



NEW YORK
CITY BAR

COMMITTEE ON STRUCTURED FINANCE

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**Re: Comments on White Paper issued on May 10, 2016
entitled “*Opportunities and Challenges in Online Marketplace
Lending*”**

Dear Ms. Temel:

The Committee on Structured Finance (the “Committee”) of The New York City Bar Association (the “Association”) would like to take this opportunity to share some thoughts on the white paper issued by the U.S. Department of the Treasury (the “Treasury”) on May 10, 2016 entitled, “*Opportunities and Challenges in Online Marketplace Lending*” (the “White Paper”). The White Paper provides, among other things, Treasury’s overview of the responses to its Request for Information on marketplace lending (the “RFI”) released in July 2015.

The Association is an organization of over 24,000 lawyers. Most of its members practice in the New York City area; however, Association membership spans nearly every state and 50 countries. The Committee’s work addresses the unique set of legal, accounting, and regulatory issues critical to structured finance.¹

The Committee has focused its attention recently on the rapidly evolving industry of online marketplace lending. Online marketplace lending offers a wide range of credit products and instruments to both consumers and businesses and delivers such products and instruments through new and evolving channels. In addition, this new breed of “fintech” lenders is utilizing a broad array of tools and techniques—including structured finance techniques—to raise the capital and provide the liquidity necessary to maintain and grow such lenders’ finance

¹ The comments in this letter express the views of the Committee as a whole, and do not necessarily reflect the views of any individual member of the Committee. In addition, this letter does not represent the views of any of the law firms or companies with which the members of the Committee are affiliated.

businesses. In fact, securitization may provide the most significant source of liquidity to support the growth of online lending platforms.

The Committee wholeheartedly endorses Treasury's recommendations in the White Paper with respect to (i) supporting more robust small business borrower protections and effective oversight; (ii) ensuring sound borrower experience and back-end operations (including robust servicing and collection operations and back-up servicing plans); (iii) promoting a transparent marketplace for borrowers and investors, including standardized representations, warranties and enforcement mechanisms as well as consistent reporting standards for loan origination data and ongoing portfolio performance, loan securitization performance reporting, and consistent market-driven loan pricing standards; (iv) expanding access to credit for underserved borrowers (currently most marketplace lending borrowers are prime or near-prime) through partnerships among banking institutions and third parties which ensure safe and affordable credit; (v) supporting the expansion of safe and affordable credit through "smart disclosures" (release of information in standard machine-readable formats that can be processed easily by third-party software) to facilitate, among other things, opportunities for comparison-shopping sites; (vi) creating real-time access to government-held data, such as IRS information; and (vii) facilitating interagency coordination to, among other things, support responsible innovation, identify existing regulatory frameworks and coordinate ongoing regulatory efforts, monitor risks through a complete credit cycle and examine the impact of nontraditional data on credit-scoring models through the creation of a standing working group comprised of representatives of the Treasury, the Consumer Financial Protection Bureau ("CFPB"), the Federal Trade Commission ("FTC"), the Securities and Exchange Commission ("SEC"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve Board ("FRB"), the Office of the Comptroller of the Currency ("OCC"), the Small Business Administration ("SBA") and a state banking regulator. In reaching these recommendations, Treasury stated that it consulted with staff from each of the regulators referred to above. In addition, Treasury noted that, since the release of the RFI, various regulatory bodies, industry participants and other concerned parties have already participated in numerous discussions regarding the online marketplace lending industry.

For example, the Committee notes that the OCC issued a white paper on March 31, 2016 entitled, *"Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective,"* the primary purpose of which is to initiate the establishment of a comprehensive framework and internal infrastructure at OCC to evaluate innovative financial products and services and the risks associated with them, as well as the evolving needs of consumers and the federal banking system's role in meeting those needs. The Committee is encouraged by the OCC's position, which is consistent with the guidance offered by Treasury, and which calls for the development of formalized inter-agency working groups among the OCC, Treasury, the CFPB, the FTC, the SBA, the FDIC, the FRB, the SEC and other relevant bodies, including state representatives, as applicable, to promote a regulatory framework that is receptive to responsible innovation while at the same time providing clear guidance to all industry participants, consumers and liquidity markets.

The Committee also appreciates Treasury's presentation, in Appendix A to the White Paper, of examples of federal regulations and requirements that apply to online marketplace

lending, and urges the coordinated regulatory working groups to commission a comprehensive review of all statutes and regulations (federal and state) that apply or may apply to online marketplace lending platforms as well as to banks, thrifts, third-party funding sources and other fintech service providers that do business in this area. The goal of such a comprehensive review would be to determine whether the existing regulatory framework is sufficient; and if further regulation, guidance or oversight is deemed to be necessary in certain areas, then to guard against over-regulation, and prevent duplicative or inconsistent rule-making.

The Committee stands ready to assist with further information or other assistance regarding this important matter.

Respectfully,



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