deBanked

July/August 2016

IT'S A BROKER'S WORLD, LITERALLY

Motivating Your Sales Force—Tips from the Floor
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Is The "Uber" of Merchant Cash Advance Actually Uber?
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Letter From the Editor

BY
SEAN MURRAY

Challenges facing some of the most well-known consumer lenders in the technology era has caused the mainstream media's love affair with "marketplace lending" to erode. For example, the Wall Street Journal published a story on July 7th with the cheeky title New Growth Plan for Online Lenders: Layoffs. "In the world of online lending, the hot, new thing is the pink slip," wrote WSJ's Peter Rudegair. But if you make it past the headlines, you'll notice that most of the gloom is constrained to the consumer side. The commercial side on the other hand, is still booming.

I saw this firsthand at a ribbon cutting I attended to celebrate the opening of a new office in Jersey City. And I saw it firsthand when a commercial finance ISO put up help-wanted ads after signing a long-term lease in lower Manhattan. And when I didn't see it with my own eyes, I read the press releases or conversed with the execs that had just closed major deals. While confidence has retreated from its euphoric highs, a feeling we were actually able to attribute a score to, optimism certainly persists.

In this issue, we shed a spotlight on some of that optimism, while continuing to do what we do best, keeping you apprised of what's happening out there. Whether it's ways to keep salespeople motivated or exploring the boundaries of a product at home and abroad, I hope you walk away from this magazine and all of our future ones, a little delighted, determined and debanked...

–Sean Murray

IT'S A BROKER'S WORLD, LITERALLY

BY SEAN MURRAY

IT'S A BROKER'S WORLD, LITERALLY

By *SEAN MURRAY*

From east to west, small businesses are getting funded. But how they're found and who they work with depends on where they are. In the US, where brokers tend to have a love/hate relationship with the funding companies they work with, they are no doubt a driving force in the market. In other countries, they might not even exist, are just starting to bloom or they add balance to a mature market. Is the world built for brokers? deBanked traveled far and wide to find the answers.

Down under in Australia, where American-based merchant cash advance and lending companies have expanded, the ISO (which stands for Independent Sales Organization and is synonymous with broker) model has not really followed. David Goldin, CEO of Capify, an international company headquartered in New York, told deBanked that there's very few ISOs in Australia.

He believes that's because there's next to no payment processing ISO market there, a foundation that was a major precursor in the US towards the development of ISOs reselling merchant cash advances and business loans.

Luke Schmille, President of CapRock Services, echoed same. The Dallas-based company founded Sprout Funding in Australia earlier this summer as part of a joint venture with Sydney-based family office Huntwick Holdings. "Direct marketing is the primary method [of acquiring deal flow]," he said. "The credit card processing space is controlled by several large banks, so you don't see ISO efforts in the acquiring space either."

Big bank dominance was only one reason why another country's emerging alternative small business funding market developed slowly. In Hong Kong, non-bank alternatives like merchant cash advances faced legal uncertainty for a long time. For example, Global Merchant Funding (GMF), once the only merchant cash advance company in the Chinese special administrative region, had been relentlessly pursued for years by the Secretary for Justice for conducting business as a money lender without a license. GMF fought it. And won.

In May of this year, the legality of merchant cash advances ultimately prevailed after the highest court ruled the agreements were not loans. Emboldened, several companies have stepped up their marketing of the product. But whether they're doing daily debit loans or split-processing merchant cash advances (both of which exist there), marketing tends to be directed at merchants, not a middle market of brokers.

Gabriel Chung of Hong Kong-based Advanced Express Capital said that there are a handful of large brokers, typically comprised of former bankers, but the rest of the broker market is highly fragmented, mostly made up individual freelancers.

Adrian Cook, the Founder and CEO of Hong Kong-based Asia Capital Advance, agreed that marketing is usually aimed at merchants directly but that it's changing. "Since the market is still very new and MCA is only beginning to gain popularity, brokers on the market are only starting to recognize MCA," he said. "There is a lot of room for the brokerage market to grow."

In the UK, where Capify also operates, CEO David Goldin explained that the UK doesn't have a lot of credit card processing ISOs so there wasn't a major migration from that business to MCA like there was in the US. But that doesn't mean there is no middleman market at all.

Paul Mildenstein, executive director of London-based Liberis, said that brokers are an important channel, but not as dominant as they are in the US. "Our brokers are usually members of the NACFB, an organisation in the UK that actively supports and provides operating principles to the furtherance of the commercial finance broker community," he wrote. The National Association of Commercial Finance Brokers claims to have 1600 members, one among them is Liberis.

"Many clients want the support of an experienced professional who can discuss the financial options available to them in their specific circumstances," said Liberis' CEO, Rob Straathof. "Given relatively low awareness of the Business Cash Advance product in the UK, this means that brokers have a key role to play in educating potential customers on when this is the right option for them," he added.

Straathof stressed a robust criteria for the brokers they work with and explained that brokers are their eyes and ears in the market. "The relationships we have with them are not transactional, but transformational for our business," he said.

The NACFB was also praised by Alexander Littner, Managing Director of Chelmsford, Essex-based Boost Capital. The company, which is actually a subsidiary of Coral Springs, FL-based BFS Capital in the US, sees a balance between their use of brokers and their efforts to acquire customers directly.

"As the alternative finance market is still relatively new here in the UK these brokers are important for this independent advice, and to help educate the market and establish trust," Littner said. "At Boost Capital we work very closely with brokers across the UK, they are a critical part of our growth and fundamental to our ongoing success."

In the US, brokers play such a dominant role in customer acquisition that some MCA funding companies rely on them to source the entirety of their business. Back in February, Jordan Feinstein of NY-based Nulook Capital told deBanked, "We decided that the best way to grow is to build relationships to avoid the overhead, compliance, training and manpower that a sales team would require." Nulook markets its broker-only approach as a strength.

and that direct marketing will only increase. "I think more and more companies are going to start building their own internal sales forces," he said.

