

THE ALTERNATIVE LENDING REPORT

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GLOVES COME OFF IN COLORADO 'TRUE LENDER' CASES

By Steve Evans

“True lender” lawsuits filed in Colorado highlight the ongoing legal ambiguity of marketplace lenders using the bank partner model. The latest dispute began earlier this year when Colorado’s attorney general filed complaints in state court against Marlette Funding and Avant of Colorado on behalf of the administrator of the state’s Uniform Consumer Credit Code. Later amended and removed to federal court, the suits allege violations based on earlier true lender and loan assignment cases. According to the complaints, these non-bank companies are the true lenders because they market and service loans originated by New Jersey-based Cross River Bank and WebBank, a state-chartered institution in Utah. The banks sell the loans to their partners.

Relevant Litigation Still Pending

In both cases, the AG’s complaint cites the 2014 case *CashCall, Inc. v. Morrissey*,

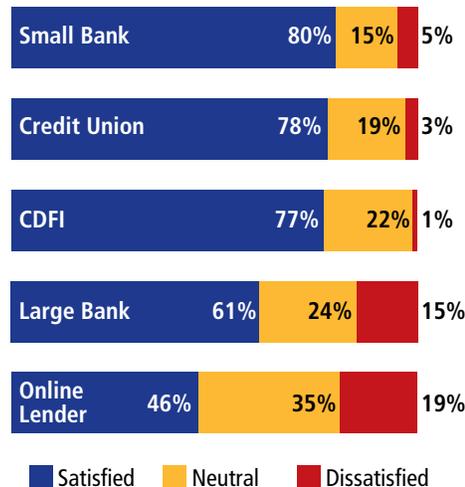
and *Madden v. Midland Funding, LLC*, from 2015 as legal authority for claims alleging usury and other violations of the state’s Uniform Consumer Credit Code. Referring to the Madden case, Colorado argues that “a bank cannot validly assign [federal interest rate exportation] to a non-bank.” However, in that earlier Madden case, the dispute involved the sale and assignment of charged-off debt – not loan originations under an ongoing arrangement between a non-bank lender like Marlette and Avant, and federally insured institutions like Cross River and WebBank. The banks earlier this month jumped into the fray with filings for declaratory judgment against Colorado.

“The decision in Madden was incorrect based on longstanding banking legal precedent,” says Mike Tomkies, a partner with Dreher Tomkies in Columbus, OH, specializing in banking and finance law.

Turn to **True Lender** on page 20

LENDER SATISFACTION

Satisfaction percentages of applicants who were approved for financing:



Source: Small Business Credit Survey, Federal Reserve Banks

ONLINE PLATFORMS HAVE CHANGED BROKERING DYNAMICS

By Gary M. Stern

Situated in his lower Broadway office, Nick Defonte who runs Broadway Advance is in the crosshairs of small business lending. Defonte offers accounts receivable financing, often in the garment industry or for retailers. Even as small company finance strategies like factoring have changed the traditional lending landscape, Broadway Advance still also serves as a broker, connecting clients to online lenders such as OnDeck, Fundation, Kabbage, Credibly and ForwardLine, to name a few.

Most online lenders offer a specialty. For example, Kabbage specializes in lines of credit of \$2,000 to \$100,000 with a six-month to one-year repayment schedule; Accion lends to businesses open less than six months, and Rapid Advance advances up to 250% of monthly credit card sales.

In the past, savings banks and community banks issued these small busi-

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EDITORIAL

ADDRESSING THE LACK OF TRANSPARENCY IN SMALL COMPANY LENDING

By Steven Dresner

People who take news reporting seriously consider the “Five W’s” principles to live by. According to the Five W’s, information can only be considered complete if you’ve answered the questions of who, what, when, where, and why. And so I thought it would be fitting to introduce you to *The Alternative Lending Report* by answering these questions.

Who’s the publisher? DealFlow Financial Products (a/k/a “DealFlow”), is the publisher of *The Alternative Lending Report*. As a company, we have considerable experience providing news, information, and analysis across a variety of deal markets. Since 2003, our team has worked to make capital markets more efficient by offering unique insight to thousands of clients of our publications, events, and database services.

If you’re a lender, broker, or service provider, we’re working for you – and *The Alternative Lending Report* is meant to serve as your trade publication.

What does the report cover? *The Alternative Lending Report* is dedicated to covering the small business lending ecosystem including alternative investment structures, online and marketplace lending, and non-bank financing structures such as factoring, invoice financing, merchant cash advance, and revenue-based financing. As the flag on the cover of this report suggests, we’re focused on innovations in finance and technology, legal and regulatory dynamics, and strategy within the alternative lending segment.

Regarding the borrowers we’ll cover, we are using criteria based on the size of a loan (approximately \$1M credit or below) and/or the size of the company (approximately \$20M in revenues or below). Academic whitepapers and industry experts commonly use these

thresholds to define the scope of the small company lending market. We do not cover consumer lending, except where we believe information in that segment would be useful to our readers.

A final note about our coverage: While we publish information about developments globally, our primary focus is on the United States.

Why are we doing this? There’s very little transparency in this market. Without government-mandated loan reporting, or public aggregation of data, there’s simply not enough information for people to make good business decisions.

Our call-to-action at DealFlow has always been to make markets more efficient through information and data. That’s what we’re aiming to do in the small company lending segment.

What’s our publishing frequency? Our first product, *Small Business Lending Daily*, is a free electronic newsletter that’s published Monday through Friday and delivered to your inbox. We cover a broad swath of topics in our Daily email such as “traditional” bank lending and we aggregate original articles, research reports, and news releases.

The Alternative Lending Report is published in PDF on the first and third Thursday of each month. As we enhance our website, new information will be updated daily on SmallBusinessLending.io.

In the near future, we will also be launching innovative webcasts, live events and training programs, and subscription-based analytics. As these products and services come online, we’ll notify you and keep an open channel for your feedback. In the meantime, we hope *The Alternative Lending Report* meets your expectations. If you’d like to subscribe to the report, call us at (516) 876-8006. 

WITH SBA BUDGETS ON THE CHOPPING BLOCK, WHAT'S THE LENDING ENVIRONMENT GOING FORWARD?

By Brian O'Connell

At a time when small business owners are bullish on the U.S. economy – and their own prospects – the Trump administration is pulling back on federal funding for smaller companies. According to a White House draft proposal, the U.S. Small Business Administration is facing a 5% budget cut for fiscal year 2018, or \$43.2 million in actual dollars.

“TD Bank continues to grow its SBA portfolio and the proposed budget changes wouldn't impact our ability to serve our customers.”

*Tom Pretty,
TD Bank*

The timing isn't exactly stellar for the Trump Administration, or for small businesses.

Opening the year, small business owners seemed downright giddy about their profit prospects, as the NFIB small business optimism index stood at a 43-year high. Correspondingly, banks and lenders seem bullish, too, as loans to small business percentages rose by a double-digit margin in 2016, and as business lending at domestic mega-banks and big lenders were at post-recession highs at the end of 2016.

But as the conventional wisdom had it, a new, self-described “business friendly” regime pulling the levers at 1600 Pennsylvania Avenue would be supportive of small businesses – but the proposed 2017 SBA budget has given both business owners and lenders pause heading into the second half of 2017.

Lenders, though, aren't backing away from small businesses yet, as they adopt

a “business as usual” mindset ahead of Congressional budget negotiations.

“We don't expect that any budget changes would impact TD Bank's overall ability to lend via the Small Business Administration to small businesses,” says Tom Pretty, head of SBA Lending at TD Bank. Pretty notes that SBA loans are typically done via a financial institution, with a small portion of the loan guaranteed by the SBA. “Because the SBA does not lend directly to small businesses, the proposed budget adjustment is unlikely to affect the agency's borrowing program,” he states.

“It's our belief the small business economy continues to be vibrant, and these businesses need capital to expand,” he adds. “TD Bank continues to grow its SBA portfolio and the proposed budget changes wouldn't impact our ability to serve our customers.”

Pretty also notes the SBA designates certain banks such as TD Bank as “Preferred Lenders,” which means they are “able to process and close SBA loans more quickly than other institutions,” he says. Also putting lenders like TD Bank on the inside track is the fact that the bank participates in all of the SBA loan offerings, including SBAExpress Loan, 7(a) Loan, 504 Loan and the USDA Loan (for agriculture businesses).

“Mixed Signals” For Small Businesses

That doesn't mean lenders won't be watching the Trump administration closely as it steers the SBA over the next four years – they will.

“The Trump administration's impact on small businesses through the SBA is still up in the air as there appears to be

KEY SBA 2018 BUDGET POINTS

- 5% of SBA cuts come from government grant programs, an area where the White House says the private sector should carry more of the load.
- Dollar amounts linked to SBA loan guarantees and to disaster assistance programs are also under the axe.
- Programs to be eliminated include PRIME technical assistance grants, Regional Innovation Clusters, and Growth Accelerators, the latter two rolled out by the Obama administration.
- The proposed budget also abolishes the Minority Business Development Agency, run by the Commerce Department, and which promotes the creation of minority-owned businesses.
- The lion's share of the 5% SBA budget cuts comes from SBA counseling and training programs, which are geared primarily to keep U.S. small businesses up and running, and out of default.
- Saved from the budget axe are funding for 7(a) and 504 loans.

mixed signals which should be worked out in more detail in May,” notes Gregg Landers, managing director at CBIZ MHM, a national accounting and professional services provider.

