deBanked

November/December 2016

A TRUE RAPID ADVANCE FOR MARK CERMINARO

Alternative Funders Bid Adieu to 2016, Show Renewed Optimism for 2017
By Cheryl Winokur Munk

Something Sour in Salamanca
By Sean Murray


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November/December 2016

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deBanked is a publication by:

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14 Wall Street, 20th Floor
New York, NY 10005
212-618-1440

For advertising information or general inquiries, email info@debanked.com or call 212-618-1440.

Letter From the Editor

BY
SEAN MURRAY

2016 didn't produce the robots, laser beams and interplanetary colonization I jokingly predicted in the final issue of last year. Instead, the year was rife with terrestrial matters like profitability, sustainability, legal compliance and adjusted expectations. The advances made in financial technology revealed their vulnerabilities and in some cases, their mortalities. But those still standing at the end of 2016 may be better prepared for the future than when they started. Change, in whatever form it may take, can be good.

You need not look further than Mark Cerminaro, the chief revenue officer of RapidAdvance who once aspired to play football in the NFL. Change came for him in several forms, from a sports injury to a harrowing experience in the World Trade Center on 9/11. Today, he's a major mover and shaker in alternative finance, having made it on the Commercial Finance Association's 2016 "40 under 40" list of achievers. In this issue, you'll learn more about Mark and his *rapid advance* with RapidAdvance.

Change for another fellow came at a more significant cost. In October, an MCA broker-turned-debt negotiator was arrested and charged with mail fraud. It's alleged those debts he offered to negotiate didn't actually get negotiated and he left a trail of damaged merchants and funders in his wake as a result. But that's just the tip of the iceberg, you'll learn, as the scheme descended into a legal war that involved Native American tribes, fake names and phony lawyers. It's a side of the story that even federal agents left alone.

Change was also once promised by a man known as Senator Barack Obama, many years ago. Did he accomplish it? One thing for certain is that a bigger change, a "yuuge" change even, is coming in the form of a President Donald Trump. He has pledged to repeal and replace Dodd-Frank, a bold intention made by an even bolder man. Trump is the curveball that breaks predictive models, a force that could be really good or really bad. Most of the advances in fintech have only known a world in which Obama is President. Is the industry ready for Trump?

It's difficult to project what will happen in 2017, but in this issue, funders bid adieu to 2016. See you next year.

–Sean Murray

A TRUE RAPID ADVANCE FOR MARK CERMINARO

By *ED MCKINLEY*

In the 1999 film “Any Given Sunday,” Al Pacino plays a pro football coach whose obsession with winning has torn apart his family. He’s also plagued by a meddlesome team owner, challenged by an offensive coordinator who’s after his job, and vexed by a talented but narcissistic backup quarterback. But none of that stops the coach from reaching deep inside to deliver a stirring halftime pep talk to his dispirited losing team. Assuring his players that life and football are both games of inches, he beseeches them to look into the eyes of the men around them. “You’re going to see a guy who will go that inch with you,” he declares. “Either we heal now as a team or we will die as individuals.” The players rally and explode onto the field.

It’s a scenario the sales staff can’t get enough of at RapidAdvance, a Bethesda, Md.-based alternative small-business finance company with more than 200 employees. Mark Cerminaro has screened a clip of the scene countless times in a company conference room to fire up his crew. Salespeople emerged from those meetings eager to make that extra phone call, provide the telling detail on an application or do whatever else it would take to taste the victory of making the sale. For Cerminaro, the movie and the sales meetings embodied his penchant for winning ethically through teamwork, dogged persistence and great customer experience. That credo has helped propel him to top management at RapidAdvance and has earned him accolades from once-skeptical financial services peers.

Cerminaro’s story begins in his hometown of Highland Park, N.J., where he experienced a small-town vibe but enjoyed easy access to New York City, Philadelphia and the Jersey Shore. He graduated in a class of 85 students from the local public high school, playing varsity football, basketball and baseball. Summers, he worked construction, did landscaping, delivered flowers and umpired Little League. “It was a great place to grow up,” he says.

In high school, Cerminaro sometimes went along for the ride when his sister, who was five years older, was choosing a college. On a visit to Georgetown University in Washington, D.C., Cerminaro stood in the student center and gazed out at the campus. “I’m going to come here and play football,” he told himself.

He made good on that vow when his high school football team made a reputation for itself, and Georgetown was among the schools that recruited him. Besides, it made sense to go there because he was interested in studying politics and going to law school. Growing up with a father who was chairman of the local Democratic Party, Cerminaro had his eye on eventually becoming governor of New Jersey.

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Playing for the NFL on the way to the governor's mansion seemed like a good idea, too. But Cerminaro, a quarterback, blew out his throwing arm two years into his collegiate football career. His dreams of making the pros died, but that left more time for academics. He plunged into a series of four rigorous internships, three of them in politics. He served two in the Clinton White House and one on Capitol Hill with Sen. Robert Torricelli, D-N.J. He fondly recalls talking to President Bill Clinton for five minutes before a state dinner. Then two hours later, after spending time with heads of state, the President called out, "There's Mark, my fellow Hoya." Cerminaro will never forget it.

> "YOUR FAMILY AND YOUR LOVED ONES ARE BY FAR MORE IMPORTANT THAN ANYTHING ELSE IN YOUR LIFE.

In the end, however, the fourth internship won out. Although Cerminaro hadn't studied business or finance too much, he landed an internship in the local Washington, D.C., office of Morgan Stanley. If nothing else, it would help him manage his investments some day, he reasoned. However, he soon approached the operations manager and some senior brokers and offered to take on duties they didn't want to fulfill. He had decided to learn about operations, and taking on extra work without additional compensation was in line with his new habit of figuring out what steps would take him where he wanted to go in life.

Cerminaro earned his managerial license with Morgan Stanley and accepted a job as associate branch manager in the Washington, D.C., office, managing and training new financial advisors. He considered the position great exposure to sales, management, operations and compliance – "elements that have paid dividends in the growth of my career," he notes.

Early in Cerminaro's tenure at Morgan Stanley, the company sent him for training with about 300 other new employees at 2 World Trade Center in Manhattan. The date was Sept. 10, 2001. When the trainees reported to the office the next day, they were in a 64th-floor conference room when they heard an explosion and saw shreds of paper floating past the windows. They didn't realize yet that a terrorist-controlled jetliner had hit next door at 1 World Trade Center.

As they evacuated down a stairwell, the trainees heard and felt the concussion of the second plane that hit their building. "I'm 22 years old and I may be about to die," Cerminaro remembers thinking. "Make sure my family knows I love them," he prayed. He made it out and was greeted with smoke, debris, the flashing lights of emergency vehicles and panic in the streets. He walked to a restaurant some family friends operated in Little Italy and borrowed a working phone to call his family in New Jersey and let them know he was OK.

Returning to the D.C. office of Morgan Stanley, Cerminaro got back to work. He loved the entrepreneurial spirit at the company, but as the years passed he realized he was unlikely to amass enough power in the giant firm to dictate how it would operate, grow and change. So he was interested when someone he knew at Morgan Stanley told him about RapidAdvance, then a two-year-old company with about 20 employees. "I saw the opportunity to be part of building a company – that's what drew me to RapidAdvance," he recalls.

In 2007, Cerminaro interviewed with Jeremy Brown, who was RapidAdvance's CEO at the time and has since advanced to chairman. "It was apparent

that Mark had a well thought-out, well-articulated plan for sales," Brown says of his first impression. "He had a presence about him, a command that said this guy a real leader – somebody who could make a long term component of the company."

Cerminaro joined RapidAdvance as national sales director and began building a sales structure and team based on some of the elements of Morgan Stanley's sales model. Developing KPIs, or key performance indicators, helped him measure progress. "You had to roll up your sleeves and get involved in every aspect of things," he said of working for a startup in a fledgling industry. The company's outbound call center came up with sales leads, and he cut and pasted them from an Excel spreadsheet and divvied them up among the five or six account executives.

Cerminaro wanted to teach that handful of salespeople to function as business advisors and help them become the single point of contact for clients. His salespeople guided small-business owners through the application process and stayed in contact with them after the sale. He emphasized doing right by customers, teammates and the company as a whole. It was a vision that inspired the team.

"Mark was a great mentor and provided me a lot of guidance and tutelage over the years," says Devin Delany, who started as an account executive at RapidAdvance and has moved up to director of sales. "His real mission was to create a sense of family and he executed on that to the fullest extent, creating a close knit team of upward of 40 folks who really care about one another."

That sales "family" used dialogue marketing to refocus attention on prospects who had fallen out of the sales cycle. In those days they used a product-driven sales pitch based on merchant cash advances. Third-party partners included credit card processors and credit card ISOs. Brokers came onto the scene later.

Soon after Cerminaro arrived at RapidAdvance, the financial crisis struck. The company managed to navigate the troubled times and emerged with improved underwriting skills, a better understanding of leading indicators and a truer grasp of how its portfolio performs. Something else happened, too.

