CONFERENCE ISSUE 2021

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What a long, strange year it’s been. Happily, life is slowly getting back to normal.

We are very excited to be offering a Hybrid Conference this year. This will be the first Hybrid Conference ever for the commercial finance industry. This event will give attendees the ability to attend either in-person or virtually. We are planning many new and novel ideas that will provide for a rewarding experience, regardless of how you are attending.

The in-person conference is being held at the Arizona Biltmore Hotel. After evaluating more than 50 different hotels around the country, I selected The Biltmore. It is a beautiful, classic property designed by Frank Lloyd Wright. It is a low-rise hotel so that attendees will not have to take an elevator at any time. There are a variety of outdoor spaces to hold all of the social events, and the room that our speaking sessions will take place in is more than 24,000 square feet, allowing attendees to be socially distant. Phoenix is also an easy destination for everyone to get to and the weather should be excellent at the time of the conference. The hotel has just completed a major renovation of its outdoor and common areas, which will provide a great experience for all attendees.

In-person attendees will find that the conference experience is fairly close to normal. Sessions remain the same. All of the events and timings will remain similar to past events. One big advantage is that in-person attendees will have the ability to network with both the group that is in Phoenix as well as virtual attendees.

Virtual attendees can attend all of the in-person events and participate just as if they are in the room. All sessions will be shown live via our conference app. Virtual attendees can ask questions of speakers and participate in all roundtable sessions. The only issue they may experience is the same that they would have if they were in Phoenix: deciding which one of the concurrent sessions to attend. All sessions will be recorded and can be viewed at a later time as well.

We are setting up the Exhibit Hall with a novel approach. All exhibitors, whether they are in-person or virtual, will be given both a physical booth and a virtual booth. In-person attendees can visit in-person booths, just as they always do. Virtual attendees can visit virtual booths via the app. Virtual exhibitors will have a tablet in their booth connected via Skype so they can see what is going on in the exhibit hall and talk to the in-person attendees in front of their booth.

The Factoring Essentials training course also will be conducted as a hybrid event. We have held various hybrid training classes during the last year, and they all went smoothly and received excellent feedback from both in-person and virtual attendees. I see this as the method that the IFA will be conducting training for the foreseeable future.

The IFA also has been busy on some other fronts:
• We just released our 2021 Factoring Profile and Performance Survey. We have been producing this report since 2007 and this is the most comprehensive survey of how factors operate.
• We will be conducting our usual number of training courses in 2021, all of which will be held as hybrid events. The latest information on our courses can be found at factoring.org.
• We have been offering a webinar every two weeks for the last year. These webinars have been very well received and facilitate the ongoing education of our members.

The AFA also has had a very busy year monitoring the legislative proposals that will affect the factoring industry. We have had excellent success in the past and expect to be influential in the future protection of the factoring industry.

The IFA is available to offer any additional assistance we can to the factoring community. Please reach out to us if we can assist you in any way.

We hope that you and your families remain safe and we look forward to a return to business as usual.
PEOPLE

Coeur Chooses Kringen to Lead New Transportation Factoring Division, Hires Dete as Partner
Coeur Capital launched a transportation financing division, CCT Factoring. Kim Kringen will lead the new division as president and managing director. She will be responsible for the division's day-to-day operations. Coeur Capital also hired Brendan Dete as a partner. He will manage Coeur Capital's day-to-day activities alongside Bud Crawford and David Ebinger.

eCapital Appoints Poston Chief Sales Officer
eCapital named James Poston chief sales officer. Poston has more than 14 years of experience in receivables financing and asset-based lending. He will oversee eCapital's sales strategy, drive business development and create a unified revenue generation process across the organization throughout the United States and Canada. As chief sales officer, Poston will be responsible for providing the leadership, direction and executive vision to ensure alignment with the company's financial goals.

Ansonia Credit Data Co-Founder Dasal to Retire
Kathleen Dasal will retire from her position at Ansonia, an Equifax company. Dasal forged strong relationships and built many lasting friendships over her 44 years in the credit industry. Dasal's vision to co-found Ansonia Credit Data introduced a new solution to credit professionals that is used throughout the factoring and transportation industries.

SG Credit Partners Enters Collateral-Based Lending Arena, Names Butler Managing Director
SG Credit Partners started a collateral-based lending division and hired Nathalie Butler as managing director of underwriting to lead the group. Butler has more than 20 years of experience in asset valuation, disposition and, most recently, lending.

