

**SMILE, DIAL AND TRIAL?  
WHY THE NEXT CALL MIGHT  
BE YOUR WORST NIGHTMARE**

Some Alternative Funders  
See Pot as Next Big  
Market Opportunity

By Cheryl Winokur Munk

Sunshine and Deal Flow:  
Who's Funding  
in Puerto Rico?

By Ed McKinley

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## SMILE, DIAL AND TRIAL? WHY THE NEXT CALL MIGHT BE YOUR WORST NIGHTMARE

By SEAN MURRAY

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# Letter From the Editor



**BY**  
**SEAN MURRAY**

What is marketplace lending? Lately it's been looking more and more like Wall Street and banking. Goldman Sachs is now playing a more prominent role in the space while the Office of the Comptroller of the Currency is considering a limited-charter framework, which would make the non-bank lenders more bank-like. Not to mention that things like securitizations, bond ratings and vintage performance are dominating news headlines. It all sounds very Wall Street indeed.

But while a segment of the industry looks to effectively merge back into the traditional banking system [ I suppose they are becoming "reBanked" ;-) ], there's another segment chugging along just fine without the banks and we write with you in mind.

To that end, we asked, what are the challenges with funding merchants in Puerto Rico? Is it okay to fund marijuana-based businesses in states where it's legal? And what's the latest challenge to affect telemarketing efforts?

Maybe you are surprised to hear that telemarketing even has a place in the world of fintech especially since the media hype over the last few years has imagined an online-only Internet utopia where all lending happens in the cloud. Meanwhile, millions upon millions of dollars of transactions start with a guy or gal and a cold call.

There are rules, of course. You can't just call anybody using whatever means you want and some people on the receiving end of those phone calls know that. Woe betide you who calls the wrong person the wrong way, our research discovered. The TCPA (Telephone Consumer Protection Act) is creating another burdensome layer of cost and some of the tactics being employed to extract penalties warrant close attention. It might not be future regulations that cause problems but existing ones. In this issue, we'll show you why smiling and dialing do not always go hand in hand.

*—Sean Murray*

# SMILE, DIAL AND TRIAL? WHY THE NEXT CALL MIGHT BE YOUR WORST NIGHTMARE

By SEAN MURRAY

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**A**aron Smith sued a merchant cash advance company in the United States District Court of Southern California earlier this year for allegedly making unsolicited calls to his personal cell phone registered on the Do-Not-Call list. His name has been changed for this story because he's a vexatious litigator, even landing on an official list of vexatious litigants by the State of California in the early 2000s thanks to his tendency to file harassing lawsuits. But that's not all, Smith has a criminal history that includes stalking and extortion and he's served time in prison for his role in a multi-million dollar mortgage fraud RICO conspiracy.

These days he's suing small business financing companies for alleged violating phone calls, at least five of which we could identify through San Diego court records just over the last several months. Two of the suits appeared while we were researching this story, which means that there could probably be even more by the time that you are reading this.

Smith presumably runs a business as his website has and still continues to advertise services to consumers. But if you are not an existing customer or have not been referred by an existing customer, his website warns that attempting to contact him by any means is a *violation*. Suffice to say that *deBanked* did not attempt to contact Smith to get his side of the story.

In one complaint, Smith claims that the phone number receiving the unsolicited calls is a "private personal cellular telephone." To his credit, a cursory glance of his business website does not appear to list any phone number for it at all. However, the Internet Archive Wayback Machine which allows users to see archived versions of web pages across time, revealed

that very same phone number being prominently displayed on his business website for several years including up to as recent as September, 2015, after which it was removed. There's reason then to question if Smith might be up to no good.

While the merits of Smith's claims will be up to the courts to decide, his background doesn't inspire confidence. Countless other plaintiffs using the Telephone Consumer Protection Act (TCPA) to file lawsuits have colorful backgrounds in their own right, a lot of which can be found using Google. But a suggestion relayed by some of our readers is that plaintiffs appear to be doing what they do for profit, not because they have been harmed by the calls they allegedly receive. *deBanked* decided to conduct its own independent research on this issue.

## SUING FOR PROFIT?

That's just what the headline of a WDSU TV story alluded to in its coverage in 2004 of a stay-at-home Pennsylvania dad named Stewart Abramson. Titled, *Man Who Turns Table On Telemarketers Turns Profit, Too*, quotes Abramson as saying, "First, I'll write them all and tell them that I'm willing to settle for the minimum statutory damages per call, which is \$500, but if they don't want to settle, then I'll file a civil complaint."

In a case he won against a debt consolidation firm for calling him with a prerecorded message, Abramson reportedly said, "It would have made sense for them to pay the minimum damages due me, but they wanted to put up a fight. I don't mind. I'll take more money."

Abramson continued to say at the time that he felt empowered by Congress to stop this illegal activity and that he was just doing his part and making a little money for doing so.

More than a decade later, Abramson's name is still showing up as a plaintiff in TCPA cases, including in at least one complaint discovered by *deBanked* against a small business financing company.

According to court records, the defendant contended that Abramson was "in the business of suing entities for violations of the TCPA," an accusation the judge ruled irrelevant to the particular matter at hand.

Michael Goodman, a partner in the Washington DC office of law firm Hudson Cook, who was not asked about this case specifically, said in an emailed

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interview that generally accusing someone of being a serial plaintiff might not really help.

“Accusing a plaintiff of being a serial or professional TCPA plaintiff is unlikely to affect the outcome much, if at all,” Goodman said. “While there are outliers, the general rule is that the court will assess the merits of each case individually and will not ‘punish’ a plaintiff for being a serial or professional TCPA plaintiff.”

An email address for Abramson could not be located and given the special circumstances of his history, we did not attempt to call him.

If ever there was a TCPA celebrity however, it'd be Diana Mey, a self-described stay-at-home mom who started wrangling with telemarketers in 1998 after what her website described as “a series of intrusive telemarketing calls by a Sears affiliate pitching vinyl siding.”

She's an important figure in TCPA history, not just because she's been awarded millions through her lawsuits but also because she helped draft the FTC's rules. Reports show her participating in FTC-hosted telemarketing forums in 2000 and 2002 and her name even appears in the footnotes of the FTC's Telemarketing Sales Rule entered into the Federal Register in 2003. And so we followed Mey's story online, noting that she has actually become famous for her pursuits, even appearing in a TV segment for ABC News in 2012. Her website at [www.dianamey.com](http://www.dianamey.com) teaches others how they too can pursue monetary damages from telemarketers that engage in illegal practices.

“The first step is to write a formal ‘demand’ letter to the president of the company, stating that the letter is a formal claim for money [...] for violations of the Telephone Consumer Protection Act of 1991,” her website advises.

It was quite a surprise then to discover that this Diana Mey was the same Diana Mey captioned as a plaintiff in a current case against a small business financing company. Almost two decades after her first experience, she is still filing lawsuits for alleged telemarketing violations.

Mey declined to respond to our questions even though they were not about that case, citing

pending litigation.

