensive," Johnson says. Today, there's much more readily available information and transparency—a significant change from when the rules were first put in place—when only the largest investors had access to the types of information necessary to make critical investment decisions, he says.

Johnson doesn't take issue with the goal of protecting investors from getting into things they don't understand. Rather, he says, "I don't believe wealth is a determiner of sophistication."

ALTERNATIVE PROPOSALS TO A WEALTH-BASED TEST

That's where another idea being floated by members of the Marketplace Lending Association and others may come in. The thought is to create a new way to measure an investor's level of sophistication and ability to withstand loss. An example of this could be some kind of test to identify investors who are deemed to have sufficient investment prowess, despite falling below the SEC's threshold based on wealth or net worth, to participate in certain types of offerings.

It's an option that, if adopted, could open up the playing field to additional investors—while still trying to accomplish the SEC's goal of investor protection, industry participants say.

Ryan Metcalf, head of U.S. Regulatory Affairs at Funding Circle, says the Financial Industry Regulatory Authority Inc. (FINRA) could develop a test to be administered online when an investor who doesn't meet the wealth or income bar wants to invest. This would allow quick-decisions to be made. People who want to invest a few thousand dollars shouldn't have to do it in person; this would be too onerous, he says.

There could even be different tests based on what investors are seeking to invest in, says Mark Atalla, owner and managing director at private lending firm Carlyle Capital.

For a private placement in a mortgage fund, there could be questions related to the risks involved there, whereas for a private placement in a start-up technology company, there could be other types of questions pertaining to risk. The goal would be to ensure the investor has a sufficient level of understanding about the particular products they are considering.

Otherwise, Atalla says, there's too much room for people to lose on a large scale. "These are people's livelihoods you're responsible for at the end of the day," he says. "I think it's important for investors to understand what they are really doing."

Some industry professionals say there may be too many practical limitations for this type of an assessment to work. Certainly details would have to be worked out including what the scope of the test or tests should be. Decisions would also have to be made about who would be in charge of creating and administering a test or tests and how and where they would be administrated, among other things.

In theory, if someone can pass a test to show he or she is knowledgeable about investing, the person should be able to invest, says PeerStreet's Johnson, adding that there's something to be said about people accepting personal responsibility for their decisions, provided they have been given adequate information from which to make informed, knowledgeable decisions. "The devil is in the details of what [this type of test] would look like," he says.

Another idea being floated—that could stand on its own or be implemented together with a sophistication test—is to allow all investors to invest on a scale that's similar to the crowdfunding exemption. Under rules adopted by the SEC in 2015, the general public now has the opportunity to participate in the early capital raising activities of start-up and early-stage companies and businesses by way of crowdfunding. Because of the risks involved with this type of investing, however, investors are limited in how they can invest during any 12-month period in these transactions. The limitation depends on the person's net worth and annual income.

Some industry watchers say the sliding scale idea is a viable one because it would allow more investors a chance to participate in more risky offerings, while providing a safety net for loss.

This type of model has the potential to offer investors a reasonable amount of protection, says Vincent Petrescu, chief executive of truCrowd, Inc., an equity crowdfunding portal that connects startups and emerging businesses with non-accredited and accredited investors. "If you have less money, you are allowed to invest less, but you still can play your hand," he says.

Johnson of PeerStreet also supports this approach because it allows investors who otherwise wouldn't have access a chance to broaden their exposure to areas that could potentially allow them to increase their wealth.

Certainly, questions about this approach persist as well. What should the investment limits be? Would it depend on the type of investment? Would investors need to self-certify as they do in crowdfunding, or would their information need to be verified by a third party? These questions and more are also likely to be probed more deeply during an SEC review.

The Marketplace Lending Association would also like employees of private funds to qualify as accredited investors for investments in their employers funds. The trade group contends that a private fund's employees likely have sufficient access to the information necessary to make informed decisions about investments in their employer's funds.

The suggestion would be for the SEC to consider adding a new category of the definition to include "knowledgeable employees" of "covered companies" as those terms are defined in Rule 3c-5 of the Investment Company Act.

Industry watchers are hopeful to have some clarity on these issues within the coming months, so stay tuned.

"The SEC's mandate is to protect investors, which sometimes is needed," says Petrescu of truCrowd, the equity crowdfunding portal. "There needs to be checks and balances," he says.

