August 5, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Senate Bill 5470 requesting veto unless chapter amendment

Dear Governor Cuomo:

I write on behalf of the American Financial Services Association ("AFSA")[1] to express our grave concerns with Senate Bill 5470. AFSA members provide vehicle dealer and other dealer "floorplan" lending necessary to enable these dealers to acquire their inventories. AFSA is concerned that SB 5470 does not contemplate floorplan lending, and as a result, could inject unnecessary confusion and potential liability into standard transactions that are already well-understood by sophisticated business parties, increasing the cost of or reducing the availability of commercial credit for New York dealers. The bill could also create the inefficient result of providing separate disclosures for each individual vehicle on a dealer's lot or piece of equipment in a dealer's inventory, which would lead to a significant compliance burden for floorplan lenders with limited additional protection for a dealer overwhelmed with dozens or hundreds of disclosures.

Vehicle and equipment dealers must pay for the automobiles, motorcycles, or equipment they hold for sale. Acquiring vehicles and equipment to stock a dealership requires a significant capital outlay. Dealers either do not have the funds on hand to purchase inventory outright, or do not wish to tie up their working capital in inventory, which can take time to sell. As a result, dealers turn to floorplan lenders to finance their inventory. The vast majority of floorplan lenders are not banks.

Floorplan lenders are financial institutions that provide floorplan inventory financing to dealers through revolving or open-end credit lines. Under the terms of this financing, floorplan lenders finance vehicles or equipment as dealers acquire them. In addition, a floorplan lender may advance against already existing inventory. Generally, an advance is an interest-only loan until the dealer sells the particular item for which the advance was made.[2] Within a specified number of days following the sale of a vehicle or piece of equipment, the dealer must remit the principal amount advanced for that vehicle or equipment to the floorplan lender. As a result, there is no traditional payment schedule. In addition, some lenders do not provide explicit credit limits to dealers. Moreover, for lenders that do

[1] Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members also provide commercial credit to vehicle and equipment dealers.

[2] Some lenders may also require dealers to pay fees in connection with a floorplan loan. These fees also are frequently variable and are tied to dealer decisions either contemporaneous with the purchase of the vehicle or after the purchase of the vehicle. Regardless, the key characteristic of floorplan loans is that principle is generally not due until the sale of the vehicle.

provide explicit credit limits, these limits may be subject to change based on factors such as the dealer's business strategy, creditworthiness, seasonality, manufacturers' production schedules, etc.

Interest accrues through the date of repayment of that advance. The interest rate on floorplan financing is a floating rate, generally tied to a base rate, such as LIBOR or prime, and often with an additional increment assessed above the base rate. Accordingly, as base rates change, a dealer's interest rate also will change. Like interest, fees also vary and depend in large part on the actions of the dealer contemporaneous to or post purchase. Finally, these loans frequently do not contain a term. Instead, a floorplan financing credit line will remain open and available until either the floorplan lender or the dealer elects to terminate it.

The revolving and floating rate nature of the product, together with the variation and timing of fees would make a disclosure that requires absolute dollar calculations misleading, as the only way to make such disclosures is to base them on a number of assumptions about the dollar amount of principal borrowed under the revolving loan, rate of interest, fees and other terms of financing.

The following comments to SB 5470 are based on the contextual background provided above.

Section 802. Exemptions

Section 802(g) exempts "an individual commercial financing transaction in an amount over five hundred thousand dollars ($500,000)." While the $500,000 threshold is likely intended to exclude more sophisticated borrowers who have larger credit facilities and who may not benefit from the disclosures, the definition would broadly capture smaller transactions arranged as part of an overall credit line that is larger than $500,000, even if the particular lender and borrower already have multi-million dollar financing agreements and annual revenues in the millions or even billions of dollars.

This $500,000 exemption may also cause floorplan lenders to halt providing 'smaller' financing offers for fear of non-compliance. Such stoppage would result in dealers being unable to obtain financing or over-borrowing to avoid the restriction while incurring additional interest charges.

Section 805. Open-end commercial financing disclosure requirements

Section 805(c) outlines the required disclosures for open-end financing and requires that a lender disclose the APR "based on the maximum amount of credit available to the recipient and the term resulting from making the minimum required payments term as disclosed." Floorplan loans are often floating rate loans with variable fees, meaning that the rate of interest charged the borrower might change as benchmark rates change. It is not clear what assumptions regarding interest rates or other fees a lender should make in order to satisfy the assumption, but presumably, the assumption would necessitate disclosing the rate and charges as if they were fixed, which could mislead a borrower and would necessitate a multitude of countervailing disclosures by the lender.

Chapter Amendment

For these reasons, **we respectfully urge a veto to this bill, or a chapter amendment to Section 802:**

> **§ 802. Exemptions. This article shall not apply to, and shall not place any additional requirements or obligations upon, any of the following:**
>
> **(a) a financial institution;**
>
> **(b) a person acting in its capacity as a technology services provider, such as licensing software and providing support services, to an entity exempt under this section for use as part of the exempt**

entity's commercial financing program, provided such person has no interest, or arrangement or agreement to purchase any interest in the commercial financing extended by the exempt entity in connection with such program;

(c) a lender regulated under the federal Farm Credit Act (12 U.S.C. Sec. 2001 et seq.);

(d) a commercial financing transaction secured by real property;

(e) a lease as defined in section 2-A-103 of the uniform commercial code;

(f) any person or provider who makes no more than five commercial financing transactions in this state in a twelve-month period; [~~or~~]

(g) an individual commercial financing transaction in an amount over five hundred thousand dollars; or (h) a commercial financing transaction in which the recipient is a dealer as defined in section 415 of the vehicle and traffic law, or an affiliate of such a dealer, or a rental vehicle company as defined in section 396-z of the general business law, or an affiliate of such a company pursuant to a commercial financing agreement or commercial open-end credit plan of at least fifty thousand dollars, including any commercial loan made pursuant to such a commercial financing transaction.

Summary

If signed into law, Senate Bill No. 5470 would be confusing or outright misleading to our customers. In complying with this law, floorplan lenders would be forced to create disclosures governing their disclosures. Floorplan financing and other open-end credit arrangements in our industry are structured in ways that are a bad fit for the approach taken in this bill. The proposed disclosures will have a tendency to mislead dealers when the credit facility involves a floating interest rate, an indeterminate term, an adjustable credit limit, an unpredictable timetable for advances, and no repayment "schedule." In order to comply, a floorplan lender may have to provide a separate disclosure for each vehicle or piece of equipment financed, and would be forced to make numerous assumptions that would be inconsistent with the methodology used in our industry, leading to misinformation and confusion.

We respectfully request a veto to this bill, or a chapter amendment to Section 802 exempting transactions with New York's dealers based on the size of the overall commercial financing or open-end credit plan—rather than the individual transaction—with a threshold no higher than fifty thousand dollars ($50,000).

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 952-922-6500 / dfagre@afsamail.org at your convenience.

Sincerely,

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