“I'm a mom and I'm a housewife, and I'm an accidental activist,” Mey said in that 2012 ABC News interview. Others have referred to her as a “private attorneys general,” defined as someone who brings a lawsuit considered to be in the public interest.

That same title has been attributed to one Robert Braver who is the man behind [www.do-not-call.com](http://www.do-not-call.com) which launched in 1998 as “a consumer's resource for stopping unsolicited telemarketing calls.” His comments appear in FCC records and he was also featured in a Dateline NBC special in 2002 about a new telemarketing scheme that was alarming consumers. Suffice to say Braver has been a consumer proponent in this area of the law for a long time, a role that has not come without risks.

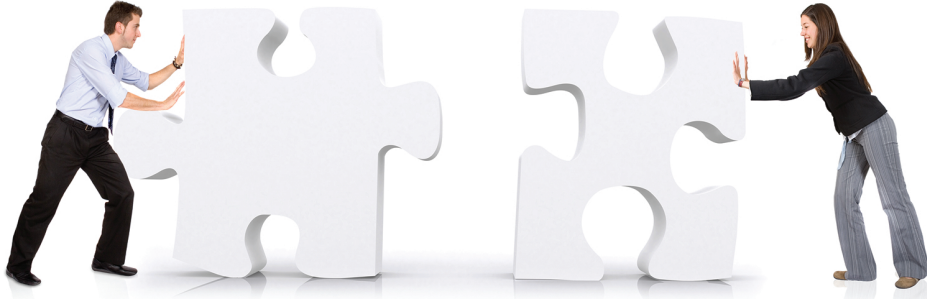


***IT'S KIND OF HARD TO CONVINC  
A FEDERAL JUDGE THAT YOU ARE  
A VICTIM WHEN YOU ARE TRYING  
TO FIND A PUBLISHER FOR A BOOK  
CALLED CREDIT TERRORIST.***

According to Braver, the attorney for one telemarketer he sued, arranged to have his (then) elementary school age kids stalked and photographed, a terrifying ordeal that was only made worse after the attorney allegedly sent him a fax bragging about it. But he has continued on, noting that while he has gotten much fewer junk faxes, telemarketing calls have gotten more out of hand over time, to the point where they're disruptive to everyday life.

“My wife is a middle school teacher,” Braver said. “She doesn't work in the summer and gets home before I do when she is teaching. She typically leaves her phone in her purse in a spot in the kitchen and hangs out in in the den or back patio. It's gotten so bad at times that when I need to call her, she doesn't get up and run to look at her phone when it rings, and I have ignored unknown calls on my cell and let





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them go to voicemail, only to find out later that they were legit calls.”

And sometimes it’s a total mystery how they even get added to a list. “We have two teenage boys still at home, and they have cell phones too. Somehow my youngest son’s cell number got on a marketing list for student loan debt relief, and was getting 10-15 calls a day for a while,” Braver explained.

Contrast that with a story that appeared in the Dallas Observer in 2010 about one Craig Cunningham, another celebrity-like TCPA figure who still has active cases pending, public records reveal.

for profit.

On May 25, 2014, a participant using the pseudonym codename47 published a thread titled, *TCPA enforcement for fun and for profit up to 3k per call* on fatwallet.com, the exact kind of salacious headline that defendant companies have probably imagined in their worst nightmares. Codename47 has a big fan base it seems, with one user even suggesting to him that he should create and sell a “sue telemarketers” package so that people could do what he does for side income.

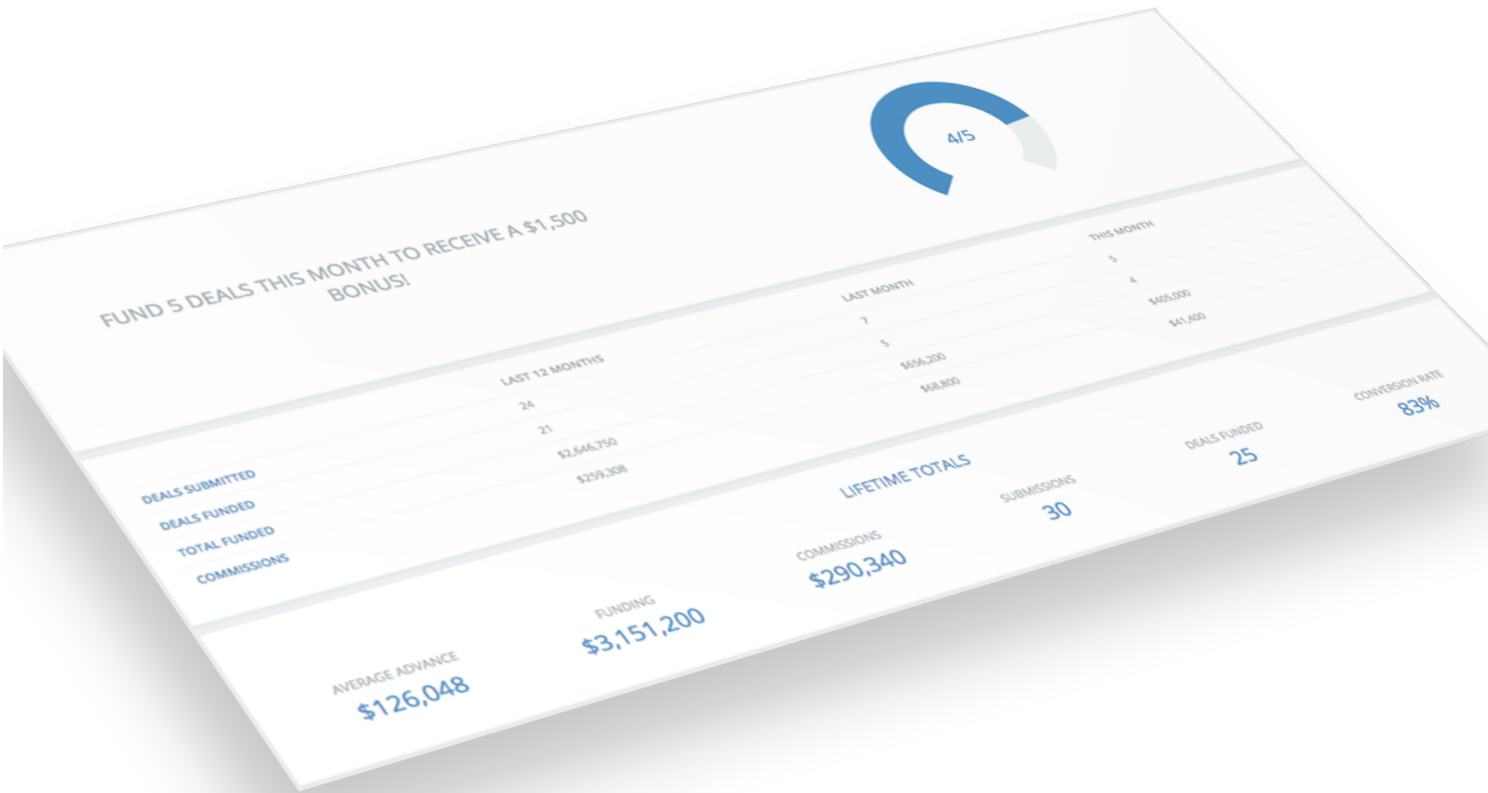
Codename47 is Craig Cunningham, who we



According to the story, Cunningham stays at home on a “dumpy couch” to wait for a particular type of phone call, “one from a representative of a debt collection agency or a credit card company, whom he’ll try to ensnare like a Venus fly trap,” the Observer reported. Cunningham is said to have learned his trade from online message boards, where we decided to look next to see if there was anyone out there indeed talking about TCPA lawsuits

reached out to with some questions through the fatwallet forum. He declined to answer them, citing pending litigation and the fact that he no longer does interviews.