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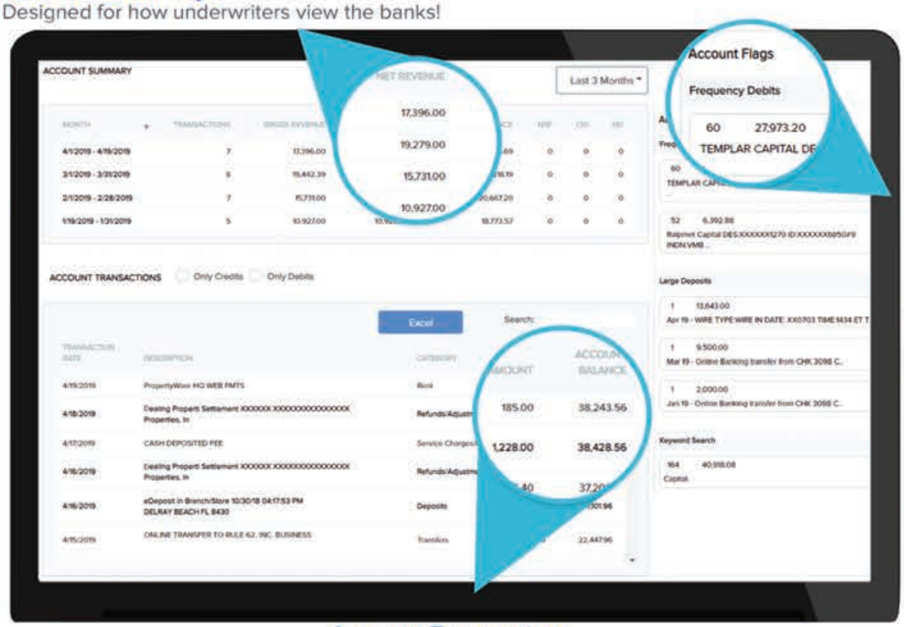

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HOW LINKED FINANCE IS LINKING IRISH SMES WITH QUICK LOANS

By *SEAN MURRAY*

Google Maps was convinced that I was already at my destination, but that didn't make sense because I was still sitting in my cramped Airbnb rental apartment in Dublin and hadn't left to go anywhere yet. "Oh man please tell me Google works in Ireland," I said to myself while glancing at the time and counting how many minutes I'd be late to my first meeting.

I was on my way to Linked Finance, a peer-to-peer SME lender based in Dublin. Their office was uncannily close to where I was staying on Liffey Street Lower, just steps away from the Ha'penny Bridge. So close in fact, that Google Maps believed that I was going to and from the same location. I breathed a sigh of relief at the realization and ventured the short distance to the elevator that promised to deliver me to the inner universe of Irish fintech.

Alan Fagan, the company's head of marketing, greeted me at the door. Fagan joined the company in 2015, two years after its founding. As we walk in, I notice the prominent display of the Linked Finance logo amid an ocean of eye-popping orange. The look, the feel, suddenly I feel transported to the tech scene in San Francisco. The accents overheard in the background, however, suggest I am most definitely in Ireland.

We sit down. Tea is offered. I decline. Fagan gets right into it and he sings a familiar song, that it can take a very long time for a business to get a bank loan.

It can take up 8 weeks to get funded, he says. "SMEs are the biggest employer in the country," he explains, while hinting that facilitating loans to this demographic is as much a patriotic endeavor as it is a business one.

The nation's Central Statistics Office puts the number of active enterprises in the private business economy at over 250,000. As of June, Linked Finance had made more than 2,100 loans for a grand total of more than €100 million.

Fagan gives me a demonstration of the platform, where individual investors (or peers) can see the name and location of the businesses whose loans are available to fund. An investor can even sort the listings by county, of which there are 26 in the Republic. Linked Finance does the underwriting, something they can do within 1 day, Fagan says.

The underwriting is tight. "We're not a lender of last resort," Fagan explains. They put themselves on the same (or better) credit risk footing as banks and claim that they're able to assess risk and provide funds in a much more efficient manner. "We feel we do it better than banks," Fagan says.

Most loans close quickly, thanks in part to their Autobid tool. Investors can be from anywhere so long as they're over 18 and have a European Union bank account. Annual interest rates on the loans range from 6% to 17.5%.

Fagan says that although they are an online lender, many borrowers in Ireland still appreciate personal relationships. They can accommodate applicants that prefer a personal walk-through by a real person and that it can actually leave a memorable impression on their customers.

Marketing is done via a variety of direct methods but also through channel partners like accountants and financial advisors. A big name asset manager, Paris-based Eiffel Investment Group, with €1.5B under management, is among the loan investors on the Linked Finance platform.

I keep waiting for the caveat, an obstacle or twist in the model so inherently Irish, that somebody like me from half a world away would never truly grasp. But there isn't one. The market is overtly familiar, yet more reminiscent of the UK than the States. Ireland lacks the robust regulatory framework of both countries, however. Despite that, the government does not appear to be holding the industry back. In June, Paschal Donohoe, the Minister for Finance, the government official responsible for all financial and monetary matters of the state, said "availability of credit is a key consideration for all businesses, and I am aware of the role peer to peer lending is playing in broadening competition in the SME finance market."

Indeed, such competition has made credit more available in markets abroad.

As our time together winds down, I mindlessly attempt to plot my trip back. "Siri, take me home," I speak into my phone. The Maps app opens and then loads to reveal a double entendre. It seems I am already very much there.