Axiom Bank Hires Simshauser as SVP of Allied Affiliated Funding
Axiom Bank expanded its factoring and asset-based lending division with the hiring of Mark J. Simshauser as senior vice president of Allied Affiliated Funding. Based on Long Island, NY, Simshauser will be responsible for expanding Allied and Axiom's existing commercial portfolio by working with business owners and centers of influence throughout the Northeast to find solutions that meet clients' financial needs. He has more than 20 years of experience, half of which he used to focus solely on building transcontinental portfolios for both bank-owned and independent financial institutions.
NEWS

Tradewind Finance Hires Najman and Champion as Sales VPs
Tradewind Finance hired Daniel Najman as vice president of sales in Miami and Greg Champion as vice president of sales in Chattanooga, TN. As VP of sales, Najman will help expand the company’s client base by leveraging his industry experience and native ties to Latin America. Najman has years of industry experience in trade credit insurance and trade logistics and a track record of dealing with Brazil and other international markets. In his role as VP of sales, Champion will be focused on driving growth for the company and increasing its client base. He has a background in sales and technology-based solutions.

Capstone Promotes Chakraborty from Senior Analyst to Associate
Capstone Capital Group promoted Abhigyan Chakraborty from senior analyst to associate and also appointed him to the company’s credit committee. Chakraborty joined Capstone in 2018 and is responsible for client relationship management, credit underwriting and collections.

eCapital Promotes Gillespie to Chief Human Resources Officer
eCapital promoted Jaime Gillespie to chief human resources officer. In her new role, Gillespie will oversee employee engagement, talent management and leadership development, as well as the alignment of the company’s workforce and the establishment of a people-centric culture. As a people-centric leader, Gillespie is tasked with building the strategy and vision for eCapital’s human resource initiatives, including engagement, performance and compensation.

Sallyport Commercial Finance Adds Scoggin to Business Development Team
Sallyport Commercial Finance added Alexandra Scoggin to its business development team. Scoggin has more than 15 years of experience in factoring and asset-based lending, previously serving as vice president of business development at Goodman Capital Finance. Scoggin is a member of the International Factoring Association, the Secured Finance Network, the Association for Corporate Growth, the Turnaround Management Association and the Commercial Finance Conference of California. She serves on the boards of National Jewish Respiratory Health and City of Hope.

Black Olive Capital Adds Palmer as VP of Underwriting
Black Olive Capital added Kristen Palmer as vice president of underwriting. Palmer has served as an operation specialist, lead underwriter and business development officer for several boutique lenders in the industry. She has experience in the inventory and purchase order finance space, bringing more than 10 years of industry knowledge to Black Olive.

Viva Capital Funding Hires Barron, Irigoyen, Rosales and Landskov
Viva Capital Funding hired four new employees: Celina Barron as account manager, Paco Irigoyen as account manager, Darlene Rosales as account specialist and Sasha Landskov as marketing specialist.

IFA CALENDAR OF EVENTS 2021

See IFA’s full calendar on page 21.
Registration Information: www.factoring.org

SOUTHEAST CHAPTER EVENTS 2021

April 15
Webinar
2pm-3:30pm EDT
Topic TBA

May 12
IFA Chapter Reception — IFA Annual Factoring Conference
4:30pm-5:30pm
Phoenix, AZ or online
www.factoringconference.com

May 27
Webinar
2pm-3pm EDT
Topic TBA

June 10
Virtual Happy Hour
4pm-5pm EDT

June 24
Webinar
2pm-3pm EDT
Topic TBA

All events: Free for IFA Southeast Chapter Members, $25 for Non-Members

For more information, call Harvey Gross at (732) 672-8410 or e-mail hgross4@verizon.net or visit www.ifasoutheast.org

SoCAL CHAPTER EVENTS 2021

April 22
Legal & Lending: Coast to Coast, Joint Webinar with NYIC & IFA Southern California
12pm-3pm PDT
Two panel presentations and an hour of virtual networking
$45 Members, $75 Non-members

May 12
IFA Chapter Reception — IFA Annual Factoring Conference
4:30pm-5:30pm
Phoenix, AZ or online
www.factoringconference.com

For more information on joining the SoCal Chapter, contact:
John Cummings, Chapter President, at cummings.john@acsfactors.com
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**NEWS**

**MIDWEST CHAPTER EVENTS 2021**

**May 12**
IFA Chapter Reception — IFA Annual Factoring Conference
4:30pm-5:30pm
Phoenix, AZ or online
www.factoringconference.com

For more information on joining the Midwest Chapter, contact:
Robert Meyers, Chapter President, at rmeyers@republicbc.com