One user on fatwallet in 2010 said of Cunningham, “It’s kind of hard to convince a Federal judge that you are a victim when you are trying to find a publisher for a book called CREDIT TERRORIST.”



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## WAIT, WHAT?

It now being six years later, no such book can be found in Amazon or through Google. A link to where purported information on it once was leads to a page not found error. The Archive Wayback Machine however, produces an interesting find.

*Tales Of A Debt Collection Terrorist: How I Beat the Credit Industry At Its Own Game and Made Big Money From the Beat Down* is the title of a proposed book in 2010 by Craig Cunningham and Brian O’Connell. O’Connell is a writer/content producer for TheStreet.com and a well-known and widely published author. He tells *deBanked* that he wished he had written it with Cunningham but that they didn’t move forward with it.

But the proposal remains, including the description of Cunningham as being a highly sought after expert in the field of debt collection “revenge” industry.

Outside of fatwallet, the only other real mention of the proposed book could be found on a website called debtorboards.com. Lenders might find the website horrifying considering the forum’s tagline is “Sue Your Creditor and Win.” With more than 20,000 members and nearly 300,000 posts, the forum has an entire section dedicated to TCPA. Legal strategy is a dominant topic and it’s abundantly obvious that people are working together to stop companies from calling them.

Sadly, it’s not all innocent consumers out there. For example, the TCPA has invited abuse to the point where at least one person admitted to buying cell phones to maximize the chances of getting illegal calls so that they could sue. That’s what serial plaintiff Melody Stoops said in a June 2016 deposition as part of her case against Wells Fargo in the Western District of Pennsylvania.

- Q. Why do you have so many cell phone numbers?
- A. I have a business suing offenders of the TCPA business — or laws.
- Q. And when you say business, what do you mean by business?
- A. It’s my business. It’s what I do.
- Q. So you’re specifically buying these cell phones in order to manufacture a TCPA? In order to bring a TCPA lawsuit?
- A. Yeah.

Purchasing at least 35 phones, she even went so far as to register them with out-of-state area codes in places she thought were more economically depressed and therefore more likely to get violating calls. Stoops sent out so many pre-litigation demand letters and filed so many lawsuits that she could not be certain how many she sent out or how many suits she was in, according her to deposition.

Apparently Stoops found the line of legal perversion and crossed it. On June 24, 2016, the judge ruled in favor of Wells Fargo because she wasn’t injured by the calls she received, nor were the injuries she claimed within the “zone of interests” the law was meant to protect. “It is unfathomable that Congress considered a consumer who files TCPA actions as a business when it enacted the TCPA,” he wrote.

## A TURNING POINT?

Hudson Cook law partner Michael Goodman said, “the impact of *Stoops v. Wells Fargo* is still to be determined, but I would say that it is significantly fact specific and therefore unlikely to result in large-scale changes in TCPA private actions. Stoops put a lot of effort into becoming a magnet for calls that could violate the TCPA. In many TCPA cases, consumers do not need to try that hard to receive a call that could prompt a TCPA suit.”

Stoops was pursuing calls while most of the advice and discussion uncovered online is about what to do if you get a call, not about how to create the calls in the first place. Even debtorboards, for example, is a registered non-profit, keeping consistent with its image as a consumer empowerment tool.

If the tide is turning though, it’s not in a direction favorable to telemarketers. Goodman said that “in July 2015, the FCC announced a new interpretation of the TCPA’s ‘autodialer’ standard that significantly expanded the definition and introduced a lot of unnecessary uncertainty as to what is and is not a regulated autodialer. That interpretation is currently being challenged in court. There’s a bit of a trend among courts requiring plaintiffs in autodialer cases to do more than simply allege that they were called with an autodialer. These courts, possibly in an effort to frustrate TCPA autodialer cases, are requiring plaintiffs to include circumstantial evidence of dialer use in their complaints: dead air, hang-up calls,

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generic messages, and so on. But the TCPA's penalty structure still encourages suits that should not be brought."

FCC Commissioner Ajit Pai, who was appointed by President Obama, voiced dissent to this new interpretation, echoing Goodman's comments that it encourages frivolous suits.

An excerpt of Pai's official dissent is below:

*"Some lawyers go to ridiculous lengths to generate new TCPA business. They have asked family members, friends, and significant others to download calling, voicemail, and texting apps in order to sue the companies behind each app. Others have bought cheap, prepaid wireless phones so they can sue any business that calls them by accident. One man in California even hired staff to log every wrong-number call he received, issue demand letters to purported violators, and negotiate settlements. Only after he was the lead plaintiff in over 600 lawsuits did the courts finally agree that he was a "vexatious litigant."*

*The common thread here is that in practice the TCPA has strayed far from its original purpose. And the FCC has the power to fix that. We could be taking aggressive enforcement action against those who violate the federal Do-Not-Call rules. We could be establishing a safe harbor so that carriers could block spoofed calls from overseas without fear of liability. And we could be shutting down the abusive lawsuits by closing the legal loopholes that trial lawyers have exploited to target legitimate communications between businesses and consumers.*

*Instead, the Order takes the opposite tack. Rather than focus on the illegal telemarketing calls that consumers really care about, the Order twists the law's words even further to target useful communications between legitimate businesses and their customers. This Order will make abuse of the TCPA much, much easier. And the primary beneficiaries will be trial lawyers, not the American public."*

The FCC reviewed 19 individual petitions on the matter, some of which included relatively recent comments from the individuals we've mentioned so far. The appearance is that the FCC has collaborated with some individuals continuously over time or that individuals have collaborated continuously with the FCC. It might not matter though. Michael Goodman

says that "the TCPA gives distinct enforcement rights to the FCC as well as persons who receive a call that violates the statute."

"It isn't really a matter of whether a particular violation should be handled by the FCC or privately," Goodman adds. "Private plaintiffs have independent incentive to sue thanks to the TCPA's penalty structure, and, compared to the FCC, private plaintiffs do not have to be as choosy in picking targets for actions."



