

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISAAC MALAFSKY, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

ON DECK CAPITAL, INC., NOAH
BRESLOW, HOWARD KATZENBERG,
DAVID HARTWIG, J. SANFORD MILLER,
JAMES D. ROBINSON III, JANE J.
THOMPSON, RONALD F. VERNI, NEIL E.
WOLFSON, MORGAN STANLEY & CO.
LLC, MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, J.P. MORGAN
SECURITIES LLC, DEUTSCHE BANK
SECURITIES INC., JEFFERIES LLC,
STIFEL, NICOLAUS & COMPANY, INC.,
NEEDHAM & COMPANY, LLC and
RAYMOND JAMES & ASSOCIATES, INC.,

Defendants.

X

: Civil Action No.

: CLASS ACTION

: COMPLAINT FOR VIOLATIONS OF THE
SECURITIES ACT OF 1933

: DEMAND FOR JURY TRIAL

X

Plaintiff Isaac Malafsky (“plaintiff”) alleges the following based upon the investigation of plaintiff’s counsel, which included a review of U.S. Securities and Exchange Commission (“SEC”) filings by On Deck Capital, Inc. (“On Deck” or the “Company”), as well as regulatory filings and reports, securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of On Deck pursuant or traceable to the Registration Statement and Prospectus (collectively, the “Registration Statement”) issued in connection with On Deck’s December 17, 2014 initial public stock offering (the “IPO” or “Offering”).

2. The action asserts strict liability claims under §§11, 12(a)(2) and 15 of the Securities Act of 1933 (“1933 Act” or “Securities Act”) against On Deck, certain On Deck officers and/or directors, and the underwriters of the IPO.

3. On Deck is an online subprime commercial lender offering small businesses quick-approval 3- to 24-month loans at interest rates exponentially higher than those offered by traditional banks. Nearly half of On Deck’s loan originations replace existing customers’ existing loans with new, larger loans over extended terms.

4. On December 17, 2014, On Deck commenced the IPO and issued 11.5 million shares of common stock at \$20 per share pursuant to the Registration Statement.

5. The Registration Statement contained untrue statements of material fact and omitted to state material facts both required by governing regulations and necessary to make the statements made not misleading. The Registration Statement failed to disclose already occurring shifts in the Company’s lending practices to less profitable channels and longer term loans, which were

negatively affecting, *inter alia*, On Deck's interest rate spread, effective interest yield, annual percentage rates ("APR"), and earnings.

6. Defendants were required to disclose this material information in the Registration Statement for three independent reasons. First, SEC Regulation S-K, 17 C.F.R. §229.303 ("Item 303"), required disclosure of any known events or uncertainties that, at the time of the IPO, had caused or were reasonably likely to cause On Deck's disclosed financial information not to be indicative of future operating results. On Deck's then occurring but undisclosed shifts in the Company's lending practices to less profitable channels and longer term loans were likely to (and in fact did) have a material adverse effect On Deck's effective interest yield, APR and earnings.

7. Second, SEC Regulation S-K, 17 C.F.R. §229.503 ("Item 503") required, in the "Risk Factor" section of the Registration Statement, a discussion of the most significant factors that make the offering risky or speculative and that each risk factor adequately describe the risk. On Deck's discussions of risk factors did not adequately describe the risk posed by On Deck's already occurring shifts in its lending practices to less profitable channels and longer term loans and the consequent material adverse effects on the Company's interest rate spread, effective interest yield, APR and earnings.

8. Third, defendants' failure to disclose the already occurring shifts to less profitable channels and longer term loans, as well as the expected consequences therefrom, rendered false and misleading the Registration Statement's many references to known risks, which, "*if*" they occurred, "*might*" or "*could*" adversely affect the Company. These "risks" had already materialized at the time of the IPO.

9. On January 12, 2015, analysts with Sterne Agee issued a report warning of compressed margins due to, *inter alia*, On Deck's suspect loan quality and borrower profiles. Sterne Agee lowered its On Deck price target from \$20 to \$15.75 per share and its investment rating from Neutral to Underperform. These concerns echoed throughout the market, in other analyst reports and in widely followed investment websites such as *SeekingAlpha.com*. As a result, the price of On

Deck common stock dropped over 25%, from as high as \$23.05 per share on January 12, 2015, to as low as \$17.12 per share on January 13, 2015.