Landers believes the guaranteed loan programs (the 7(a) for general business loans and 504 loans for capital) may weather any SBA budget storms, but microloans, which target very small low-income businesses and provides some business skills assistance, may be affected. “If that's the case it would certainly negatively affect those small low-income

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related businesses more than the typical small business,” he states.

One “big issue” also looms large, Landers says – How do small businesses get the money to survive and grow if they don’t have SBA loan options?

“You could argue there are more capital alternatives for small business today than there were ten or twenty years ago,” he adds. “For example, we now have

crowd source possibilities, and arguably more alternative lending companies that charge higher interest for collateralized business loans. You could also argue the other side as well – that because regulations have become more onerous, the SBA and big lenders won’t be as prominent in filling this void. In that regard, higher risk small business loans simply become too unprofitable for banks to address.”

Landers also sees larger problems that have little to do with SBA budget cuts that are curbing small business financing so far in 2017.

“Banks, independent or not, are so heavily regulated now that smaller loans, especially if there is no track record or weak collateral making the loan riskier, become unprofitable for a bank,” he says. “There are alternative lenders, especially relative to equipment or tangible asset purchases and you may see more demand for them, however, they typically charge much higher rates for the loan and are often more oriented towards short term loans.”

Trouble with SBA Mainstays

If there are specific concerns about a slimmer SBA budget going forward, some lending industry insiders point to a

pair of agency mainstays over the years – the 7(a) Loan Program and the SBA 504 Loan Program, says Manuel Henriquez, founder and CEO of Hercules Capital, a large non-bank provider of venture debt to both expansion-stage and established companies.

“It’s highly likely that concerns primarily surround the SBA’s 7(a) Loan Program, the agency’s primary program for helping

start-up and existing small businesses, with financing guaranteed for a variety of general business purposes,” says Henriquez. “After all, SBA does not make loans itself, but rather guarantees loans made by participating lending institutions. In this way, taxpayer funds are only used in the event of borrower default. This reduces the risk to the lender but not to the borrower, who remains obligated for the full debt, even in the event of default.”

Henriquez also cites concerns about the SBA 504 loan program, which works in conjunction with Certified Development Companies throughout the United States, for the acquisition of owner-occupied commercial real estate or machinery and equipment.

“The SBA 504 program provides fixed-rate, long-term financing for businesses in need of brick-and-mortar financing,” he notes. “Non-profit Certified Development Companies are set up to contribute to the economic develop-

“There are alternative lenders, especially relative to equipment or tangible asset purchases and you may see more demand for them...”

*Gregg Landers,
CBIZ MHM*

SNAPSHOT OF U.S. SMALL BUSINESS LENDING CLIMATE

- Lenders are approving small business rates at a 63% approval clip, and small business loan approval rates jumped by 23% in December, 2016 – a sign that lenders are optimistic the Trump administration will be business friendly.
- Big banks such as Bank of America, Wells Fargo, and JP Morgan, are seeing small business loan growth rising, in many cases at double-digit growth.
- Loan rates at smaller banks, credit unions, and alternative lenders are either down or flat in early 2017.
- Both business owners and lenders are wondering how Trump administration policies (along with the drive to reduce regulations) will impact the small business lending environment in 2017.

ment of its community,” he adds. “CDCs work with SBA and private-sector lenders to provide financing to small businesses through the CDC/504 Loan Program, which provides growing businesses with long-term, fixed-rate financing

for major fixed assets, such as land and buildings.”

Henriquez says that if these programs were cut back because of budget issues,

and the SBA is unable to serve as the guarantor for these loan programs, small businesses could suffer on the cash financing front.

“I certainly expect to see less banks willing to underwrite thereby causing a liquidity crunch or crisis in the SMB

“I certainly expect to see less banks willing to underwrite thereby causing a liquidity crunch or crisis in the SMB market.”

*Manuel Henriquez,
Hercules Capital*

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market,” he says. “That’s especially true as the actual number of banks able to participate under either of these programs are very limited, and shrinking. They will continue to lend, but certainly not at the levels they have been in if the funding for these programs are cut.”

Even if banks do lend, the loan landscape would shift, and not in favor of small companies.

“Lenders, in essence, would be assuming the underwriting of great risk assets and loans and having to absorb the total risk of loans, without the SBA loan programs which serves to dampen any material losses,” Henriquez explains.

Without the SBA acting as a backstop, banks would have to charge higher rates to help offset any bad loans, he adds. “Higher rates that would compensate for higher risk means less borrowers will seek those loans, because they would be potentially too expensive, thus leading to an adverse selection of weaker or desperate borrowers willing to accept those higher rates – even though they may already be at elevated risk of default, before facing the higher costs of capital or cost of loans they would need to accept.”

“Unfortunately, given the realities of

BASEL 3 and higher current regulations, I don’t see many banks rushing in to fill this void, and I don’t expect to see community banks step in to underwrite these higher risk loans without the SBA 7(a) or 504 program,” Henriquez says.

While nobody’s calling the proposed SBA budget cuts a total game-changer, lenders do see a potential shift in loan availability for small companies down the road – a scenario small business owners certainly don’t want to experience, although a tighter SBA budget means they’ll have little to say about the situation.



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RECENT LITIGATION ILLUSTRATES WHY MERCHANT CASH ADVANCES ARE NOT LOANS

By Mark Dabertin, Pepper Hamilton LLP

To the casual observer, the African hyena is unquestionably a type of wolf or wild dog. No one can deny that hyenas and wolves look alike. For zoological purposes, however, the hyena is a type of feline; albeit one that bears an uncanny resemblance to a canine. In the financial world, a merchant cash advance, or “MCA,” is analogous to a hyena. An MCA strongly resembles a loan, but for legal purposes constitutes a purchase and sale contract, i.e. it’s a different animal.

Analogies aside, MCA plays an important role in small business financing. The merchant cash advance industry arose during the recent financial crisis when many banks ceased making loans to small businesses. If accurately understood and properly structured, a merchant cash advance offers mutual benefits to both

suppliers and recipients of this increasingly popular source of funding.

New York Litigation Summary

Because New York has both a relatively low usury cap and a high population of small businesses, New York courts are frequently called upon to interpret whether a given MCA arrangement constitutes a loan. As a result, a review of relevant New York cases is helpful in understanding the key differences between the two.

The key difference between an installment loan and a merchant cash advance was summarized by the Supreme Court of New York, Nassau County in its recent March 16, 2017 decision in *IBIS Capital Group, LLC*

*v. Four Paws Orlando LLC*¹ as follows: “For a true loan it is essential to provide for repayment absolutely and at all events. . . [In contrast, where] payment or enforcement [of an MCA] rests upon a contingency, the [MCA] agreement is valid even though it provides for a return in excess of the legal rate of interest.”

Briefly, in the case of a loan, all funds

In the case of a merchant cash advance, a person who advances funds to another in exchange for an ownership interest in that party’s business receivables may see a profit, or suffer a loss, depending on how those receivables perform. The distinction between a loan and a merchant cash advance matters because it is not uncommon for the cost of an MCA arrangement to equate to an interest rate which exceeds the usury cap of most states.

that were advanced to the recipient must be repaid to the advancing party (i.e., the lender) in full on or before the specified payment due date, usually with interest added. In the case of a merchant cash advance, on the other hand, a person who advances funds to another in exchange for an ownership interest in that party’s business receivables may see a profit, or suffer a loss, depending on how those receivables perform. The distinction between a loan and a merchant cash advance matters because it is not uncommon for the cost of an MCA arrangement to equate to an interest rate of 150% or higher, which far exceeds the criminal usury cap of most states. For example, New York’s criminal usury limit is 25%.

On October 25, 2016, the New York Supreme Court issued a decision in *Pearl Capital Ravis Ventures, LLC v. RDN Construction, Inc.*² that turned on the absence of language in the parties’ contested MCA agreement specifying that the sale of receivables to the maker/defendant was without recourse to the seller/plaintiff. In the absence of such language, the court found that the plaintiff was absolutely obligated to repay and the parties’ arrangement therefore amounted to a loan with a usurious interest rate of approximately 180% per year.

In this regard, the court drew a distinction between the risk that purchased receivables may not perform as expected and “the risk of nonpayment that is inherent in every loan and that may only be compensated for by

statutory interest; the risk of loss by the death or insolvency of the borrower is the risk that every person runs who lends money on personal security only.”³

In *IBIS Capital Group*, the New York Supreme Court first cited numerous New York cases in support of the position that in order to constitute a loan, the principal sum given to one party must be absolutely repayable and not contingent upon future events.⁴ The court then proceeded to review specific provisions from the parties MCA agreement stating that: (i) IBIS would receive a percentage of Four Paws’ daily sales, (ii) the transaction was not a loan, and (iii) the agreement would be governed by the Uniform Commercial Code (which does not govern loans).⁵ According to the

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court, the foregoing offered persuasive evidence that the contested transaction did not constitute a loan and hence was not subject to usury.⁶

The *IBIS Capital Group* decision is notable for several other reasons. First, in finding that the agreement did not create a loan, the court addressed defendant Four Paws' contention that the parties' agreement established a "set and finite fixed daily payment" that could be used to calculate a usurious interest rate. In this regard, the court noted that it was unable to find such a provision, but opined that even if one had existed, the principal repayment would be contingent upon Four Paws ability to sell their product, noting that the agreement called for Four Paws to repay to IBIS any amounts received directly related to future sales.⁷

Second, the court noted that the MCA agreement included no due date

upon with all amounts advanced would become due and payable.⁸

Finally, the court opined that even if the agreement had established a loan, Four Paws could not show that IBIS had intended to charge a usurious rate of interest, which is required in order to prove criminal usury under New York law. In this regard, the court noted that "[t]he only time the parties could have possessed sufficient data to calculate the comparable equivalent to an interest rate, would have been too late for IBIS to have possessed usurious intent."⁹

MCA Deal Structure

That a merchant cash advance closely resembles a loan is understandable. For example, in the case of a sole proprietorship, it would be imprudent not to underwrite the individual owner of the business for either relationship – in the case of an MCA, for the purpose of ascertaining whether and to what extent continued funding of the business might be available.