And what are the violations and penalties exactly? Goodman explained as follows:

*Depending on the specific TCPA provision at issue, private actions may be brought by individual consumers as well as businesses. The autodialer and prerecorded message provisions can be enforced by individuals and consumers, and they can sue based on a single improper call. For these provisions, the TCPA directs courts to award \$500 per violation; courts do not have discretion to award a lesser figure. Courts do have discretion to award up to three times that amount (i.e., up to \$1,500) per violation for willful or knowing violations. The TCPA's do-not-call provisions are enforced by individual consumers, and this type of action requires more than one unlawful call in a 12-month period. For the do-not-call provisions,*

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*courts do have discretion to award less than \$500 per violation (and can triple the penalty for willful or knowing violations).*

*The FCC has authority to obtain penalties of up to \$16,000 per day of a continuing violation or per violation. FCC rules establish factors for the FCC to consider in calculating a proper penalty figure, including the nature of the violation, history of prior offenses, and ability to pay.*

“The base \$500 per violation in statutory damages that consumers are entitled to hasn’t increased since the TCPA went into effect in 1992,” said activist Robert Braver. “This should be increased, especially since the TCPA does not allow for the recovery of attorney’s fees.”

Goodman said that private actions are much more common than FCC enforcement actions. That much is obvious. Private actions are becoming all too common in the small business financing industry

where so many cases were uncovered through public records that we lacked the resources to follow them all.

More lawsuits might not be the cure though, according to Braver. He said that “more egregious telemarketing (massive robocall campaigns) should be criminalized on the federal level,” adding that “it’s one thing for an unscrupulous telemarketer to allow their shell corporation to have an uncollectible money judgment, but it’s another thing when individuals can wind up with a felony conviction on their records, and possible jail time.”

While that suggestion might antagonize telemarketers, Braver said that his cell phone, which is listed on the Do-Not-Call-Registry, can receive as many as 4-5 telemarketing calls per day, generally robocalls.

Whether plaintiff allegations from cases in this industry are true or not, legal fees over TCPA cases have continued to be an expense that many small business financing companies are contending with. Those costs have a way of being tacked on to the price of financing for small businesses that need capital, making it a lose-lose situation.

One marketing company in the industry who had to remain anonymous because settlement negotiations at the time were likely to include a non-disclosure clause, posed the question, “how are you supposed to help small businesses if you can’t actually call small businesses?”

“More and more merchants are using their cell phone as their business phone,” he argued. “The TCPA regulations need to be changed so that a merchant can’t claim his cell phone is his business phone one minute and his personal phone the next.”

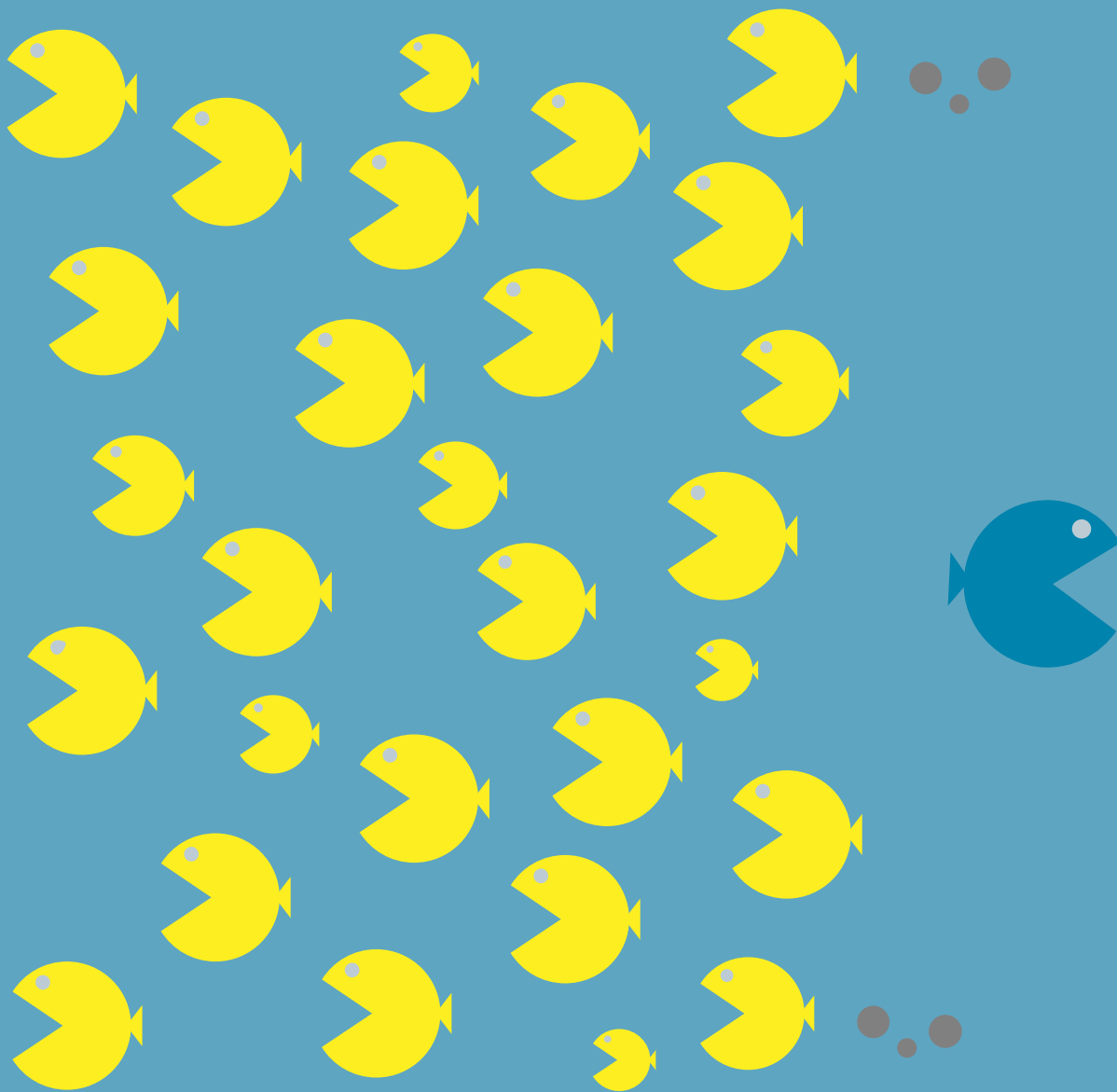
Indeed, the motivations, facts and alleged damages in TCPA complaints are not always clear. And even though the plaintiffs don’t always win, the laws as they are, can make telemarketing difficult no matter how careful one is.

Still dialing for dollars these days? Just know that some folks may be just a little too happy that you called them. And for all the wrong reasons.

Good luck out there.







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# SOME ALTERNATIVE FUNDERS SEE POT AS NEXT BIG MARKET OPPORTUNITY

BY CHERYL WINOKUR MUNK



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# SOME ALTERNATIVE FUNDERS SEE POT AS NEXT BIG MARKET OPPORTUNITY

By *CHERYL WINOKUR MUNK*

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**F**or some funders, marijuana is not just about sewing their wild oats. Rather, they see the business potential of being early to what's expected to be a highly profitable and long-lasting party.