The FTC Wants To Police Small Business Finance

By: Paul Sweeney

On May 23, the Federal Trade Commission launched an investigation into unfair or deceptive practices in the small business financing industry, including by merchant cash advance providers.

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The agency is looking into, among other things, whether both financial technology companies and merchant cash advance firms are making misrepresentations in their marketing and advertising to small businesses, whether they employ brokers and lead-generators who make false and misleading claims, and whether they engage in legal chicanery and misconduct in structuring contracts and debt-servicing.

Evan Zullow, senior attorney at the FTC's consumer protection division, told *deBanked* that the FTC is, moreover, investigating whether fintechs and MCAs employ "problematic," "egregious" and "abusive" tactics in collecting debts. He cited such bullying actions as "making false threats of the consequences of not paying a debt," as well as pressuring debtors with warnings that they could face jail time, that authorities would be notified of their "criminal" behavior, contacting third-parties like employers, colleagues, or family members, and even issuing physical threats.

"Broadly," Zullow said in a telephone interview, "our work and authority reaches the full life cycle of the financing arrangement." He added: "We're looking closely at the conduct (of firms) in this industry and, if there's unlawful conduct, we'll take law enforcement action."

Zullow declined to identify any targets of the FTC inquiry. "I can't comment on nonpublic investigative work," he said.

The FTC investigation is one of several regulatory, legislative and law enforcement actions facing the merchant cash advance industry, which was triggered by a Bloomberg exposé last winter alleging sharp practices by some MCA firms.

The Bloomberg series told of high-cost financings, of MCA firms' draining debtors' bank accounts, and of controversial collections practices in which debtors signed contracts that included "confessions of judgment."

The FTC long ago outlawed the use of COJs in consumer loan contracts and several states have banned their use in commercial transactions. In September, Governor Andrew Cuomo signed legislation prohibiting the use of COJs in New York State courts for out-of-state residents. And there is a bipartisan bill pending in the U.S. Senate authored by Florida Republican Marco Rubio and Ohio Democrat Sherrod Brown to outlaw COJs nationwide.

Mark Dabertin, a senior attorney at Pepper Hamilton, described the FTC's investigation of small business financing as a "significant development." But he also said that the agency's "expansive reading of the FTC Act arguably presents the bigger news." Writing in a legal memorandum to clients, Dabertin added: "It opens the door to introducing federal consumer protection laws into all manner of business-to-business conduct."

FTC attorney Zullow told *deBanked*, "We don't think it's new or that we're in uncharted waters."

The FTC inquiry into alternative small business financing is not the only investigation into the MCA industry. Citing unnamed sources, The Washington Post reported in June that the Manhattan district attorney is pursuing a criminal investigation of "a group of cash-advance executives" and that the New York State attorney general's office is conducting a separate civil probe.

The FTC's investigation follows hard on the heels of a May 8 forum on small business financing. Labeled "Strictly Business," the proceedings commenced with a brief address by FTC Commissioner Rohit Chopra, who paid homage to the vital role that small business plays in the U.S. economy. "Hard work and the creativity of entrepreneurs and new small businesses helped us grow," he said.

But he expressed concern that entrepreneurship and small business formation in the U.S. was in decline. According to census data analyzed by the Kaufmann Foundation and the Brookings Institution, the commissioner noted, the number of new companies as a share of U.S. businesses has declined by 44 percent from 1978 to 2012.

"It's getting harder and harder for entrepreneurs to launch new businesses," Chopra declared. "Since the 1980s, new business formation began its long steady decline. A decade ago births of new firms started to be eclipsed by deaths of firms."

Chopra singled out one-sided, unjust contracts as a particularly concerning phenomenon. "One of the most powerful weapons wielded by firms over new businesses is the take-it-or-leave-it contract," he said, adding: "Contracts are ways that we put promises on paper. When it comes to commerce, arm's length dealing codified through contracts is a prerequisite for prosperity. "But when a market structure requires small businesses to be dependent on a small set of dominant firms — or firms that don't engage in scrupulous business practices — these incumbents can impose contract terms that cement dominance, extract rents, and make it harder for new businesses to emerge and thrive."

As the panel discussions unfolded, representatives of financial technology industry (Kabbage, Square Capital and the Electronic Transactions Association) as well as executives in the merchant cash advance industry (Kapitus, Everest Business Financing, and United Capital Source) sought to emphasize the beneficial role that alternative commercial financiers were playing in fostering the growth of small businesses by filling a void left by banks.

The fintechs went first. In general, they stressed the speed and convenience of their loans and lines of credit,

and the pioneering innovations in technology that allowed them to do deeper dives into companies seeking credit, and to tailor their products to the borrower's needs. Panelists cited the "SMART Box" devised by Kabbage and OnDeck as examples of transparency. (Accompanying those companies' loan offers, the SMART Box is modeled on the uniform terms contained in credit card offerings, which are mandated by the Truth in Lending Act. TILA does not pertain to commercial debt transactions.)

