



House Industry, Business and Labor Committee

March 17, 2021

Senate Bill No. 2103

Chairman Lefor and Members of the Committee,

Our companies, Automotive Finance Corporation and NextGear Capital, Inc., operate in a niche credit market known as “floor plan financing,” which allows car dealers of varying sizes across the country to finance their motor vehicle inventory being held for resale. Floor plan financing arrangements typically involve a commercial line of credit that can be used at vehicle auctions, to finance dealer-to-dealer purchases, and to finance customer trade-ins. Each advance on the line of credit is a type of short-term, secured loan relating to a specific motor vehicle, in which the floor plan lender retains a security interest in the vehicle being financed. The floor plan line of credit is further secured by a blanket security interest in the borrower’s other assets. Notably, our companies do not provide any financing to retail consumers.

On our first analysis of SB 2103, we were concerned that the bill would place restrictions on the types and amounts of fees commonly charged in typical floor plan lending arrangements. Specifically, at the time a commercial floor plan line of credit is opened, it is not possible for either the borrower or the lender to know the total “cost” of the financing, for several reasons. For example:

- Floor plan lines of credit are typically discretionary. A borrower could choose not to utilize its credit line at all, or the lender could choose to not make certain requested advances (such as for high-end vehicles).
- Individual dollar costs of each advance will vary based on the amount of the advance requested and the amount of time the dealer takes to repay that advance. The initial “floor plan fee” for each advance is known, but the total fees to be charged over the life of the advance can vary.
- Total fees charged will depend on whether the vehicle was purchased at an auction or elsewhere; whether the floor plan advance was made at the time of purchase or at some later date; whether the advance is repaid during the first repayment period or if additional repayment periods are requested; and in some cases, will depend on the amount of the advance itself.
- The interest rates to be charged on the line of credit are known at the time of contracting, but can also vary thereafter. Interest is determined for each specific floor plan advance as of the floor plan date. In most cases, the dealer’s interest

rate will be tied to the lender's published "base rate" or "prime rate"—which can change over time, similar to the Fed's interest rate changes—plus an agreed-upon "contract rate." Accordingly, an advance that is made in one month may be charged a different rate of interest than an advance made in a subsequent month if, for example, the lender published a change to the base rate or the prime rate changes in the intervening time period.

Our companies jointly reached out to the Department of Financial Institutions ("DFI") to raise our collective concern that SB 2103 does not take into consideration the standard industry practices for commercial floor plan lending noted above. While the conversations were productive, our concerns with the language of the bill remain, although it has become clear that DFI's intent is—importantly—consistent with the following:

- 1) The DFI pointed out that the "maximum charges" for loans permitted under NDCC Section 13-04.1-09.3 are calculated at the time of the execution of the credit or loan document, and that those maximums are limited to charges, if any, that are mandatory at the time of execution of the credit or loan document. Under current floor plan industry practices, no charges are typically incurred at the time the loan documents are executed.
- 2) The DFI has shared its interpretation that the maximum charges for loans under this section are not calculated on any charges incurred subsequent to the execution of the credit or loan document, nor at the time advances are made under commercial revolving lines of credit.
- 3) There is uncertainty concerning the application of the section on maximum late charges. It is important to know DFI's interpretation and confirmation that SB 2103's maximum late charges provisions for revolving credit lines or loans over \$50,000 at the time of execution of the loan documents shall be the greater of 5% of the late payment or \$20.00.

We appreciate your review of our concerns and support the intent of the bill, as mentioned above. We would be pleased to offer the committee as much additional detail as might be helpful. We thank DFI for their collaboration, and we thank you for your consideration.

Sincerely,

Mark Nelson
Automotive Finance Corporation

Eric Wright
NextGear Capital, Inc.