Indeed, for the right type of funder, doling out money to marijuana-related businesses is a promising market—certainly in the short term because these companies are so capital-starved. Because marijuana is still classified by the feds as an illegal drug, many related businesses can't even get a bank account much less access to bank loans or more traditional funding. Many alternative funders are also unwilling to lend to marijuana-related businesses, which has

left a significant void that's beginning to be filled by opportunistic private equity investors, venture capitalists and others.

Meanwhile, rapidly shifting public opinion and state-centered initiatives bode well for what many estimate is a multi-billion dollar market. Indeed, industry watchers say marijuana funding will eventually be an even stronger niche than lending to alcohol producers, tobacco companies or pharmaceuticals because of all the ancillary business opportunities related to medical marijuana use.

"I think it's probably the biggest opportunity we've seen since the Internet," says Steve Gormley, managing partner and chief executive at Seventh Point LLC, a Norwalk, Connecticut-based private equity firm that invests in the cannabis industry. "Consumption continues to grow and demand is there," he notes.

Despite shifting public opinion, legalized marijuana use is still quite controversial. So, all things considered, it takes a particularly thick-skinned funding company—one that has no moral objectives to marijuana and is also willing to accept a significant amount of legal, business and reputational risk—to throw its hat in the ring.

One of the biggest challenges keeping banks and many mainstream funders at bay is that cannabis remains illegal under law. Despite numerous attempts



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9 month term



by proponents to scrap marijuana's outlaw status, the DEA recently dealt out a significant blow by opting to maintain the status quo. This means that for the foreseeable future marijuana remains a Schedule I drug, on par with LSD and heroin, and as a result many lenders will choose to remain on the sidelines for now.

It remains promising, however, that over the past several years, the federal government has taken a more laissez-faire approach, giving individual states the authority to decide how they will deal with legalizing marijuana use. Forty-two states, the District of Columbia, and the U.S. territories of Puerto Rico and Guam have adopted laws recognizing marijuana's medical value, according to the Marijuana Policy Project, an advocacy group. Four states—Alaska, Washington, Oregon, and Colorado—as well as the District of Columbia have gone even further. They allow the recreational use of marijuana for adults, with certain restrictions. Meanwhile, marijuana initiatives are on the November ballot in numerous states.

As these changes have percolated, forward-thinking alternative funders have been dipping their toes in the market—getting an early start on a market that's hungrily looking for growth capital. "The last couple years there have been fewer investors than capital needed, but we believe that tide is changing," says Morgan Paxhia, managing director and chief investor of Poseidon Asset Management LLC in San Francisco, an investment management company founded in 2013 to invest exclusively in the cannabis industry.

Paxhia says he's starting to see more venture capitalists, lease-finance companies and private equity investors willing to provide liquidity to marijuana-based companies that are seeking to grow.

The short-term cash advance marketplace, however, is not there yet. The challenge is finding funders willing to do the business with them.

"The people that are building these businesses have to always be worried about their cash. It's not a given that they'll get new additional investment," Paxhia says. "Most people are quick to brush it aside. They won't give it a minute to take a serious look at it and understand that it is already a multi-billion dollar market growing at 30 percent annualized for the next several years,"

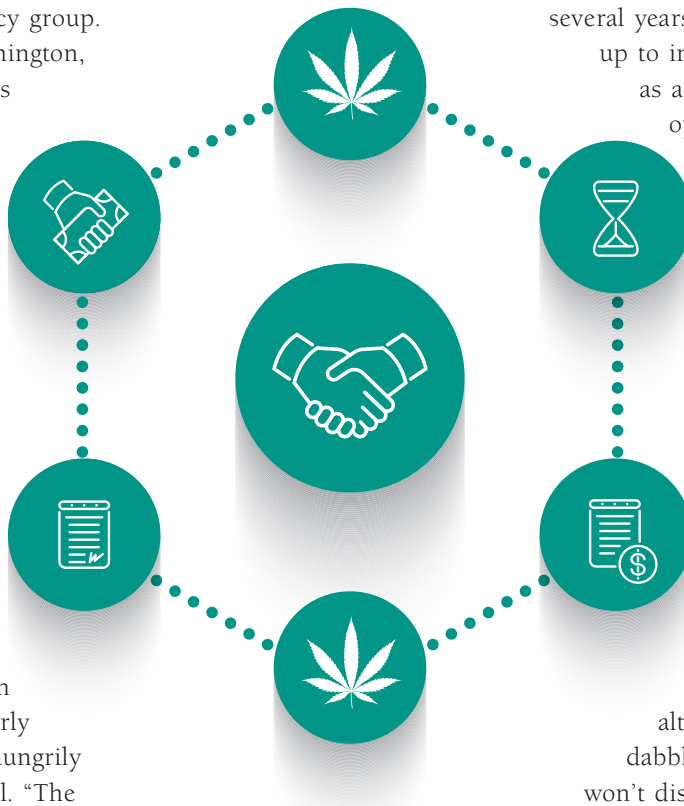
### A QUIETLY GROWING INDUSTRY

There are a number of private investors and venture capitalists who have spent the last several years researching and ramping up to invest in what they see as a goldmine of business opportunities. Many of these companies aren't shy about publicly expressing their support for change.

"We see this as an opportunity of a lifetime to witness a societal change and we want to be a part of it," says Paxhia who together with his sister runs a \$10 million investment fund.

At the same time, there are also some alternative funders who dabble in this space and won't discuss it publicly—partly because of the perceived stigma and partly out of concern that their financial backers won't approve. To cover themselves, some are only willing to deal with companies that have hard assets. Often times the rates they offer are much higher than businesses in other industries with comparable financials would pay.

Andrew Vanam, founder of Rx Capital Funding LLC, an ISO in Norwalk, Connecticut, who focuses on the healthcare and medical industry, has helped a handful of few marijuana-related businesses





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get funding in the past few years and would love to help facilitate more deals. But he says it's extremely difficult to find lenders that are willing to fund cannabis-related businesses as well as offer reasonable rates. Many of the files he generates in the cannabis space have incredible financials, positive cash flow, and month-on-month growth. However, lenders still treat these businesses as high-risk and offer rates so high it's not even worth bringing back to a client. Instead, "they are taking hard money loans from private investors that put these cash advance offers to shame," he says.

### ASSESSING THE RISKS

Certainly there are risks to funding marijuana businesses. In Colorado—one of the first states to legalize the recreational use of marijuana—values are getting lofty, and people are overpaying for properties that house marijuana-related businesses, notes Glen Weinberg, a partner in Fairview Commercial Lending, a hard-money lender with offices in Atlanta and Evergreen, Colorado.

Weinberg has financed between 75 and 100 commercial real estate loans where marijuana businesses were involved, but says recently he's shied away. "I'm not comfortable with the valuations at a lot of these marijuana properties," he says.

Even investors who are bullish on the space urge caution. "If you're in a [nationwide] market that is growing at about 64 percent per year, that rising tide floats all boats, but there's a lot of risk, so you have to be careful," says Chet Billingsley, chief executive of Mentor Capital Inc., a public operating company in Ramona, California, which acquires and provides liquidity for medical and social use cannabis companies.