Other brokers are not convinced that acquisition costs will lead to the death of their businesses, especially if they've already found ways to reduce overhead costs. Several brokers have discreetly mentioned running operations from Costa Rica, Nicaragua or elsewhere as a way to keep things profitable. Still more, like Excel Capital Management based in Manhattan, have found that offering a suite of products allows them to monetize more customers. Chad Otar, a managing partner for Excel, said that they recently brokered a $4.9 million SBA loan. MCA is just one of their options these days. "As long as there's small businesses, there's always going to be opportunity," he said.

In the US, the brokers have certainly seized it, but that's because most funding companies offer big bucks and quick payment to those that are capable of sourcing customers. In other countries, compensation for services rendered might be the responsibility of the broker to arrange with the merchant since it may not be customary for funding providers to pay

"Brokers in the UK are incredibly important as independent advisors to small businesses on the various sources of finance to suit their needs."

Others take a more blended approach, like Justin Bakes, CEO of Forward Financing, for example. "While our priority is to self originate, it is essential to create and maintain partnerships in this business," he said earlier this year.

Notably, no such guiding authority like the UK's NACFB exists for brokers in the US so it's not easy to track exactly how many there are or how they operate, but their role in the industry cannot be understated. deBanked actually labeled 2015 *The Year Of The Broker,* when it published an article in its March/April 2015 issue that tried to capture the essence of the industry at the time. Tom McGovern, who was then a VP at Cypress Associates LLC, said of brokers, "They're like the missionaries of the industry going out to untapped areas of the market."

But preaching the gospel of alternative funding exists at different stages across the world. And Goldin, whose company Capify operates in four countries including the US, thinks that many middlemen here at home may not ultimately survive. In an interview, he predicted that the stronger ones over time will be acquired by funding companies

commissions. That would mean more work and more risk for the broker.

Ironically, some brokers in the US will tap into both sides, earning a commission from the funder and charging a fee to the merchant for services rendered. And if the broker has payment processing roots, they can go a step further and earn merchant account residuals as well.

Brokers can't exist without funding companies willing to support their endeavors, of course. While their prevalence around the world varies, most of the funding companies deBanked spoke to, appear eager to nurture the middleman's role, so long as they act responsibly.

"Brokers in the UK are incredibly important as independent advisors to small businesses on the various sources of finance to suit their needs" said Littner.

And as long as those customers, wherever they may be, are getting the value they want from a broker, that role, so long as it can continue to be done profitably, will likely have a place in the world for the foreseeable future.

MOTIVATING YOUR SALES FORCE—TIPS FROM THE FLOOR

By *CHERYL WINOKUR MUNK*

MOTIVATING YOUR SALES FORCE—TIPS FROM THE FLOOR

By *CHERYL WINOKUR MUNK*

Fancy steak dinners, electronic devices and cold hard cash are just some of the ways ISOs and funders these days are motivating sales reps to bring in business.

Although it's largely a field for self-starters, many companies find that even small tokens of appreciation do wonders to increase rep productivity.

"Waving a carrot in front of your reps can make a massive difference," says Zachary Ramirez, branch manager of the Costa Mesa, California branch of World Business Lenders, an ISO and a lender.

When it comes to motivating sales reps, every company does things slightly differently. Some have more established incentive programs, while others are more ad hoc, depending on how the day, week or month is shaping up. The common goal of all the programs, however, is to give a little something to get something greater in return.

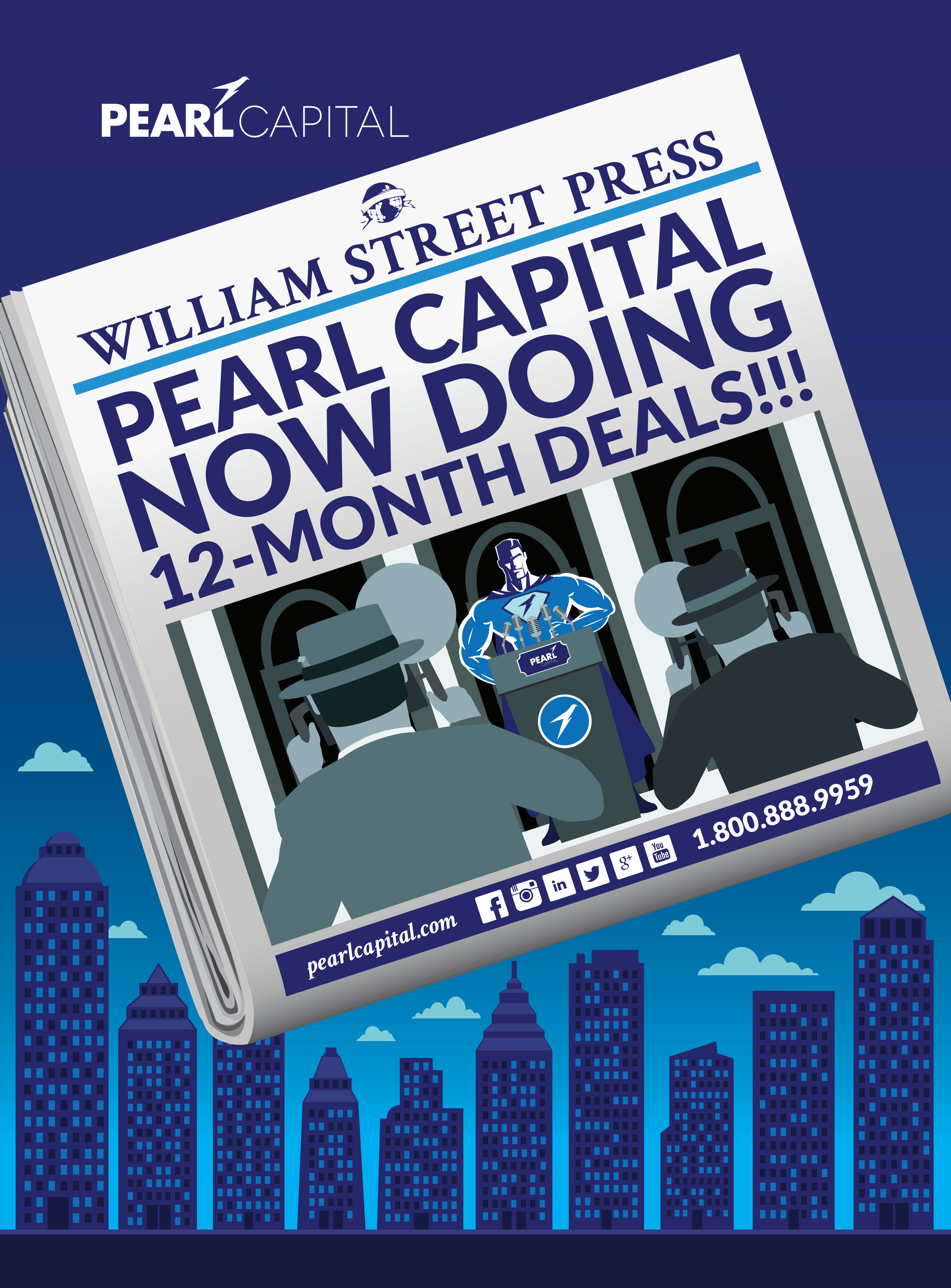
Ramirez remembers one sales rep who won a trip to Las Vegas and then continued to be the top rep for three months running. "Those types of rewards can keep a sales team motivated, hungry and excited," he says.