10. In late February and early March 2015, the fact that these margin and loan profile risks had already materialized began to surface with On Deck's first public financial reports, which disclosed, *inter alia*, that On Deck's once constant effective interest yield had plummeted 10% sequentially to 38.7% in the fourth quarter of 2014, caused by On Deck's shift to less profitable channels and longer term loans. As a result, the price of On Deck common stock dropped over 25%, from \$21.49 per share in late February to as low as \$16.08 per share on March 5, 2015.

11. Then, on May 4, 2015, On Deck issued a press release announcing its second quarter 2015 financial results, disclosing yet another over 10% decline in effective interest yield as well as a nearly 20% year-over-year decline in APR, as follows:

The effective interest yield for the first quarter of 2015 was 36.7%, down from 41.2% in the comparable prior year period, reflecting the continued mix shift to lower cost distribution channels, an increase in average term length over the period and On Deck's continuing efforts to lower pricing for customers as it achieves cost efficiencies. Reflecting these trends, the average APR of loans originated in the first quarter was 49.3%, a decline from 59.9% in the prior year period.

12. On these developments, the market reacted severely. The price of On Deck common stock dropped nearly 20%, from \$20.39 per share on May 4, 2015 to as low as \$16.41 per share on May 5, 2015.

13. By the commencement of this action, the price of On Deck common stock has dropped below \$10 per share, a decline of over 50% from the IPO price and a nearly 65% decline from its approximately \$28 per share high.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction under §22 of the 1933 Act.

15. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), because On Deck is headquartered in this District and many of the acts and practices complained of herein occurred in substantial part in this District.

PARTIES

16. Plaintiff Isaac Malafsky purchased On Deck common stock pursuant or traceable to the IPO and was damaged thereby.

17. Defendant On Deck is an online subprime commercial lender, headquartered in New York, New York, and trading on the New York Stock Exchange under the ticker symbol “ONDK.” On Deck’s primary business is offering small businesses quick-approval, 3- to 24-month loans at interest rates exponentially higher than those offered by traditional banks. Nearly half of On Deck’s loan originations replace existing customers’ existing loans with new, larger loans over extended terms.

18. Defendant Noah Breslow (“Breslow”) is the Company’s Chief Executive Officer (“CEO”) and a director.

19. Defendant Howard Katzenberg (“Katzenberg”) is the Company’s Chief Financial Officer (“CFO”).

20. Defendant David Hartwig (“Hartwig”) is a director of On Deck. Hartwig is a resident of San Mateo, California.

21. Defendant J. Sanford Miller (“Miller”) is a director of On Deck.

22. Defendant James D. Robinson III (“Robinson”) is a director of On Deck.

23. Defendant Jane J. Thompson (“Thompson”) is a director of On Deck.

24. Defendant Ronald F. Verni (“Verni”) is a director of On Deck.

25. Defendant Neil E. Wolfson (“Wolfson”) is a director of On Deck.

26. The defendants named in ¶¶18-25 are referred to herein as the “Individual Defendants.” The Individual Defendants each signed the Registration Statement and/or solicited the investing public to purchase securities issued pursuant thereto, hired and assisted the underwriters, planned and contributed to the IPO and Registration Statement, and attended road shows and other promotions to meet with and present favorable information to potential On Deck investors, all motivated by their own and the Company’s financial interests.

27. Defendant Morgan Stanley & Co. LLC is a financial services company that acted as an underwriter and joint lead book-running manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

28. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated is a financial services company that acted as an underwriter and joint lead book-running manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

29. Defendant J.P. Morgan Securities LLC is a financial services company that acted as an underwriter and book-running manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

30. Defendant Deutsche Bank Securities Inc. is a financial services company that acted as an underwriter and book-running manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

31. Defendant Jefferies LLC is a financial services company that acted as an underwriter and book-running manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

32. Defendant Stifel, Nicolaus & Company, Inc. is a financial services company that acted as an underwriter and co-manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

33. Defendant Needham & Company, LLC. is a financial services company that acted as an underwriter and co-manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

34. Defendant Raymond James & Associates, Inc. is a financial services company that acted as an underwriter and co-manager for On Deck's IPO, helping to draft and disseminate the Registration Statement and solicit investors to purchase On Deck securities issued pursuant thereto.