Billingsley says he has learned some hard lessons through his dealings with about nine marijuana-related companies. For example, he recently won a court judgment against a company that Mentor had supplied with millions of dollars in cash and stock. The company later balked at the terms of the deal and tried to renege, but Mentor ultimately prevailed in court. Still, Billingsley says Mentor went through many unnecessary hassles and racked up \$300k in legal costs over the course of its two-and-a-half-year legal battle.

Many business owners in the marijuana space started out during a period when it was completely

illegal. Often these companies march to the beat of their own drum; to protect themselves, lenders need to do more than offer a standard funding contract and hope for the best, Billingsley says.

"The contract has to be solid and it has to be explained in detail to the marijuana operator who is often not sophisticated with regard to contracts." If you leave things open to interpretation, you're likely to end up in court, where anything can happen, he cautions.



Companies that fund cannabis businesses say they have very extensive vetting processes—so much so that they turn away a good portion of requests. Jeffrey Howard, managing partner of Salveo Capital in Chicago, says about two-thirds of the companies that come across his desk don't make it past the company's initial criteria. "We see a ton of companies and business plans from companies seeking capital to raise money," he says. "We are going to be very selective about who we invest in and how much."

Gormley, of Seventh Point, leverages all the same resources he would if he were buying any retail or production manufacturing outfit. He does extremely invasive vetting of the individuals involved and uses private detectives to help.

It many cases it comes down to the business's



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management team, according to Paxhia of Poseidon Asset Management. “All the businesses are very early-stage and most companies have a very short track record, so you have to place a greater emphasis on the people,” he says.

### OPPORTUNITIES AROUND

Despite the risks, funders that work in the marijuana space say they are filling an important need by providing capital to marijuana-related businesses. For Gormley of Seventh Point, it’s a calculated risk in an area he’s been following for quite some time. “How often do you get to be part of

gearing up to provide private equity and venture capital to several marijuana-related businesses through its Salveo Fund I and will only make select investments into companies that “touch the plant.” The goal is to eventually have \$25 million of committed capital to invest in multiple early-stage companies that offer ancillary products and services to the marijuana industry. “We think there’s more exciting opportunities than ‘touch the plant’ investments,” he says.

Crowdfunding platforms are another avenue for companies in the marijuana space. This type of funding hasn’t yet been utilized to its full potential, industry watchers say.

Eaze Solutions, a San Francisco-based provider of technology that optimizes medical marijuana delivery, is one example of a company that turned to crowdfunding. It raised part of a \$1.5 million infusion to fund its expansion via the crowdfunding site AngelList in 2014. Loto Labs, in Redwood City, California, is another example. It raised more than \$220k via Indiegogo to fund production of its Evoke vaporizer. There’s also CannaFundr, an online investment marketplace for companies in the cannabis industry to gain access to capital.

Seth Yakatan, co-founder of Katan Associates in Hermosa Beach, California, suggests that crowdfunding will become more of an option for certain types of cannabis based companies, specifically those that aren’t as closely tied to the actual production of the plant. “Until federal

regulations change, it’s going to be hard to raise money for an entity where you are actively engaged in the cultivation, distribution or sales of a product that’s federally illegal,” says Yakatan, whose company invests in and advises cannabis-related companies that have a biotech or pharmaceutical orientation.

Because laws on legalized marijuana are still in limbo, industry watchers say the market is still many years away from being mainstream. “Public



history, and how often do you get to participate in a burgeoning market?” he says.

Industry participants stress the many funding opportunities aside from companies that cultivate and distribute the plant. Indeed, there are many ancillary businesses that provide products and services geared towards patients and cannabis users without having anything to do with the actual plant.

Howard of Salveo Capital, says his company is

perception will be similar to alcohol in 10 years from now,” predicts Weinberg of Fairview Commercial Lending, adding that he expects banks to enter the funding arena in five to 10 years.

In the meantime, alternative funders who can stomach risk continue to pave the path for others. Howard of Salveo Capital expects private equity investors, venture capitalists and other alternative players to continue playing a big role in getting the nascent industry off the ground.

“I strongly believe that in the interim there’s a significant advantage for players like us to be funding and to be in on the ground floor of this industry before it changes,” Howard says.

Indeed, many alternative funders believe the potential upside significantly outweighs possible negative consequences. “The perceived risk at this point is far greater than the actual risk,” says Paxhia of Poseidon Asset Management.




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# SUNSHINE AND DEAL FLOW: WHO'S FUNDING IN PUERTO RICO?

By ED MCKINLEY

Lots of small businesses need capital in Puerto Rico and not many companies are trying to provide it. Combine that with the island's tax incentives, tourist attractions and gaggle of ambitious entrepreneurs, and America's largest unincorporated territory can seem like an archipelago of opportunity for the alternative small-business finance community – a virtual paradise.

But for alt funders, the sunshine, sandy beaches, swaying palms, picturesque rocky outcroppings, rich history and renowned cuisine can't change two nagging facts about this tropical commonwealth that 3.4 million people call home. Alternative finance remains largely unknown on the island, and it's difficult if not impossible to split credit card receipts there.

Let's start with the good part. "If you call a restaurant in Los Angeles at 2 o'clock in the afternoon, you're the 15th person to call them that day, but if you're calling a business in Puerto Rico, you might be the only one," says Andrew Roberts, director of partnership development for Merchant Cash Group, which funds some deals on the island. "So it's not the same cutthroat competitiveness that we have here."

But consumers in Puerto Rico's tourist areas rely on PIN debit cards, which don't qualify for split funding between merchants and finance providers because the cards don't have Visa or MasterCard logos and thus merchants can't run them as credit transactions, Roberts says. Besides, processors on the island don't want to split the revenue from credit card transactions between funders and merchants, either, Roberts notes. "If there's a processor in Puerto Rico that will split fund, I haven't been unable to find them," he says. "Believe me, I have looked."

The two main processing platforms on the island, Global and First Data, require ISOs to carry 100 percent of the risk on a split, according to Elevate Funding CEO Heather Francis, who was involved in the island market at another company before taking her current job. That's why split remittance "remains almost nil" in Puerto Rico, she says.





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Splitting funds by using a “lockbox” – which works like an escrow account and distributes a certain percentage of receipts to the merchant and the rest to the funder – doesn’t provide a solution because banks in Puerto Rico decline to use the option, Roberts maintains. That’s why he advises that it’s easier to offer ACH-based products on the island.

Merchants on the island have to meet the same requirements for ACH that apply on the mainland, Roberts notes. That includes a reasonable number of checks returned for non-sufficient funds and a reasonable number of negative days. “The underwriting procedure on the island is pretty much the same as it is here,” he says.

Perhaps the difficulties of setting up the split in Puerto Rico shouldn’t cause any uneasiness about entering the market because the bulk of alternative funding on the island relies on daily debits—just as it does on the mainland, Roberts says. Still, he notes that some merchants in both places may qualify for split funding but fail to measure up for daily debit.