In addition, as in *IBIS Capital Group*, the parties may find it advantageous to structure payments in a manner similar to a loan, but ultimately subject to the performance of the receivables.

Furthermore, to compensate for the risk of making the merchant cash advance, it is not uncommon for the party advancing funds to charge a factor rate, which may seem analogous to a finance charge. What ultimately matters, however, is whether repayment hinges upon the performance of the purchased receivables or an absolute obligation to repay on the part of the individual business owners, which might take the form of a personal guarantee of financial performance or costly late charges that are payable from sources besides the receivables and which effectively remove the business risks associated with the latter.

In sum, having a full and accurate understanding of a merchant cash advance is important for both recipients and providers of capital. For the recipient, knowing that there is nothing inherently untoward about a merchant cash advance and understanding why usury does not apply can be helpful in addressing the true risks associated with such relationships. For the provider, having sound knowledge of structuring merchant cash advance agreements can be helpful in avoiding unnecessary litigation and potentially costly pitfalls. 

Mark T. Dabertin is special counsel in the Financial Services Practice Group of Pepper Hamilton LLP. Mr. Dabertin has over 25 years of broad-based experience in financial services law and consumer and regulatory compliance. He can be reached at dabertinm@pepperlaw.com or (610) 640-7841.

Notes

- 1 *IBIS Capital Group, LLC v Four Paws Orlando LLC*, 2017 N.Y. Misc. LEXIS 884, 2017 NY Slip Op 30477(U) (N.Y. Sup. Ct. Mar. 10, 2017).
- 2 *Pearl Capital Ravis Ventures, LLC v RDN Constr., Inc.*, 54 Misc. 3d 470, 41 N.Y.S.3d 397, 2016 N.Y. Misc. LEXIS 3945, 2016 NY Slip Op 26344 (N.Y. Sup. Ct. 2016).
- 3 *Pearl Capital*, 2016 N.Y. Misc. LEXIS 3945, at * 7.
- 4 *IBIS Capital Group* at *2.
- 5 *Id.* at *8.
- 6 *Id.* at *9.
- 7 *Id.* at **8-9.
- 8 *Id.* at *9.
- 9 *Id.* at *10.



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BANKRUPT NULOOK NOW FACING RICO LAWSUIT

By Steve Evans

“NuLook is no longer lending,” said a woman who answered the company’s phone last week.

Suspending merchant cash advances may be the least of NuLook Capital’s worries as it now faces a RICO lawsuit from one of its creditors in the midst of Chapter 11 bankruptcy.

The Massapequa, NY-based MCA financing company filed for bankruptcy protection this month in the Eastern District of New York. The filing lists primary creditors who are owed \$2,799,402 (*PacerMonitor*: bit.ly/2oLB1UR). The largest single creditor is GWG MCA out of Minneapolis, on the hook for more than \$2 million according to the filing.

GWG is a specialty finance company that’s primarily been engaged in the life settlements business but also feeds capital directly to small businesses as well as providing secured loans to MCA funders. Parent company GWG Holdings expanded 13 months ago after picking up a \$4.3 million portfolio of loans and advances from a subsidiary of Walker Preston Capital – including the loan to NuLook.

NuLook filed for Chapter 11 less than a week after GWG brought the RICO suit against the company. GWG’s suit alleges fraud against NuLook and other defendants under RICO statutes.

As outlined in the complaint, GWG accuses the defendants of an “egregious illicit scheme to defraud GWG out of millions of dollars. Beginning sometime in 2014, and continuing through today, Defendants, in bad faith, through the use of fraud and deceit and with the specific intent to cause harm to GWG, embarked upon a series of related and continuous transactions that ultimately

resulted in the outright theft of GWG’s collateral and the diversion of earmarked cash belonging to GWG into certain Defendants’ own pockets.”

Neither NuLook attorney Randall Jacobs nor GWG attorney Edward Stone returned calls seeking comment. Defendants named in the suit could not be reached.

Other companies named as defendants are International Professional Services Inc., its subsidiary, PSC Financial

GWG alleges the NuLook and PSC defendants engaged in a sophisticated shell game, in which payments owed to GWG were instead diverted to other NuLook investors and to PSC affiliates.

GWG alleges the NuLook and PSC defendants engaged in a sophisticated shell game, in which payments owed to GWG were instead diverted to other NuLook investors and to PSC affiliates. GWG says more than \$300,000 was diverted in this manner in November. Another \$300,000 owed to GWG and under PSC’s control allegedly went missing between February and March of this year, GWG says in the lawsuit. These “non-ordinary course payments”

likely rendered NuLook insolvent by mid-March if not earlier, GWG says.

“While pretending to be working towards curing NuLook’s default under the Loan, the RICO defendants were actually looting the assets of NuLook, making non-ordinary course

cash payments to insiders and/or subordinated creditors and repeatedly and systematically pledging NuLook Collateral to other entities and diverting funds away from GWG so the RICO defendants could profit,” the suit states.

Merchant payments that were supposed to be made to NuLook and then forwarded to GWG were instead siphoned off to PSC insiders and others, the suit alleges.

NuLook did make a \$500,000 payment to GWG in June 2016 in an effort to shore up the borrowing base deficiency on its loan from GWG. NuLook’s “Mannino and Aurigema both represented to GWG that the proceeds from this \$500,000 payment came from an equity investment in NuLook that was made by an investor in PSC. This critical representation turned out to be false,” the lawsuit states. GWG contends that the money actually came from a high-priced factoring deal with PSC that caused further erosion to the value of the NuLook collateral.

and PSC’s agent, ACHWorks.

ACHWorks collected on merchant cash advances owed to NuLook, which in turn owed GWG. PSC took a portion of the collections for its fees. At some point in February, collection efforts on debtors suddenly stopped, GWG says in the suit, as did payments to GWG.

NuLook CEO Anthony Mannino, NuLook co-founder and partner Robert Aurigema, and PSC Executive Director Joel Nazareno are also named defendants in the case.

Nazareno was convicted in 2001 of a “pump and dump” securities fraud scheme while working as a broker at Hanover Sterling, a penny-stock firm that collapsed in 1995 (*NY Daily News*: <http://nydn.us/2pC5Idx>). In that case, the court found Nazareno and a co-defendant were personally responsible for bogus trades of as much as \$37 million. He was sentenced to five years in prison and ordered to make restitution of \$10 million. GWG claims Nazareno is the leader of the alleged scheme in the current case.

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“It turns out that this was one of many factoring deals done with PSC in blatant disregard of the GWG Loan and in violation of GWG’s perfected security interest in the Collateral,” the suit states.

GWG also says PSC had claimed that member referral companies for its loan syndication business had passed a background check and that neither the companies nor its principals were involved in past fraudulent or criminal activity. However, the lawsuit notes that PSC especially encouraged transactions with a company called American Funding Group, which is controlled by Mark Mancino, another former broker with Hanover Sterling.

Mancino was indicted and eventually pleaded guilty for his role in the same securities fraud scheme as Nazareno more than a decade ago (*Leagle: bit.ly/2pRs17q*).

When GWG was unable to get pay-

ments back on track and attempted to send demand letters earlier this year, GWG learned that NuLook and PSC had merged and relocated to a new shared office space in New Hyde Park, NY, the suit states.

GWG in its most recent 10K for Dec. 31 noted, “The secured loan to Nulook Capital LLC had an outstanding balance of \$2,527,000 and a loan loss reserve of \$600,000 at December 31, 2016. We deem fair value to be the estimated collectible value on each loan or advance made from GWG MCA. Where we estimate the collectible amount to be less than the outstanding balance, we record a reserve for the difference.” (*SEC.gov: bit.ly/2oVnXPn*)

As of March 16, the amount owed to GWG was \$2,073,398.13, the company says. GWG in its lawsuit also seeks default interest on the loan at an annual rate of 35%.

Before NuLook’s payments ceased, GWG also alleges NuLook was “double counting pledged MCA’s and including defaulted MCA’s and other ineligible receivables on their Borrowing Base and generally overstating the amount of Collateral available to support Nulook’s obligations to GWG under the Loan.”

NuLook’s total debts are as much as \$10 million, according to the company’s bankruptcy filing.

Many merchant cash advance operations have been clobbered in the last

year after taking on high-risk loans to small businesses looking to leverage fast cash against a cut of future credit card receipts. Small business owners with a bad credit rating often turn to MCA operators who will in some cases cut a check the same day. Interest rates tend to be sky high, but so are the risks.

It’s a double-edged sword for some MCA funders charging rates as high as triple digits. The payback schedule on an MCA can create further cash-flow problems for the merchant, leading into a spiraling debt trap that requires more and more advances, and sometimes bankruptcy at the end of the line. Because many consumer advocate groups recommend an MCA as a loan of last resort, merchants who’ve reached that stage may have done too little too late. Repayment amounts typically fluctuate with the merchant’s sales, so a few down months will extend the time for repayment – adding to the cost of the advance. Since there’s usually no benefit to early repayment, merchants will also often spread repayments out over time.

One source in the MCA industry says NuLook acquired a reputation for pursuing shorter-term, high-risk deals and like Icarus may have flown too high, too fast.