**NORTHEAST CHAPTER EVENTS 2021**

**April 20**
Webinar
10am-11am EDT
Topic TBA

**May 5**
Virtual Happy Hour
4pm-5pm EDT

**May 12**
IFA Chapter Reception — IFA Annual Factoring Conference
4:30pm-5:30pm
Phoenix, AZ or online
www.factoringconference.com

**May 18**
Webinar
10am-11am EDT
Topic TBA

**June 2**
Virtual Happy Hour
4pm-5pm EDT

**June 15**
Webinar
10am-11am EDT
Topic TBA

All events: Free for IFA Northeast Chapter Members, $25 for Non-Members

For more information, call Harvey Gross at (732) 672-8410 or e-mail hgross4@verizon.net or visit www.ifanortheast.org

**Busbee Joins eCapital Commercial Finance as SVP/BDO**
eCapital Commercial Finance, a division of eCapital, appointed Dale Busbee senior vice president and business development officer. Busbee has more than 25 years of vertical market experience within the staffing industry as a facilitator of payroll funding and working capital solutions to staffing businesses. Prior to joining eCapital, Busbee held the position of senior vice president in charge of sales, business development and operations at Revolution Capital.

**White Oak Adds Tan, Hanson and Kearney as Business Development Officers**
White Oak Commercial Finance hired Garrick Tan, Fridolf Hanson and Bill Kearney as senior business development officers to its asset-based lending and lender finance platform. In their roles, Tan, Hanson and Kearney will focus on sourcing transactions with committed capital needs ranging from $15 million to $250 million.

**Rogers Rejoins Orange Commercial Credit to Lead Marketing Strategy**
Andrea Rogers rejoined Orange Commercial Credit as vice president. Based in the Seattle area, Rogers has 25 years of experience in factoring business development and spent the last five years marketing commercial credit solutions at Ansonia Credit Data, which was acquired by Equifax in July 2020. Rogers will develop and implement Orange Commercial Credit’s marketing strategy.

**Porter Capital Funds $20MM Facility for Machine Tool Manufacturing Company**
Porter Capital, a nationwide provider of accounts receivable financing and asset-based lending solutions, funded a $20 million facility for a publicly-traded company that specializes in manufacturing machine tools and machines.

**LSQ Delivers $10MM Factoring Facility to Amazon Vendor**
LSQ originated a $10 million factoring credit facility within an expedited timeline for an Amazon vendor.

**J D Factors Provides $1.96MM in Recent Factoring Facilities**
J D Factors recently provided $1.96 million in factoring facilities for 12 different transportation company clients.

**CANADA CHAPTER EVENTS 2021**

**May 12**
IFA Chapter Reception — IFA Annual Factoring Conference
4:30pm-5:30pm
Phoenix, AZ or online
www.factoringconference.com

For more information, call Oscar Rombolà at (905) 603-6284 or email oscar.rombola@ecapital.com. Visit IFA Canada’s website at www.FactoringAssociationCanada.com
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+ Lender Finance
+ Supply Chain Finance
+ Inventory Purchase Facilities
+ International Lending Solutions

whiteoaksf.com/commercialfinance
First Business Bank Closes $1MM Factoring Transaction for IT Staffing Company
First Business Bank’s accounts receivable financing group closed a $1 million factoring transaction for a new client that provides IT staffing and consulting to corporate customers. First Business closed the deal even though many of the client’s customers were in the process of changing their managed service providers.

Haversine Funding Closes $7.75MM in Recent Transactions
Haversine Funding closed $750,000 of a $1.5 million factoring participation to finance a ‘do it yourself’ home automation and security product manufacturer. Haversine also closed a $3 million subordinated debt facility to support the growth of a residential real estate lender for loans that may be held for sale or investment. In addition, Haversine closed $4 million of an $8 million purchase order and factoring participation for a personal protective equipment transaction to deliver masks to a national retailer.

Wells Fargo Capital Finance Adds $30MM to Alterna Capital Solutions’ Credit Facility
Wells Fargo Capital Finance increased Alterna Capital Solutions’ asset-based credit facility by $30 million. The line increase brings the firm’s total credit facility to $110 million.

Capital One Closes $200MM Senior Credit Facility for Maxim Healthcare
Capital One served as administrative agent and sole lender on a $200 million credit facility for Maxim Healthcare, a U.S. provider of home health and medical staffing with more than 400 branches in 37 states. Proceeds will be used to support continued growth in Maxim’s home care and staffing businesses.