Though merchants and funders have those commonalities, the banking systems differ on the mainland and on the island. Banco Popular, which has held sway in Puerto Rico for nearly 120 years, controls much of the island’s banking and inhibits the growth of alternative funding for small businesses there, Francis says. Still, Puerto Rican merchants should have some familiarity with alternative finance or high-fee products because of the island’s high concentration of title loan companies, she notes.

Similarities and differences aside, the Puerto Rican market provides a little business to some mainland alternative finance companies. United Capital Source LLC, for example, has completed five deals for small-businesses on the island, says CEO Jared Weitz. Companies can provide accounts receivable factoring there, he says.

Alternative funding has yet to post runaway growth in Puerto Rico, Weitz says, because it’s not marketed strongly there, only a few mainland funders are willing to do business in Puerto Rico, the range of products offered there is limited, and small business remains less prevalent there than on the mainland.

But a handful of mainland-based companies have been willing to take on the uncertainties of the Puerto Rican market, and Connecticut-based Latin Financial LLC serves as an example of an ISO that has enthusiastically embraced the challenge. The company got its start in 2013 by offering funding to Hispanic businesspeople on the mainland and began concentrating on Puerto Rico early in 2015, says Sonia Alvelo, company president.

Alvelo built a strong enough portfolio of business on the mainland that funders were willing to take a chance on her and her customers in Puerto Rico. Latin Financial now maintains a satellite office on the island, and the company generates 90 percent of its business there and 10 percent on the mainland.

Latin Financial has a sister company called Sharpe Capital LLC that operates on the mainland, says Brendan P. Lynch, Sharpe’s president. Alvelo describes Lynch as her business partner, and he says he’s started several successful ISOs. He credits her with helping Puerto Rican customers learn to qualify for credit by keeping daily balances high and avoiding negative days.

“It’s a small company with a big heart,” Alvelo says of Latin Financial. She was born in Puerto Rico and came to Connecticut at the age of 17. “For me it’s home,” she says of the island. She’s realizing a dream of bringing financial opportunity to business owners there.

To accomplish that goal, Alvelo spends much of her time teaching the details of alternative finance to Puerto Rico’s small-business owners, their families, their accountants and their attorneys. “You want to



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make sure they understand,” she says, adding that the hard work pays off. “My clientele is fantastic,” she says. “I get a lot of referrals.”

Latin Financial started small in Puerto Rico when a pharmacy there contacted them to seek financing, Alvelo says. It wasn't easy to get underway, she recalls, noting that it required a lot of phone calls to find funding. Soon, however, one pharmacy became

maintains that it's perfectly acceptable to conduct business in English on the island because both languages are officially recognized.

People in Puerto Rico have been speaking Spanish since colonists arrived in the 15th Century, and English has had a place there since the American occupation that resulted from the Spanish-American War in 1898. Still, more than 70 percent of the

residents of Puerto Rico speak English “less than well,” according to the 2000 Census, but that's changing, Alvelo says.

Whatever the linguistic restraints, the products Latin Financial offers in Puerto Rico have been short-term, most with a minimum of six-month payback and a maximum of 12 months, but Alvelo hopes to begin offering longer-duration funding.

She also believes that



three pharmacies and the business kept growing, branching out to restaurants and gas stations. Already, some merchants there are renewing their deals.

Growth is occurring because of the need for funding there. Puerto Rican merchants have had the same difficulties obtaining credit from banks as their peers on the mainland since the beginning of the Great Recession, Alvelo says. “It's the same story in a different language,” she notes.

Speaking of language, Alvelo considers her fluency in Spanish essential to her company's success in Puerto Rico. “You have to speak the language,” she insists. “They have to feel secure and know that you will be there for them,” she says of her clients.

Roberts agrees that it's sound business practice to conduct discussions in the language the customer prefers, and his company uses applications and contracts printed in Spanish. At the same time, he

split funding will come to Puerto Rico. “It's in the works,” she asserts, noting that she is campaigning for it with the banks and processors.

At the same time, mainland alternative finance companies are learning that the threat of Puerto Rican government default does not mean merchants there don't deserve credit, notes Lynch. “Just because the government is having trouble paying its bills,” he says, “doesn't mean these merchants aren't successful. The island is full of entrepreneurs.” In fact, many of Puerto Rico's merchants use accountants and keep their business affairs in better order than their mainland counterparts do with their homemade bookkeeping.

Alvelo also knows many merchants there are worthy of time and investment. She strives to listen to her customers when they express their needs and then help them fill those needs. “I'm very, very proud to be doing this in Puerto Rico now,” she says.



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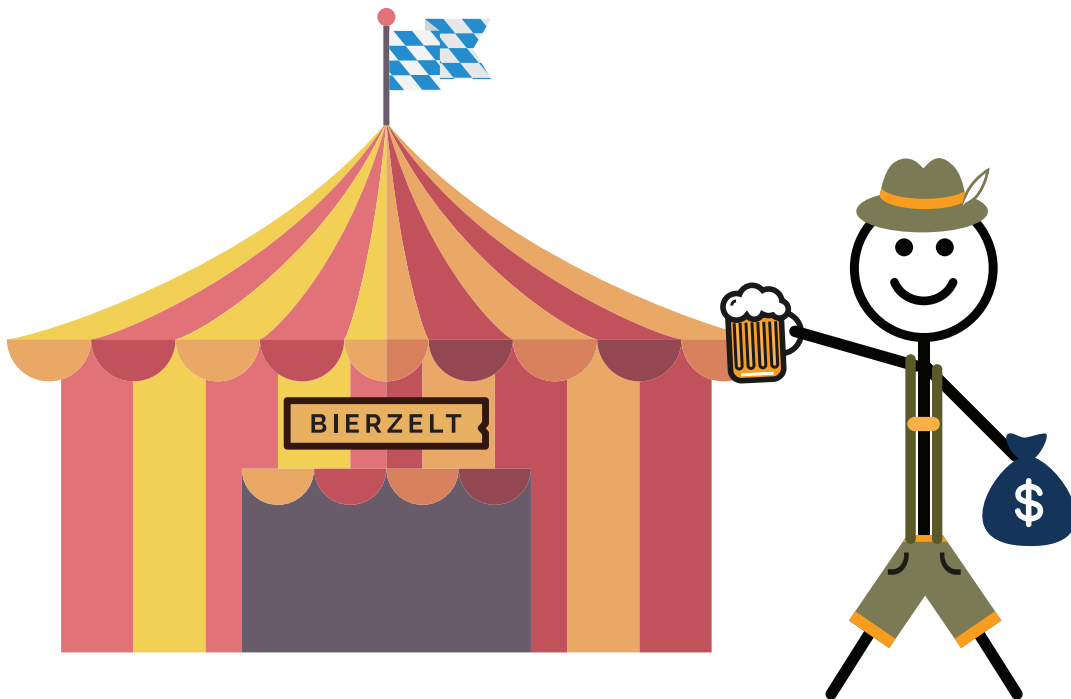
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# AT MARKETPLACE LENDING & INVESTING: HAVE ONLINE CONSUMER LOANS SERVED AS A REPLACEMENT FOR HOME EQUITY LOANS?