As traditional lines of credit dried up during the recession, small businesses that didn't accept credit cards began to search for working capital. In response, Cerminaro, Brown and Joseph Looney, RapidAdvance's chief operations officer and general counsel, sat down and outlined a plan to offer small-business loans as well as MCAs. "That effort really redefined who RapidAdvance was," Cerminaro says of the new loans. "We went from a single-product company

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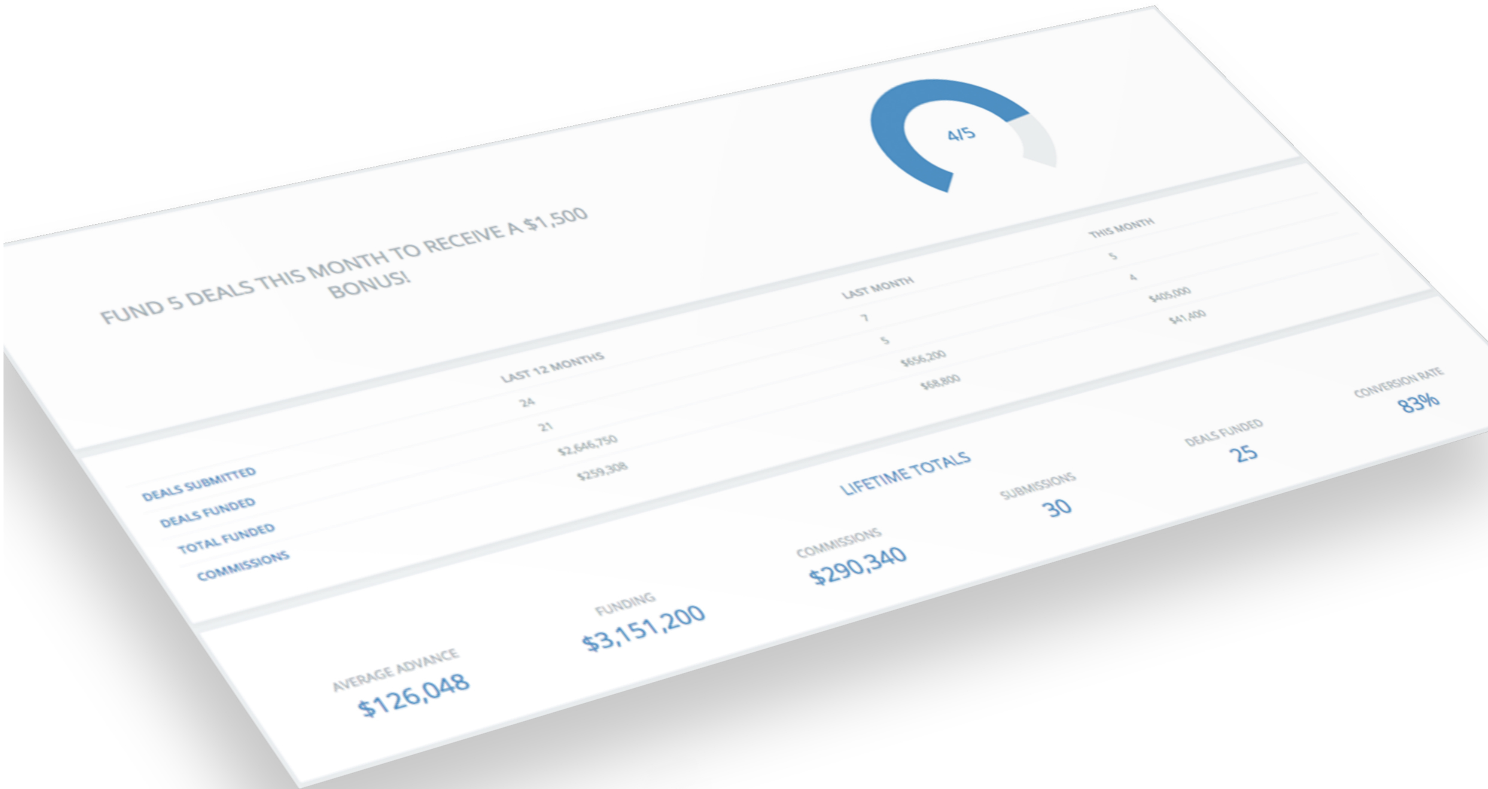

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to now being more of a solutions-based company," he maintains. "We were able to shift from selling a product to doing needs-based analysis with our clients and focusing on what was the right solution for them."

Cerminaro found it exciting to develop the loan program and oversee sales, but he was looking for more. He turned part of his attention to business development and even expanded his purview to include marketing. The company was thinking along the same lines. In 2010, RapidAdvance promoted him to senior vice president, sales and marketing. "As the company has grown we have had different needs, and we leaned on Mark and his skill set every time we made a change," Brown says. "Every time we made a change he has stepped up and done what's asked of him."

Producing one of the industry's first national television ad campaigns highlighted Cerminaro's period as senior vice president. "We were the pioneers in being able to market through that medium," he says. "It was absolutely scary at the same time. It was a massive investment for us and we had no idea whether it would pan out." The sales staff were waiting in anticipation when the phones began ringing after the public saw the commercial. "The original spot we put together still tests well and drives a lot of traffic," he notes. Viewers find a tune featured in the ad sticks in their minds and can't help humming it – sometimes when they'd prefer they didn't, he adds.

Then came another promotion. In 2013, just before Detroit-based Rockbridge Growth Equity LLC acquired RapidAdvance, Cerminaro was named chief revenue officer and became responsible for all revenue-generating activities and all of the company's front end efforts. The company had grown significantly over the years, but the merger increased financial backing and thus accelerated growth, he says. For him, that meant pursuing a new type of partner company – asset-based lenders and factoring companies. It wouldn't be easy. "The traditional lending market had a lot of misconceptions about our industry," Cerminaro admits. "A lot of people in that business were very critical."

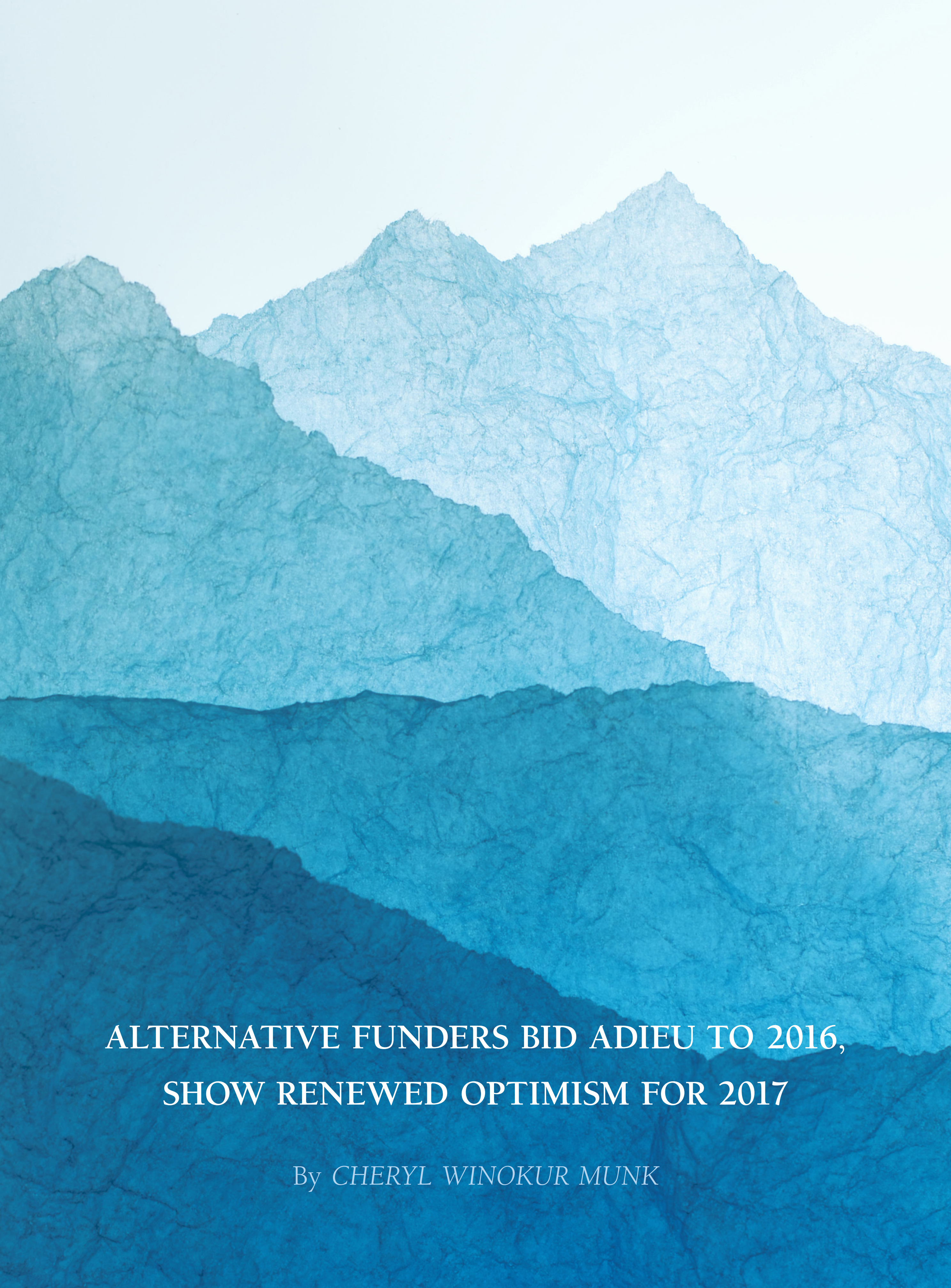
But Cerminaro made the rounds of trade shows and visited conference rooms until he succeeded in winning the hearts of bankers, according to Will Tumulty, RapidAdvance's CEO. "Mark and his team have developed partnerships in the commercial lending space," Tumulty says. "There are a number of companies that have historically viewed working-capital funding as a competitor. We don't see ourselves competing with those companies. Mark and his team have worked with those companies to get merchants what they need."