35. The defendants named in ¶¶27-34 are referred to herein as the “Underwriter Defendants.” Pursuant to the Securities Act, the Underwriter Defendants are liable for the false and misleading statements in the Registration Statement as follows:

(a) The Underwriter Defendants are investment banking houses that specialize, *inter alia*, in underwriting public offerings of securities. They served as the underwriters of the IPO and shared over \$14 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to merchandise On Deck stock in the IPO. The Underwriter Defendants arranged a multi-city roadshow prior to the IPO, during which they, and representatives from On Deck, met with potential investors and presented highly favorable information about the Company, its operation, and its financial prospects.

(b) The Underwriter Defendants also demanded and obtained an agreement from On Deck that On Deck would indemnify and hold the Underwriter Defendants harmless from any liability under the federal securities laws.

(c) Representatives of the Underwriter Defendants also assisted On Deck and the Individual Defendants in planning the IPO, and purportedly conducted an adequate and reasonable investigation into the business and operations of On Deck, an undertaking known as a “due diligence” investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the IPO. During the course of their “due diligence,” the Underwriter Defendants had continual access to confidential corporate information concerning On Deck’s operations and financial prospects.

(d) In addition to availing themselves of virtually unbridled access to internal corporate documents, agents of the Underwriter Defendants met with On Deck’s lawyers, management and top executives and engaged in “drafting sessions.” During these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price at which On Deck stock would be sold; (iii) the language to be used in the Registration Statement; (iv) what disclosures about On Deck would be made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the

Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives and On Deck's management and top executives, the Underwriter Defendants knew of, or in the exercise of reasonable care should have known of, On Deck's existing problems as detailed herein.

(e) The Underwriter Defendants caused the Registration Statement to be filed with the SEC and declared effective in connection with the offers and sales of securities registered thereby, including those to plaintiff and the other members of the Class.

THE FALSE AND MISLEADING REGISTRATION STATEMENT AND PROSPECTUS

36. On August 21, 2014, On Deck filed with the SEC a confidential draft Registration Statement on Form S-1, which would be used for the IPO following several amendments in response to the SEC's comments, including comments from the SEC emphasizing the importance of adequately disclosing material trends and risk factors, as required by Items 303 and 503.

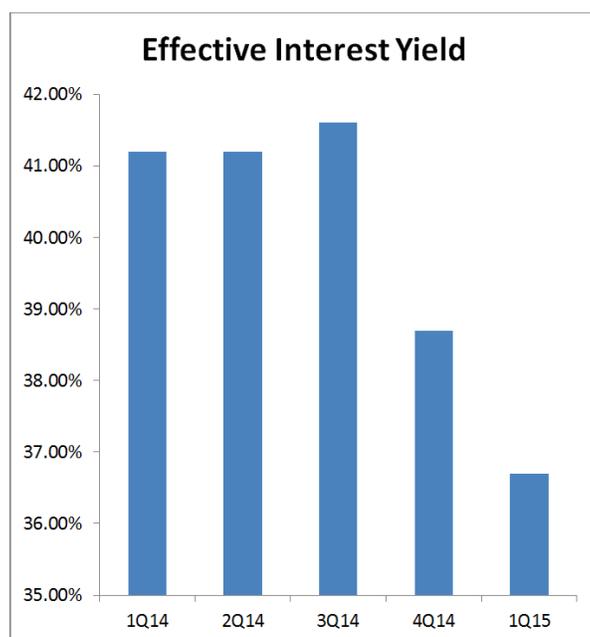
37. On December 16, 2014, the SEC declared the Registration Statement effective. On or about December 17, 2014, defendants priced the IPO and filed the final prospectus, which was incorporated into the Registration Statement.

38. The Registration Statement contained untrue statements of material fact and omitted to state material facts both required by governing regulations and necessary to make the statements made not misleading, including as described below.