From time to time, Ramirez offers rewards such as a small cash bonus if a rep meets certain metrics like getting three submissions in a day or multiple fundings in a week. In addition, whenever his reps, who are all hourly employees, hit key performance indicators, Ramirez rewards them with a poker chip. After they accumulate enough, they can trade in their chips for various prizes. Twenty-five poker chips might be worth a flat-screen TV and 50 chips could be an expense-paid trip to Las Vegas, for example.

When it comes to motivation, it's important to incentivize the correct behavior, Ramirez says, noting that in his earlier years running an ISO, he used to reward reps based on the number of calls they made in a day rather than applications, approvals or fundings.

The latter represent a much more serious commitment and are worth motivating for as opposed to simply making a phone call, where the outcome is uncertain. "Even if they make as many as 500 phone calls in a day, it's irrelevant if they are not moving the transactions forward by getting applications and bank statements," he says.

It's also very important to have clear-cut expectations; reps need to know the consequences of not performing, Ramirez says. Most top salespeople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won't need the stick. But it's still necessary for them to know the policies, he says.

THE POWER OF SELF-ORIGINATION

One major way United Capital Source incentivizes its 15-person sales force is by self-originating leads. It provides its reps—who are all W2 employees—with merchants that are actively expecting phone calls as opposed to handing them a laundry list of names to pitch which may or may not pan out. It costs more for United Capital to do this, but it works well for the company and for its sales force, says Jared Weitz, chief executive of the New York-based alternative-finance brokerage.

"It enables us to put our guys in a position where they are growing with the company and the company is growing as well," he says.

In addition, United Capital has an aggressive pay structure that allows salespeople to grow with the company. For instance, the pay plans are all based on how the company is doing overall, as opposed to an individual salesperson's performance. In this way, it encourages the sales force to work together, as opposed to each person being out for himself. Weitz says its sales team understands that if the company hits x, the sales team gets y. United Capital also offers competitive healthcare and 401(k) plans and there's no vesting period for employees to receive their 401(k) employer match. Additionally, the company does small things like Friday lunches on the company's dime as a thank you for time spent. It's another way to keep the sales team happy, Weitz says.

Fundzio, an alternative funder in Fort Lauderdale, Florida, also works very hard to make sure it keeps up its pipeline of fresh leads so that reps don't have to do that on their own. Indeed, Fundzio provides them with between seven and ten fresh and promising revenue-earning opportunities each day. This helps tie the reps to Fundzio because they have a continuous stream of business and don't have to find it on their own.

"It guarantees them at bats every day," says Edward Siegel, founder and chief executive of Fundzio. It also helps tie the reps to Fundzio because they have constant business. "The key thing is having new leads," he says.

Additionally, anyone who funds a deal gets to spin a wheel in the office at the end of the business day and earn cash or special prizes like concert tickets or a fancy dinner or a $200 gift certificate. Reps really appreciate getting those prizes, which is evident when they come back to work after enjoying their steak dinner at a Fort Lauderdale waterfront restaurant. "I think it creates a fun and relaxed

atmosphere feeling. A little bit goes a long way," Siegel says.

One way Fundzio motivates reps from the get-go is to bring them on initially as independent contractors. If they prove themselves over a 90-day period, they have the opportunity to become an employee. At any given time, the company has about 20 to 25 sales reps, representing a combination of contractors and W2 employees.

Another way Fundzio helps motivate reps is by allowing them to earn residuals from repeat business for the life of the account as long as they are still employed by the funder. Many funders have renewal departments and reps don't directly benefit when a customer does repeat business, but that's not the case at Fundzio, Siegel says.

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REVVING UP SALES WITH CONTESTS

Certainly, to succeed in the alternative finance industry, sales reps have to be self-starters. It's a key requirement to do the job well, in part because so many shops are purely commission-based. Nonetheless, many companies find it helps to grease the wheel a bit—regardless of whether reps are independent or W2 employees.