Versant Funding Closes $4MM Factoring Facility for Airplane Parts Manufacturer
Versant Funding funded a $4 million non-recourse factoring facility to a manufacturer of precision airplane parts with commercial and military applications. The financial performance of the manufacturer was negatively impacted by the COVID-19 pandemic and its existing asset-based lender was putting pressure on the business to refinance its facility as soon as possible.

Victory Park Capital Delivers $100MM Credit Facility to Dave
Dave, a banking app, secured a $100 million credit facility from Victory Park Capital, a global alternative investment firm. The funding will support the growth of Dave’s banking product and accelerate the company’s expansion into new products and features.
IDS ACQUIRES WILLIAM STUCKY & ASSOCIATES

EQUIPMENT FINANCE + ABL + FACTORING ON A SINGLE SECURED FINANCE PLATFORM

This is about driving portfolio growth and operational simplicity. IDS recently acquired William Stucky & Associates (WSA) — the most trusted name in software solutions for asset-based lending (ABL) and factoring. We’re integrating that powerful software with our own equipment finance solutions to expand the capabilities of IDScloud™ — and create a complete secured finance solution that brings simplicity, security and productivity to your operations.

READY TO TALK GROWTH?

We see opportunities for you to drive strong growth and streamline your operations. That’s why we’re building the industry’s most complete secured finance platform. So, if you’re ready to modernize your operations and talk about your growth plans, contact us today. You can call +1.612.851.3200 to talk with an IDScloud expert. Or visit idsgrp.com/stucky-acquisition to learn more.
Pinnacle Capital Finance Provides $4MM Line of Credit to Energy & Environmental Service Provider

Pinnacle Capital Finance issued a $4 million asset-based line of credit to a veteran-owned, Southern California-based energy service provider. The company provides engineering and consulting services to various sectors, including oil, natural gas, rail, highway infrastructure, public supported projects as well as international, federal, state and local governments. The Pinnacle Capital Finance loan is in the form of a 36-month, $4 million accounts receivable line of credit.

TradeCap Partners Provides $1.2MM PO Facility to Pacific NW Household Products Importer

TradeCap Partners facilitated the closing of a $1.2 million purchase order finance facility for an importer of household products based in Oregon. TradeCap was introduced by the company’s financial advisor. TradeCap structured an in-transit inventory facility, making payments to the supplier as goods were shipped. TradeCap also provided funding to pay all import costs, including freight, duties and outbound logistics.

Express Trade Capital Completes $5MM Facility for PPE Production

Express Trade Capital provided a $5 million letter of credit facility to assist an apparel industry company with the production of personal protective equipment. The client was using Express Trade Capital’s factoring and PO funding facilities for several years before pivoting to produce PPE during the COVID-19 pandemic. The client needed to fulfill immediate orders and replenish stock but was uncomfortable leaving large deposits overseas before ensuring that goods were produced and passed quality inspections. The prior relationship allowed Express Trade Capital to piggyback on already existing due diligence and history to deliver an add-on facility.

INDUSTRY NEWS

Ohio Law Enforcement Officials Search Northwest Capital’s Offices

The Toledo Blade reported that state law enforcement officials searched the offices of Northwest Capital, an Ohio-based factoring company, in late February as part of an in-progress investigation.

CapitalNow Cannabis Becomes Full Member of the IFA

CapitalNow Cannabis became the first cannabis working capital company to be granted membership in the International Factoring Association. CapitalNow Cannabis provides supply chain financing programs to Canadian cannabis companies.
IFA Officially Forms Southern California Chapter
The International Factoring Association officially formed its Southern California chapter in late December 2020. The official name of the chapter is the SoCal Chapter of the IFA and its mission will be consistent with the IFA’s mission. The new chapter will spread the IFA’s values and benefits to its members and supporters.

Borrowing Costs Rise for SMBs, Particularly Women and Black-Owned Businesses
According to a new survey from C2FO, 87% of small and mid-sized businesses (SMBs) have enough liquidity for the next six months, but the cost of borrowing has increased for 32% of SMBs, including 43% of women-owned businesses and 34% of black-owned businesses. The trend for women-owned businesses was further reflected when looking at small businesses with revenue of under $50 million, with 39% of women-owned businesses within this category reporting an increase, while only 23% of men-owned businesses with a revenue of under $50 million said their cost of borrowing increased.