39. The Registration Statement touted On Deck's revenue growth "primarily as a result of growth in originations . . . as other factors such as effective interest yields and annual loan loss rates have remained relatively constant over this time." The Registration Statement further highlighted On Deck's "constant" effective interest yield by quarter leading up to the IPO, from the fourth quarter of 2012 (ending December 31, 2012) through the third quarter of 2014 (ending September 30, 2014) as follows:

	4Q12	1Q13	2Q13	3Q13	4Q13	1Q14	2Q14	3Q14
Effective Interest Yield	42.4%	41.1%	42.9%	44.7%	43.9%	41.2%	41.2%	41.6%

40. These representations and reported trends were materially misleading because On Deck was at the time of the IPO already experiencing shifts to less profitable channels and longer term loans, which were negatively affecting, *inter alia*, On Deck’s interest rate spread, effective interest yield, APR and earnings. Indeed, due to shifts in the Company’s lending practices to less profitable channels and longer term loans that were already occurring at the time of the IPO, On Deck’s effective interest yield dropped nearly 10% sequentially to 38.70% in the fourth quarter of 2014 (the quarter ending just two weeks after the IPO) and a further nearly 10% sequentially to 36.70% in the first quarter of 2015 (On Deck’s first full quarter reported as a public company), as shown below:



41. The Company’s first quarter 2015 financial reports indicated that On Deck’s APR dropped even more dramatically – nearly 20% year-over-year from 59.9% to 49.3% in the first quarter of 2015.

42. These known trends, events, and uncertainties, as well as their expected impact, were required to be disclosed in the Registration Statement but were not. Indeed, the IPO occurred just two weeks before the close of the 2014 fourth quarter, a quarter during which On Deck's historically constant effective interest yield dropped nearly 10% sequentially to 38.70%. Under the rules and regulations governing preparation of the Registration Statement, On Deck was required to disclose and adequately describe that, at the time of the IPO, it was already experiencing shifts to less profitable channels and longer term loans, as well as the resultant and expected declines in interest rate spread, effective interest yield, APR and earnings. The Registration Statement, however, contained no such disclosures.

43. Pursuant to Item 303 and the SEC's related interpretive releases thereto, issuers are required to disclose events or uncertainties that have caused or are reasonably likely to cause the registrant's financial information not to be indicative of future operating results, including any known trends. At the time of the IPO, On Deck was experiencing known shifts to less profitable channels and longer term loans, which were likely to (and in fact did) cause a material reduction in On Deck's interest rate spread, effective interest yield, APR and earnings. These developments and their expected impact were required to be disclosed in the Registration Statement but were not.

44. Pursuant to Item 503, issuers are required, in the "Risk Factor" section of the registration statement, to include "a discussion of the most significant factors that make the offering speculative or risky" and, as to each risk factor, "adequately describe[] the risk." On Deck's discussions of risk factors did not adequately describe the risk posed. An adequate description of the risk required disclosure of the facts and circumstances of On Deck's already occurring shifts in lending practices to less profitable channels and longer term loans and the consequent material adverse effects on the Company's interest rate spread, effective interest yield, APR and earnings.

45. The Registration Statement also stated that certain "risks" *would* or *could* adversely affect On Deck's business and results only *if* they occurred, yet failed to disclose that those very risks had already materialized and adversely affected On Deck at the time of the IPO. Specifically, the Registration Statement stated:

We earn a substantial majority of our revenues from interest payments on the loans we make to our customers. . . . In the event that the spread between the rate at which we lend to our customers and the rate at which we borrow from our lenders decreases, our financial results and operating performance will be harmed. The interest rates we charge to our customers and pay to our lenders *could* each be affected by a variety of factors, including access to capital based on our business performance, the volume of loans we make to our customers, competition and regulatory requirements. These interest rates *may* also be affected by a change over time in the mix of the types of products we sell to our customers and investors and *a shift among our channels* of customer acquisition. . . . Any material reduction in our interest rate spread *could* have a material adverse effect on our business, results of operations and financial condition.