Fast and Easy Funds, for instance, holds weekly contests to encourage its internal sales force of 15 independent contractors. One week the contest may be for the rep with the most dials, another week it's for the most submissions and another week for the highest number of deals funded. Each contest pays in the vicinity of $150 to $250 cash. "Every week I change it up. They don't know what the contest is going to be until the last day of the week," says David Avidon, president of Fast and Easy Funds, a broker and alternative funder in Boca Raton, Florida.

iAdvanceNow, a brokerage firm in Uniondale, New York, runs daily, weekly and monthly bonuses for its 38-person sales force.

For instance, if a rep submits two completed deals for approval in a day he or she might get $100 cash; for three completed deals, the cash bonus might be $250, says Eddie Hamid, president of iAdvanceNow.

On a weekly basis, for submitting six complete files, reps get one spin on a big Wheel of Fortune-like apparatus in the office. Everybody is a winner; the prize depends on where the arrow lands. It may be a cash prize of $20, $50, $100 or a physical prize like a 40 inch-Samsung TV, an Apple Watch or iPad, Hamid explains.

On a monthly basis, meanwhile, each team of five to seven sales reps has a goal. If as a team they reach their goal, they get $1,500. Additionally, the top producer of the month—provided he or she has achieved a minimum of three merchants being funded—receives the top producer bonus of $1,500. The runner-up receives a $1,000 bonus and the third place sales rep receives $500. The top team in the office also gets a steak dinner at a local establishment, Hamid says.

The system works because it gives them a drive to obtain a goal while also encouraging friendly competition, says Hamid, noting that he once overheard reps talking about how much they value being named the top producer. "With sales people, they are more concerned with the recognition than the prize or the money they are receiving," he says.

iAdvance has been in business for about two years. The current motivational system has been in place for about a year-and-a-half and it seems to work very well to motivate the sales force, Hamid says. In addition, if they are having a down sales month, Hamid ups the ante for the daily goals, adding not only cash, but also prizes.

These techniques all help to light a fire under the sales force, he says.

STRATEGIES FOR SLOW DAYS

Sometimes around 3 p.m., if he feels like the room is starting to quiet, Jordan Lindenbaum, director of sales at Excel Capital Management in New York, a business financing ISO, might offer $20 or $30 cash for the next submission. Or he might offer

$40 to $50 for two or three submissions by the end of the day.

"All it takes is one slow day to kill the energy of a sales rep," he says.

Lindenbaum finds that motivation checkpoints seem to work well. For instance, at the end of the month, the firm commonly gives a $200 bonus to the sales rep with the most submissions. For actual deals funded, Excel Capital is also working to implement a more concrete revenue-based bonus system as well, Lindenbaum says.

Excel Capital works with independent ISOs in addition to its in-house staff to bring in business. To encourage independent ISOs to refer business, the funding company offers higher payouts to those who consistently bring in high quality deals than to ISOs who bring in deals sporadically.

Chad Otar, co-founder and managing partner at Excel Capital, says a key piece of motivating sales reps is to make sure the sales manager feels motivated as well. Accordingly, the firm also makes sure to motivate Lindenbaum with larger payments for doing an outstanding job of motivating the sales force to bring in deals. "We need to motivate the sales manager so the sales manager motivates the people on the phone. It's a chain effect. You motivate one and it motivates the others," he says.

Excel Capital also believes in the power of team rewards. Recently, for instance, company executives treated all staffers to a steak dinner at Delmonico's in New York City. "We've done it many times so our team knows they are appreciated and that our goals were met because everyone worked together," Otar says.

THE SALARY VS COMMISSION CONUNDRUM

Paying reps a base salary in addition to commissions is another strategy some ISOs use to motivate sales reps. A salary is especially meaningful to reps just starting out, notes Ramirez of World Business Lenders.

He says he has worked with a lot of ISOs and many of them don't want to pay reps a base salary because they feel it's a mistake to give them a cushion. Because by doing so, reps get comfortable and when they get comfortable, they don't push deals—or so the thinking goes. But Ramirez believes this is counterproductive to the rep's career and the ISO's sales.

He believes reps should be given a big enough base while they are learning the industry—say for 90 days. Giving them $2,500 a month or so, motivates them and it doesn't choke their possibility for survival. "You have to give every salesperson the opportunity to succeed. Give them some coaching, give them some guidance, give them a little time. But if there's no possibility of that rep succeeding or being an asset to your team, it's important to remove them as efficiently as possible," he says.

It may seem counter-intuitive, but removing dead weight is also motivating for reps who are really working hard to sell, Ramirez says. To keep that person is demoralizing for the other reps—who may feel they don't have to work as hard either or who feel they have job security even without doing their best. "It fosters complacency," he says.

RIBBON CUTTINGS SIGNAL CONTINUED GROWTH IN THE "WORLD OF BUSINESS LENDING"

By *SEAN MURRAY*

Jersey City successfully wooed another alternative lender away from Manhattan.

On the evening of July 20th, state and local officials partook in a ribbon cutting event on the 33rd floor of 101 Hudson Street to celebrate the coming of World Business Lenders (WBL). The company, which often competes with the likes of OnDeck and merchant cash advance companies, has an average loan size of $200,000. And they're collateralized.

That might make WBL seem more like a traditional commercial lender, and in a lot of ways they are. Company CEO Doug Naidus, who has roots in the mortgage industry, doesn't fully believe in the wave of algorithmic underwriting that has swept the small business lending industry over the last few years and believes a correction is coming. Although there have been outside observers making similar predictions for some time, Naidus is an insider and his belief is rooted in his desire to build a company that lasts, one that he can look back on and be proud of, he told deBanked.

And so far, he's got something to show for it. Under the Grow NJ program, WBL will bring 225 jobs to Jersey City by the end of 2016. And thanks to their franchise model, in which they've been converting local commercial finance brokerages across the country into WBL branches, they've created and maintained jobs elsewhere as well.