Sam Taussig, head of global policy at Kabbage, explained that his company typically provides loans to borrowers with five to seven employees — "truly Main Street American small businesses" — that are seeking out "project-based financing" or "working capital."

"The average small business according to our research only has about 27 days of cash flow on hand," Taussig told the fintech panel, FTC moderators and audience members. "So if you as a small business owner need to seize an opportunity to expand your revenue or (have) a one-off event — such as the freezer in your ice cream store breaks — it's very difficult to access that capital quickly to get back to business or grow your business."

Taussig contrasted the purpose of a commercial loan with consumer loans taken out to consolidate existing debt or purchase a consumer product that's "a depreciating asset." Fintechs, which typically supply lightning-quick loans to entrepreneurs to purchase equipment, meet payrolls, or build inventory, should be judged by a different standard.

A florist needs to purchase roses and carnations for Mother's Day, an ice-cream store must replenish inventory over the summer, an Irish pub has to stock up on beer and add bartenders at St. Patrick's Day.

The session was a snapshot of not just the fintech industry but of the state of small business. Lewis Goodwin, the head of banking services at Square Capital, noted that small businesses account for 48% of the U.S. workforce. Yet, he said, Square's surveys show that 70% of them "are not able to get what they want" when they seek financing.

Square, he said, has made 700,000 loans for $4.5 billion in just the past few years, the platform's average loan is between $6,000 and $7,000, and it never charges borrowers more than 15% of a business's daily receipts. The No. 1 alternative for small businesses in need of capital is "friends and family," Goodwin said, "and that's a tough bank to go back to."

Panelist Gwendy Brown, vice-president of research and policy at the Opportunity Fund, a non-profit microfinance organization, provided the fintechs with their most rocky moment when she declared that small businesses turning up at her fund were typically paying an annual percentage rate of 94 percent for fintech loans. And while most small business owners were knowledgeable about their businesses — the florists "know flowers in and out," for example — they are often bewildered by the "landscape" of financial product offerings.

"Sophistication as a business owner," Brown said, "does not necessarily equate into sophistication in being able to assess finance options."

Panelist Claire Kramer Mills, vice-president of the Federal Reserve Bank of New York, reported that the country's banks have made a dramatic exit from small business lending over the past ten years. A graphic would show that bank loans of more than $1 million have risen dramatically over the past decade but, she said, "When you look at the small loans, they've remained relatively flat and are not back to pre-crisis levels."

> **IT'S GETTING HARDER AND HARDER FOR ENTREPRENEURS TO LAUNCH NEW BUSINESSES...SINCE THE 1980S, NEW BUSINESS FORMATION BEGAN ITS LONG STEADY DECLINE. A DECADE AGO BIRTHS OF NEW FIRMS STARTED TO BE ECLIPSED BY DEATHS OF FIRMS.**

Mills also said that 50% of small businesses in the Federal Reserve's surveys "tell us that they have a funding shortfall of some sort or another. It's more stark when you look at women-owned business, black or African-American owned businesses, and Latino-owned businesses."

On the merchant cash advance panel there was less opportunity to dazzle the regulators and audience members with accounts of state-of-the-art technology and the ability to aggregate mountains of data to make online loans in as few as seven minutes, as Kabbage's Taussig noted the fintech is wont to do.

Instead, industry panelists endeavored to explain to an audience — which included skeptical regulators, journalists, lawyers and critics — the precarious, high-risk nature of an MCA or factoring product, how it differs from a loan, and the upside to a merchant opting for a cash advance. (To their credit, one attendee told ***deBanked***, the audience also included members of the MCA industry interested in compliance with federal law.)

A merchant cash advance is "a purchase of future receipts," Kate Fisher, an attorney at Hudson Cook in Baltimore, explained. "The business promises to deliver a percentage of its revenue only to the extent as that revenue is created. If sales go down," she explained, "then the business has a contractual right to pay less. If sales go up, the business may have to pay more."

As for the major difference between a loan and a merchant cash advance: the borrower promises to repay the lender for the loan, Fisher noted, but for a cash advance "there's no absolute obligation to repay."

Scott Crockett, chief executive at Everest Business Funding, related two anecdotes, both involving cash advances to seasonal businesses. In the first instance, a summer resort in Georgia relied on Everest's cash advances to tide it over during the off-season.

When the resort owner didn't call back after two seasonal advances, Crockett said, Everest wanted to know the reason. The answer? The resort had been sold to Marriott Corporation. Thanking Everest, Crockett said, the former resort-owners reported that without the MCA, he would likely have sold off a share of his business to a private equity fund or an investor.

By providing a cash advance Everest acted "more like a temporary equity partner," Crockett remarked.