46. The Registration Statement's representations that these risk factors *may* or *could* have a materially adverse effect On Deck's business, results of operations and financial condition were false and misleading because On Deck was, at the time of the IPO, already experiencing shifts to less profitable channels and longer term loans, which were likely to (and in fact did) cause a material reduction in On Deck's interest rate spread, effective interest yield, APR and earnings.

47. On January 12, 2015, analysts with Sterne Agee issued a report dramatically lowering its On Deck price target from \$20 to \$15.75 per share and its investment rating from Neutral to Underperform, while warning of compressed margins due to, *inter alia*, On Deck's suspect loan quality and borrower profiles:

After reviewing comments from investors and considerable internal discussion we have come to the opinion that ONDK should be viewed and valued as a high growth specialty finance lender. We are reducing our price target from \$20 to \$15.75, and reflecting this, reducing our rating from Neutral to Underperform.

* * *

[G]iven this company's orientation as a lender, we think investors will focus on other factors impacting growth in earnings and share value including:

1. **Loan Quality & Borrower Profile:** In 3Q14 the annualized percentage rate (APRs) on its loans was 53.2% and during the first 9 months of '14, net charge-offs equaled 11% of loans. Based on a securitization completed earlier this year, approximately 60% of its borrowers are sub-prime/near-prime (FICOs below 700), and its geographic and industry mixes were reflective of general small business data.

* * *

In some ways, the rapidly growing marketplace lending and P2P business reminds us of the U.S. prepaid card business five years ago. Recall when [such] companies . . . were coming public in 2010, these new prepaid program managers were touted as an exciting way to invest in the large and growing un-banked and under-banked U.S. consumer market. . . . Over time, as growth slowed [and] margins compressed . . . [such] companies traded at lower valuations.

48. These concerns reverberated throughout the market, in other analyst reports and widely followed investment websites such as *SeekingAlpha.com*. For example, on January 12, 2015, *The Wall Street Journal* published an article entitled “Sterne Agee Says On Deck Capital Is More Finance Than Tech, and That’s a Problem,” which echoed concerns that “investors will be looking at the quality of [On Deck’s] loans and borrowers . . . rather than the growth in loan origination and revenue,” and that such risks cause “growth to slow and margins to compress.”

49. On these developments, the price of On Deck common stock declined over 25% from as high as \$23.05 per share on January 12, 2015 to as low as \$17.12 per share on January 13, 2015.

50. In late February and early March 2015, it was revealed that these risks and concerns had already, at the time of the IPO, materialized and had compressed On Deck’s margins. On Deck’s first public financial reports disclosed, *inter alia*, that On Deck’s once constant effective interest yield had plummeted 10% sequentially to 38.7% in the fourth quarter of 2014, caused by On Deck’s shift to less profitable channels and longer term loans.

51. On February 23, 2015, On Deck issued a press release entitled “OnDeck Reports Fourth Quarter and Full Year 2014 Financial Results,” which stated as follows:

The effective interest yield for the fourth quarter of 2014 was 38.7%, down from 43.9% in the comparable prior year period, reflecting the mix shift in distribution channels, increase in average term length over the period and OnDeck’s continuing efforts to lower pricing for customers as it achieves cost efficiencies. Reflecting these trends, the average APR of loans originated in the fourth quarter was 51.2%, a decline of over ten percentage points from the prior year period.

52. Later that day, during a conference call with analysts, On Deck’s CFO, defendant Katzenberg, stated as follows:

From a product perspective, term loans continue to be the main driver of origination. And as a predictive power of our credit models improve, ***we continue to extend the average length of our term loans.***

In Q4, the average length of an OnDeck loan was 11.5 months, up from 10.5 months a year ago. Meanwhile in Q4, our line of credit product represented 7% of our total originations. We continue to be very pleased with our customers' response to this product and its significant growth potential.

* * *

Effective interest deal declined in the fourth quarter to 38.7% from 43.9% a year ago, primarily as a result of the lengthening average term I spoke about, as well as the continuing mix shift to lower-cost acquisition channels. And as expected, the rate also declined sequentially, reflecting the continuing mix shift as well as OnDeck's ongoing efforts to pass our cost savings on to customers.