Federal Reserve Extends Paycheck Protection Program Liquidity Facility to June 30
The Federal Reserve Board extended its Paycheck Protection Program Liquidity Facility (PPPLF) to June 30, 2021. The extension will provide continued support for the flow of credit to small businesses through the Paycheck Protection Program. The PPPLF extends term credit to financial institutions making PPP loans, accepting the PPP loans as collateral. The liquidity provided by the PPPLF helps eligible financial institutions fund additional PPP loans. The PPPLF was established under the Federal Reserve Board’s 13(3) authority and the extension from March 31 to June 30 was approved by the Secretary of the Treasury.

Solar Capital Partners Rebrands as SLR Capital Partners
Commercial finance platform Solar Capital Partners changed its name to SLR Capital Partners. Part of the rebrand includes renaming Crystal Financial (SLR Credit Solutions), Nations Equipment Finance (SLR Equipment Finance), North Mill Capital (SLR Business Credit) and Gemino Healthcare Finance (SLR Healthcare ABL).

Former Texas Business Owner Pleads Guilty to $12.3MM Wire Fraud Scheme
A former Sweetwater, TX, business owner recently pleaded guilty to engaging in a $12.3 million wire fraud scheme, according to Prerak Shah, the acting U.S. Attorney for the Northern District of Texas. Stewart Kile Williams, 31, pleaded guilty to two counts of wire fraud and two counts of engaging in monetary transactions in property derived from unlawful activity. According to court documents, Williams committed his crimes in the Northern District of Texas after engaging in another fraud scheme in the Southern District of Texas, where he pleaded guilty to four counts of wire fraud. Williams was sentenced to serve 70 months in federal prison and ordered to pay $2,071,925 in restitution for his crimes in the Southern District of Texas.

Center Launches Quasar Capital Partners, a TX-Based ABL Company
Brian Center launched a new Texas-based commercial finance company, Quasar Capital Partners. The company will have a small business focus, providing factoring receivables funding and asset-based lending solutions for facility sizes ranging from $100,000 to $999,999. Center has more than 30 years of experience in serving clients and referral sources.

IFA Mourns Passing of ABL Industry Veteran Richard Gilbert
Richard “Dick” Gilbert passed away on Jan. 6 at San Antonio Regional Hospital in Upland, CA. Gilbert had a long and successful career in the asset-based lending industry and was instrumental in the formation of the Commercial Finance Conference of California (CFCC), which is now known as the Southern California chapter of the Secured Finance Network.

Tax Guard Resolves $670K Liability for Staffing Company
Tax Guard resolved an IRS liability of $670,000 for a staffing company by negotiating a lien-deferred installment agreement with a payment of $4,000 per month. As a result, the business can continue funding with LSQ Group.

Revolution Capital Acquires Factoring Firm Atlantic Gateway
Revolution Capital, a provider of factoring and cash flow financing in Canada and the U.S., acquired Atlantic Gateway, a boutique factoring firm specializing in transportation factoring.

OP Bancorp Acquires Hana Small Business Lending’s SBA Portfolio
OP Bancorp, parent company of Open Bank, will acquire Hana Small Business Lending’s SBA portfolio in an asset purchase agreement. The transaction includes the sale of approximately $105 million of SBA 7(a) loans as well as servicing rights relating to a pool of $295 million in loans.

IDS Acquires William Stucky and Associates
IDS, a provider of asset and equipment finance technology, completed the acquisition of William Stucky and Associates (WSA), a provider of asset-based lending and factoring software. The combination of the two companies creates a cloud-based technology platform providing secured finance solutions to customers and financial firms globally.
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- You earn 50% of the commissions throughout the lifetime of the deal.

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Emma Hart of Sallyport Commercial Finance takes us back a year and explains how the operations team at Sallyport Commercial Finance dealt with the initial shockwave of the COVID-19 pandemic to keep employees safe while providing support for clients.

BY EMMA HART

When my colleagues at Sallyport Commercial Finance and I returned from spring break vacations in March 2020, we were returning to a whole new world. States and counties began shutting down and issuing stay-at-home orders, further precipitating a fear of the unknown.

What did that mean from an operations perspective for the company? First, we needed to take care of our staff. Second, we needed to take care of our clients and ensure we could provide the working capital they needed to take care of their own businesses and employees.
Without question, our operations team was resilient throughout those early months of the pandemic. They worked hard in very trying circumstances and they were responsive and reactive to our clients.

As we conducted these initiatives, roads were eerily quiet, as only essential businesses were allowed to remain open. As an essential financial services business, our office was open daily, but only senior management was in attendance. That meant senior managers were answering the door and phone, opening the mail, and picking up and depositing checks.

As the weeks went by, some employees felt isolated and scared, while others felt safer and more productive than in the office. However, some employees felt the need to get back to the office and/or find relief from stress related to childcare and schooling.