The ceremonial ribbon cutting stood in sharp contrast to events taking place at some of the

Doug Naidus, Dep. Mayor Marcos Vigil
Bennett Raglin/Getty Images for World Business Lenders

companies in the consumer lending space who have been laying employees off. Those companies are coincidentally renowned for their algorithmic approach, the kind Naidus is suspicious of.

Jersey City mayor Steven Fulop said of the move, "helping small businesses thrive has been one of the guiding priorities of my administration, which makes world Business Lenders' relocation to Jersey City even more rewarding."

In March, WBL rival Fundry, a company better known by its subsidiary Yellowstone Capital, also moved to Jersey City in exchange for creating jobs there. Their arrival was blessed by the Mayor's office as well.

WBL stands to receive up to $16.8 million in performance-based tax credit over ten years.

"We are thrilled to contribute to the growth of Jersey City as a haven for commerce," Naidus said. "We are delighted to call Jersey city our new home."

Mitchell Rudin, Archbishop Billings, Rep. Payne, Doug Naidus, Dep. Mayor Marcos Vigil, Rep. Towns, Christina Fuentes, Councilwoman Osborne

Bennett Raglin/Getty Images for World Business Lenders

CAN AN ISO "EXCEL" IN 2016?

By *SEAN MURRAY*

Don't let anyone tell you that it's too hard for a commercial finance broker to make a buck in exchange for honest work these days. One ISO in lower Manhattan is seeing more opportunity than ever before. Chad Otar, a managing partner of Excel Capital Management, sat down with deBanked to make his case for a bright future.

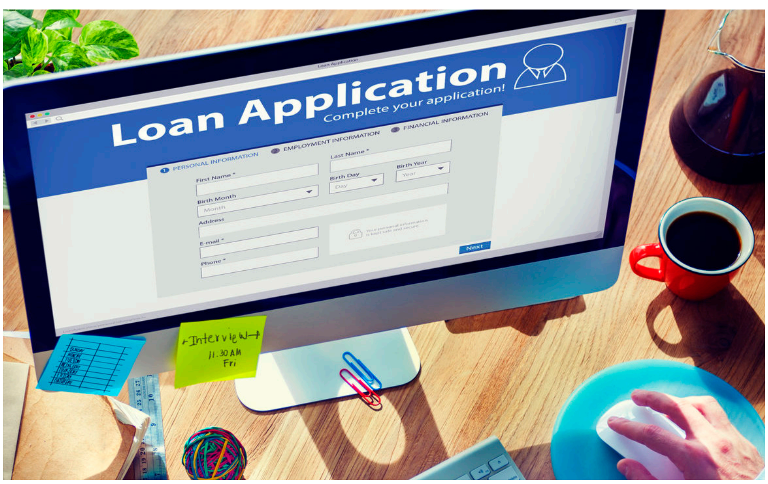
"As long as there's small businesses, there's always going to be opportunity," Otar said. "Business owners are always going to need money." Ironically, his own company that he co-founded in 2013 with hometown friend Nathan Abadi, was formed without any outside debt. Bootstrapped even to this day and even as they're expanding, they've seen firsthand what other businesses around the country have to go through to get ahead.

"We've always believed in the products that we've sold," said Otar, who brokers merchant cash advances, business loans, SBA loans, factoring products and more. They want every deal to help their clients whether it's big or small, explaining further that even he himself has to feel comfortable with what the merchant wants. When asked about size, Otar said the largest SBA loan they got done was for $4.9 million.

But when questioned if more merchants were moving towards factoring and other traditional products, he explained that some merchants just don't want to deal with the hassle of something that might be overly invasive or a process that might take a long time. They just want to get funded quickly, he

said. And that's where they come in.

Otar and Abadi's optimism is not just anecdotal. The two partners, who previously renewed one-year leases for their small office on Maiden Lane, saw enough runway to recently sign a five-year lease for a 2,700 sq ft. office on Greenwich Street, staying within the bounds of the city's financial district. Between full time employees and contractors, they currently house about fifteen people in their new office.



Though the partners live in Brooklyn, they, like many other companies in the industry, believe a Manhattan headquarters makes the most sense. "Everything is here," Otar said. It's easier to recruit new hires, he explained. And they indeed have immediate hiring plans now that they've got the space for it, both in sales and operationally.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This new up-and-coming generation of business owners is very comfortable with the Internet and technology, Otar added, speeding up the process and allowing they and the funding partners they work with to do more deals together. One example offered was a small business owner who gave a guided tour of his establishment to an underwriter using FaceTime on his phone. Normally, the process would've been delayed by a few days because of the time it takes to hire a third party to perform a site inspection.

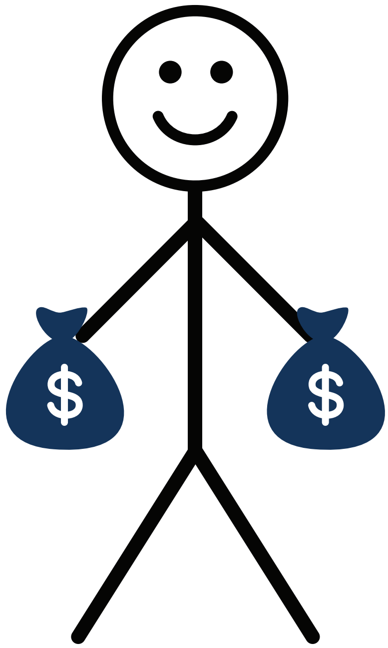
Some funding partners offer DocuSign so that merchants don't even have to spend time printing and signing documents anymore, he said, qualifying that however by adding that while some merchants love it, others hate it and feel more comfortable doing things the old fashioned way. He acknowledged that was likely due to the generational gap that still exists.