Note also that on a sequential basis, there were two fewer business days in Q4 than there were in Q3, which also contributed to the quarter over quarter decline in EIY. Going forward, *we expect a continued gradual decline in effective interest deals as these trends continue and line of credit, which is priced lower than our term loans from an APR perspective, becomes a greater part of our portfolio mix.*

53. On February 24, 2015, analysts with Sterne Agee issued a report as follows:

We are lowering our EPS estimates to reflect three items: 1) lower than originally [expected] origination volumes, 2) lower revenue tied principally to an anticipated decline in yields related to both the growth of the line of credit product and lower rates being offered existing customers, and 3) higher marketing and technology spending. We are reducing our FY15 estimate from \$0.15 to \$0.01, reducing our 2016 estimate from \$0.60 to \$0.50 and reducing our 2017 EPS estimate from \$1.25 to \$0.80.

54. On these developments, the price of On Deck common stock fell approximately 10%, from as high as \$21.49 per share on February 24, 2015 to as low as \$19.04 per share on February 25, 2015.

55. Over the following days, analysts expressed similar concerns in published reports. On March 3, 2015, analysts with FinTrust Brokerage Services issued a report expressing disappointment with On Deck's declining effective yield interest as follows:

While we were anticipating \$47.6 million in Interest Income, that figure was \$45.4 million, driven principally by a sharp y-o-y drop in Effective Interest Yield, to 38.7% (versus our target of 41.6%). EIY is equal to annualized interest income/avg. loans. The drop, while disappointing, was driven by a shift in distribution channel usage to Direct and Strategic Partner, and an increase in average term length.

56. The price of On Deck common stock dropped more than 20%, from as high as \$21.49 per share on March 3, 2015 to as low as \$16.08 per share on March 5, 2015.

57. Then, on May 4, 2015, On Deck issued a press release announcing its second quarter 2015 financial results, disclosing a further 10%+ decline in effective interest yield as well as a nearly 20% decline in APR, as follows:

The effective interest yield for the first quarter of 2015 was 36.7%, down from 41.2% in the comparable prior year period, reflecting the continued mix shift to lower cost distribution channels, an increase in average term length over the period and OnDeck's continuing efforts to lower pricing for customers as it achieves cost efficiencies. Reflecting these trends, the average APR of loans originated in the first quarter was 49.3%, a decline from 59.9% in the prior year period.

58. Analysts expressed concern over On Deck's continuing and accelerating decline in effective interest yield. On May 4, 2015, Deutsche Bank analysts issued a report lowering their price target and stating as follows:

OnDeck reported mixed 1Q results and guidance. On the positive side, the company saw strong origination growth and a positive acquisition channel mix, continued progress on Marketplace, and lower funding costs. These *positives were offset by weaker effective interest yields (EIY)* and higher OpEx, resulting in lower EBITDA guidance for 2015. *We expect some indigestion around 1Q results as disappointing EIYs stoke concerns* around competition from the bevy of companies getting funded in the space. . . . [W]e reduce our PT to \$25 (from \$28).

* * *

Items to Monitor

EIY of 36.7% fell 193bps Q/Q, below our estimate of 38.6%, stoking fears of competitive pressures. The company attributed this decline to (1) increasing term of loans, where they make more dollars per loan but at a lower annualized interest rate, (2) growth of the lower EIY line of credit product, (3) a deliberate strategy of passing along lower costs to borrowers, and (4) fewer businesses days in 1Q15 versus 4Q14 and 1Q14 (a 60bps drag).

1. On May 5, 2015, Morgan Stanley analysts issued a report stating as follows:

Revenue growth was tempered by lower interest yields vs. Street, and modest raise to 2015 revenues will likely disappoint. . . .

Sequentially lower interest yield was key investor focus: *Effective interest yield of 36.7% came in lower than expected (MSe 38.4%), continuing a trend of*

falling interest yields, *but at a more rapid pace than we had previously anticipated*. After adjusting for one fewer business day in the quarter, effective interest yields would have been ~37.3%, representing a 140bps decrease vs. 4Q14.

59. On these developments, the market reacted severely. The price of On Deck common stock dropped nearly 20%, from as high as \$20.39 per share on May 4, 2015 to as low as \$16.41 per share on May 5, 2015.