By SEAN MURRAY

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At the late September Marketplace Lending and Investing Conference in New York City, loanDepot CEO Anthony Hsieh laid out his view on the state of the union.

“As a nonbank lender, you must be patient,” he preached. Hsieh knows something about patience. His company’s planned November 2015 IPO was cancelled due to adverse market conditions and six months later, the scandal at Lending Club sent just about all marketplace lenders reeling.

“I’m still trying to figure out what’s been going on over the last 6-9 months,” Hsieh joked in front of the audience. No rookie to lending, Hsieh said he has been in consumer lending for 32 years, before FICO scores were around, and as he viewed it, through five credit cycles.

“The mortgage industry is still very archaic,” he said. “It hasn’t found the digital age yet.” He explained that it can take weeks or months to do a cash-out depending on where a borrower lives because of the appraisal process. And since the Great Recession, those borrowers that used to tap into their home equity have been going somewhere else.

One thing they noticed was that the credit and financial profiles of their borrowers were nearly identical whether they took a home loan or a personal loan, meaning that it’s all the same borrower base.

Both borrowers had a 724 FICO on average.

Home loan borrowers had an average age of 49 versus an age of 51 for personal loan borrowers.

Home loan borrowers had an average income of \$82,500 versus an average income of \$82,300 for personal loan borrowers.

Home loan borrowers had an average 100% home ownership rate versus a 94% home ownership rate for personal loan borrowers. But here’s where it gets different. The average home loan amount is \$274,000 while personal loan sizes average only \$16,076. The average coupon percentage is 3.88% for home loans versus 13.87% for personal loans.

The motivations for borrowing are also similar. 92% of personal loan borrowers claim to be using the funds either for debt consolidation or home improvement. So until home equity returns as a major source of consumer cash, which Hsieh believes it will, consumers will continue to seek all types of alternatives.

One way they’ve been able to measure that demand is from the sheer volume of leads they acquire, in the range of 600,000 leads every month, a level that has surprised even Hsieh. Not that they don’t work to generate those prospects considering they spend more than \$150 million a month in marketing.

Conversions, he noted however, have been quite low for many lenders because so many are monoline.

But even so, “today’s cycle is fundamentally different from the previous 4 cycles,” Hsieh argued, citing that people working in the industry this time around are genuinely smarter. And despite the fact that loanDepot operates in the era of the CFPB, a judge, jury and executioner-style government agency, Hsieh remains optimistic. “I respect the CFPB,” he said. “I think they’re a great agency.”

*All data and quotes were sourced from Anthony Hsieh’s presentation at the Marketplace Lending & Investing Conference in New York City on September 27th. deBanked did not interview him personally.*

# BACK ON THE HILL: THE CFC'S 2ND 2016 FLY-IN

The Commercial Finance Coalition returned to Washington DC in late September to continue educating policymakers about merchant cash advance. The opportunity allowed industry representatives to get face time with Republicans and Democrats from both the House and the Senate.

One message of great importance was in communicating the challenges that small businesses face in trying to access less than \$250,000 in working capital. Another was in distinguishing purchase transactions from loans.

“Our members are engaged and committed to educating and advocating the interests of the merchant cash advance industry in Washington DC and state capitals around the country,” said Isaac Stern, President of the CFC and Fundry. “I would strongly encourage my industry colleagues and competitors to get involved in the organization and help us grow the CFC.”

Regulations have made it too burdensome and expensive for a bank to underwrite a \$25,000 loan, plus they may not be able to stomach the risk or be properly incentivized to approve or decline a loan in the first place. The CFC's members do not securitize their transactions or sell them off, meaning that they carry all of the risk.

“In less than 9 months the CFC has become the gold standard of alternative small business finance trade groups in Washington,” said Dan Gans, Executive Director of the CFC. “In a short time we have been able to conduct over 50 meetings with key policymakers and assemble a world class regulatory and lobbying team. I would encourage anyone involved in the merchant cash advance or alternative small business finance space to join the CFC and help us advocate for the thousands of small businesses across the country who benefit from the access to needed capital provided by the industry.”

For more information on the CFC, visit:  
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**REP KYRSTEN SINEMA (D-AZ) AND  
REP DAVID SCOTT (D-GA) IN FRONT.**

From top to bottom and left to right: Tim Mages, Expansion Capital Group – Troy Caruso, iAdvance Now – Lindsey Rohan, Platinum Rapid Funding Group – Marc Helman, Expansion Capital Group – Bill Gallagher, CFG Merchant Solutions – Adam Sloane, Cresthill Capital – Jake Weiser, Fundry/ Yellowstone Capital – Scott Crockett, Everest Business Funding – Sean Murray, deBanked – Isaac Stern, Fundry/Yellowstone Capital





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# INDUSTRY NEWS

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## WINDSET CAPITAL ANNOUNCED END OF OPERATIONS

“After three years of serving the short-term working capital market and dedicating 100% of Windset’s resources to the broker/ISO community, we have made the strategic decision to exit the working capital loan market and focus solely on our growing equipment finance businesses.” said Barry Shafran, Chesswood’s President and CEO. Chesswood owns Windset Capital as well as the notable leasing company, Pawnee Leasing.

## TCC RANKS ABOVE APR, AGAIN

In a recent Electronic Transactions Association (ETA) survey conducted by Edelman Intelligence of almost 600 small business borrowers, a majority of respondents stated that they would look to minimize the Total Cost of Capital (TCC), rather than APR when considering loan options in the face of a short-term ROI opportunity.

As explained in a report published by the ETA:

“Unlike consumer loans, commercial loans are normally used to generate revenue by helping a business purchase equipment or inventory or hire additional employees. Thus, ‘affordability’ for small business borrowers means assessing the cash flow impact of the loan and comparing the TCC of the loan and the return they expect to earn from investing the loan proceeds.”

## THE BIG RETORT

Steve Eisman, who was represented by character Mark Baum in *The Big Short*, criticized marketplace lenders during his speech at the 22nd annual ABS East Conference. Eisman called Silicon Valley “clueless” and explained that lending is not like buying a book on Amazon. He also had a much more rigid definition of balance sheet lending, labeling companies that originate and hold loans, banks. According to the Asset Securitization Report, Eisman said of the marketplaces, “who are they going to sell [loans] to? You [Wall Street]. And you are fickle.”

## BANKS? NONBANKS? DOESN'T MATTER

In an interview that former Congressman Barney Frank gave with the Commercial Observer, Frank said, “From the standpoint of the economy, the goal is to make sure enough loans are being made and they’re not too risky. Who makes them is less important.”



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✓ Reports

✓ Tiered Logins

✓ Dashboards

✓ Fee Management

✓ Access

✓ Alerts

✓ Split Payments

✓ ACH Payments

✓ Syndicators

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