As a testament to Cerminaro's success in that quest, the Commercial Finance Association named him to its 2016 list of "40 under 40" achievers. He was the only person from alternative small-business funding to make that venerable list of prominent young lending executives. He helped spur his company on to other awards, too. The RapidAdvance Bethesda office was chosen for The Washington Post Top Workplaces 2016 list, and the RapidAdvance Detroit office made the list of 101 firms recognized as Metro Detroit's 2016 Best and Brightest Companies to Work For.

Meanwhile, Cerminaro was successfully courting mega retailers, says Brown. When the possibility of becoming a partner with Office Depot arose, Brown felt hopeful but remained skeptical because of the long lead time required to convince so many executives in such a large corporation. "But mark was dogged," he says. "It took him probably a year to land and close the deal and negotiate the agreement and sign the account. He went to countless meetings down in Florida. He participated in endless conference calls, but mark got the deal done. It's a relationship we're proud of, and he is singularly responsible for closing that deal."

In those encounters with Office Depot execs, Cerminaro displayed savvy and professionalism, Brown says. They're traits that will continue to pay off not only for RapidAdvance but for the entire industry, maintains RapidAdvance's Looney. "He's out there with lots of big banks and other potential partners," says Looney. "He's a good face for the industry."

For Cerminaro, it's satisfying to see RapidAdvance become all he dreamed it could be. But that still comes in second for him and differentiates him from the coach played by Al Pacino. Cerminaro's the kind of guy who asked his father to be his best man and now has a wife and two sons of his own. "Your family and your loved ones are by far more important than anything else in your life," he says.



ALTERNATIVE FUNDERS BID ADIEU TO 2016, SHOW RENEWED OPTIMISM FOR 2017

By *CHERYL WINOKUR MUNK*

ALTERNATIVE FUNDERS BID ADIEU TO 2016, SHOW RENEWED OPTIMISM FOR 2017

By *CHERYL WINOKUR MUNK*

After getting pummeled in 2016, many alternative funders have licked their wounds and are flexing their muscles to go another round in 2017.

"The industry didn't implode or go away after some fairly negative headlines earlier in the year," says Bill Ullman, chief commercial officer of Orchard Platform, a New York-based provider of technology and data to the online lending industry. "While there were definitely some industry and company-specific challenges in the first half of the year, I believe the online lending industry as a whole is wiser and stronger as a result," he says.

Certainly, 2016 saw a slowdown in the rapid rate of growth of online lenders. The year began with slight upticks in delinquency rates at some of the larger consumer originators. This was followed by the highly publicized Lending Club scandal over questionable lending practices and the ouster of its CEO. Consumers got spooked as share prices of industry bellwethers tumbled and institutional investors such as VCs, private equity firms and hedge funds curbed their enthusiasm. Originations slowed and job cuts at several prominent firms followed.

Despite the turmoil, most players managed to stay afloat, with limited exceptions, and brighter times seemed on the horizon toward the end of 2016. Institutional investors began to dip their toes back into the market with a handful of publicly announced capital-raising ventures. Loan volumes also began to tick up, giving rise to renewed optimism for 2017.

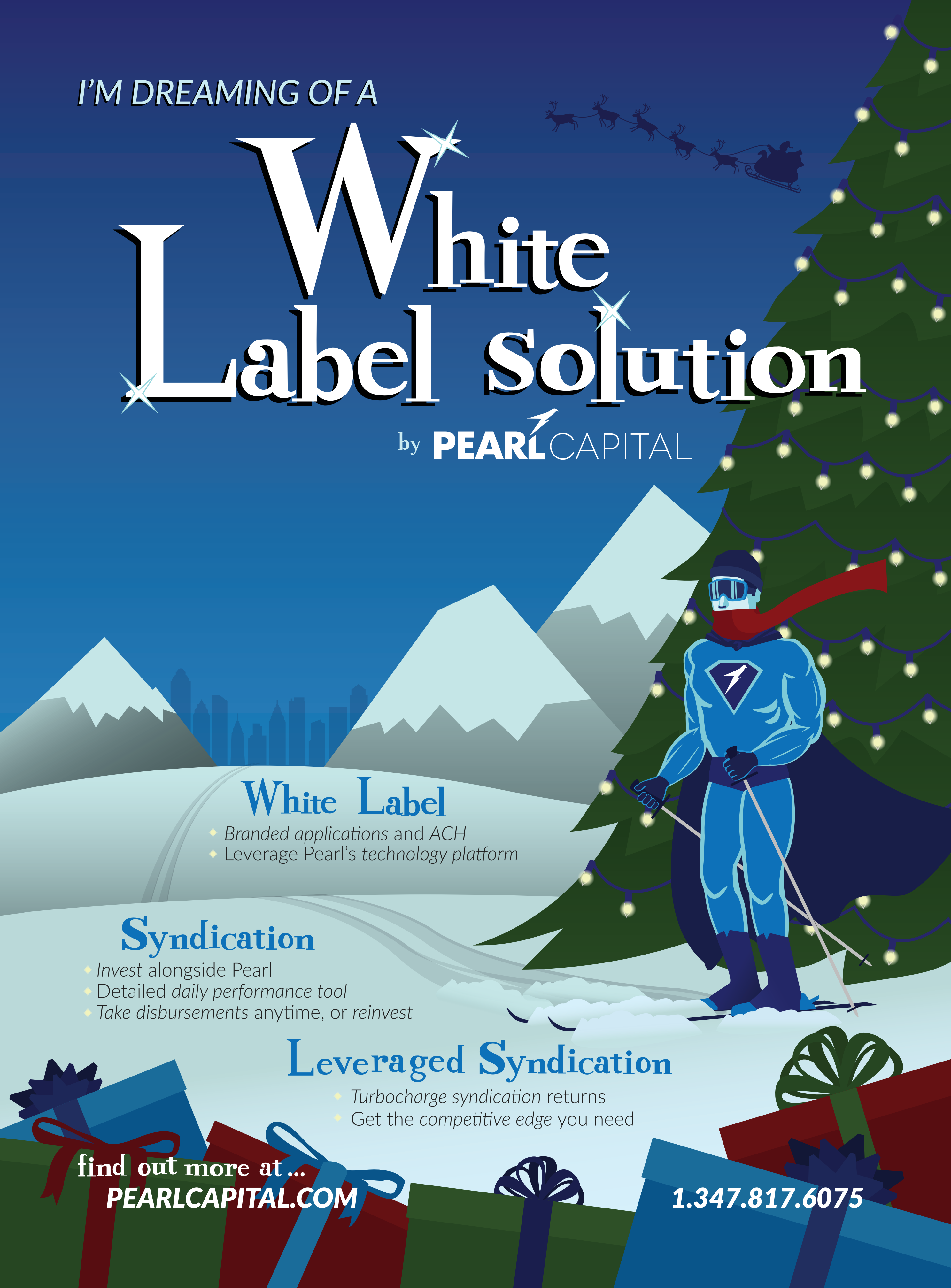
Notably, in the year ahead, market watchers say they anticipate modest growth, a shift in business models, consolidation, possible regulation and additional consumer-focused initiatives, among other things.

MARKETPLACE LENDERS REDEFINING THEMSELVES

Several industry participants expect to see marketplace lenders continue to refocus after a particularly rough 2016. Some had gone into other businesses, geographies and products that they thought would be profitable but didn't turn out as expected. They got overextended and began getting back to their core in 2016. Others realized, the hard way, that having only one source of funding was a recipe for disaster.

"Business models are going to evolve quite substantially," says Sam Graziano, chief executive officer and co-founder of Fundation Group, a New York-based company that makes online business loans through banks and other partners.

For instance, he predicts that marketplace lenders will move toward using their balance sheet or



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some kind of permanent capital to fund their loan originations. "I think that there will be a lot fewer pure play marketplace lenders," he says.

Indeed, some marketplace lenders are starting to take note that it's a bad idea to rely on a single source of financing and are shifting course. Some companies have set up 1940-Act funds for an ongoing capital source. Others have considered taking assets on balance sheet or securitizing assets.

"The trend will accelerate in 2017 as platforms and investors realize that it's absolutely necessary for long-term viability," says Glenn Goldman, chief executive of Credibly, an online lender that caters to small-and medium-sized businesses and is based in Troy, Michigan and New York.

BJ Lackland, chief executive of Lighter Capital, a Seattle-based alternative lender that provides revenue-based start-up funding for tech companies, believes that more online lenders will start to specialize in 2017. This will allow them to better understand and serve their customers, and it means they won't have to rely so heavily on speed and volume—a combination that can lead to shady deals.

"I don't think that the big generalist online lenders will go away, just like payday lending is not going to go away. There's still going to be a need, therefore there will be providers. But I think we'll see the rise of online lending 2.0," he says.

Despite the hiccups in 2016, Peter Renton, an avid P2P investor who founded Lend Academy to teach others about the sector, says he is expecting to see steady and predictable growth patterns from the major players in 2017. It won't be the triple-digit growth of years past, but he predicts investors will set aside their concerns from 2016 and re-enter the market with renewed vigor. "I think 2017 we'll go back to seeing more sustainable growth," he says.

THE CONSOLIDATION EQUATION

Ron Suber, president of Prosper Marketplace, a privately held online lender in San Francisco, says victory will go to the platforms that were able to pivot in 2016 and make hard decisions about their businesses.

Prosper, for example, had a challenging year and has now started to refocus on hiring and growth in core areas. This rebound comes after the company said in May that it was trimming about a third of its workforce, and in October it closed down its secondary market for retail investors. Suber says business started to pick up again after a low point in July. "Business has grown in each of the subsequent months, so we are back to focused growth and quality loan production," he says.

Not long after he said this, Prosper's CEO, Aaron Vermut, stepped down. His father, Stephen Vermut, also relinquished his executive chairman post, a sign that attempts to recover have come at a cost.

Other platforms, meanwhile, that haven't made necessary adjustments are likely to find that they don't have enough equity and debt capital to support themselves, industry watchers say. This could lead to more firms consolidating or going out of business.

The industry has already seen some evidence of trouble brewing. For instance, online marketplace lender Vouch, a three-year-old company, said in June that it was permanently shuttering operations. In October, CircleBack Lending, a marketplace lending platform, disclosed that they were no longer originating loans and would transfer existing loans to another company if they couldn't promptly find funding. And just before this story went to print, Peerform announced that they had been acquired by Versara Lending, a sign that consolidation in the industry has come.

"I think you will see the real start of consolidation in the space in 2017," says Stephen Sheinbaum, founder of New York-based Bizfi, an online marketplace. While some deals will be able to breathe life into troubled companies, others will merge to produce stronger, more nimble industry players, he says. "With good operations, one plus one should at least equal three because of the benefits of the economies of scale," he says.

Market participants will also be paying close attention in 2017 to new online lending entrants such Goldman Sachs' with its lending platform Marcus. Ullman of Orchard Platform says he also expects to see more partnerships and licensing deals. "For smaller, regional and community banks and credit unions—organizations that tend not to have large IT or development budgets—these kinds of arrangements can make a lot of sense," he says.

A BLEAKER MCA OUTLOOK

Meanwhile, MCA funders are ripe for a pullback, industry participants say. MCA companies are now a dime a dozen, according to industry veteran Chad Otar, managing partner of Excel Capital Management in New York, who believes new entrants won't be

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Paul A. Rianda, whose Irvine, California-based law firm focuses on MCA companies, likens the situation to the Internet boom and subsequent bust. "There's a lot of money flying around and fin-tech is the hot thing this time around. Sooner or later it always ends."

In particular, Rianda is concerned about rising levels of stacking in the industry. According to TransUnion data, stacked loans are four times more likely to be the result of fraudulent activity. Moreover, a 2015 study of fintech lenders found that stacked loans represented $39 million of $497 million in charge-offs.

Although Rianda does not see the situation having far-reaching implications as say the Internet bubble or the mortgage crisis, he does predict a gradual drop off in business among MCA players and a wave of consolidation for these companies.

"I do not believe that the current state of some MCA companies taking stacked positions where there are multiple cash advances on a single merchant is sustainable. Sooner or later the losses will catch up with them," he says.

Rianda also predicts that the decrease of outside funding to related industries could have a spillover effect on MCA companies, causing some to cut back operations or go out of business. "Some companies have already seen decreased funding in the lending space and subsequent lay off of employees that likely will also occur in the merchant cash advance industry," he says.

THE REGULATORY QUESTION MARK

One major unknown for the broader funding industry is what regulation will come down the pike and from which entity. The Office of the Comptroller of the Currency that regulates and supervises banks has raised the issue of fintech companies possibly getting a limited-purpose charter for non-banks. The OCC also recently announced plans to set up a dedicated "fintech innovation office" early in 2017, with branches in New York, San Francisco and Washington.

There's also a question of the CFPB's future role in the alternative funding space. Some industry participants expect the regulator to continue bringing enforcement actions against companies. In September, for instance, it ordered San Francisco-based LendUp to pay $3.63 million for failing to deliver the promised benefits of its loan products. Ullman of Orchard Platform says he expects the agency to continue to play a role in the future of online lending, particularly for lenders targeting sub-prime borrowers.

Meanwhile, some states like California and New York are focusing more efforts on reining in online small business lenders, and it remains to be seen where this trend takes us in 2017.

MORE CONSUMER-FOCUSED INITIATIVES ON HORIZON

As the question of increased regulation looms, some industry watchers expect to see more industry-led consumer-focused initiatives, an effort which gained momentum in 2016. A prime example of this is the agreement between OnDeck Capital Inc., Kabbage Inc. and CAN Capital Inc. on a new disclosure box that will display a small-business loan's pricing in terms of total cost of capital, annual percentage rates, average monthly payment and other metrics. The initiative marked the first collaborative effort of the Innovative Lending Platform Association, a trade group the three firms formed to increase the transparency of the online lending process for small business owners.

Katherine C. Fisher, a partner with Hudson Cook LLP, a law firm based in Hanover, Maryland, that focuses on alternative funding, predicts that more financers will focus on transparency in 2017 for competitive and anticipated regulatory reasons. Particularly with MCA, many merchants don't understand what it means, yet they are still interested in the product, resulting in a great deal of confusion. Clearing this up will benefit merchants and the providers themselves, Fisher notes. "It can be a competitive advantage to do a better job explaining what the product is," she says.

CAPITAL-RAISING WILL CONTINUE TO POSE CHALLENGES

Although there have been notable examples of funders getting the financing they need to operate and expand, it's decidedly harder than it once was. Renton of Lend Academy says that some institutional investors will remain hesitant to fund the industry, given its recent troubles. "It's a valuation story. While valuations were increasing, it was relatively easy to get funding," he says. However, industry bellwethers Lending Club and OnDeck are both down dramatically from their highs and concerns about their long-term viability remain.

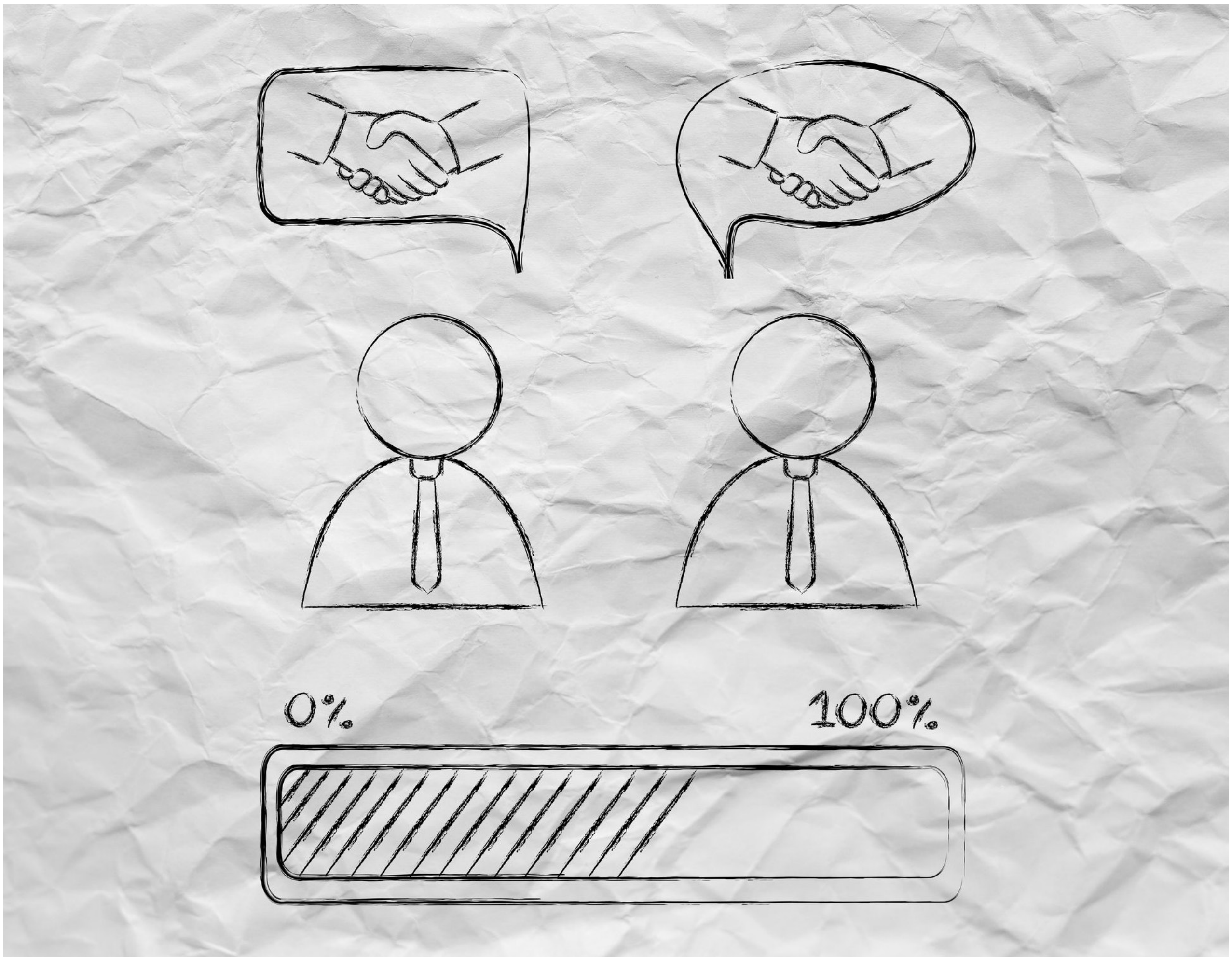
"Until you get sustained increases in the valuation of those two companies, I think it's going to be hard for others to raise money," Renton says.