60. By the commencement of this action, the price of On Deck common stock has dropped below \$10 per share, a decline of over 50% from the IPO price and a nearly 65% decline from its approximately \$28 per share high.

CLASS ACTION ALLEGATIONS

61. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class consisting of all those who purchased On Deck common stock pursuant or traceable to the Registration Statement issued in connection with the IPO (the “Class”). Excluded from the Class are defendants and their families, the officers and directors and affiliates of defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

62. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are at least hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by On Deck or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

63. Plaintiff’s claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by defendants’ wrongful conduct in violation of federal law that is complained of herein.

64. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

65. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether defendants violated the Securities Act;
- (b) Whether the Registration Statement contained false and misleading statements of material fact and omitted material information required to be stated therein; and
- (c) To what extent the members of the Class have sustained damages and the proper measure of damages.

66. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

For Violation of §11 of the Securities Act Against All Defendants

67. Plaintiff incorporates ¶¶1-66 by reference.

68. This Count is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all defendants.

69. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

70. Defendants are strictly liable to plaintiff and the Class for the misstatements and omissions.

71. None of the defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omission of any material facts and were not misleading.

72. By reason of the conduct herein alleged, each defendant violated §11 of the Securities Act.

73. Plaintiff acquired On Deck common stock pursuant to the IPO.

74. Plaintiff and the Class have sustained damages. The value of On Deck common stock has declined substantially subsequent to and due to defendants' violations.

75. At the time of their purchases of On Deck common stock, plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to the disclosures herein. Less than one year has elapsed from the time that plaintiff discovered or reasonably could have discovered the facts upon which this Complaint is based to the time that plaintiff commenced this action. Less than three years has elapsed between the time that the securities upon which this Count is brought were offered to the public and the time plaintiff commenced this action.

COUNT II

For Violation of §12(a)(2) of the Securities Act Against All Defendants

76. Plaintiff incorporates ¶¶1-75 by reference.

77. By means of the defective Prospectus, defendants promoted and sold On Deck stock to plaintiff and other members of the Class.

78. The Prospectus contained untrue statements of material fact, and concealed and failed to disclose material facts, as detailed above. Defendants owed plaintiff and the other members of the Class who purchased On Deck common stock pursuant to the Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of

reasonable care, should have known of the misstatements and omissions contained in the Prospectus as set forth above.

79. Plaintiff did not know, nor in the exercise of reasonable diligence could have known, of the untruths and omissions contained in the Prospectus at the time that plaintiff acquired On Deck common stock.

80. By reason of the conduct alleged herein, defendants violated §12(a)(2) of the Securities Act. As a direct and proximate result of such violations, plaintiff and the other members of the Class who purchased On Deck common stock pursuant to the Prospectus sustained substantial damages in connection with their purchases of the stock. Accordingly, plaintiff and the other members of the Class who hold the common stock issued pursuant to the Prospectus have the right to rescind and recover the consideration paid for their shares, and hereby tender their common stock to defendants sued herein. Class members who have sold their common stock seek damages to the extent permitted by law.

COUNT III

For Violation of §15 of the Securities Act Against On Deck and the Individual Defendants

81. Plaintiff incorporates ¶¶1-80 by reference.

82. This Count is brought pursuant to §15 of the Securities Act against On Deck and the Individual Defendants.

83. The Individual Defendants each were control persons of On Deck by virtue of their positions as directors and/or senior officers of On Deck. The Individual Defendants each had a series of direct or indirect business or personal relationships with other directors and officers and major shareholders of On Deck. The Company controlled the Individual Defendants and all of On Deck's employees.

84. The Individual Defendants were each culpable participants in the violations of §§11 and/or 12(a)(2) of the Securities Act, alleged in the Counts I and II above, based on their having

signed or authorized the signing of the Registration Statement and having otherwise participated in the process that allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment as follows:

- A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;;
- B. Awarding damages in favor of plaintiff and the Class against all defendants, jointly and severally, in an amount to be proven at trial, including interest thereon;
- C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding rescission or a rescissory measure of damages; and
- E. Such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY TRIAL DEMANDED

Plaintiff demands trial by jury.

DATED: August 5, 2015

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