On one Friday afternoon a few weeks into the COVID-19 pandemic, my two teenage sons and I hand-delivered gift bags to the front doorsteps of all of the operations team with a message showing appreciation for all that they were going through and encouraging them to keep their spirits up. My boys literally were allowed to play “ding-dong-ditch” with full permission (and masks)!

On the client side, COVID-19 was taking hold and businesses were panicking about what to do. One of the first things to happen was a slowdown in our clients’ sales, which immediately impacted their cash flow. To make matters worse, customers would hold on to payments. No one knew what the future would hold or how these developments would affect business. The high streets were closed, and retailers were reluctant to pay invoices, as were many companies and industries.

This led to an immediate slowdown of collections, a dynamic that shows up fast and furiously in a factoring portfolio. Understandably, clients were drawing all available funds while volumes were significantly down and collections were being impacted, resulting in debt aging out. Most AP departments (including Sallyport’s) were working from home, making it very difficult to contact people and to receive responses to calls and emails, leading to a perfect storm for delays to payments, approvals, check signatures, etc.

HELPING CLIENTS IN CRISIS

Despite these challenges, it was imperative that we did not stop trying. Cash going out and not coming in is not a sustainable business model and can lead to devastating consequences. We needed our operations team to continue to chase customers and provide a service to our clients, who were, aside from a few, all struggling.

Our clients needed our help. We reassured them we would be there to support them. We provided a moratorium for loan and interest repayments, waived fees and allowed for borrowing base governors to be relaxed. We extended recourse days and provided over-advances when needed. We talked to our clients and changed processes and controls, as their staffs were working from home as well. We were in it together with our clients and felt together we would get through it. We also were talking to our banks and investors regularly to ensure we had their support and remained transparent about what was happening to the portfolio. The risk in our portfolio was increasing, but we had strategies in place to deal with it.

As time marched on, we realized the best way to help our clients was to return to the office so there was once again collaboration, ease of communication, efficiency and productivity. Our clients and our company were coming out of crisis management mode and finding new and improved ways of working.

Most of our operations team returned to the office in late May.
In line with CDC guidelines, we disinfected the office, brought in sneeze screens and changed the seating plan to ensure social distancing. We also introduced a bi-weekly COVID-19 testing protocol and travel guidance protocols to ensure everyone was protected. Immediately, productivity was enhanced, conversations were dynamic and client issues were promptly addressed and quickly resolved.

Without question, our operations team was resilient throughout those early months of the pandemic. They worked hard in very trying circumstances and they were responsive and reactive to our clients. This experience made us nimble to act so that when an asymptomatic COVID-19 positive case showed up in the office a month later, we immediately reverted to home working with all home office equipment for a two-week quarantine period — as was the recommendation at the time.

Right from the get-go, we qualified as an essential business, but we listened to and cared about our team, their individual circumstances and their fears. They, in turn, listened and cared about our clients, and we were able to accommodate and be flexible with the terms of our contracts to help our clients through this difficult time.

It is now a year later and we are gradually beginning to return to normal. The camaraderie that Sallyport’s team has is remarkable, especially now that we have navigated a pandemic together. We have implemented procedures to keep everyone safe while remaining flexible and supportive of one another and our clients during a crisis. Today, we are equipped, resilient and nimble enough to deal with what comes next.

Emma Hart is the chief operating officer of Sallyport Commercial Finance. Hart has a tenure of more than 30 years in the commercial finance industry. Prior to helping to set up Sallyport Commercial Finance, she held the role of executive vice president of operations with Bibby Financial Services (CA), Inc. from 2008 to 2014. Prior to joining Bibby, Hart spent 20 years with Lloyds TSB Commercial Finance in the UK. She can be reached at 832-939-9450 or at ehart@sallyportcf.com.
In an exclusive Q&A, Jamie Clemons of Artis Trade Systems and George Souri of LQD Business Finance provide insight on the most pressing trends in factoring technology, including artificial intelligence, machine learning, APIs, robot process automation and more.

BY PHIL NEUFFER

These days, technology is accelerating at tremendous speeds, leaving some firms behind with every new product. To give us an update on the developments most pertinent to the factoring industry, Commercial Factor spoke with Jamie Clemons, co-founder of Artis Trade Systems, and George Souri, founder and CEO of LQD Business Finance, about the current state of factoring technology and where the industry is headed.

How are things like artificial intelligence and machine learning making an impact in the factoring world and how can companies in the industry utilize these tools?