Several years ago, alternative funders were new to the game and gained a lot of traction, but it remains to be seen whether they can continue to grow profits amid greater competition and the high cost of obtaining capital to fund receivables, according to William Keenan, chief executive of Pango Financial LLC, an alternative funding company for entrepreneurs and small businesses in Wilmington, Delaware.

These companies continue to need investors or retained earnings and for some companies this is going to be increasingly difficult. "How they sustain growth going forward could be a challenge," he says.

Even so, Renton remains bullish on the industry—P2P players especially. "The industry's confidence has been shaken. There have been a lot of challenges this year. I think many people in the industry are going to be glad to put 2016 to bed and will look with renewed optimism on 2017," he says.

Prior to this story going to print, small business lender Dealstruck was reportedly not funding new loans and CAN Capital announced that three of the company's most senior executive had stepped down.



BRIEF: THE CFPB'S UNCONSTITUTIONALITY

By *SEAN MURRAY*

The Director of the consumer agency wields so much power that his authority actually violates Article II of the United States Constitution, according to the United States Court of Appeals for the District of Columbia Circuit which presided over PHH Corp v. CFPB. "In short, when measured in terms of unilateral power, the Director of the CFPB is the single most powerful official in the entire U.S. Government, other than the President," the Court wrote. "Indeed, within his jurisdiction, the Director of the CFPB can be considered even more powerful than the President."

Article II of the Constitution grants the President alone the authority to take care that the laws be faithfully executed. That means that Congress can't even legally legislate another single individual to possess that amount of power even if they wanted to. But rather than order the dismantling of the CFPB, the Court suggested two remedies, either the director be overseen by the President of the United States or the single-directorship model be reconfigured to become a multi-member commission, a workaround that other executive agencies operate under.

Even though the agency is tasked to protect consumers, the Court recognized the potential for corruption when overseen by a single unaccountable person. "The CFPB's concentration of enormous executive power in a single, unaccountable, unchecked Director not only departs from settled historical practice, but also poses a far greater risk of arbitrary decision-making and abuse of power, and a far greater threat to individual liberty, than does a multi-member independent agency," the Court asserted.

Meanwhile, the CFPB has cast the decision aside as nonsense and has refused to comply, even going as far as to directly rebut it in another case shortly thereafter. In *CFPB v. Intercept Corporation*, the CFPB argued that the D.C. Circuit's decision was "wrongly decided" and "not likely to withstand further review." They've also asked the D.C. Circuit to rehear the case in part because they believe the decision "purports to override Congress's explicit determination to create 'an independent bureau' to exercise regulatory and law enforcement authority in a particular segment of the economy." The Court can simply deny to rehear the case.

One wild card to consider in this debate is that President-Elect Trump has pledged to repeal the Dodd-Frank Act, the law that created the CFPB to begin with. At the very least, Trump may feel it necessary to flex the power granted to him under Article II and subvert the directorship of the agency.

THE SCAMMER OF SALAMANCA

By *SEAN MURRAY*

Last year, one small business owner pinged an expert online to see if a company named *Corporate Restructure Inc.* was legitimate, according to a question published in the Bankruptcy section of *JustAnswer.com*. The poster, who was anonymous, said the company offered to take his short term loans and extend them out to a 48 month term by filing an injunction to freeze out the lenders based on the unlawful interest rates.

An expert, Ely, who is a verified attorney on the website, issued a blunt response. "I'm sorry, but this is a scam," he said. It looks like Ely was right. Just one year later, Corporate Restructure Inc. would be referenced in a criminal complaint that called for the arrest of one Sergiy Bezrukov, a resident of Salamanca, a small town in upstate New York with less than 6,000 people. Bezrukov, who goes by many aliases including John Butler, Thomas Paris and Christopher Riley, has been charged with mail fraud after a joint investigation between the Department of Homeland Security, the IRS and the US Postal Inspection Service.

Some of his purported 100+ victims received advertisements that claimed his company could reduce a merchant's short term debt by as much as 75% in just 6 to 12 hours. But after the victims paid for the service, the negotiators didn't actually do any negotiating. And worse yet, the victims were told to stop making payments to their lenders and merchant cash advance companies, putting them in breach of their agreements.

According to federal agents, "the victims and losses are the direct result of Bezrukov's scheme involving the mailing of thousands of fraudulent solicitations to vulnerable small business owners, luring them into paying him for a service he never intended to provide, and resulting in hundreds of defaulted loans, worth hundreds of thousands of dollars."

At the time of this being written, Bezrukov sits in jail pending trial, his bail denied after being deemed a flight risk. Investigators recovered $400,000 in cash that he had hidden, a sign that he may have been planning to leave town. More troubling was Bezrukov's claim that the duplicate copy of his passport is missing and cannot be surrendered to the authorities. His dual Ukranian citizenship and penchant for using aliases were just the icing on the cake as to why he's better off in custody for the time being.

The details behind his arrest, which were covered by *deBanked* on November 2nd and *The Buffalo News* on October 31st, tell only part of the story, that Bezrukov mailed fraudulent solicitations, collected payments and left merchants high and dry without any attempts to negotiate their debts. If he engaged in other dubious acts, the three federal agencies who took him down didn't accuse him of such in their complaint.

Bezrukov has not been accused of other crimes so what I'm about to share is purely informational, a series of events and documents that appear related to his scheme. The scope of my disclosure and research had to consider potential conflicts of interest, perceived or otherwise while considering the sensitivity of pending litigation and the parties or witnesses who are involved in them. Many names have been omitted even if their statements were sworn to. I did attempt to contact two people connected with Bezrukov, one of his former employees who he sued, and an individual that may have been his girlfriend and colleague at Corporate Restructure. Neither responded.

That being said, Bezrukov's operation was obviously much more elaborate than law enforcement gives him credit for. He was in some ways a mastermind. Thanks to public records, what I found was a paper trail that involved native American tribes and suspicious legal filings that will make you wonder what the hell was really going on in upstate New York.

"USE DEADLY FORCE TO ELIMINATE THE CONFIDENTIAL INFORMANTS"

One MCA player reportedly "wanted blood" last year after a suspicious stream of pro se lawsuits began making the rounds in the industry that alleged among other things, that commercial finance companies had made illegal payday loans. *Pro se* means that the merchants were purportedly representing themselves in court against funders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without an attorney. The complaints they filed used inflammatory language and were riddled with spelling errors, but notably, they were all exactly alike, making it obvious that these were fill-in-the-blank templates originating from a single source.

I reviewed more than 40 such dockets and found references to Corporate Restructure Inc., Sergiy Bezrukov or his alleged aliases in several.

In summary, here's how the ruse seemed to be carried out:

Corporate Restructure, which is not a law firm, would file a lawsuit against a funder on a merchant's behalf using NYSCEF, New York State's electronic filing system. This by the way, does not automatically lead to an injunction because once served with a summons and complaint, the funders as defendants are directed to answer or move to dismiss. Some funders struck back with counterclaims, kicking off a complex commercial litigation that merchants may not have signed up for. Without real attorneys, Corporate Restructure tried to play litigator on behalf of merchants, resulting in legal arguments that veered off into the delusional at best and taking a promise to settle debt for cheap into the realm of the deranged and dangerous at worst.

In one of these cases, Bezrukov (while apparently pretending to be a merchant) tried to quash a subpoena by arguing incoherently that the funding company had "access to the use of deadly force to intimidate or eliminate [the] confidential informants" and therefore should be granted a protective order.

That's not language you see every day in a civil case.

In the same document, he says the funder's attorneys will have to travel to the Seneca Indian Reservation in Salamanca, NY, where the "informants" operate (which is near where Bezrukov lived).

He then switches gears and identifies who the informants are by name, one Thomas Paris and Emily Goldstein, which are ironically aliases for himself and his girlfriend.

Confused yet? Imagine how the merchant must have felt once he learned these arguments were being submitted under his name to sue an MCA company purportedly without his knowledge. In May of 2016, the actual merchant signed an affidavit to clear everything up with the court. In it, he said that Thomas Paris (aka Bezrukov) and his girlfriend held themselves out as debt counselors for Corporate Restructure Inc. and that they would be his legal counsel, upon which they began charging him for "various unexplained fees" while filing a lawsuit and other allegations in his name without his knowledge or consent. "I have learned that Paris and Goldstein are not the real names of the people that I dealt with, that Corporate Restructure is not a real company, that they are not licensed to practice law in any state, and that they do not operate with any authority granted by the court of the State of New York," the merchant swore.

The part about the Seneca Indian Reservation that Bezrukov rambled about would later become his calling card. Without the assistance of an actual attorney, lawsuits filed by merchants against funders soon began including verifications from a supposed tribal member of the Seneca Nation of Indians affirming the merchants' claims to be true, as if this somehow would serve in lieu of an attorney.

"I am a supervising non-attorney paralegal under my business Seneca BPO and I assist the plaintiff herein," a typical verification affidavit would read.

One judge in November took particular issue with these verifications. "This purported verification is utterly meaningless," she wrote. "[The tribe member] is not an attorney, and this document is unsworn."

