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SECURED FINANCE NETWORK

Via Email

July 28, 2020

Kumiki Gibson
Counsel to the Governor
State Capitol
Albany, NY 12224
(Kumiki.Gibson@exec.ny.gov)

Re: Letter of Opposition and Request to Veto Assembly Bill 10118A and Senate Bill 5470B

Dear Governor Cuomo;

On behalf of the members of the Secured Finance Network (“SFNet”), I am writing to express our steadfast opposition to Assembly Bill 10118A and Senate Bill 5470B and to request your veto of these well-intentioned but flawed measures.

The Secured Finance Network (formerly known as the Commercial Finance Association) (“SFNet”) is the international trade organization (founded in 1944) representing the asset-based lending, factoring, trade and supply chain finance industries, with member organizations throughout the State of New York (113 members), the United States Canada and around the world. Our members provide between \$10-20B annually in secured working capital to over 1,500 New York businesses.

It is important to note that historical default rates among borrowers using these commercial finance products is less than 1% and losses in the event of default have averaged 0.53% since we began tracking this metric in 1993. We believe this demonstrates an alignment between borrowers

and lenders in these product classes rather than abusive lending practices which is one of the goals of the proposed legislation.

We have expressed and reiterated in our discussions with the Assembly sponsor and legislative staff over the past month that our members, based on the structure of their finance products, will be unable to comply with AB 10118A and specifically with respect to the APR provisions, as this metric cannot be calculated for asset based lending and factoring products which base their fees on future sales which sales volume is completely and totally unknown at the time of the commencement of the loan or factoring facility. Instituting such a statutory requirement would result in exposing our members to material and unwarranted risks and consequences that are in direct conflict with the sponsor's stated policy objective of protecting small business borrowers. In short, by this bill mandating APR as the standard for disclosure, our members who do not offer term loans as a product, are simply left to guess what the disclosure might be. We believe mandating a disclosure based on a total guestimate is not in the interest of New York businesses and not consistent with the intent of this legislation.

Should this statute be instituted the outcome we believe will be a reduction in lending in New York State by impacted financial institutions at a time when working capital is critical to restarting the state's economy. The effect of passing a similarly provisioned disclosure law in California has resulted in chaotic delays in implementing a regulatory structure, not because of opposition to the legislation, but largely driven by the inability of the regulators to match the APR provisions to the products being solicited by borrowers. We believe the APR based formulary of this legislation would lead New York State to suffer from the same incongruity.

Further influencing SFNet's opposition to this Bill is the lack of a "safe harbor" to protect our members from claims due to their inability to accurately estimate the APR component.

Finally, the Bill effects all advances made below \$500,000. It is our view that this is an unwarranted ceiling and should be reduced to \$250,000 as borrower seeking loans and advances in excess of \$250,000 in the products classes our members offer receive written term sheets from lenders and therefore already have a basis for comparing the cost of the product being offered and do not need the protections provided by the Bill. Additionally, any commercial operation able to borrow in excess of a quarter of a million dollars would have the ability to properly vet borrowing such a large sum.

SFNet and its membership are supportive of providing as much information and transparency as possible to small businesses in order to assist them in making an informed decision on which financing product is right for them. However, SFNet and its members, having thoughtfully and thoroughly presented the rationale for requested amendments, and seeing none adopted, must express our strong opposition to Assembly Bill 10118A and Senate Bill 5470B and ask for you veto on these measures.

Respectfully,



Richard D. Gumbrecht
CEO
Secured Finance Network

cc.

Beth Garvey, Special Counsel and Senior Advisor to the Governor (beth.garvey@exec.ny.gov)
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