JAMIE CLEMONS: AI and machine learning will have a significant impact in four areas that have overlap and are not mutually exclusive: operational efficiencies, identifying fraud risk, payment application and underwriting. However, AI is often used precariously to mean many things at once,
and as a result, can often present as a misnomer and sometimes even seem meaningless given the over-reach of application.

If we are referring to AI as any machine that exhibits traits associated with a human mind, I have seen very few, if any, examples from fintech startups in the factoring space. Machine learning, which is a subset of AI, in its simplest form, is pattern recognition focused on learning from data and improving the accuracy input over time without being programmed to do so. Machine learning is rather “easy,” but it is also very expensive to do well. I think in the very near future all companies will have access to machine learning as a tool for a fraction of the current cost.

The most significant impact factors will likely experience will be AI-machine learning-based forecast and credit performance prediction tools implemented by fintechs and banks. The projected level of accuracy of these tools as well as the removal of human underwriting represents a remarkable and unprecedented outsourcing of human decision-making within the industry. Of course, there are inherent dangers [in] outsourcing decision-making to machines, especially if there is a wrong decision that is made at scale by machines. It could result in abnormal losses until the incorrect assumptions/model/algorithm is updated.

Thus, we have a “buy versus build” question. In the foreseeable future, it is my belief that factors will be successful in the “buy, not build” scenario, and factors will successfully deploy available AI and machine learning offerings into their operations, allowing for significant automation.

**GEORGE SOURI:** The term artificial intelligence is really just a big blanket term for a variety of techniques to improve decisions that maybe otherwise would have been made by a human, and machine learning is one form of those techniques.

The way machine learning works is by feeding a bunch of data into a machine learning model, and as that model sees more and more data, it tries to make predictions. The idea or the hope is that the predictions of the model are adequately precise such that you can use the model to automate decision-making.

As machine learning is learning, it makes a lot of errors and it needs the right data set, and the data set a model like that would need just doesn’t exist. That’s problem one. Problem two, to build it would be extremely costly because you would have millions and millions of dollars of charge-offs. I think the biggest opportunities are not in machine learning but in using logic-based systems and using automation and then using data integration to make the process more efficient.

**APIs are another technology that is becoming more and more prevalent in the industry. What trends have you seen on this side and how can this tech best be utilized?**

**CLEMONS:** APIs are nothing new; they have been around for 20-plus years. Like our AI/machine learning discussion, API is also a broad term that is often over-extended to the point of detracting from meaning.

API is ultimately just computers communicating with other computers. APIs are becoming more prevalent as more things are cloud-based. On-premise systems, versus cloud-based, cannot talk to each other, but once you are cloud-based, you now have the ability to connect to other systems.

**What is really driving the adoption of APIs are third party software providers like Zapier, who make it relatively easy to connect APIs.**

These companies provide simple workflows to connect APIs for cloud-based solutions. Historically, if you wanted to do things with APIs, you would have to be very technologically savvy. However, with these emerging providers, the process is being streamlined and becoming more accessible. That being said, if one is trying to connect to a robust or complex system, IT expertise is certainly required for successful facilitation.

Regarding how it can improve business processes for factors — simple, if you automate something, you become more efficient. When you become more efficient, you have better workflow and likely better capital efficiency.

**SOURI:** In theory, API sounds great. There are a couple of challenges to the use of APIs. The first is not all data’s available through API. So, if somebody is using a local server version of Sage Accounting or QuickBooks, you can’t use an API. And to the extent it’s theoretically available, it’s not consistently available.

Problem No. 2 is APIs break all the time, especially application-to-application APIs. So, people need to be very sober about the fact that using an API integrated app-to-app connection is going to require maintenance.

However, the biggest problem is that once you get the data, if that data is not accurate, then nothing that comes after it is going to be useful. So, it’s not a be-all-end-all. Where APIs can be very effective, however, is as it relates to outgoing data. If you have incoming data that you have cleaned and warehoused, and you want to set up a portal for customers or investors, APIs can be very powerful. But while they are powerful with respect to acquiring and aggregating data, there are some challenges with APIs that I think people need to be very sober about.
The hardest part is designing a structure that is adequately flexible and adequately robust in its design to enable you to accommodate the vast majority of requirements and needs. — George Souri

How much more important has it been to be on the cutting-edge of technology developments during the COVID-19 pandemic?

CLEMONS: Very important. Cloud helps dramatically, as employees can work anywhere versus being in the office; physical presence is not important. Companies that had been open to new technology and updating their operating systems did much better during this time than those on legacy and on-prem systems.