A court hearing for a preliminary injunction and appointment of a receiver for PSC is set for April 20.

GWG is asking for full recovery of its capital, treble damages and costs. 

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New Technology & Product Launches

Androscoggin Bank Launches Online Business Lending Tool

Androscoggin Bank aims to beat online-only lenders at their own game through a new business lending platform. Executives expect momentum to grow as entrepreneurs take advantage of a quick turnaround time for getting loans approved. According to company executives, a formal marketing plan will be rolled out in the second half of this year. bit.ly/2pBBYG1

Global Debt Registry Adds Prosper to Network

Global Debt Registry, a loan validation platform for institutional investors, has added Prosper Marketplace to its verification network. GDR says the partnership will enable Prosper investors access to their due diligence tools to ensure data integrity. Prosper piloted GDR connectivity in 2016 and is now offering GDR's solutions as a turn-key system. bit.ly/2nNqzgD

FICO Launches Solution to Help Lenders Automate Decisions

FICO has launched FICO Origination Manager Essentials to help financial institutions make faster small business lending decisions. Delivered as a cloud service, the loan origination system streamlines and automates the decision process and gives institutions access to a variety of analytics. The company claims lenders using their solution can process small business loan applications in as little as 60 seconds. bit.ly/2p3JxQg

ID Analytics' Says its Lending Network Will Reduce Fraud

ID Analytics hopes its near real-time Online Lending Network will reduce fraud committed against participating members. The Online Lending Network uses cross-industry data to assess con-

sumer credit risk and detect fraudulent activity. Members report loan applications and fund provisions and receive information on the applicant's recent financial activity. The quick response makes high-velocity fraud activities like loan stacking harder to accomplish. bit.ly/2ovm5bu

Orca Launches Peer-to-Peer Comparison Tool

UK research company Orca announced the launch of its new platform, which offers standardized metrics to compare P2P investments. The platform allows users to perform due diligence on P2P investments and benchmark them in a similar manner to traditional assets so people can make risk-adjusted, informed investment decisions. The platform will also offer market data such as interest rates, default rates, bad debt rates and a platform's financial standing. bit.ly/2pjl06R

Experian Teams Up with BioCatch to Combat Fraud

Credit bureau Experian has joined forces with BioCatch to use behavioral biometrics to help clients spot fraudsters applying for loans. BioCatch's software, which was integrated in Experian's fraud prevention platform, analyzes the way users interact with devices and websites by tracking a wide range of factors including how fast they type or the way they move their mouse across a web page. bit.ly/2ovpneY

Signature Bank Launches Conditional Loan Approval Program

Signature Bank launched what it described as a new program for loan approvals, specifically for businesses looking for a quick response time. The 48-Hour Conditional Loan Approval Program is available for business loans

up to \$500,000 for businesses with a minimum of two years of verifiable operations. bit.ly/2pjAJTs

North State Bank Launches with nCino's Bank O/S

nCino, a developer of cloud banking of banking solutions, announced that North State Bank went live with its Bank Operating System, centralizing and automating the commercial loan process. nCino's Bank Operating System aims to improve time management, in order to shift bank resources to meaningful customer interactions. bit.ly/2ozLoyJ

MoolahSense Launches Invoice Financing Service

Crowdfunding platform MoolahSense has launched an invoice financing service, to help small and medium-sized enterprises looking to raise short-term financing of more than \$15,000. To qualify, companies must have tax invoices with fixed payment terms of 15 to 90 days. bit.ly/2ofWYHU

CWB and Payfirma Partner on New Merchant Services in Canada

CWB Financial Group and Payfirma announced a strategic partnership to provide CWB with a white labeled version of Payfirma's payment technology platform, PayHQ. The release of CWB PayHQ allows CWB to add an omni-channel merchant services platform to its portfolio of business services products. The platform is scheduled to launch on May 1. bit.ly/2oI7f3w

Aspire Announces New Securitizations Data and Analytics

Aspire Financial Technologies announced the release of a new asset-level disclosure module that will pro-

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New Technology & Product Launches

vide market participants with loan-level characteristic and performance data for asset pools of U.S. public securitizations. The module is part of Aspire's Gateway™ platform, which enables users to research, monitor, and forecast their consumer or SME loan risk exposure, across multiple use cases. bit.ly/2ocMolY

Quick.me Launches Financing Platform for Beauty & Wellness Sector

Fintech startup Quick announced the beta launch of their financing platform aimed at small business owners in the beauty and wellness space. Combining machine learning with human emotional intelligence, Quick aims to provide personalized financing recommendations that should translate into lower rates and shorter approval times — without the collateral requirements typical in the industry. bit.ly/2ocH69V

FactorTrust Announces Reporting Format for Non-Prime Lenders

FactorTrust announced FlexFormat, what it hopes will become a standard in reporting short-term loan data for products focused on underbanked consumers. The underbanked typically are consumers with traditional credit scores under 700. FlexFormat provides a single format designed around the needs of short-term lenders and allows customers to submit data to FactorTrust, which then maps the data, and passes it on to credit bureaus. bit.ly/2ocAsAR

Opus Releases New Version of OpusNotes

Opus Fund Services, a provider of hedge fund administration services, has launched a new release of the OpusNotes loan accounting platform for marketplace lending vehicles. Since institutional capital started to be deployed into the marketplace lending asset class, Opus has been refining its

platform to meet the needs of investors in the segment. bit.ly/2ovFsBv

FMS.next Platform Enhanced with More Functionality

Profile Software, an international financial solutions provider, announced the latest upgrade in the FMS.next Alternative Finance platform, to offer enhanced capabilities that streamline the marketplace lending process. FMS.next Alternative Finance, the advanced financing platform of Profile Software, utilizes FMS.next's functionality to address the needs of lenders and borrowers in an integrated environment. bit.ly/2ovD25Q

LendingClub Introduces New iOS App

LendingClub introduced a new iOS mobile application, LendingClub Invest. The company says investors will now have more access to and control of their investment portfolios. Investors said that some of the most important functionality they use on a regular basis is checking their account summaries. With this insight, the company crafted a user interface that consolidates the investor's total account value, available cash, returns and holdings. bit.ly/2oImw4z

ORIX Launches Online Lending Business for Japanese SMEs

ORIX Corporation and Yayoi Co. announced that they are launching a new online lending business using accounting big data and a proprietary artificial intelligence-based credit model. The company will provide Internet-based lending to small businesses in Japan. A new credit model is under development. bit.ly/2ofTHZe

BondMason Launches Self-Invested Personal Pension Program

BondMason has become the first peer-to-peer service provider to launch a

self-invested personal pension, or "SIPP," leading what it sees as a growing shift within the industry towards pension-grade investment vehicles. The P2P investor, which selects loans across lending platforms, aims to give UK investors exposure to higher-return assets than traditional pension savings products. bit.ly/2pxfgsR

Payix and Nortridge Announce Collections Tools

Payix and Nortridge Software announced they have formed a strategic alliance to help lenders connect with borrowers and improve their ability to collect payments. The alliance allows Payix to offer real-time integration between its suite of collections tools and the Nortridge Loan System. bit.ly/2okWtgT

Alfa Finance Launches P2P Lender DoFinance

Latvia-based Alfa Finance Group has launched a new P2P lending platform named DoFinance. The online lender is said to be available in all EU and EEA countries. According to the company, unlike many P2P lenders DoFinance will enable investors to access their money before the term of the loan ends with a 14 to 28 day advance notice. bit.ly/2okBjPS

Oracle Powers DecisivEdge's Lending/Leasing as a Service Product

DecisivEdge, a business consulting and technology services company, launched its lending and leasing as a service (LLaaS) product, powered by Oracle. DecisivEdge is reportedly onboarding its first customer, a mid-sized lessor of residential HVAC equipment, to the platform and is working with several other interested lenders. bit.ly/2pyVzhE

Research & Markets Predicts P2P Lending Will Grow at a CAGR of 51.5% by 2022

Research and Markets announced its "Global Peer to Peer Lending Market" report and said the P2P lending market was valued at \$26,064 (million) in 2015 and is projected to reach \$460,312 (million) by 2022, growing at a CAGR of 51.5% from 2016 to 2022. They reported that in 2015, small business loans dominated the market, whereas consumer credit loans are anticipated to grow at a robust rate, in terms of market share. bit.ly/2pvRvSf

MPL Securitizations Total \$3B in First Quarter

Seven marketplace lending securitizations took place in the U.S. in the first quarter of 2017, with a total value of \$3 billion, according to new research from PeerIQ. This is up from \$2.4 billion in the fourth quarter of 2016. The alternative lending research firm reports that total issuance to date now stands at \$18 billion, comprised of 80 U.S. MPL deals since September 2013. bit.ly/2pxYwzc

Key SBA Program in Danger of Hitting Legislative Cap

It is becoming increasingly likely that a supplemental appropriation will be needed to keep the Small Business Administration's 7(a) loan-guarantee program operating through September. At \$11.3 billion, the program's volume halfway through its fiscal year is about 9% ahead of the scorching pace set a year earlier. bit.ly/2okkt3o

Online Lenders Spooked by Colorado's Tough Stance on Interest Rates

The ongoing battle over the interest rates that online lenders can charge has moved to Colorado, which is taking aggressive steps to enforce its 12% rate cap

for consumer loans. The state's posture is setting off alarms in the marketplace lending industry, where websites frequently partner with banks in arrangements that are designed to work around state-by-state interest rate caps. bit.ly/2pxUir6