When asked if the setbacks and gloom that had begun to envelop the consumer lending side of fintech, was also affecting the commercial side, Otar said he didn't see it. Funders are still very aggressive with approvals and terms, he said. While paperwork required for approval is declining overall, he described one obstacle that he hadn't really dealt with in previous years, UCC filings that are accidentally left active even when the agreements are satisfied in full.

Underwriters doing due diligence might interpret active UCCs to mean that outstanding obligations

still exist. Absent a formal termination of the UCC, an underwriter may request that merchants provide documents from the secured party to support that a termination should've been filed. This in itself is not a burdensome task but Otar said he has seen merchants who have used alternative financing products continuously over the last eight years or so, who are then challenged to produce satisfaction letters from dozens of companies, some of whom the merchant may only vaguely remember.

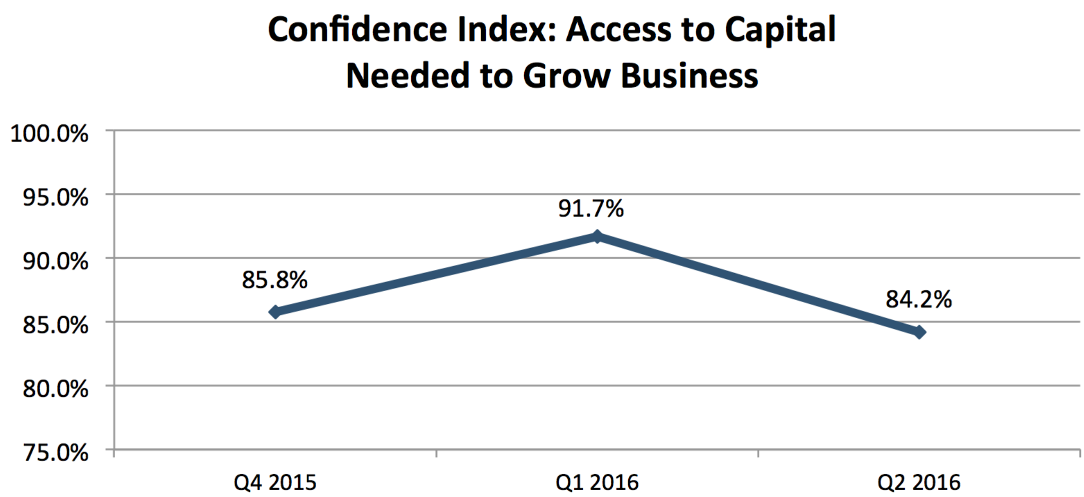
But he is not discouraged when new challenges come up. "We've been constantly learning," he said. And when asked what their secret to success has been up until this point, "It's hard work and dedication," he responded.



THE MONEY'S STILL FLOWING

Confidence among small business lending and merchant cash industry executives in their ability to access capital needed to grow their business did not fall by much in Q2. The deBanked/Bryant Park Capital survey revealed a confidence score of 84.2%, down from 91.7% in Q1.

Execs were slightly more confident in being able to access capital than they were in the continued success of the industry they operate in as a whole, which they scored at 78.9% in Q2.



RECENT DEBT & OTHER NON-EQUITY TRANSACTIONS IN BUSINESS LENDING AND MERCHANT CASH ADVANCE

Month	Company Name	Amount
May	Fora Financial	$52.5 Million
June	Bizfi	$20 Million
June	Pearl Capital	$20 Million
June	Legend Funding	$3 Million
July	Fundry	$75 Million

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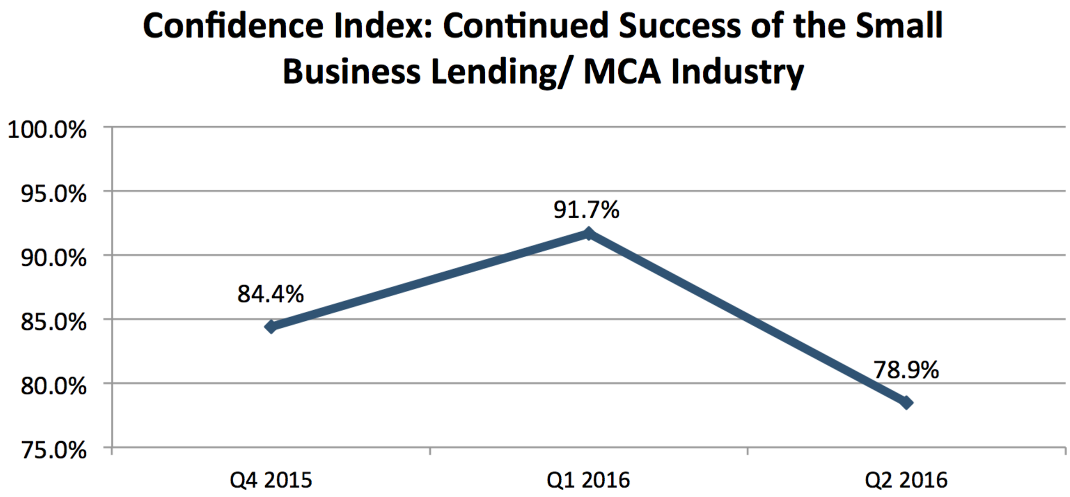
THE END OF EUPHORIA

A joint deBanked/Bryant Park Capital survey revealed what many people were already thinking, that the euphoria surrounding MCA and small business lending has dissipated. But there's good news because the most recent confidence levels reported by chief executives are still pretty high.

On the continued success of the small business lending/MCA industry, the survey results showed a confidence level of 78.9% in Q2, down from 91.7% in Q1. Respondents were not asked to explain the reasons behind their scores, but increasing competition and ripples from the Lending Club debacle in May likely played a role.

deBanked and Bryant Park Capital only started to measure confidence levels in the fourth quarter of 2015 so comparisons to previous times periods are limited.



