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SECURED FINANCE NETWORK

July 12, 2020

Memo of Opposition

A.10118-A Zembroski (Assembly Codes Committee)
S.5470-B Thomas (Senate Banks Committee)

AN ACT to amend the financial services law, in relation to requiring certain providers that extend specific terms of commercial financing to a recipient to disclose certain information about the offer to the recipient.

On behalf of the members of the Secured Finance Network (“SFNet”), I am writing to express our steadfast opposition to Assembly Bill 10118. 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. Historical default rates are less than 1% and losses in the event of default have averaged 0.53% since we began tracking this measure in 1993, demonstrating the strong alignment between borrowers and lenders in this asset class.

As expressed in our discussions with the Assembly sponsor and legislative staff over the past month, we reiterate that our members will not be able to comply with AB 10118, specifically with respect to the APR provisions, since this metric cannot be accurately calculated for the asset-based lending and factoring products our members provide. Instituting such a statutory requirement would result in exposing our members to material and unwarranted risks and consequences that are in direct conflict with your policy objective of protecting small business borrowers. In short, by this bill mandating APR as the standard formulary for disclosure, our members who do not offer term loans are simply left to guess what the disclosure would be. We believe mandating a disclosure based on a best guess is not in the interest of New York businesses and not consistent with the intent of this legislation.

The outcome of this well intended but flawed statute instead 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 APR provisions that are impossible to calculate for certain types of financial products. 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 comply with this improperly conceived aspect of the Bill.

As we have previously discussed, 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 at this time express our strong opposition to Assembly Bill 10118.

Respectfully,

A handwritten signature in black ink, appearing to read "RDG", with a long horizontal line extending to the right.

Richard D. Gumbrecht
CEO
Secured Finance Network