States Oppose OCC's Proposed Fintech Charter

While most would agree that a fintech charter has the potential of facilitating innovative companies, states are not likely to cede their regulatory territory easily. State attorneys general, state regulators and the Conference of State Bank Examiners all oppose the OCC's move as an attack on federalism and state regulatory oversight. Those groups fear that the preemptive effect of a federal charter will nullify their ability to protect consumers. bit.ly/2oRYLqS

NJ Bankruptcy Case Takes Aim at Small Business Financing, MCA and Bank Partnerships

A complaint filed by the bankruptcy trustee for Lam Cloud Management, LLC in the United States Bankruptcy Court for the District of New Jersey challenges two small business financing models: (i) merchant cash advances; and (ii) small business loans originated under bank partnerships. The complaint is another recent challenge involving usury and bank partner programs and warrants attention from entities involved in small business lending. bit.ly/2okc9Rr

Banks Get More Goodies in Updated Dodd-Frank Overhaul Plan

House Financial Services Committee Chairman Jeb Hensarling is likely to reintroduce a Dodd-Frank overhaul bill by the end of the month. The Financial Choice Act has been the House GOP's flagship financial reform bill and passed out of committee in the last Congress, but Hensarling has said he would

introduce a 2.0 version this year. bit.ly/2oRKAlo

Small Businesses Hate Fintech Lenders More than Big Banks

The Federal Reserve Bank of New York released its 2016 small business credit survey, which provides an idea of the experiences of over 10,000 firms across the U.S. While small business expectations don't say much about the economy, the survey does report useful information on how small business owners view various sources of credit. The results for fintech startups, specifically online lenders, are not as terrific as one might expect. bit.ly/2pdXWcT

Rep. Graves says Congress Needs to Support Small Business Lending

Representative Sam Graves, chairman of the House Committee on Small Business, wrote an article discussing a well-worn theme among small business owners. He said Washington needs to "stand to the side and let the American entrepreneur lead the path to recovery." Many would contend that Rep. Graves is part of the beltway elite that's actually blocking the path of entrepreneurs through his lack of support of key lending programs like the SBA's 504 program, which is set to expire in coming months. bit.ly/2ol4xhC

Marathon Partners Calls for Vote Against OnDeck's Directors

Marathon Partners announced it released a letter that was sent to the board of directors of OnDeck Capital expressing concerns about the direction of the company and making recommendations on steps to improve shareholder value. Marathon also announced its intention to vote against the three incumbent directors up for election at OnDeck's upcoming annual meeting scheduled on May

10. In its letter to the board, Marathon recommended two courses of action for OnDeck: Fully rationalize the company's cost structure to achieve profitability and reduce the pressure on the organization to grow its loan portfolio, and seek the sale of the company to a partner where OnDeck can thrive without the risks of destabilizing confidence in the business. bit.ly/2nZHkp0

China Rapid Finance Sets Terms for U.S. IPO

China Rapid Finance, a peer-to-peer lender based in Shanghai, announced that it has set the terms for its upcoming US IPO. The company plans to raise \$105M through the offering of 10 million shares priced between \$9.50 to \$11.50 a share. At \$10.50 a share, China Rapid Finance would have a fully diluted market value of \$586M. Founded in 2001, China Rapid Finance is a consumer lending marketplace that aims to serve China's emerging middle class. bit.ly/2oJ4kqU

Small Businesses Hold Fast to Aversion to Debt

Small business owners are holding fast to their aversion to taking on more debt, even though they're optimistic about the future. That's the finding of a report on small business credit released last week by 12 Federal Reserve regional banks across the country. The report, based on a 2016 survey, found that about three-quarters of company owners used personal funds when their businesses needed cash, instead of seeking financing including loans. And only 19% of companies expect to increase their debt level this year, down from 34% that did so in 2016. bit.ly/2oSn3Ro

Republicans Propose Drastic Overhaul of Dodd-Frank and CFPB

The updates to the leading Republican effort to replace the Dodd-Frank

Wall Street Reform and Consumer Protection Act are out, which include possible changes to the leadership structure of the top housing agencies. According to the summary of bill changes, the original CHOICE Act would restructure the FHFA and OCC as bipartisan commissions. The new CHOICE Act 2.0 cuts a lot of those proposed changes, and instead, the FHFA director would be removable at will by the president, with no changes to the current law regarding OCC and NCUA. bit.ly/2px9isl

HSBC to Pay \$2M to Resolve Fraud Lawsuit Over SBAExpress Loans

Joon H. Kim, the acting U.S. attorney for the Southern District of New York, and Eric S. Benderson, the acting general counsel of the U.S. Small Business Administration, announced that the United States has settled a civil fraud lawsuit against HSBC Bank. The government's complaint, filed on April 10, 2017, sought damages and civil penalties under the False Claims Act for misconduct in connection with HSBC's participation in the SBAExpress loan program, which was designed to help start-ups and existing small businesses. HSBC agreed to pay \$2,118,861.36 to resolve the government's claims, and admitted, acknowledged, and accepted responsibility for conduct alleged in the complaint. bit.ly/2pxfyAb

Controversial NY Lender Licensing Proposal Removed from Budget Bill

A New York lender licensing proposal that threatened to create new regulatory burdens for financial service providers and to potentially adversely affect credit availability to New York residents and businesses, has been removed from a New York State budget bill. The amended budget bill, S. 2008-C/A. 3008-C, has passed both houses of the New York State Legislature and been

delivered to Governor Cuomo for executive action. The controversial lender licensing proposal, which appeared in Part EE of the initial proposal, has been "intentionally omitted" from the amended budget bill passed by the Legislature. bit.ly/2pekyrb

Accion Report Suggests Data Can Lead to Financial Inclusion

A new report released by Accion finds potential for financial service providers to leverage data-driven innovations to improve business operations and reach the world's financially underserved. Despite this, the report contends that many service providers do not adequately use data to its full potential. Early adopters often start by using alternative sources – such as mobile call records, utility payments, and social media activity – to extend credit to "thin-file" or "credit-invisible" customers. Accion says that such data can drive innovation in business activities such as verifying customer identity, digitizing workflows for automated business processes, analyzing customer behavior to develop personalized products, and using real-time messaging services to improve customer service. bit.ly/2oq68Sp

Transparency Remains a Sticking Point for Online Lenders

The recent small business credit survey by the Federal Reserve Bank of New York found 46% customer satisfaction at online lenders like Lending Club and OnDeck Capital with a 19% rate of dissatisfied customers – compared with large banks' 61% of customers who indicated they were satisfied with their small business loan process and 15% of whom expressed dissatisfaction. Almost half of all customers specified that their dissatisfaction came from a "lack of transparency." bit.ly/2o0sizz

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M&A + Partnerships (April 1 through April 18)

During the period April 1 through April 18, 2017, M&A deal activity and strategic partnership announcements in the alternative lending and small business lending segments included the following companies/transactions.

DATE	COMPANIES	STRUCTURE	DEAL DESCRIPTION
4/3/17	Pacific Premier Bancorp, Heritage Oaks Bancorp	Acquisition	Pacific Premier Bancorp announced that it has completed the acquisition, effective as of April 1, 2017, of Heritage Oaks Bancorp, a California-chartered banking corporation headquartered in Paso Robles, California.
4/4/17	Fundbox, Zoho	Partnership	Fundbox and Zoho announced a partnership in which Zoho will offer Fundbox to its user base in the U.S. Under the partnership, Zoho will provide access to Fundbox's technology to streamline and automate the business borrowing experience within the Zoho ecosystem.
4/4/17	Consumer Capital Group Inc., CCG Yin Hang, Yilongdai	Partnership	Partnering with Yilongdai, CCG Yin Hang can provide better financial advisory service for micro, small-to-medium sized enterprises ("SMEs") in China.
4/4/17	FTN Financial, Coastal Securities	Acquisition	FTN Financial, a division of First Tennessee Bank, has completed the acquisition of Coastal Securities, a national leader in the trading, securitization and analysis of Small Business Administration (SBA) loans.
4/4/17	AltFi Data, Lendix	Partnership	AltFi Data, an independent analytics firm, has announced a deal with business loans marketplace Lendix. The French online lender now joins UK-based firms Zopa, Funding Circle, RateSetter and MarketInvoice, as well as US-based Prosper Marketplace, in supplying data to the analytics firm.
4/4/17	Bond Street, NerdWallet	Partnership	Bond Street announced plans to partner with NerdWallet to help more small business owners access fair and affordable financing. The two will create resources, guides and webinars to support the growth of businesses. In addition, entrepreneurs can access financing from Bond Street via NerdWallet's Small Business Loan Tool.
4/5/17	Flagstar, Opes Advisors	Acquisition	Flagstar will operate Opes Advisors as a separate division with its own brand, providing a strategic expansion to Flagstar's retail home lending franchise.
4/6/17	PacWest Bancorp, CU Bancorp	Merger	PacWest Bancorp and CU Bancorp announced the signing of a definitive agreement and plan of merger whereby PacWest will acquire CU Bancorp in a transaction valued at approximately \$705 million.
4/6/17	Tradeshift, CreditEase	Partnership	Tradeshift has partnered with CreditEase to deliver a trade financing app that will bring low-cost financing to millions of businesses in China. CreditEase, a peer-to-peer lender in China (and globally), can now deliver accounts receivables financing to millions of fast-growing small and medium enterprises (SMEs).
4/7/17	NewOak, LendingArch	Partnership	LendingArch, the Calgary-based online and point-of-sale lending platform, announced a partnership with NewOak, a New York-based asset management and institutional advisory firm who have advised on over \$5.5 trillion in assets on behalf of the world's top banks, institutions, law firms and regulators. This partnership gives NewOak the ability to purchase up to \$2 billion worth of loans originated through LendingArch's platform over the next three years.
4/10/17	Experian, BioCatch	Partnership	Credit bureau Experian has joined forces with technology firm BioCatch to use behavioral biometrics to help its clients spot fraudsters applying for credit cards and other lending products online.
4/12/17	North State Bank, nCino	Partnership	nCino, a cloud banking solution, announced that North State Bank has successfully gone live with its Bank Operating System, centralizing and automating the commercial loan process, ultimately enhancing overall borrower experience.
4/12/17	BayCom Corp, First ULB Corp	Merger	BayCom and First ULB announced the receipt of regulatory and shareholder approvals of the merger of First ULB with and into BayCom, and the subsequent merger of United Business Bank with and into Bay Commercial Bank.
4/12/17	CWB Financial Group, Payfirma	Partnership	CWB Financial Group (CWB) and Payfirma announced a new strategic partnership, the first of its kind in Canada, that will provide CWB with a white labeled version of Payfirma's payment technology platform, PayHQ.
4/12/17	ArmadaUSA, Davis Commercial Finance	Acquisition	Armada Group USA, has acquired 50% of the issued and outstanding common shares of Bahn, d/b/a Davis Commercial Finance.
4/12/17	NCSS, Kabbage	Partnership	The National Cybersecurity Society (NCSS) entered into a strategic partnership with Kabbage Inc., an online financial technology company that provides funding directly to small businesses through its automated lending platform.
4/12/17	CreditEase, Jerusalem School of Business Admin.	Partnership	CreditEase Wealth Management signed an MOU with the School of Business Administration, the Hebrew University of Jerusalem to jointly boost strategic cooperation in internship, educational resource sharing, cultural events and commercial exchanges.