In the second instance, a restaurant in the Florida Keys that relied on a cash advance from Everest to get through the slow summer season was destroyed by Hurricane Irma. "Thank God no one was hurt," Crockett said, "but the business owner didn't owe us anything. We had purchased future revenues that never materialized."

FTC's panel moderators prodded the MCA firms to describe a typical factor rate. Jesse Carlson, senior vice-president and general counsel at Kapitus, asserted that the factor rate can vary, but did not provide a rate.

"Our average financing is approximately $50,000, it's approximately 11-12 months," he said. "On a $50,000 funding we would be purchasing $65,000 of future revenue of that business."

The FTC moderator asked how that financing arrangement compared with a "typical" annual percentage rate for a small business financing loan and whether businesses "understand the difference."

Carlson replied: "There is no interest rate and there is no APR. There is no set repayment period, so there is no term." He added: "We provide (the) total cost in a very clear disclosure on the first page of all of our contracts."

Ami Kassar, founder and chief executive of Multifunding, a loan broker that does 70% of its work with the Small Business Administration, emerged as the panelist most critical of the MCA industry. If a small business owner takes an advance of $50,000, Kassar said, the advance is "often quoted as a factor rate of 20%. The merchant thinks about that as a 20% rate. But on a six-month payback, it's closer to 60-65%."

He asserted that small businesses would do better to borrow the same amount of money using an SBA loan, pay 8 1/4 percent and take 10 years to pay back. It would take more effort and the wait might be longer, but "the impact on their cash flow is dramatic" — $600 per month versus $600 a day, he said — "compared to some of these other solutions."

Kassar warned about "enticing" offers from MCA firms on the Internet, particularly for a business owner in a bind. "If you jump on that train and take a short-term amortization, oftentimes the cash flow pressure that creates forces you into a cycle of short-term renewals. As your situation gets tougher and tougher, you get into situations of stacking and stacking."

On a final panel on, among other matters, whether there is uniformity in the commercial funding business, panelists described a massive muddle of financial products.

Barbara Lipman: project manager in the division of community affairs with the Federal Reserve Board of Governors, said that the central bank rounded up small businesses to do some mystery shopping. The cohort — small businesses that employ fewer than 20 employees and had less than $2 million in revenues — pretended to shop for credit online.

As they sought out information about costs and terms and what the application process was like, she said, "They're telling us that it's very difficult to find even some basic information. Some of the lenders are very explicit about costs and fees. Others however require a visitor to go to the website to enter business and personal information before finding even the basics about the products." That experience, Lipman said, was "problematic."

She also said that, once they were identified as prospective borrowers on the Internet, the Fed's shoppers were barraged with a ceaseless spate of online credit offers.

John Arensmeyer, chief executive at Small Business Majority, an advocacy organization, called for greater consistency and transparency in the marketplace. "We hear all the time, 'Gee, why do we need to worry about this? These are business people,'" he said. "The reality is that unless a business is large enough to have a controller or head of accounting, they are no more sophisticated than the average consumer.

"Even about the question of whether a merchant cash advance is a loan or not," Arensmeyer added. "To the average small business owner everything is a loan. These legal distinctions are meaningless. It's pretty much the Wild West."

In the aftermath of the forum, the question now is: What is the FTC likely to do?

Zullow, the FTC attorney, referred ***deBanked*** to several recent cases — including actions against Avant and SoFi — in which the agency sanctioned online lenders that engaged in unfair or deceptive practices, or misrepresented their products to consumers.

These included a $3.85 million settlement in April, 2019, with Avant, an online lending company. The FTC had charged that the fintech had made "unauthorized charges on consumers' accounts" and "unlawfully required consumers to consent to automatic payments from their bank accounts," the agency said in a statement.

In the settlement with SoFi, the FTC alleged that the online lender, "made prominent false statements about loan refinancing savings in television, print, and internet advertisements." Under the final order, "SoFi is prohibited from misrepresenting to consumers how much money consumers will save," according to an FTC press release.

But these are traditional actions against consumer lenders. A more relevant FTC action, says Pepper Hamilton attorney Dabertin, was the FTC's "Operation Main Street," a major enforcement action taken in July, 2018 when the agency joined forces with a dozen law enforcement partners to bring civil and criminal charges against 24 alleged scam artists charged with bilking U.S. small businesses for more than $290 million.

In the multi-pronged campaign, which Zullow also cited, the FTC collaborated with two U.S. attorneys' offices, the attorneys general of eight states, the U.S. Postal Inspection Service, and the Better Business Bureau. According to the FTC, the strike force took action against six types of fraudulent schemes, including:

-Unordered merchandise scams in which the defendants charged consumers for toner, light bulbs, cleaner and other office supplies that they never ordered;

-Imposter scams in which the defendants use deceptive tactics, such as claiming an affiliation with a government or private entity, to trick consumers into paying for corporate materials, filings, registrations, or fees;

-Scams involving unsolicited faxes or robocalls offering business loans and vacation packages.