However fruitless these attempts were to deflect attention away from Corporate Restructure to a native American tribe, the circumstances quickly escalated when multiple funding companies caught on and sued Bezrukov himself.

"THIS IS AN ATTACK ON MY LAND AND MY ANCESTORS LAND"

In June, a lawsuit filed against Bezrukov and his companies was answered, but it didn't come from him. Instead, someone representing themselves to be a member of the Seneca Nation of Indians said that he is the real defendant, not Bezrukov. "I am a member of the Deer Clan [...] and this is an attack on my land and my ancestors lands and invasive attack on my employee John Butler (aka Bezrukov) living on the reservation land and under my jurisdiction," the response reads. While claiming sovereign immunity, he added for good measure that if someone wanted to sue them, they'd have to take it up with the Cattaraugus Territory Tribal Peacemakers Court.

Also included was the copy of an Asset Purchase Agreement signed by Bezrukov under his real name that purportedly transferred his business to one Seneca Nations tribal member and then again from that member to the person that ultimately responded to the funder's complaint. That case was still ongoing

at the time this story went to print.

Another lawsuit filed around the same time against Bezrukov and his companies was answered by another tribal member. "I am a member of the Hawk Clan," he asserts, while going on to voice the same outrage about it being an attack on his ancestor's land. That case is also still ongoing.

One clue Corporate Restructure left behind in NYSCEF is that at least 25 merchants who filed lawsuits, did so electronically using an @foxmailnow.com email address, a domain created in 2016 that no longer exists. Five separate lawsuits also seem to have accidentally included a printout in the documents that revealed an IP address, which a simple online search traced back to Salamanca, NY. This seems like too much of a coincidence for merchants who were supposedly representing themselves all across the country.

Even more suspicious is when a home care business in Aynor, SC filed a lawsuit against one funder while attaching the contract of an acupuncture business in Brentwood, NY with another funder as the supporting exhibit. The owners were completely different too. How could that inadvertently happen unless a third party was orchestrating everything on their behalves?

More damning still was the lawsuit purportedly filed by a merchant on their own that accidentally included pages of communications from Corporate Restructure.

If Bezrukov and his associates were truly out there practicing law without a license, he should be worried. Adam Atlas, a licensed attorney in New York, who was not speaking in reference to this particular case, told deBanked in an email that practicing law without a license in the state could result in a Class E felony where the act results in a loss of $1,000 or more. "Aggrieved parties could also pursue civil claims against the alleged unlicensed practitioner," he wrote. "I don't think these rules are there simply to protect the monopoly of lawyers in legal advice; instead they are there to ensure that the public is being served by a duly qualified and licensed professional when the professional holds themselves out as a New York attorney," he added. "As licensed lawyers, we are officers of the court and duty-bound by ethical obligations that the public expects us to uphold."

AN ATTORNEY RESIGNS

One lawyer apparently felt that his prior work with Bezrukov crossed that duty-bound line. A little over a year ago, an attorney who worked for and represented his companies resigned "after certain business practices" came to light, an affidavit states. He was apparently so concerned and distraught that he even reported himself to the attorney grievance committee.

VENDETTA

The war Corporate Restructure waged on a niche financial industry leaves many questions. For instance, why bother to file lawsuits against funders if the motivation behind the scheme was to simply defraud merchants and take their money? And why this industry?

Perhaps his own frustrations as a previous industry insider were a factor. A source says he started off as a merchant cash advance broker as far back as 2008, where he began with a desire and drive to make big money.

Fast forward a couple years and Bezrukov, who was already using the alias John Butler, was the owner of NY-based broker Fastsource Capital, LLC, court records indicate. A former employer sued him for $500,000 back in 2012 on the basis that he allegedly profited off of stolen trade secrets. Four years later, the case is still ongoing. One of the original accusations his former employer made is that he posed as them and fraudulently entered into a contract with a merchant on their behalf.

Bezrukov filed several counterclaims, alleging among other things, defamation. One of several attorneys that have represented Bezrukov in that action is the same one that resigned and self-reported himself to the grievance committee. They apparently haven't spoken since July 2015, an affidavit says.

Of all Bezrukov's merchant cash advance companies, SBC Telecom Consulting Inc. (which doesn't appear to have had anything to do with telecoms), may have garnered the most publicity. Part of that stems from a judgment he won on default against one of his former employees for violating a non-compete, among other similar claims. The damages sought were so big ($45 million) that it got reported on in a legal blog. "A cash advance company lodged a suit in New York state court on Friday seeking more than $45 million in damages from a former call center manager who allegedly stole clients and proprietary corporate information and steered accounts over to its competitors," *Law360.com* wrote in May 2015.

In July 2014, SBC offered $5,000 to anyone willing identify the person who posted a complaint about them on *Ripoffreport.com*. SBC later sued a former employee they believed was behind the post, seeking $12 million in damages for among other things, libel. In December 2015, the judge ruled in favor of the former employee however, and all the claims were dismissed.

By then, Bezrukov's debt settlement scheme was underway. His victims were not only small business owners, but also lenders and MCA companies he previously competed against. During his reign of terror, he used at least 30 different business names and directed the processing and movement of funds through at least 10 different banks, federal agents allege. He even opened up a P.O. box at the Salamanca Post Office to receive mail for multiple companies including SBC and Corporate Restructure, exhibits show.

MAIL FRAUD AND BANK FRAUD IN WESTERN NEW YORK

The arrest warrant for Bezrukov states, "Since at least December 26, 2015 and continuing through at least October 7, 2016 in the County of Erie, in the Western District of New York, the defendant did knowingly commit Mail Fraud, in violation of Title 18, United States Code, Sections 1341 and 2." He was arrested on October 27th, as were two other individuals connected to the scheme who were charged separately with bank fraud, Mark Farnham of Buffalo and Dustin Walker of Salamanca. Walker was Bezrukov's Chief of Security and Farnham served as his Vice President. Both have been released on bond.

Federal agents say their primary responsibility was to travel throughout the Buffalo metro area opening bank accounts and making deposits and withdrawals in furtherance of the scheme.

Just a week before the arrests were made, another small business owner pinged an expert on *JustAnswer.com*. "I've been contacted by a company called Native Corp Restructure from West Seneca New York with an offer to restructure my 3 merchant loans, reducing debt of $100,000 to $25,000," they wrote. "Sounds too good to be true. What do you think?"

The very same Ely that fielded a similar question the year before, responded and asked for more information.

The merchant said the company was formerly known as Corporate Restructure and that he was communicating with a debt advisor named Chris Riley, another alias of Bezrukov's.

"This is a scam," Ely wrote.

He was right again.

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deBanked first reported on Bezrukov's arrest on November 2nd in a blog post titled, A GIANT BUFFALO 'BILL': Fake Debt Settlement Company Allegedly Defrauded Merchants, Business Lenders and MCA Companies Out of Lots of Cash.

IF TRULY FIXED, MCAS RISK GETTING NIXED

By *SEAN MURRAY*

In October, an unfavorable New York trial court decision involving merchant cash advances and usury sent shockwaves throughout the industry. Among the defects in the agreement was "that the principal sum advanced was absolutely repayable with calculated interest that exceeds the legal rate," the judge opined.

While there were certain circumstances unique to this case (an illegible contract, inconsistent witness testimony, etc.), it should serve as a reminder to every company involved in the purchase of future receivables, that one mistake could send an innocent business agreement into criminally unenforceable territory.

Merchant Cash Advances are not absolutely repayable. And fixed daily payments do not mean fixed terms, nor are the daily payments really even fixed. Proper contracts empower the merchant to receive adjustments based upon their actual ongoing sales activity. Referred to as a "reconciliation" or a "true-up," sales reps should look for it in the merchant agreements and familiarize themselves with the specifics of the clause. If a merchant asks to execute it, the funder has to comply. That means if a merchant's sales drop, the daily delivery of receivables can drop too, a good deal for the merchant, and a feature that consistently makes this product better than a loan.

In this way, ACH deals have always been built upon the same framework as split-processing deals that ebbed and flowed with a merchant's credit card sales activity. There is really nothing fixed about an MCA (be it ACH or split-processing) other than perhaps the dollar value of the purchased receivables.

But knowing that isn't enough, because there are other products out there with daily payments in which the terms really are fixed. OnDeck for example, offers loans, and they do so through a chartered bank, which exempts the loans from state usury laws. That means you need to know how to be able to distinguish a loan contract from a purchase contract and communicate the respective pros and cons to your merchant accordingly.

Even if the contract itself is worded right, if you as the representative characterize it incorrectly, you still risk making the contract unenforceable.

A respect for state laws is important as is the respect for your role in facilitating what can be considered a complex commercial transaction.

Whether your current employer has provided adequate training or not, one way to test your knowledge in this area is to take MCA Basics (www.counselorlibrary.com/public/courses-mca.cfm). This online course instructs users with video tutorials and then assesses their comprehension through multiple quizzes. While it won't teach you how to be a good salesperson, it does sufficiently explain the differences between purchases and loans. Those that pass the quizzes, get a certificate that is valid for at least two years.

The October trial court decision was a reminder, but it should also be a wakeup call. What you say and how you say it not only matters in court, but also through emails, on the phone and over online forums.