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DATE	COMPANIES	STRUCTURE	DEAL DESCRIPTION
4/14/17	Fifth Third Bank, Accion	Partnership	Fifth Third Bank announced an investment and expanded partnership with the Accion U.S. Network - the largest network of nonprofit small business lenders in the United States - to support lending to underserved small businesses in Florida, Indiana, Illinois, Michigan and Ohio.
4/18/17	Payix, Nortridge Software	Partnership	Payix and Nortridge Software announced a strategic alliance to help lenders connect with their borrowers and improve collections. The alliance allows Payix to offer real-time integration between its suite of collections tools and the Nortridge Loan System.

New Investments (April 1 through April 18)

During the period April 1 through April 18, 2017, new investment activity in issuers operating in the alternative lending and small business lending segments included the following companies/transactions.

DATE	COMPANY	BUSINESS DESCRIPTION	AMOUNT	STRUCTURE	USE OF PROCEEDS	INVESTORS
4/3/17	Cadence Bancorporation	Cadence Bancorporation operates as a bank holding company for Cadence Bank, N.A. that provides commercial banking products and services to businesses, high net worth individuals, business owners, and retail customers in the United States.	\$150,000,000	IPO	Organic growth; general corporate purposes	Not applicable
4/3/17	China Rapid Finance	China Rapid Finance Limited, through its subsidiaries, provides consumer lending marketplace in the People's Republic of China.	\$105,000,000	IPO	Increase capitalization and financial flexibility, liquidity, employee retention	Not applicable
4/5/17	Wecash	Wecash provides big data analytics services.	\$80,000,000	Venture, Series C	Development of AI-enabled lending system for financial institutions, expand partnership network, expanding in Latin America	China Merchants Venture Capital Management Co., Ltd., Forebright Capital, SIG, Dongfang Hongdao Capital, Lingfeng Capital
4/10/17	Funding Circle	Funding Circle Limited operates an online marketplace for small business loan lenders and seekers.	\$182,000,000	Private Equity	Investments in line with its investment policies and objectives; working capital	Accel, Baillie Gifford, DST Global, Index Ventures, Ribbit Capital, Rocket Internet, Sands Capital Ventures, Temasek, Union Square Ventures.
4/12/17	First Circle	First Circle offers consumer lending, mortgages, and asset-based lending services.	\$2,500,000	Venture, Seed	To further develop technology and a data analytics platform	Accion Venture Lab, Deep Blue VC, 500 Startups, IMJ, and Key Capital
4/12/17	Lend	LEND connects investors with borrowers.	\$3,500,000	Venture, Series A	Platform development and marketing, automation enhancement, customer usability	Polytech Ecosystem Ventures, Angel Investors
4/13/17	4finance Holding S.A.	4finance Holding S.A. offers online single and installment loan services.	\$325,000,000	Debt	To refinance 2019 USD notes and call 2018 SEK notes; growth/corporate purposes	Not disclosed at time of publication
4/13/17	Global Financial Credit	Global Financial Credit, LLC, a specialty finance company, provides pre-settlement cash advances.	Undisclosed	Private Equity	Acquisitions, financing relationships, and other corporate development efforts	Lovell Minnick Partners
4/17/17	Perfios	Perfios Software Solutions Pvt. Ltd. provides personal finance software application to manage personal finance.	\$6,200,000	Venture, Series A	Team expansion, international expansion, and potential acquisitions	Bessemer Venture Partners
4/17/17	SmartCoin	SmartCoin Financials Pvt Ltd. develops a micro lending application to disburse unsecured loans to individuals beyond the salaried class.	\$500,000	Venture, Seed	Hiring; upgrading technology; scaling operations	Unicorn India Ventures

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Indices of Interest

All data as of April 19, 2017 or last reported date. Constituents refer to either stocks or individual loans included as members of the index. Information sources include Nasdaq and company web sites.

INDEX	TICKER	VALUE	CONSTITUENTS	TYPE
KBW/Nasdaq Fintech Performance Index	KFTX	1,128.52	49	Fintech
Cliffwater Direct Lending Index	CDLI	3,139.00	> 6,000	Comm. Loan
Orchard US Consumer Online Lending Index	n/a	1,500.08	1,350	Cons. Loan

Funds of Interest

FUNDS	TICKER	MKT. CAP	CURRENT PRICE	12-MO. % CHANGE
VPC Specialty Lending (in GBP)	VSL	n/a	0.773	-14.88
Ranger Direct Lending (in GBP)	RDL	n/a	10.19	2.90
SME Loan Fund PLC (in GBP)	SMEF	n/a	99.17	3.52
River North Marketplace Lending (in USD)	RMPLX	n/a	25.20	n/a

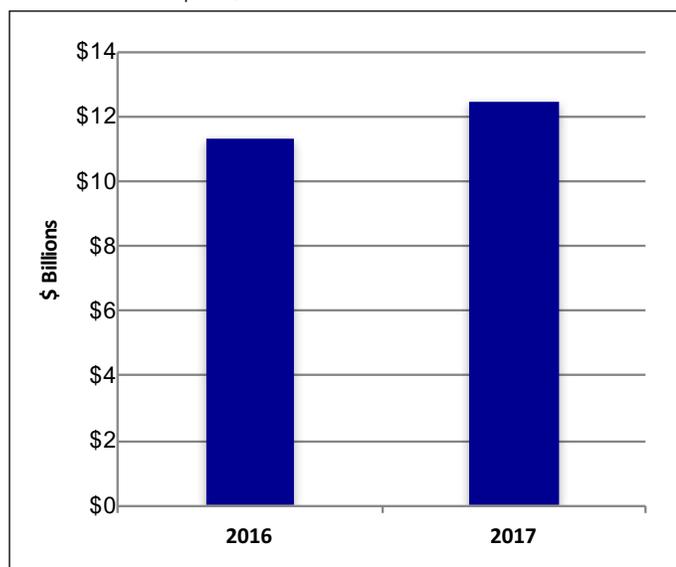
SBA Year Over Year Activity Comparison (For week ended April 7, 2017)

The following table includes information about Small Business Administration loans for the current year to date, broken down by size, and compares that activity with the similar period from last year in order to gauge changes in credit formation and composition.

	2016		2017		YOY CHANGE
All Activity YTD (7A)	\$11,313,811,600		\$12,421,946,400		9.79%
Existing vs. New Business (% of All)	64%	36%	64%	35%	
Size Breakdown	Amount		Amount		
\$150K and Under	\$1,111,085,200	10%	\$1,074,925,500	9%	
>\$150K - \$350K	\$1,316,902,000	12%	\$1,355,554,600	11%	
>\$350K - \$2M	\$5,378,404,800	48%	\$5,690,329,200	46%	
>\$2M	\$3,507,419,600	31%	\$4,301,137,100	35%	