If there remains any question about whether the FTC believes itself constrained from acting on behalf of small businesses as well as consumers, consider the closing remarks at the May forum made by Andrew Smith, director of the agency's bureau of consumer protection.

"(O)ur organic statute, the FTC Act, allows us to address unfair and deceptive practices even with respect to businesses," Smith declared, "And I want to make clear that we believe strongly in the importance of small businesses to the economy, the importance of loans and financing to the economy.

Smith asserted that the agency could be casting a wide net. "The FTC Act gives us broad authority to stop deceptive and unfair practices by nonbank lenders, marketers, brokers, ISOs, servicers, lead generators and collectors."

As fintechs and MCAs, in particular, await forthcoming actions by the commission, their membership should take pains to comport themselves ethically and responsibly, counsels Hudson Cook attorney Fisher. "I don't think businesses should be nervous," she says, "but they should be motivated to improve compliance with the law."

She recommends that companies make certain that they have a robust vendor-management policy in place, and that they review contracts with ISOs. Companies should also ensure that they have the ability to audit ISOs and monitor any complaints. "Take them seriously and respond," Fisher says.

Companies would also do well to review advertising on their websites to ascertain that claims are not deceptive, and see to it that customer service and collections are "done in a way that is fair and not deceptive," she says, adding of the FTC investigation: "This is a wake-up call."

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WHAT HAPPENED TO BORRO?

By *SEAN MURRAY*

In 2013, Borro, an innovative online lending company that was poised to disrupt pawn shop lending forever, invited me to their stylish offices at 767 Third Avenue in Manhattan. It wasn't for a story per se, but rather to learn more about each other's place in the world of online lending. deBanked was still called Merchant Processing Resource and Borro, well they were beginning to take a shine to the idea that business owners could be a good source of potential customers. Framed as a "luxury asset-backed lender," deBanked would eventually cover the concept two years later as Borro and other lenders like them took off.

A then-executive of Borro explained the model as follows, "People don't want to put their house at risk when they need capital. They'd rather lose the Maserati or a lovely piece of art than the house." Ferraris, fine wine, rolexes, whatever, they would take it and make loans as low as $20,000 to as high as $10 million. Borro made $50 million worth of such loans in 2013 and doubled that number in 2014. Founded in the UK, the company's expansion into the US was indicative of untapped demand and sky high potential. Big name investors got behind it including Victory Park Capital, Canaan Partners, Eden Ventures, and Augmentum Capital, eventually tallying up to more than $200 million raised.

But less than two years after deBanked ran its story, Borro went into administration, the UK's version of bankruptcy.

WHAT HAPPENED?

Zelf Hussain, Partner at PwC, had to answer that question in his position as joint administrator of BGH Realisations (2017) Limited, a Borro holding company. Hussain retells the tale in a 2018 Companies House report. It is as follows:

In February 2014, Victory Park Management LLC (VPM) entered into a £67 million credit facility with a number of Borro companies which was guaranteed, inter alia, by the Company. The VPM loan was intended to allow Borro to expand its portfolio and make larger value loans to clients.

Following the VPM loan, Borro's loan book increased in size and it moved into property lending. This was not a successful move and several loans went into default. In addition, Borro was unsuccessful in selling the underlying properties of defaulted loans in a timely manner. These issues exacerbated its cash flow issues due to carrying costs and the cost of interest due to VPM.

Following a review of the Borro business, it was decided that the property lending side of the business would be closed down. In addition, VPM became aware of other customer loans that were in arrears and these lead to further cash flow issues and a depletion of Borro's working capital.

In an effort to raise additional capital, Borro instructed investment advisors to run a sales proces. No bids were received which would serve to fully repay VPM or provide any equity value beyond the debt obligations to VPM.

In light of the failed sales process, PwC was engaged by the Company to assess its options. Following discussions, VPM offered to purchase the business and assets of the Company, including its share in Borro Limited (BL) and therefore indirectly the shares in other Borro group companies.

On 15 November 2017 the Company directors resolved that placing the Company into administration to facilitate the transfer of ownership of BL to VPM was in the best interests of all stakeholders and, in particular, the Company's creditors. VPM would be a well-capitalised and supportive owner, with a long term plan for the business.

We were appointed as administrators on 15 November 2017, and effected the sale of the business and assets to VPM in a pre-packaged transaction on the same day.

Since then, Borro trudged along, but earlier this year the company stopped making new loans.

The news was cheered by one of the same pawn shop lenders that Borro was supposed to disrupt. Jordan Tabach-Bank, a board member of the National Pawnbrokers Association and CEO of a family owned pawn shop business, used the company's downfall to promote the benefits of doing business offline. "Our clients like the personal touch of a face-to-face loan, particularly when entrusting us to safeguard their most precious and expensive personal possessions," he wrote in a release.

INDUSTRY NEWS

7/23/19
CAN Capital Announced the hiring of John McNeill as its new CFO. McNeill joins from Ocwen Financial Corporation where he served as SVP of Servicing Finance, Treasury and Investor Relations.

