STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

In Re:	)	
	)	
LICENSING EXEMPTION FOR	)	**Docket No. 18 -042- B**
LOAN SOLICITATION COMPANIES THAT	)	
PARTNER WITH FDIC INSURED BANKS	)	
TO EXTEND COMMERCIAL LOANS	)	

ORDER EXEMPTING CERTAIN LOAN SOLICITATION COMPANIES FROM THE LOAN SOLICITATION LICENSING REQUIREMENT OF 8 VSA CHAPTER 73

Background and Findings

1. The Commissioner of the Department of Financial Regulation is charged with administering Vermont law as it pertains to loan solicitation companies. 8 V.S.A. Chapters 1 and 73.

2. The definition of "loan solicitation" is very broad and includes:

   a. offering, soliciting, brokering, directly or indirectly arranging, placing, or finding a loan for a prospective Vermont borrower;

   b. engaging in any activity intended to assist a prospective Vermont borrower in obtaining a loan, including lead generation;

   c. arranging, in whole or in part, a loan though a third party, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method, including mail, telephone, internet, or any electronic means; or

   d. advertising or causing to be advertised in Vermont a loan or any of the services described above.

8 V.S.A. § 2200(17)(A).

By referencing "lead generation" the definition of loan solicitation also includes:

e. initiating interest or inquiry in a loan by online marketing, direct response advertising, telemarketing, or other similar consumer contact;

f. selling leads for loans;

g. generating or augmenting leads for other persons; and

h. referring Vermont borrowers to other persons for loans.

8 V.S.A. § 2200(14).

3. The Vermont legislature granted the Commissioner the authority to exempt from loan solicitation licensing "other categories of loans or service providers as determined by the Commissioner by rule or order." 8 V.S.A. § 2200(17)(B)(vi).

4. Certain loan solicitation companies partner with FDIC-insured banks to extend loans to commercial borrowers.

5. Under this business model, the loan solicitation company will solicit potential commercial borrowers by mail, email, pop-up advertisements, and other direct, indirect, or electronic means. The potential commercial borrower submits information to the loan solicitation company's online platform. The loan solicitation company uses its proprietary algorithm and the bank's underwriting criteria to determine if the potential commercial borrower qualifies for a loan, based on prior contractual agreements between the loan solicitation company and the bank. If the borrower qualifies, the bank makes the commercial loan to the borrower and the bank is the lender on the loan documents.

6. The FDIC-insured bank's state and federal regulators hold the bank responsible for the products, services, and actions of the loan solicitation company. As such, banks are required to

have strong risk management programs and to maintain ongoing monitoring, training, and compliance programs to manage the activities of the loan solicitation company. Both the loan solicitation company (as an "institution-affiliated party" under federal law) and the FDIC-insured bank are subject to supervision, oversight, regulation, and examination by the bank's domicile state and federal regulators. 12 U.S.C. §§ 1813(q), 1813(u), 1867(c). See *In the Matter of Freedom Financial Asset Management, LLC*, FDIC-17-0126b, FDIC-17-0125b, and FDIC-17-124k (March 28, 2018).

7. FDIC-insured banks continue to be subject to ongoing guidance on programs with third-party providers, such as loan solicitation companies. See, FDIC FIL-44-2008 (Guidance for Managing Third-Party Risk); FDIC FIL-9-2016 (Supervisory Insights – Marketplace Lending, Winter 2015); FDIC FIL-50-2016 (FDIC Seeking Comment on Proposed Guidance for Third-Party Lending); and OCC Bulletin 2013-29 (Risk Management Guidance for assessing and managing risks associated with third-party relationship).

8. The Commissioner finds that these types of loan arrangements provide a necessary source of capital for commercial entities – particularly small entities – in situations where other forms of financing may be unavailable or impracticable.

9. The Commissioner finds that, in the commercial context, FDIC and state regulation of the participating bank, as outlined in part above, provides sufficient protection for the commercial borrower.

10. The Commissioner finds that loan solicitation companies that partner with FDIC-insured banks to solicit potential commercial borrowers, and where the bank extends the commercial loans to the Vermont borrower, are sufficiently regulated by the bank's state and federal

regulators to justify exempting the loan solicitation company from the loan solicitation licensing requirement of 8 V.S.A. Chapter 73.

11. This exemption is consistent with, and will further, the goal of having multiple sources of capital available for small and start-up business from lenders that are subject to appropriate oversight and regulation.

12. This exemption is also consistent with the distinction between commercial loans and consumer loans. Commercial loans are not subject to the same statutory restrictions and protections under Vermont law as consumer loans. Several provisions of 9 V.S.A. Chapter 4 (usury statute) and of 8 V.S.A. Chapter 73 (licensed lender statute) do not apply to commercial loans.[1] While an exemption related to consumer loans might not be appropriate, the Commissioner finds that an exemption for loan solicitation companies that partner with FDIC insured banks to solicit potential commercial borrowers for a loan from that bank is consistent with the less restrictive statutory protections governing commercial loans.

ORDER

Based on the foregoing findings, it is hereby ordered that:

13. Loan solicitation companies that meet all the following conditions are exempt from the loan solicitation licensing requirement of 8 V.S.A. Chapter 73:

a. The loan solicitation company has partnered with an FDIC insured bank;

b. The loan solicitation company is soliciting commercial loans;

c. The commercial loan is made by the FDIC-insured bank and the bank is clearly identified as the lender in the loan documents;

[1] Commercial borrowers, however, are still protected by the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63.

d. The loan solicitation company is subject to ongoing monitoring, training, and compliance programs by the FDIC-insured bank to manage the activities of the loan solicitation company; and

e. The loan solicitation company is subject to supervision, oversight, regulation, and examination by the FDIC-insured bank's state regulator (if any) and federal regulator.

14. Upon request, the loan solicitation company shall provide the Commissioner with evidence demonstrating that the company is subject to regulatory supervision, including examinations, by the bank's state regulator (if any) and federal regulator in a manner that is at least equivalent to the supervision and examination of a loan solicitation company licensed by the Department.

BY ORDER OF THE COMMISSIONER

Entered this 13th day of September 2018

Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation