DollarsDirect

Memorandum

To: General Manager
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Re: DollarsDirect's Comments to the Consumer Credit and Corporations Legislation Amendment (Enhancements) Discussion Paper

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Dear Sir or Madam:

Below please find DollarsDirect's comments to the Consumer Credit and Corporations Legislation Amendment (Enhancements) Discussion Paper ("Discussion Paper") distributed on Wednesday April 4, 2012. We are the leading online broker for short-term loans in the Australian market, and are owned by Enova International, Inc., part of the Cash America group of companies (NYSE: CSH). If you have any questions or comments, or seek any clarification regarding our submission, please do not hesitate to contact me by email at DShteyn@enova.com.

I. Website Disclosure Statements

DollarsDirect supports a law requiring credit providers and credit assistance providers to present visitors to their websites with a series of disclosure statements, but only if the disclosures assist consumers, not burden them. Thus, the disclosures should provide clear and understandable information about the product offered.

Focus Questions:

(a) What information should the disclosure notices include, given that it should be short and succinct to maximise its impact?

(b) Should the website and the shopfront disclosure have the same content?

(c) What is the appropriate placement for the storefront notice – for example, immediately next to the entry door, or on the door if no window or glass placement is available?

The Discussion Paper notes that the Ontario Government requires lenders to provide a disclosure setting forth key terms, such as the maximum allowable cost of borrowing, the lender's cost of borrowing, example APRs for loans of a certain amount and duration, etc.[1] It is important to note that Ontario's disclosures are limited, which maximizes their effectiveness to consumers. Moreover, Ontario's disclosure statements are succinct, readable and easy to understand.

Unlike Ontario, which prescribes only one disclosure requirement, Australian consumers are already shown a broker statement and a lender statement. Adding yet another disclosure would only serve to minimize the impact of each of the various statements and disclosures. The salient purpose of any disclosure requirement should be to inform the consumer of the nature and cost of the product. Any and all disclosure requirements should thus maximize the consumer's understanding. In order to do so, the disclosures should be clear, succinct and provide only so much information the consumer will be able to retain and understand.

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[1] *Ontario Regulation made under the Payday Loans Act, 2008*, para. 14 merely requires credit providers to disclosure:

1. A heading setting out the words "Maximum Allowable Cost per $100 Borrowed:" and the amount "$21.00" immediately below;
2. A heading setting out the words "Our cost per $100 borrowed:" and the total cost of borrowing per each $100 advanced under the agreement immediately below;
3. A subheading with the words "Example: Your $300 loan for 14 days," followed by:
    a) The words "Amount Advanced $300.00"; and
    b) The words "Total Cost of Borrowing" followed by the total cost of borrowing per each $300 advanced under the agreement; and
    c) The words "Total You Repay" followed by the total of $300 plus the total cost of borrowing per each $300 advanced under the agreement.

If Australia implements a website disclosure statement requirement, whether at a storefront or online, the disclosure notices should require the lender to provide the following information: the lender's name and contact information, the maximum allowable cost per $100 borrowed (any rate cap), the lender's cost per $100 borrowed, and an example (*e.g.*, total cost of borrowing and total amount of repayment for a 21 day, $400 loan).

(d) What timing/placement would be most effective in providing information to consumers in relation to the website disclosure? For example, should it be displayed on every webpage, say as a banner on top of each page (this would allow for consumers to see the information irrespective of their entry page to the website), or should it be a pop-up box that must appear on the application page before the consumer can commence a loan application?

Any disclosures should provide the consumer with the most relevant information before entering into a credit contract. Disclosing more information than necessary distracts from that information which is most critical. We suggest that the disclosures be presented online for the consumer's review. In order to avoid confusion, we suggest that these disclosures be presented after application, but prior to signing the loan contract. .

(e) What is the likely impact of requiring information about alternative options to be included in the Credit Guide? In particular, is the timing of the provision of this document likely to be helpful to consumers?

(f) Are there any other alternatives to the delivery or method of disclosure that should be considered?

The more information provided, the greater the likelihood the consumer will ignore all or part of the information. Thus, disclosure of alternative options is unlikely to increase the consumer's knowledge or education.

II. Prohibitions on Multiple Concurrent Contracts, Refinancing and Increasing Credit Limit

Australia's Responsible Lending Obligations ("RLO") require credit providers and credit assistance providers to ensure that their products are not unsuitable to the borrower. In some cases, a second or third loan may be suitable for a consumer whereas the first loan was not. We believe that increased regulation of RLO, particularly assessments and hardship, would eliminate the need for a ban on multiple concurrent contracts, refinances and increasing credit limits.

Limiting the number of consecutive loans where only fees are paid to a specific number is a reasonable measure. In fact, as a matter of company policy, DollarsDirect's customers are prohibited from taking out more than four consecutive loans where only fees are paid. However, prohibiting this practice altogether is harmful to consumers because it prohibits consumers from obtaining cheaper credit and fails to account for situations where consumers experience a short-term inability to repay a loan.

A. The prohibition on refinances consumers by restricting competition and reducing options.

The prohibition on refinances, specifically, may harm the Australian consumer. There are many instances where it is in the consumer's best interest to retain the ability to refinance with cheaper credit. If a consumer is prohibited from refinancing with cheaper debt, the consumer loses from a monetary perspective. Then the question becomes: How do we determine what "cheaper credit" is? Defining "cheaper credit" is virtually impossible because comparing different loans is incongruent when one loan's characteristics differ from another loan's (*e.g.*, duration, repayment methods). Outside of the monetary aspects of "cheaper credit," a definition could not factor in non-quantifiable factors, such as a consumer preference for superior customer service.

Even if there was a way to define "cheaper credit," doing so would be extremely burdensome to credit providers and consumers. The credit provider would have to compare credit contracts and the customer would have to provide the new lender with a copy of his or her existing credit contract.

In short, a consumer should retain the right to refinance with cheaper debt. However, absent a way to compare debts, it is nearly impossible to implement a standard measure to compare the debt. Therefore, the prohibition on refinances should be removed in its entirety.

B. The proposed ban on refinances is burdensome absent comprehensive credit reporting.

A ban on refinances would be extremely onerous absent comprehensive credit reporting. Currently, it is nearly impossible to even identify the existence of another small amount credit contract with any certainty, absent comprehensive credit reporting. Instead, lenders and brokers should be obliged to consider the existence of such loans in the context of their responsible lending obligations. At the very least, a transition measure should be put in place until such time as comprehensive credit reporting is introduced and the amount of data in credit reports is increased.

C. The Discussion Paper contains no empirical data demonstrating that multiple concurrent contracts and refinances increase consumers' risk of a debt spiral.

The Discussion Paper sets forth the proposition that multiple concurrent contracts and refinances increase consumers' risk of a debt spiral. We respectfully request the disclosure of empirical data or statistical analysis upon which this proposition is based so that we may provide a more comprehensive response.

Focus Questions:

(a) What would be the practical implications of requiring lenders to consider the borrower's best interests? It this approach was adopted, how would the content of the obligation be defined?

Treasury presents the concept that there could be an "exception" from the prohibitions if such exception would be in the "consumer's best interests." From a practical standpoint, requiring lenders to consider the borrower's best interests would put lenders in the impossible position of both defining "best interests" and matching the lender's definition to the consumer's circumstances. Moreover, without additional guidance on interpreting the term "consumer's best interests," lenders will be left to guess at the term's meaning. Such conjecture will only lead to inconsistent interpretations by lender.

The same objectives may be achieved through further refinement and increased regulation of the Responsible Lending Obligations. ASIC could create a tight definition of unsuitability, with key factors and assessment requirements, which would decrease the degree of inconsistency by lender. Thereafter, ASIC could more closely regulate the assessment requirement to ensure that lender and brokers are complying with ASIC's guidance.

(b) If exceptions are to be defined by a category of transaction (for example, by the characteristics or circumstances of the borrower), how are these categories to be defined? In particular, can these transactions be defined in a way that is clear and unambiguous as to when the exception applies?

Defining exceptions by a category of transactions – or by the circumstances of the borrower – is too imprecise. Widespread inconsistencies between lenders will emerge because one lender's definition of a "consumer's best interests" will differ from another's. Such discrepancies promote lender-shopping for the most "lenient" lender, which hurts consumers.

(c) If the approach of providing for an unsuitability presumption was adopted, what circumstances or transactions should the presumption apply to?

As discussed above, we support refinement to RLO and increased regulation of those obligations, rather than the adoption of an unsuitability presumption. If, however, an unsuitability presumption is adopted, it should only apply if the consumer claimed hardship with that lender within the previous sixty days of application.

III. Repeat Lending/Successive Loans

Rather than implement prohibitions on repeat lending and successive loans, the Government should consider more actively enforcing RLO. If such obligations are insufficient to protect the consumer, then the best practice is to limit loan extensions to four or five (as we have done as a matter of company policy), rather than prohibit them entirely.

An outright ban on loan extensions actually punishes consumers who encounter unforeseen financial difficulties because consumers often need extra time to repay a loan. An effective ban on rollovers will cause consumers to lose financial flexibility and control over their financial affairs, when it is demonstrably in their best interest to control their financial affairs.

Responsible lending goes hand-in-hand with responsible borrowing. The key to responsible borrowing is educating consumers to the greatest extent possible. Lenders should provide consumers with disclosures, as well as a booklet or downloadable pamphlet, with more detailed information on responsible borrowing. We envision the proposed pamphlet as a collaborative effort between the credit industry and the government, whereby all credit providers issue the same document.

Additionally, a prohibition against repeat lending and/or successive loans is acceptable if the restriction is only against repeat lending or successive loans where there is no repayment of the principal. Any other restrictions harm the consumer.

Finally, the Discussion Paper states that repeat lending and/or successive loans can result in financially vulnerable consumers never improving their financial situations or addressing their financial woes. We respectfully request that Treasury provide the data or analysis upon which this proposition is based so that we may provide a more informed response.

Focus Questions

(a) To what extent is the repeated use of SACCs indicative of a class of consumers who may be experiencing psychological or social barriers to seeking advice or assistance? Where this is the case, will repeated disclosure (under Option 1) overcome or lower these barriers?

DollarsDirect does not have the data or the ability to analyze whether a repeated disclosure requirement would assist consumers who are purportedly experiencing psychological or social barriers to seeking advice or assistance.

(b) What are the advantages and disadvantages of the options considered above to address repeated use of SACCs? What should be the appropriate trigger for each such option?

Placing a trigger on a fifth consecutive small amount credit contract ("SACC"), in conjunction with RLO and allowing customers to alter repayments via hardship provisions protects consumers, while still providing consumers access to credit. As explained above, an outright ban hurts consumers who may be experiencing unanticipated financial difficulties.

(c) What additional responsible lending obligations could apply, if that was required, in relation to repeat borrowers?

(d) Are there any other options that should be considered to regulate repeated use of SACCs?

The answer is to refine and more clearly interpret the existing responsible lending obligations, rather than adding new obligations. If a consumer states that he or she is in hardship, then there is a presumption of unsuitability. There may also be a presumption of unsuitability at a certain trigger point, such as a fifth consecutive loan. Otherwise, the credit provider should be trusted to conduct an assessment and the consumer should be educated and relied upon to make his or her own financial decisions.

IV. Restrictions in Relation to Small Amount Credit Contracts with a Single Repayment

DollarsDirect and its related companies conduct business in Australia, the US, the UK and Canada, all of which permit single repayment lending. Providing consumers the freedom to take out a single repayment loan, where the consumer so desires and the lender determines that it is suitable, has been successful in all of the jurisdictions in which DollarsDirect offers credit products.

Further, DollarsDirect's internal data indicates that most single repayment loans are due 3-4 weeks after issuance, not within the 2-week period indicated in the Discussion Paper. We respectfully request to see any statistical analysis or data, if any exists on this point, so that we are able to better respond to this point.

Focus Questions

(a) What effect will the introduction of the proposed cap on SACCs and other proposed reforms have on single repayment SACCs? Could it be expected that it will result in a reduction in this type of lending?

(b) What would be the impact of introducing a ban on contracts with single repayments? How would this compare with the impact of a presumption in relation to suitability?

Prohibiting single repayment loans harms the consumer more than anything by stripping him or her of a choice in repayment terms. There is no evidence that single repayment loans lead to defaults. In fact, forbidding single repayment loans may actually increase default rates and put consumers into debt spirals, as they would be forced to take out longer duration loans with multiple repayments. A multiple repayment option may benefit consumers because it provides more affordable repayments.

(c) Are there any other options that should be considered to address SACCs with single repayments?

Repayment options should be addressed via RLO and the hardship assessment. Creating a presumption that a loan is unsuitable if it has to be repaid within a short time or specified period does not comport with responsible lending. It is possible that a short time period may be a window for the consumer to repay a loan before other financial obligations are due. Likewise, some consumers may prefer a single repayment loan because it is simple, fast and addresses a specific and unexpected financial concern, while other consumers' needs may be better suited to a longer term repayment plan. The credit industry should create a regulatory framework that fosters multiple product offerings and grants the consumer and credit provider the freedom to decide on a repayment plan. If suitable, a single repayment option should be available.

V. Use of Direct Debit Repayment Options

A ban on repayments via direct debit does not make sense in the modern internet commercial world. If consumers can receive loan proceeds via direct credit, they should also be able to repay by direct debit. Direct debit repayments are beneficial to consumers for a number of reasons, including convenient and timely repayment and preventing default and debt spirals.

The Responsible Lending Obligations already provide more than adequate protection to consumers. Lenders and brokers are both, individually, required to assess whether the proposed loan is suitable for the borrower. If the loan is unsuitable, the loan should not be made. Additionally, pursuant to the hardship provisions, a lender will not debit a customer once that customer claims hardship.

While we strongly oppose a prohibition against direct debit repayment, we support certain regulations on direct debiting, including:

- Ban against debiting a customer's account after a hardship claim;
- Cap of one NSF/late fee per failed debit; and
- A maximum limit of three re-presentations, which should be included in all loan agreements.

Focus Questions

(a) What are the likely outcomes from banning direct debits? In particular would it be expected to result in an increase in the rate of defaults?

Banning direct debits will likely lead to an *increase* in defaults. Our experience shows that consumers are more likely to repay their loans on time when they do not have to take any affirmative action, such as logging online to make a payment. Thus, allowing for the convenience of direct debits makes repayment easier for customers, lessens default rates and prevents consumers from falling into debt spirals due to default fees.

(b) Should consumers always be provided with choices for making repayments (for example, a minimum of three options)? If so, what other payment options would be considered appropriate?

Consumers should be given repayment options if possible, though we express no opinion on how many options should be provided. Other repayment options may include online payment, transfer, bank-certified checks and PayPal. Some forms of repayment will be more suitable for certain customers than for others, thus repayment options should be individual to the consumer. However, it is important to note that lenders can only offer those options which are commercially feasible – *i.e.*, PayPal or other payment processors may not allow the use of their services to repay other indebtedness.

There is no precedent for banning repayment of short-term loans via direct debit. Indeed, other jurisdictions place repayment restrictions only on long-term credit products, not short-term consumer loans. Banning repayments via direct debit will only serve to harm consumers by increasing defaults and forcing consumers into debt spirals.

(c) What would be the impact of suspending the use of a direct debit request where it has been rejected three times because of insufficient funds in the borrower's account?

If direct debit requests were suspended where rejected three times due to insufficient funds, credit providers would have to contact the borrower to set up new payment arrangements. DollarsDirect would support such a limit because to do otherwise would expose the customer to a potentially unlimited stream of NSF charges on the part of his or her financial institution.

(d) What would be the impact of increasing the triggers for credit providers to provide a Form 11 direct debit default notice (for example, when the consumer signs a direct debit authority)?

DollarsDirect supports a regulation requiring lenders provide an electronic notice when a consumer signs a direct debit authority.

VI. Introduction of a Protected Earnings Amount ("PEA")

Implementing a protected earnings amount ("PEA") might make sense; however, DollarsDirect cannot comment on the logic of implementing a PEA until the other issues are resolved.

I greatly appreciate your thorough consideration of the points made in our submission and I look forward to working with the Committee on a solution that permits the short-term small amount credit industry to survive, while at the same time addressing the concerns of the Australian consumer.

Sincerely,

/s/ Daniel Shteyn

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