Lendio acquired Billy, a bookkeeping software for small businesses. Lendio rebranded the company to Sunrise.

OnDeck announced that Lonnie Hayes had joined ODX as the Head of Sales and Strategy. ODX is a wholly owned subsidiary of OnDeck that assists banks with streamlining and digitizing small business credit origination

7/24/19
Drip Capital, a startup that helps small export businesses secure working capital, raised $25M in a Series B round led by Accel with participation from Wing, Sequoia India, and Y Combinator.

Sergiy Bezrukov, the small business debt settlement scammer that deBanked profiled in 2016 (See: http://dbnk.news/1Q), was sentenced to 66 months in prison.

7/25/19
deBanked CONNECT held its debut Canadian event in Toronto

7/28/19
PayPal revealed that it had begun offering its popular working capital business loan program in Canada

7/29/19
OnDeck announced Q2 net income of $4.3M and originations of $592M. The company also announced that its partnership with Chase had ended

The St. Louis Post-Dispatch reported that Square Inc had signed a 15-year lease for the newspaper's downtown St. Louis headquarters building that would allow Square to more than double its workforce there

7/30/19
Ken Rees, the CEO of consumer lending company Elevate, announced his resignation despite the company reporting a positive Q2 and favorable trajectory

PayPal sued a little-known lending startup named Lenmo for infringing on its trademark of Venmo

7/31/19
Maria Vullo, the previous NYDFS Superintendent, was elected to Emigrant Bank's Board of Directors

Clearbanc raised a $50M equity investment led by Highland Capital with participation from Arcadia, iNovia, and Emergence Capital, in addition to raising $250M from limited partners for its third fund.

Everlasting Capital founders Josh Feinberg and Will Murphy announced a new Equipment Finance and Leasing training course

Dollar Bank, the 3rd largest mutual bank in the US, contracted with Numerated to digitize its business lending process

8/1/19
Breakout Capital Finance announced the completion of a senior secured credit facility with Medalist Partners

8/4/19
Fox Corp. struck a deal to buy a majority stake in Credible Labs Inc., a marketplace for consumer-lending information, for $265M

Shopify originated $93M in MCAs and loans in Q2 and revealed it had begun offering funding to non-Shopify payments customers

8/5/19
Square Capital originated 78,000 loans for $528M in Q2

8/6/19
Lendio announced that it had facilitated more than $1.5B in financing to small businesses since the company's founding in 2011

NYDFS Superintendent Linda Lacewell announced that the agency was leading a multistate investigation into the payroll advance industry

Klarna, a Swedish online payments firm backed by Snoop Dogg, became Europe's most valuable fintech company, at a $5.5B valuation

8/8/19
Funding Circle Co-founder and Managing Director James Meekings was reported to be stepping down and transitioning to a non-executive role on the UK board

8/10/19
1 Global Capital's CEO consented to judgment with the SEC

8/12/19
In Chase bank's haste to exit its Canadian credit card business, the bank decided to cancel all remaining debt still due from its Canadian credit card customers

Canada's fintech week launched in Toronto

HSBC's new digital personal lending platform went live

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INDUSTRY ***NEWS CONT'D***

8/13/19
Prosper Marketplace reported a Q2 net loss of $569,000 and originations of $760M

8/14/19
WeWork filed for an IPO
SellersFunding, an alternative lending platform, announced its expansion to the UK and Canada

8/15/19
Alan G. Heide, the former CFO of 1 Global Capital, LLC, was criminally charged with conspiracy to commit securities fraud

Funding Circle surpassed $10B in loans made globally to small businesses

8/16/19
Enova reported Q2 net income of $25M and revealed that small business financing originations had increased 140% y-o-y

8/19/19
Jennifer Lopez and Alex Rodriguez joined Ashton Kutcher and Kevin Durant as investors in Acorns Grow Inc. Acorns allows its customers to round up their debit card purchases and set aside the difference in a savings account.

8/20/19
American Express announced the launch of its Express Personal Loans product in Canada

8/26/19
LendingPoint closed on a $250M credit facility arranged by Guggenheim Securities

IOU Financial reported positive Q2 earnings and originations of $38.5M

8/30/19
New York Governor Cuomo signed legislation that prohibits confessions of judgments being entered in New York courts against non-New York debtors

9/4/19
LendingPoint closed on a $178M securitization

Canadian-based PayBright raised $34M in growth equity financing from goeasy Ltd.

National Funding closed a $120M securitization with Guggenheim securities

Even Financial raised $25M from investors that included Citi Ventures, MassMutual Ventures, Lending Club, and also previous investors

9/5/19
Stripe launched a merchant cash advance and business loan business called Stripe Capital

9/6/19
New York State Senator James Sanders Jr. introduced S6688, a bill that would require licensing to engage in the making or soliciting of commercial finance transactions

9/10/19
The NY Times reported that prosecutors were investigating possible predatory lending abuse in the NYC Taxi medallion industry.