The MCA Basics course, the only one of its kind, was created by law firm Hudson Cook, LLP and is co-presented by deBanked. To register go to: http://mcabasics.training

A SNAPSHOT OF MONEY20/20 IN LAS VEGAS

MONEY2020 / LAS VEGAS, NV / OCTOBER, 2016

NOAH BRESLOW, CEO, ONDECK

On an SMB Lending Panel, OnDeck CEO Noah Breslow was referred to as the senior citizen of the industry, a lighthearted joke made to characterize how long he and his company have been leaders in the space. We immediately took the joke one step further in a blog post published on October 25th that referred to Breslow as Grandpa Breslow. Considering he made Crain's 40 Under 40 List just last year at the spry age of 39, he certainly doesn't look like a Grandpa.

At the conference, Breslow spoke briefly about OnDeck's initiative to increase transparency levels with borrowers, clarifying that it's not about encouraging business lending to be regulated like consumer lending. "If we regulate commercial lending more like consumer, ultimately less capital is going to flow, when the goal should be to get more capital to flow," he said

JACK DORSEY, CEO, SQUARE

Replacing banks? That wasn't necessarily the goal. Dorsey said on stage that his company is trying to make financial services more accessible. Speaking almost entirely about the company's payments business rather than its lending business, he expressed dismay over the average time it takes for the industry to process chipped cards. "It's really, really, really slow," he said.

SCOTT SANBORN, CEO, LENDING CLUB

Lending Club announced their foray into the $1 trillion auto refinancing market. "I remain very bullish about the future," Sanborn said. Sounding very much like a banker, he also told the audience that the company thinks about two things, regulation and downturn readiness.

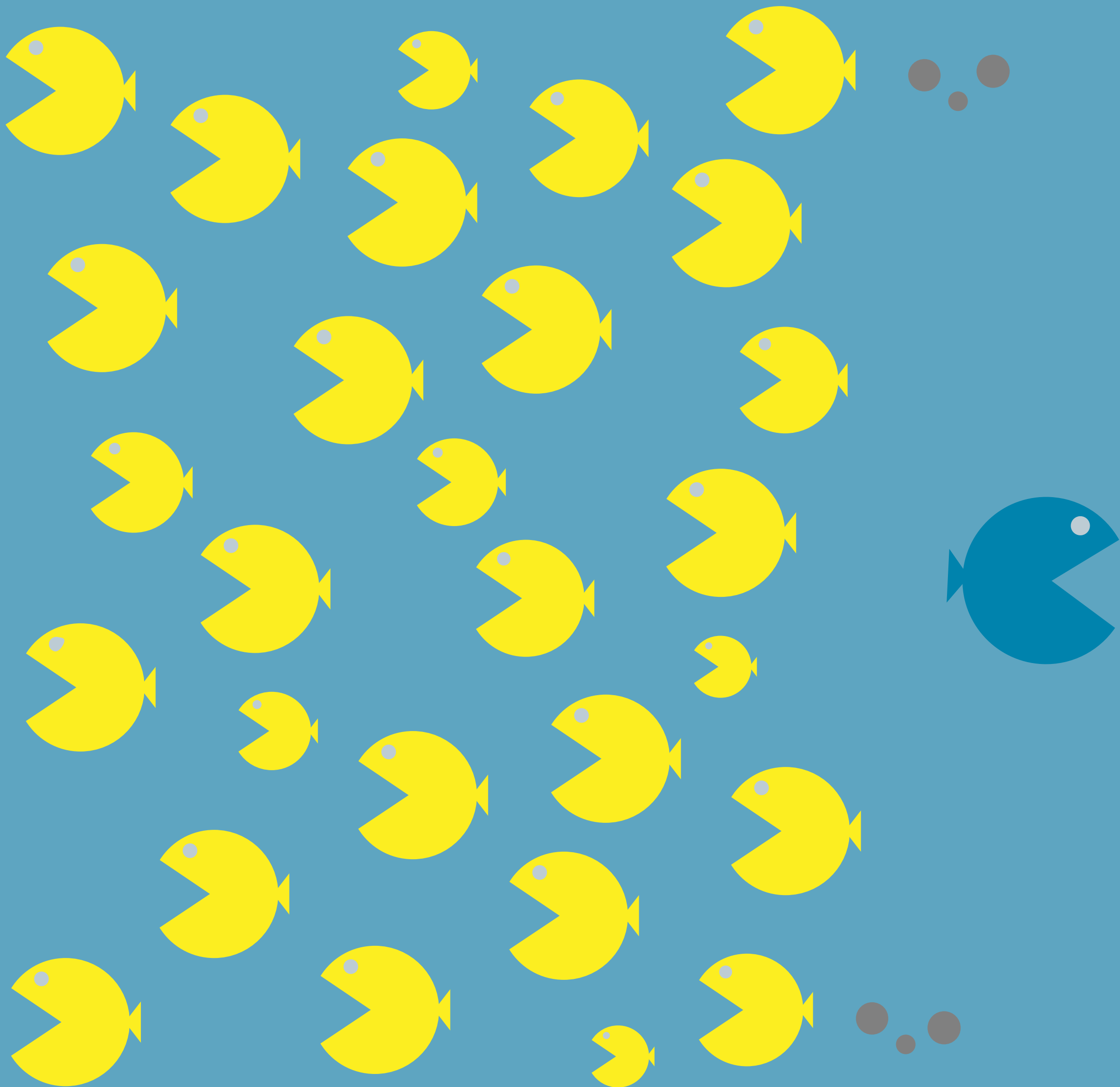
RICHARD CORDRAY, DIRECTOR, CFPB

No reason to be afraid, it's just meat and potatoes. Director Cordray tried to spell out the controversial agency's agenda by saying that it was their prerogative to pursue deceptive practices, where a company promises something and then doesn't deliver it. "Our enforcement actions to date have dealt with meat and potatoes issues," he said, adding that they have tried to do their best to reduce uncertainty through the use of aids like no-action letters. "We can help push [the innovators] in the right direction," he said, but he conceded that the agency can't actually create the products.


Scott Sanborn, CEO, Lending Club


Richard Cordray, Director, CFPB


Jack Dorsey, CEO, Square



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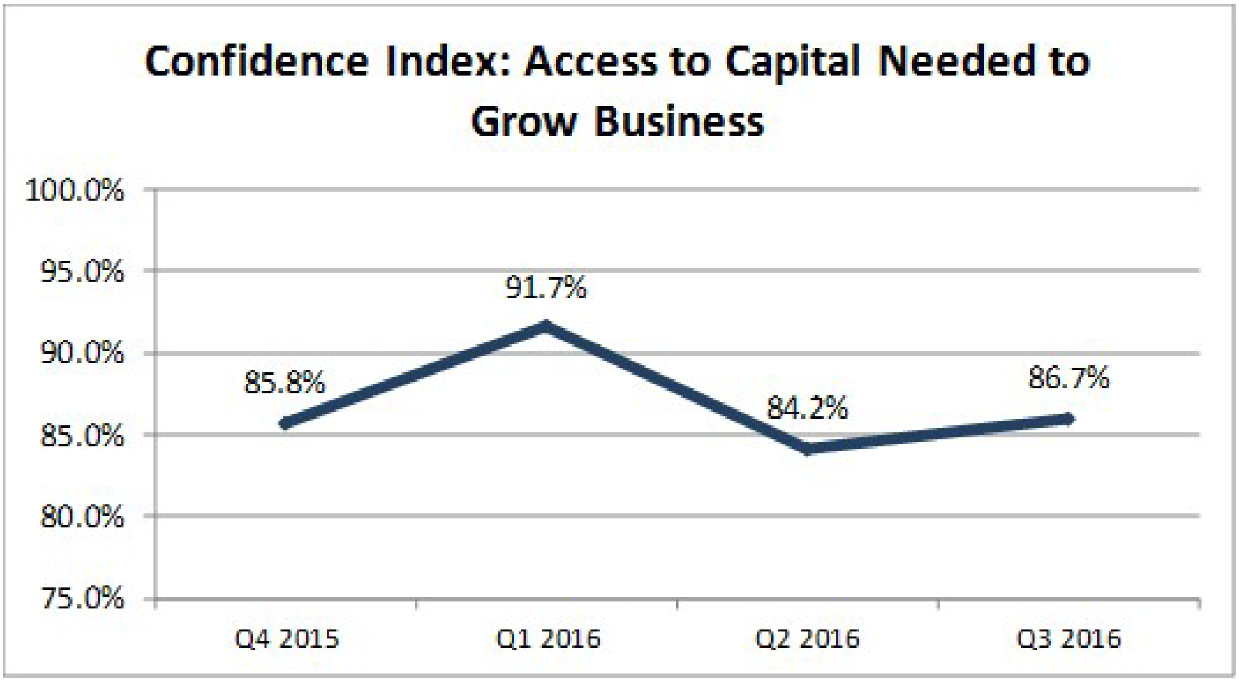
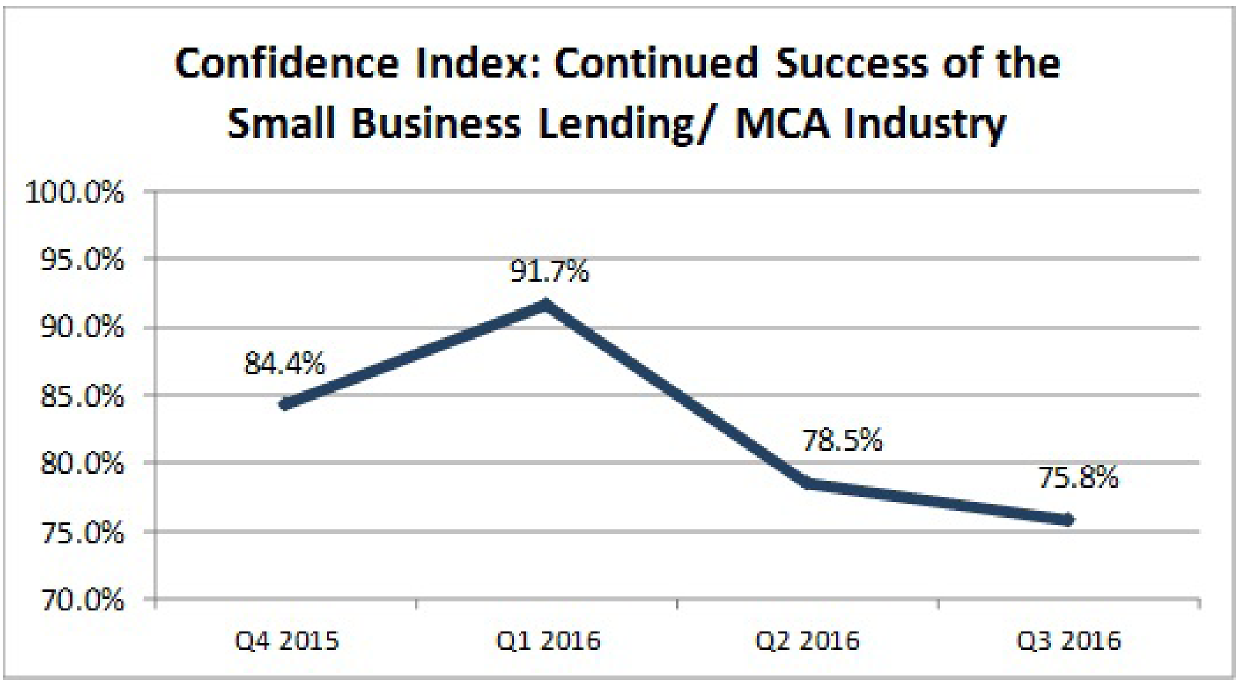
In the most recent survey conducted by Bryant Park Capital and deBanked, CEOs in the small business financing industry scored their confidence in being able to access capital needed to grow their business at 86.7% in Q3 and their confidence in the continued success of the industry at 75.8%