Opinion

Disruption in consumer lending has been mostly about refinancing credit cards and the speed and ease of an online-only experience. The borrowers are already bankable and typically have great credit. Banks are the competition, whether they admit it or not.

In business lending, most of the innovation has focused on borrowers that have historically been unable to obtain credit from a bank. Credit profiles of these customers range from poor to excellent. Other non-bank lenders are the competition. Banks still do not want to lend to these borrowers.

Because of these differences, it is possible to have budding growth and optimism on one side and pessimism and challenges on the other. While we did not measure confidence levels of online consumer lending executives, several well-known players announced layoffs in the second quarter. Because of the underlying differences, it is possible to see a continuation of that negative trend in online consumer lending while business lenders continue to grow unscathed.

I was therefore not surprised to see a lot of negative news headlines about online consumer lenders in the second quarter while finding high confidence levels on the commercial side in our survey. Such is the divergent nature of the objectives that each are trying to accomplish.

- Sean Murray

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A MERCHANT CASH ADVANCE IS *NOT* A LOAN, NEW YORK JUDGE RULES

By *SEAN MURRAY*

A New York Supreme Court Justice ruled that a purchase of future receivables is not a loan. And it's not even close, according to a decision and order by The Honorable Jerome C. Murphy in Platinum Rapid Funding Group Ltd v. VIP Limousine Services, Inc. and Charles Cotton.

As a background, the corporate defendant agreed to sell their future receivables to plaintiff in return for an upfront payment, an arrangement commonly referred to as a merchant cash advance. Defendants breached and plaintiff filed a lawsuit accordingly. Defendants asserted twelve defenses including that plaintiff had committed civil and criminal usury. Plaintiff Platinum Rapid Funding Group then moved to dismiss their defenses.

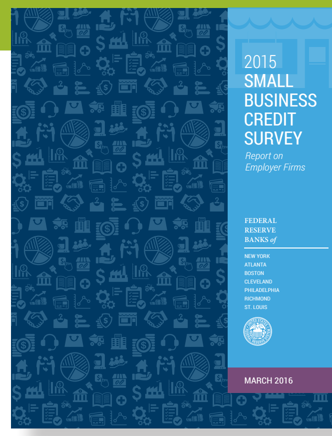
In a 9-page decision, Justice Murphy dismissed nearly all of the defenses, including the one alleging usury, because as he put it, the agreement was not a loan, so there can be no usury. His ruling on that defense is quoted as follows:

> *Defendants' contention that the Agreements violate General Obligation § Law 5-501[1] and Banking Law § 14-a[1], and are civilly and criminally usurious is without merit. A corporation is prohibited from asserting a defense of civil usury (Arbozova v. Skalet, 92 A.D.3d 816 [2d Dept. 2012]). An individual guarantor of a corporate obligation is also precluded from raising such a defense (Id.). Defendants have failed to adequately allege a defense of criminal usury in violation of Penal Law § 190.40, in that they failed to allege that the lender knowingly charged, took or received annual interest exceeding 25% on a loan or forbearance of money. In its bill of particulars, defendant hypothesizes that the terms of the Agreement could result in the payment of criminally excessive interest, but this is clearly insufficient under the pleading requirements.*
>
> *Essentially, usury laws are applicable only to loans or forbearances, and if the transaction is not a loan, there can be no usury. As onerous as a repayment requirement may be, it is not usurious if it does not constitute a loan or forbearance. The Agreement was for the purchase of future receivables in return for an upfront payment. The repayment was based upon a percentage of daily receipts, and the period over which such payment would take place was indeterminate. Plaintiff took the risk that there could be no daily receipts, and defendants took the risk that, if receipts were substantially greater than anticipated, repayment of the obligation could occur over an abbreviated period, with the sum over and above the amount advanced being more than 25%. The request for the Court to convert the Agreement to a loan, with interest in excess of 25%, would require unwarranted speculation, and would contradict the explicit terms of the sale of future receivables in accordance with the Merchant Agreement.*

The detailed explanation reaffirms the obvious distinctions that such a purchase has from a loan, even when such receivables purchased are future receivables. To the extent that defendants argued that a potential outcome of such an agreement could hypothetically be converted to a usurious interest rate, that is a risk that the defendants took, the Court said, and converting this sale agreement to a loan would require "unwarranted speculation."

Christopher Murray of Giuliano McDonnell & Perrone, LLP is the attorney representing plaintiff Platinum Rapid Funding Group in this action. The case number is 604163/2015 in the New York Supreme Court.

DEBANKED HAS DEBUNKED A TROUBLESOME STATISTIC



1. One statistic found in the results of a March 2016 Fed study is being twisted and misused. Supposedly only 15% of small business borrowers were satisfied with the loan they were approved for by an online lender. The number, that didn't sound right at all, has been attributed to this Fed report. After noticing several instances of it being repeated by witnesses testifying at congressional hearings, deBanked decided to look closer at the study:

2. It was determined that 15% represented a "net satisfaction score," which means that more than 50% of borrowers were satisfied. Readers were misinterpreting the scoring mechanism. But even that seemed low and that brought us to the next reveal.

It's not a scientific study. Hidden in plain sight in the report, are these facts:

» The data are not a statistical representation of small businesses.

» The SBCS is not a random sample of small employer firms, and therefore suffers from a greater set of biases than surveys that contact firms randomly.

» Businesses are contacted by email through organizations that serve the small business community in participating Federal Reserve Districts.

» Caution should be taken when interpreting the results

3. deBanked also found evidence that at least one organization that helped the Fed distribute the survey to small businesses, was actively engaged in lobbying for strict regulations against online lenders. Since we were convinced that the deficiencies in the study were already sufficiently acknowledged by the Fed in the report itself, we did not aggressively pursue that connection.