Mexico-based small business lender, Konfio, secured a $100M loan from Goldman Sachs

OAREX, a company that buys invoices of digital media firms for cash upfront, closed on a $50M line of credit from a group of lenders led by Arena Investors LP

TBF Financial announced that it had purchased nearly $60M in non-performing loans form a major online small business lender in recent transactions

9/11/19
MyPayrollHR, an upstate NY-based payroll company, vanished with $35M

9/13/19
California capped interest rates on personal loans from $2,500 to $10,000 to 36%

A business suing Celtic Bank over an online business loan gone bad, lost big in arbitration, when it was ordered to pay millions in legal fees, costs, and expenses in addition to the outstanding loan amount due

9/16/19
The city of Cleveland announced plans to launch an online crowdfunding portal to improve access to capital for Cleveland small businesses

SoFi unveiled its naming rights for the new LA Rams/LA Chargers NFL football stadium. The stadium will also be home to Super Bowl 56 in 2022 and serve as the venue for the opening and closing ceremony of the 2028 Summer Olympics.

9/17/19
BlueVine appointed Brad Brodigan as Chief Commercial Officer. Brodigan was previously the President and Chief Operating Officer at DOSH.

OppLoans announced its first bank-led credit facility

Jan Douglas Atlas, a former attorney with Kopelowitz Ostrow, was charged with 1 count of securities fraud by the US Attorney in South Florida for his role in the 1 Global Capital securities fraud

9/18/19
SellersFunding acquired amzLenders, an online lending platform built to service the needs of Amazon sellers.

The Federal Reserve cut interest rates by a quarter point

NYC TAXI INDUSTRY LEADS CHARGE TO BAN CONFESSIONS OF JUDGMENT NATIONWIDE

By *SEAN MURRAY*

New York State may have outlawed entering confessions of judgments (COJs) against out-of-state debtors in their courts, but federal legislators want to see a ban on their use nationwide. On September 26, the House Financial Services Committee convened for a hearing on predatory debt collection. Notably adding small businesses to the mix with consumers, COJs repeatedly came under attack.

Testimony presented by Bhairavi Desai, executive Director of the 22,000 member New York Taxi Workers Alliance, claimed that predatory lenders are aggressively relying on COJs to "intimidate borrowers into making large sum payments towards outstanding loan balances." Desai provided one such COJ affidavit to the Committee in which allegedly victimized defendants had confessed to judgment for nearly $600,000. The plaintiff was 160-year-old New York Community Bank, not an alternative finance company.

The NYC taxi business has moved front and center after the New York Times published a bombshell story in May that alleged lenders unfairly trapped Taxi medallion owners into loans they could not repay. The occasional reliance on COJs was vaguely mentioned but struck a nerve with critics already frothing to make them illegal.

Desai explained that unusually high suicide rates in the taxi business are rooted in part by predatory lending practices. "The real stories are the tens of thousands of drivers we see today that are really dying a slow death from despair, from stress from the crisis of this debt," she told the Committee on Thursday. "Confessions of judgment have basically meant that when [the taxi medallion market] started to fall, drivers were told that they had to pay up the total sum of what was owed on that debt, had to produce $350,000, $400,000 overnight."

FTC Commissioner Rohit Chopra voiced his support for a COJ ban when called upon to testify. "The FTC has unique jurisdiction to attack debt collection and discrimination issues in the small business lending market and we should look to restrict terms like confessions of judgment that the FTC banned in consumer loans ago."

The Bloomberg stories that led to new legislation in New York were only mentioned during the hearing once and only in passing.

A slew of bills have been introduced to pursue the Committee's initiatives. In addition to the Small Business Fairness Lending Act that would outlaw COJs from small business finance transactions nationwide, the Small Business Fair Debt Collection Protection Act seeks to apply the existing Fair Debt Collections Practices Act to small businesses and effectively put small business lenders under the regulatory purview of the CFPB.

UP NEXT ON THE NEW YORK LEGISLATIVE AGENDA: FUNDER, LENDER, AND BROKER LICENSING

By *SEAN MURRAY*

New York State Senator James Sanders Jr. has introduced S6688, a commercial financing licensing bill that would require persons or entities engaging in the business of making or soliciting commercial financing products in New York state to obtain a license from the New York Department of Financial Services. The bill covers small business lenders, merchant cash advance companies, factors, and leasing companies for transactions under $500,000.

The bill likely won't see any activity until the New York legislative session resumes in 2020, at which point it could be amended or killed.

As currently drafted, applicants for a license would be subject to a criminal background search and be required to submit their fingerprints for a review by agencies such as the FBI. In addition to paying an application fee, applicants would be required to maintain liquid assets of $50,000.

Sanders, the bill's sponsor, is the Chairman of the banking committee.