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INDUSTRY *NEWS*

9/27 / Able Lending secured $100 million in debt financing

9/30 / The FTC won a judgment of $1.3 billion against payday loan kingpin Scott Tucker, its largest ever award through litigation

10/11 / The United States Court of Appeals for The District of Columbia ruled the CFPB's organizational structure unconstitutional. To remedy, the agency will either have to convert its one-person directorship to a multi-member commission or the director will have to report to the President of the United States. The CFPB is appealing the decision.

10/13 / Affirm secured $100 million in debt financing

10/14 / CircleBack Lending was reported to have ceased lending operations

Goldman Sachs unveiled its new online consumer lending division, Marcus

10/20 / CommonBond secured a $168 million securitization deal

10/24 / Bizfi announced that John Donovan has joined the company as CEO. Donovan was the COO of Lending Club from 2007 to 2012

10/25 / Expansion Capital Group announced new management team. Vincent Ney, the company's majority shareholder, became the CEO

Lendio raised $20 million through a new equity round led by Comcast Ventures and Stereo Capital

Lending Club announced its foray into the $1 trillion auto refinancing market

11/1 / Cross River Bank raised $28 million in equity led by Boston-based investment firm Battery Ventures, along with Silicon Valley venture capital firms Andreessen Horowitz and Ribbit Capital

Square beat earnings estimates and extended $208 million through 35,000 loans in Q3

11/3 / OnDeck announced earnings, continued use of balance sheet to fund loans and extended $613 million in Q3

Independent Merchant Cash Advance training course goes live, allowing brokers and underwriters to earn a certificate (http://mcabasics.training)

11/7 / Lending Club announced earnings and a deal to sell $1.3 billion worth of loans to a National Bank of Canada subsidiary

11/8 / CFG Merchant Solutions secured a $4 million revolving line of credit

11/9 / Donald Trump becomes the President-Elect

11/11 / Fintech leader Peter Thiel joins the executive committee of Trump's transition team

Kabbage appointed Amala Duggirala as Chief Technology Officer and Rama Rao as Chief Data officer

11/16 / UK-based p2p lender Zopa applied for a banking license

Small business lender DealStruck is reported to have halted new originations.

Former Lending Club CEO revealed to be launching a new rival, Credify

11/17 / LiftForward secured a $100 million credit facility

Prosper filed their Q3 10-Q, revealing that they only originated $311.8 million in loans for the quarter compared to $445 million in Q2

The IRS sent a broad request to Coinbase, the nation's largest bitcoin exchange, as part of a hunt for tax evaders

PeerStreet raised a $15 Million Series A Funding Round Led by Andreessen Horowitz

11/18 / P2Bi raised $7.7 in venture financing

11/29 / CAN Capital announced unexpectedly that 3 executives including their CEO had been placed on leave after determining that some assets were not performing.

THE NACLB CONFERENCE WAS A SUCCESS

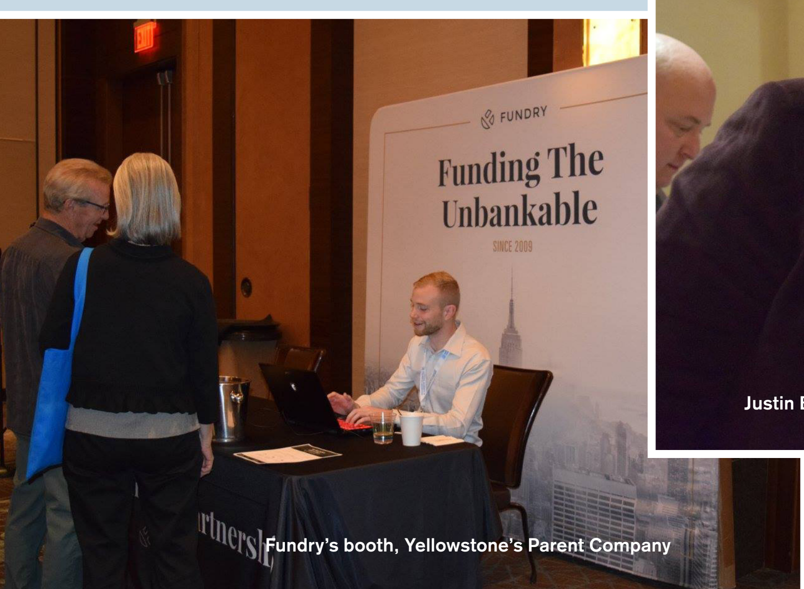
NACLB / LAS VEGAS, NV / OCTOBER, 2016

The National Association of Commercial Loan Brokers Conference at the Red Rock Casino in Las Vegas did not disappoint. Almost 400 commercial loan brokers attended, an unheard of figure compared to other industry conferences that attract mainly just lenders and institutional investors.

The reporter's panel included Sean Murray of deBanked as a spokesperson for the merchant cash advance industry, while Bob Coleman of The Coleman Report and Kit Menkin of Leasing News spoke on behalf of the SBA lending and leasing industries respectively. Moderated by Mike Rozman of Boefly, the discussion at one point veered off into a debate about how merchant cash advances worked. Coleman argued that they were just loans, while Murray worked to clarify for the audience why they weren't.

Ultimately, the conference resulted in an exciting exchange of ideas between industries catering to the same type of clientele, small businesses. deBanked plans to return to it again next year!


Justin Benton of Lenders Marketing and Luis Hernandez of 1st Atlantic Funding



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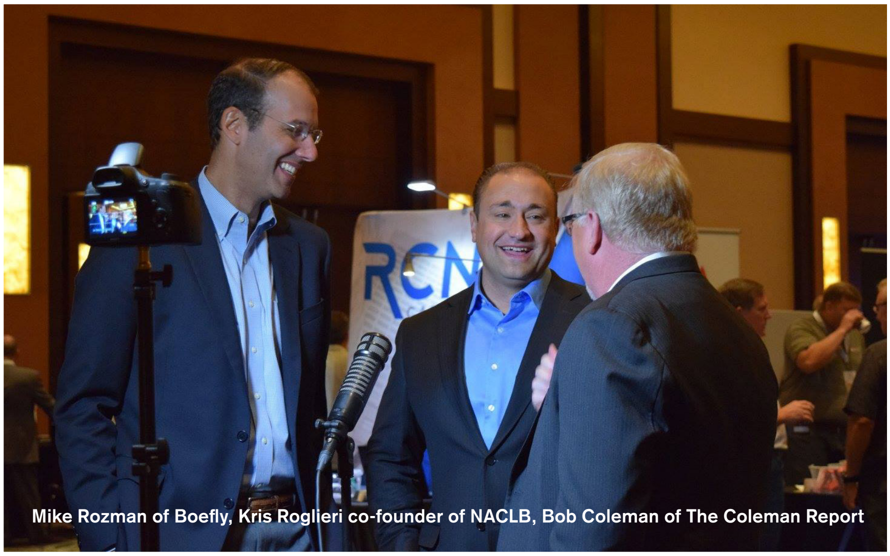
THE NACLB CONFERENCE WAS A SUCCESS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Mike Rozman of Boefly, Bob Coleman of The Coleman Report,Kit Menkin of Leasing News,Sean Murray of deBanked