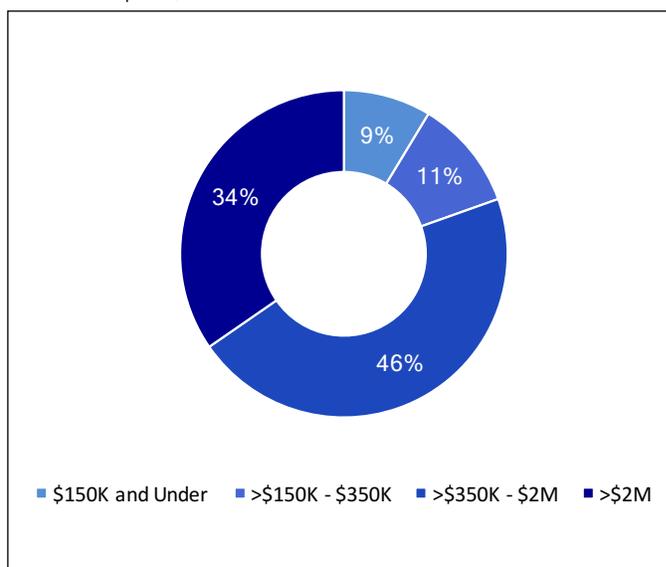
SBA Year Over Year Activity Comparison

For week ended April 7, 2017



SBA Loan Size Breakdown

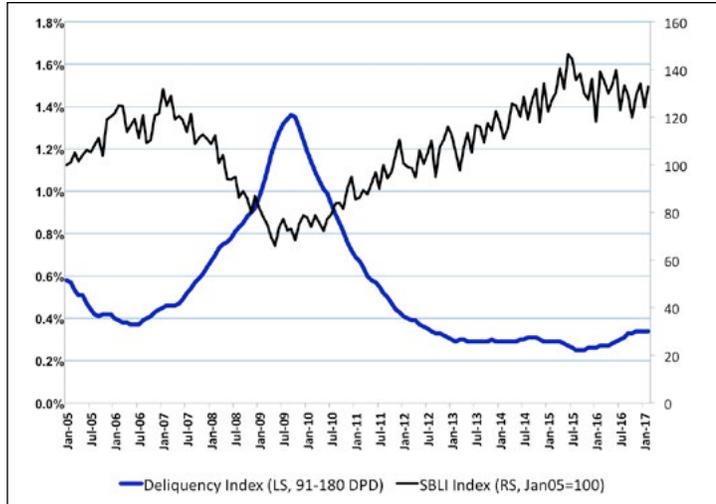
YTD as of April 7, 2017



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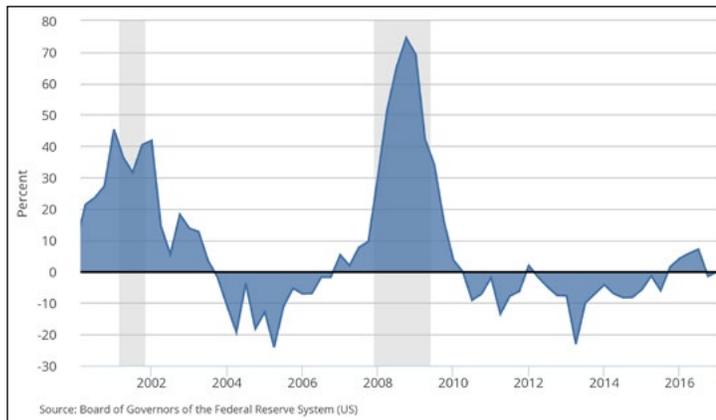
Loan Tape

Thomson Reuters/PayNet Small Business Lending Indices (As of February 2017)



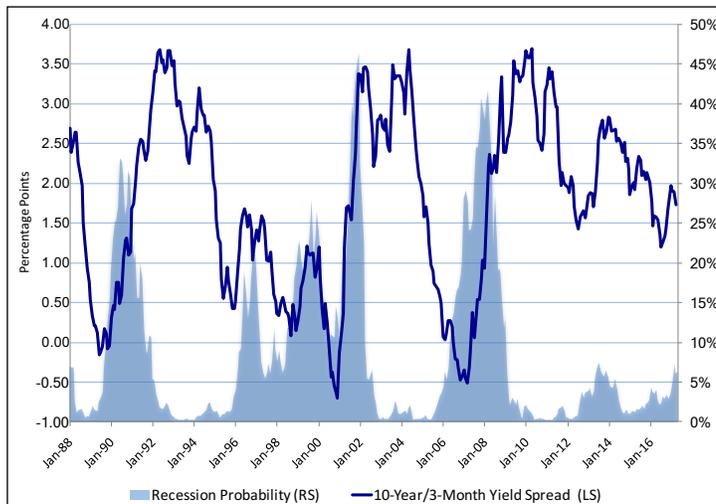
The Small Business Lending Indices from Thomson Reuters/PayNet track credit activity within the U.S. small business sector. The nearby chart graphs two of these measures, the Small Business Lending Index, which tracks the net volume of new commercial loans and leases to small businesses, and the Small Business Delinquency Index, which follows the percentage of reporting small businesses that are 91 to 180 days past due (DPD) on payment as an indicator of financial stress and default risk. Taken together, the indices provide meaningful insights into business cycle trends, economic growth, capital investment and employment within the small business niche of the U.S. economy.

Net Percentage of Banks Tightening Standards for C&I Loans to Small Businesses



Taken from the U.S. Federal Reserve's quarterly Senior Loan Officer Opinion Survey on Bank Lending Practices, the nearby chart shows the net percentage of banks polled that have indicated they are tightening credit standards for small businesses. Declines in the measure suggest fewer banks are raising standards, and thus suggest easing credit conditions; rises mean businesses may encounter greater difficulty obtaining financing. Gray areas indicate periods of recession.

U.S. 10-Yr./3-Mo. Spread Versus Recession Probability



Declines in the yield spread between 10-year U.S. Treasury bonds and 3-month U.S. Treasury bills tend to lead increases in the chances of a recession. The nearby chart shows the yield spread (blue line) graphed against the U.S. Federal Reserve's Recession Probability Indicator (background) back to January 1988. Sharp drops in the spread generally foreshadow rises in the probability indicator, increasing the likelihood of recessionary conditions 12 months later.

Currently, the gradual saw-tooth movement down in spreads since the end of the financial crisis has broadly coincided with global zero-interest rate policies and quantitative easing, and has not yet generated a meaningful increase in recession probability, which although off its 2016 lows, remains very low.

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Brokering Dynamics

Continued from front page

ness loans, but Defonte attributes the advent of the Dodd-Frank Act to their retrenchment. “Banks are shying away from lending to small businesses because it takes the same amount of money to underwrite a file for \$5,000 as it does for \$5 million. It’s a lot of work and banks shied away from it,” he says.

And that void created the niche of small business lenders that offer online capital with fast turnarounds. But the industry is changing at a rapid pace. While brokers still play a role in recommending clients to online lenders, some experts say their days are numbered.

Factors and brokers like Broadway Advance recommend can-

didates to online lenders that fill the void that most banks deserted: offering small business loans. Many borrowers are desperate to make payroll or obtain quick cash for expansion. “They don’t have three months to act on this opportunity and often have three days,” Defonte pointed out.

If the small business doesn’t meet the criteria that Broadway Advance sets as a factor, then it morphs into a broker and for a fee connects the client to the online lender that best makes a match.

Similarly, Richard Gusmano, managing director at Huntington, N.Y.-based Business Capital Consultants, and Gary Lockwood, its chief operating officer, serve as brokers connecting borrowers to the right online lender. Gusmano said many clients are hungry for capital and don’t know where to obtain it so they turn to brokers for assistance.

“If you own a print shop in the West Village and want to expand, your accountant isn’t telling you how to do it. Your attorney isn’t telling you how to do it, and if he is, he’s charging you by

the minute. And if you go to an online lender, you won’t find someone to help you,” Gusmano asserted. Most online lenders would dispute that point, since many offer personalized loan specialists.

Determining which online lender fits for each client is executed on a case-by-case basis.

These business brokers identify the online lender that maximizes the borrower’s chances of obtaining a loan. Some online lenders won’t offer capital to start-ups and require more of a

track record, but some do. “Some lenders like to fund deals for six months because the margins are higher. Some fund different types of

industries,” Lockwood stated. Each loan is idiosyncratic, and Lockwood said, “It’s never one size fits all.”

In the online lending industry, funding varies greatly depending on each lender. Some cater to micro loans and start as low as \$2,000; but many offer capital with a \$10,000 threshold. Some reach a maximum at \$250,000 but some go to several million.

Online lenders – like traditional offline lenders – consider a range of factors to grant loans including: FICO scores, financial records, average checking account balance, monthly sales and even how seasonality affects sales.

Online lenders are increasingly filling a valuable niche by supplying objectively evaluated short-term loans, which most banks disdain. “A restaurant doing \$50,000 a month in sales with a 600 credit score likely will end up with an online lender,” Gusmano said. “Most banks won’t look at [lending to] a restaurant outside of equipment financing. And most banks won’t grant a loan unless the restaurant is operating for two

years,” he added.

Furthermore, most online lenders base their lending on analytics. If the criteria are met, they can turn a decision around in a day or so, as opposed to what used to take over a week with the more cumbersome banks.

Aggregators Replacing Brokers

Despite the positive role that brokers play in the online lending process, Mike Michalowicz, a Morristown, N.J.-based business consultant, said that their role is fading fast. He says they operate in a painstaking and antiquated way and are quickly being replaced by targeted websites and aggregators that send customers to online platforms.

Brokers, he noted, represent “more of a one-on-one mentality.” The broker shops out the loan for a fee, but that can take some time to investigate. Online aggregators can perform that same task in minutes with a much greater precision. Online lenders are faster, cheaper and more effective than brokers, Michalowicz concluded.

With the traditional bank, the larger the loan, the more circumspect the loan officer is because it wants to maximize the chances that the loan will be repaid. Hence, small businesses must show a demonstrated track record of rising revenue and supply sufficient collateral or the loan is denied.

Online lenders are appealing to a wider range of customers than banks. With online loans, “People making decisions are more tuned in, understand the next generation of businesses, and often embrace innovative businesses,” Michalowicz noted. Hence, their criteria won’t be as rigid, and they’ll understand that profits take time to build and still grant loans.

Michalowicz is seeing smaller independent savings and community banks and credit unions, starting to explore electronic lending themselves. “They’re being more proactive in modernizing

“Each loan is idiosyncratic. It’s never one size fits all.”

*Gary Lockwood,
Business Capital Consultants*

their lending approach and becoming more like online lenders,” he said.

Electronic platforms have disrupted lending for small business, Michalowicz concluded. “It’s fast, easy, efficient. You can obtain it quickly with little effort and get money within 24 hours. That’s the big advantage,” he said.

Fast and efficient might also describe Fundera, a Wall Street-based aggregator, which launched in 2014, and directs small business borrowers to the most appropriate lender. It doesn’t lend money, but expedites the process.

In the pre-online days, banks weren’t open on week-

ends or evenings, explained Meredith Wood, the vice-president of content at Fundera. “With online lending, all of a sudden, a business owner can have access to loans at any hour of the day,” she noted.

Moreover, online lending amplifies access to a whole host of borrowers who previously were shut out and couldn’t meet traditional banking criteria. “Online lenders take on more risk than traditional banks,” she said.

Fundera’s mission is to help small business owners understand and navigate loans. “We provide a technology platform that replaces loan brokers,” Wood said.

Business owners access Fundera’s website, complete an application, provide financial data, and then the site offers three or four options that vary from SBA loans to targeted online lenders. “We know our borrowers and provide insight based on past experience,” Wood stated. Borrowers can plug their QuickBooks accounts directly into the website, expediting and streamlining the process, compared to the manual method that most brokers employ.

Moreover, Wood says because Fundera operates by scale, it offers lower fees than brokers. Often the broker’s fee is incorporated into the loan, spiking it. Loans that Fundera expedites start as low as \$2,000 and can rise to \$2 million.

While Fundera handles a diverse mix of small businesses, its most prevalent customers are “traditional Main Street businesses, including three top retailers: restaurants, ecommerce and general contractors,” Wood said. The major

driving force for taking out a loan is cash flow and paying bills, maintaining inventory and updating equipment.

Fundera

directs clients to the lowest interest rates that suit their business. Half of its staff consists of loan specialists, who augment what is executed online, with one-on-one consultations.

Once the loan is approved, Fundera maintains contact and arranges metrics to remind clients to pay loans back and avoid any surcharges. Then it strives to help customers with any subsequent loans, depending on their capital needs.

When Russell Carter, founder of Philadelphia, Pa.-based Body Cycle Studios, which specializes in spin classes, was looking to borrow \$250,000 to renovate his studio and hire new instructors, he started with the credit union where he banks. But they presented several hurdles including wanting his house as collateral.

Instead, he turned to Fundera. A loan specialist guided him along the way, but even then, some obstacles cropped up. Fundera asked him for three years of bank statements and income statements and directed him to an online lender. But that lender also wouldn’t authorize the loan without his house as collateral, forcing him to return to Fundera for another option.

Finally, Carter landed at Smartbiz and submitted all the necessary financial data. After a week, Smartbiz authorized the \$250,000 loan. But the entire process took several more weeks until Smartbiz approved an SBA loan sponsored by First Home Bank, with his studio – not his house – as collateral. “It was much easier than going for an SBA loan to a bank,” Carter added.

The online loan enabled him to stay competitive. “It allowed me to get people on board much quicker,” he said.

OnDeck’s Shrinking Broker Channel

Speed also prevails at OnDeck Capital, which specializes in making loan decisions quickly, within a day in many cases, and deposits funding in a day or so, explained Kimberly Solarz, its director of brand marketing. OnDeck focuses on businesses that have been in operation for more than a year, which generate \$100,000 in annual revenue, though average revenue is \$500,000. It offers term loans from \$5,000 to \$500,000 and lines of credit up to \$100,000.

Over the years OnDeck has partnered with a variety of brokers, including consultants, accountants, funding advisors and attorneys but that number has been dwindling. The percentage of loans to customers via its “funding advisor program” dipped from 41 percent in 2014, to 28 percent in 2015 and 27 percent in 2016.

Solarz said that OnDeck has been focusing on collaborating with brokers “whose values we’re aligned with. Some brokers are better than others. Over the last three to five years, we’re working with a smaller number who exhibit much stronger quality.” 

“We provide a technology platform that replaces loan brokers.”

*Meredith Wood,
Fundera*

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True Lender

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“Now that the banks are involved in Colorado it brings in the federal pre-emption. Banks are stepping in and claiming ownership of these programs, so there’s going to be some fight. There’s a lot of precedent to support these loan programs, which have been done for 30 years. This will probably be a test case.”

Depending on how the cases play out, “this may be an opportunity for another district court to come in and straighten this out,” Tomkies says. “The valid-when-made doctrine is a cardinal rule of usury, according to the Supreme Court. The Madden case was not properly presented to the court with all appropriate legal theories.”

There is also a gray zone in the current litigation, since the ruling in the Madden case noted that loan assignments under different circumstances might lead to a different legal decision.

Still, Colorado claims that the banks cannot assign to partners the ability to export interest rates. The attorney general argues that loans sold to the banks’ partners should fall under Colorado law governing interest rates and late fees – even though interest rate caps on state bank loans are preempted by Section 27 of the Federal Deposit Insurance Act.

Colorado’s similar amended complaint filed in federal court against Avant alleges that Avant – and not WebBank – originated the loans, and bears all cost and expenses. The complaint also claims that Avant is responsible for interacting with customers and for “all servicing and administration of the Avant Loans, even during the period before WebBank sells the loans to Avant or its affiliates.” Colorado also argues that funding for Avant Loans comes from Avant. A spokesman for the state AG said the office does not comment on pending cases.

Defending their business model and potentially their very livelihood, Cross

River and WebBank have countersued for a declaratory judgment, arguing, among other things, that Colorado did not join them in the enforcement action against Avant and Marlette in an effort to dodge Section 27. Under that section, the FDIA lets state-chartered banks “charge the interest rates of the banks’ home states to borrowers nationwide,

“Banks are stepping in and claiming ownership of these programs, so there’s going to be some fight... This will probably be a test case.”

*Mike Tomkies,
Dreher Tomkies*

notwithstanding individual states’ laws regarding the terms, including interest rates and fees, on which loans may be extended.”

Whatever the outcome, another attorney familiar with the legal issues in play says the impact won’t be immediate, but could cause banks and non-bank partners to scrutinize their contractual arrangements and shore up any problem areas so the non-bank does not bear all the legal and financial risks of the loan.

“These cases are litigated in a federal court in Colorado and don’t bind anybody who’s not involved,” the attorney says, speaking on condition of anonymity. “Madden was a debt-buying operation but it raises the same questions: When a bank sells a loan to a non-bank does the non-bank have the ability to charge the same interest? You can make loans in states that have usury limits. But the [Madden] case showed the ability to export interest rates is like a driver’s license. Just because you buy a car from somebody doesn’t mean you have a driver’s license to operate it.”

Cross River’s filing seeks protection of its “statutory and contractual rights to freely extend credit and to freely sell loans on a nationwide basis.” Cross River alleges that the Colorado suits ignore

two key principles of federal banking law. First, a bank’s right to offer their home state’s interest rates to borrowers in other states under Section 27, and the so-called “valid-when-made” principle, meaning a loan that is non-usurious when originated cannot become usurious after assignment or sale.

Essentially, Cross River argues that existing federal banking law overrides Colorado’s enforcement efforts against the bank’s partner, Marlette. Further, Cross River says it “continues to retain a randomly-selected population of the loans to maturity and sells others to Marlette, though it retains an ongoing economic interest even in the loans it sells.”

Colorado’s action against Marlette “directly challenges Cross River’s federally protected rights to originate loans to borrowers nationwide with interest rate [and other] terms permitted by its home state ... and to sell those loans to third parties with the assurance that the loans’ original terms will remain valid after the loans are sold,” Cross River says in the filing. The bank also says “underwriting guidelines and the credit policy ... are established by Cross River and approved by its Board of Directors.”

The bank also addresses the issue of its own legal risk, stating it “is responsible for consumer compliance and is accountable to its prudential regulators for any potential violation.” Cross River also notes that the lending model under attack is “essential to the way Cross River does business” and adheres to “FDIC, OCC, and interagency guidance on third-party lending.”

MPLs Using Bank-Partner Model at Risk

The outcome of the Cross River and WebBank cases and Colorado’s enforcement efforts could set legal precedent and have a major impact on marketplace

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lenders that use the bank-partner model, as well as credit cards and other loan products in which banks sell loans to non-bank financial services companies. If Colorado prevails against Avant and Marlette, there could be serious repercussions for fintech companies as well as chartered banks, which depend on selling loans to manage their balance sheets.

Cross River and WebBank did not respond to requests for comment.

“If these cases turn out badly for the companies it would seriously affect their ability to buy and service loans,” says the attorney following the cases. “Another option is to just stop lending in Colorado. There’s also a question as to whether other states will do the same thing. You have a lot of cases where it’s a copycat thing.”

True lender ambiguities have prompt-

ed the Office of the Comptroller of the Currency to push for a special-purpose national bank charter. This would give fintech companies a set of umbrella regulations to follow, rather than registering on a state-by-state basis and following different rules in each. The OCC also sets higher capital requirements for a special charter to reflect “off balance sheet” activities a fintech might be involved in.

“The reality today is that the 4,000 fintech companies out there are already competing with national and state banks, without regard to any of the national bank responsibilities and under a patchwork of supervision,” OCC Comptroller Thomas Curry said when the special charters were announced. “In some ways, [this] levels the playing field because statutes that by their terms apply to

national banks would apply to all special purpose national banks, even uninsured ones.”

“They’re not really taking applications for those charters yet and it remains to be seen what the terms will be,” says the attorney following the true lender cases. “I wonder if any fintechs would qualify based on the requirements that have been articulated to date. Much higher capital requirements (compared to banks) would be one obstacle.” 

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