Credit should be given to the Fed for acknowledging that their study was biased and unscientific. Hopefully the statistics therein do not become the basis for any policies or regulations.

☑ THE NOTION THAT **ONLY 15%** OF SMALL BUSINESS BORROWERS ARE SATISFIED WITH ONLINE LENDERS HAS BEEN **DEBUNKED.**

IS THE "UBER" OF MERCHANT CASH ADVANCE ACTUALLY UBER?

By *ED MCKINLEY*

If imitation is the sincerest form of flattery, Uber is paying the alternative small-business finance industry a high compliment. The San Francisco-based ride-sharing company is offering its drivers some programs that closely resemble merchant cash advances.

New drivers receive part of the advance before they pick up their first fare and the rest soon after that initial ride. Clearbanc, which bills itself as a financial services provider for "the self-employed, freelancers, independent contractors and entrepreneurs," is putting up the money.

As with a merchant cash advance, drivers can choose to pay back the Advance Pay funds by directing a portion of their weekly earnings to Clearbanc, according to a blog by Rachel Holt, an Uber regional manager. In the test the companies are limiting the automatic deductions to no more than 50% of the driver's weekly paycheck, she said. Participating drivers can still work whatever hours they choose.

If $1,000 isn't enough to put an aspiring Uber driver on the road, the company has another plan. Through the XChange Leasing program Uber automatically deducts car lease payments from drivers' weekly income, a company spokesperson said. A number of financial institutions work with the ride-sharing company in the program, according to the Uber website.

Applicants have to agree to what the company calls "a routine screening." If they're approved they receive a list of participating local car dealers. The leases are up to three years for new cars valued at as much as $20,000 and used cars worth up to $18,500. Cars can't be more than seven years old or have more than 75,000 miles. They have to have four doors and five seat belts.

Drivers put up a $250 security deposit when they receive the leased car. Typically, they might have 156 payments of $115 each for a 2013 Toyota Corolla or 156 payments of $143 each for a 2016 Corolla. California requires rideshare insurance, and Uber provides it through Farmers Insurance or Mercury Insurance.

Unlike many standard automobile leases, XChange Leasing does not have mileage caps, and drivers can

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exit the program by giving two weeks notice and paying a $250 "disposition fee," essentially forfeiting their security deposit, the Uber spokesperson said.

For drivers who prefer to own their vehicles, Uber has negotiated fleet discounts with a long list of car manufacturers, the company said. The deals can reportedly bring drivers thousands of dollars in savings over the sticker price of a car.

Meanwhile, Uber is testing Another foray into financial services. Drivers can use "Instant Pay," an Uber debit card from Green Dot's GoBank division, to collect the cash immediately after finishing a ride, according to Holt. The cards don't require a minimum bank balance and don't carry any fees, she said.

The company seemed upbeat about its new offerings. "We look forward to seeing how these pilots progress and to making innovative payment solutions more widely available to drivers soon," Holt said in her blog of Advance Pay and Instant Pay.

But some Uber drivers don't share that optimistic view. In fact, Advance Pay and XChange Leasing have both come under fire for what critics view as disadvantages for drivers and for the economy as a whole. Some have gone so far as to label the lease terms practices as predatory.

Uber offers Advance Pay only to new drivers, and they could receive just about as much as a sign-up bonus, according to a blog on UberPeople.net, a website for drivers. The author of the blog speculated that the company is using Advance Pay to eliminate the sign-up bonus and also to do away with its bonus for referring new drivers.

Drivers have to pay off the advance in 15 weeks, according to the UberPeople blogger. At the rate of 30 cents per mile that drivers receive in Detroit, paying back the $1,000 would require logging 3,333 miles, approximately the distance from New York to California, the blogger lamented. However, Uber pays a lower rate in Detroit than in most cities, according to statements from other drivers.

And although Advance Pay carries no interest, Clearbanc charges drivers a fee of up to $50 if they fail to pay off the advance in 15 weeks, according to published reports.

Complaints also arise with XChange Leasing, according to a website called therideshareguy.com. Dealers sometimes refuse to provide used cars for the program because they can make more money with new cars, according to the site.

If the dealers are willing to provide used cars, problems sometimes surface because XChange Leasing prohibits leasing a used vehicle for more than 105% of its book value, the site said. Cars with a reputation for reliability, such as Toyotas and Hondas, often sell for more than book value, according to the site.

Drivers have reported elsewhere that they feel trapped by the leases, many of them continuing to work for Uber just to make the payments. However, the Uber spokesperson maintained that drivers can leave the program anytime after the first 30 days.

Some critics bemoan the spread of subprime auto leases, which they have compared to the

subprime mortgage debacle that contributed to the Great Recession that struck in 2008. Uber prefers comparisons to Amazon, a company that has expanded by continuing to enter new businesses.

In general, Uber has met resistance repeatedly from traditional taxi drivers who find their livelihood threatened by the ride-sharing service. Taxi drivers around the world have chided Uber for failing to pay taxes, obtain taxi licenses and uphold safety standards.

Complaints aside, Uber continues to grow prodigiously and now serves riders in more than 400 cities in 70 countries, according to metrics supplied by the Uber spokesperson. Seventy-five percent of Americans live in counties where Uber operates, the spokesperson added. Globally, Uber employs 7,000 workers and 1 million drivers, the company said.

The word "uber" is defined as "denoting an outstanding or supreme example of a particular kind of person or thing, according to a dictionary entry the company sometimes cites. In German, "uber" means "across" or "above." Many potential riders know the word "uber" from the phrase "Deutschland, Deutschland uber alles," a line from the German national anthem that translates as "Germany, Germany above all else." The words to the song were written during Germany's unification, and the lyrics refer to the idea that allegiance to the nation should trump loyalty to local kingdoms.

Maybe Uber should stick with its own definition of "uber."