SOURI: Our platform is cloud-based and our data are all accessible by internet. We don’t have any local servers of any kind. So, if you were a company that still had local servers and you had to use a VPN, obviously you were going to have certain challenges that companies who had moved into the digital domain were not.

All of our loan agreements are all electronically signed. All of our servicing is done electronically and all of our reporting is done digitally. So, organizations that have not undergone a digital transformation were going to have a very hard time in the world of COVID-19.

One of the things that technology cannot replace, though, is the degree to which you can collaborate and exchange ideas when you’re working on complicated problems. There are certain aspects of this where technology definitely acts as an equalizer, but it doesn’t solve all the problems.

When developing software for factoring companies, what are some of the pain points that are most critical to address?

CLEMONS: First and foremost, we focus on building our software to make it incredibly easy to use, and secondly, incredibly adaptive to allow it to be customizable to fit the user’s needs. We are fond of the quote “simplicity is the ultimate form of sophistication,” and we spend a tremendous amount of effort to make the sophisticated simple.

SOURI: The biggest problem is building a solution that can accommodate unforeseen future scenarios and requirements. This is what we call in the scientific world a particular solution versus a general solution. The idea is that the general solution solves for all cases, whereas the particular solution solves for a particular case.

The biggest problem with technology developers is they solve for a particular case, and then they want the user of the software to squeeze themselves into the software. My view is the technology must always act in service of the end it’s serving. In other words, my business should not be a slave to the technology. The technology must help me run my business better, and if it doesn’t conform to do the things I need it to do, then it’s not as good as it could otherwise be.

So, the hardest part is designing a structure that is adequately flexible and adequately robust in its design to enable you to accommodate the vast majority of requirements and needs.

How do you see this sector developing over the next five to 10 years?

CLEMONS: I believe that there will be consolidation in the industry, especially as more advanced
HOPEFULLY YOU DON’T NEED A COLLECTION AGENCY BUT IF, YOU DO.

MAKE SURE IT IS A CLLA CERTIFIED AGENCY

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Kearns Brnen & Magliaghian, Inc.
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Millennium Collections Corporation
Vero Beach, FL
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Melville, NY
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Erie, PA
Williams & Williams, Inc.
Louisville, KY
Windham Professionals, Inc.
Fair Lawn, NJ
technology makes its way into the industry. The factors that can incorporate AI and machine learning tools into their operations will have a competitive advantage and the opportunity to gain market share. I also believe that early payment programs are going to be made available by more and more businesses, which will allow traditional factoring clients to accelerate their payments at a discount less than what they are factoring for. This will reduce the total available market (TAM) to factors. I believe factors will be able to create new lines of business by offering their expertise in invoicing, trade finance and payments to companies in some form, such as outsourced AR/AP operations, trade finance programs and business consulting.

SOURI: I don’t have [the] slightest idea, to be honest with you, because technology moves so quickly right now. We’re starting to work with blockchain to package loans. So instead of the more traditional securitization model, there are ways you can use a blockchain to package loans and all the related documents and offer those loans for sale to investors or loan buyers. There are tremendous innovations that are theoretically possible, the question is, what happens with adoption rate?

Jamie Clemons, CPA, is the co-founder and CEO of Artis Trade Systems. Clemons began his career in consulting and then transitioned into international finance and moved abroad to work for KPMG. After returning to the U.S., he worked for a former client, ON Semiconductor, directing and operating the internal audit and inventory audit groups. Clemons then worked for DriveTime to pursue his interest in asset-based lending before founding Artis Trade Systems in 2018. He can be contacted at 602-825-1841 or jamie.clemons@artistrade.com.

George Souri is CEO and Founder of LQD Business Finance, a tech-enabled business lender based in Chicago. Souri has more than 20 years of entrepreneurial experience and leads LQD Business Finance’s strategic direction and innovation initiatives. Prior to founding LQD Business Finance, Souri spent seven years as the founder and CEO of Atria Capital, a Chicago-based advisory firm. Before Atria Capital, Souri was the co-founder and CEO of Ramzy Broadband, a national provider of end-user fulfillment services to cable companies.
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Turning Uncertainty into Opportunity: Solutions for Emerging Tax Liabilities

Jason Peckham and Rachel Libowitz clear up some of the misconceptions about the IRS while providing strategies for finance providers and their clients to deal with tax liabilities so that fear and uncertainty don’t ruin opportunities.

BY JASON PECKHAM, ESQ., AND RACHEL LIBOWITZ

So far, the uncertainty created by what was a most unpleasant 2020 (putting it mildly) is creeping into 2021 as well. However, as we begin to emerge from the COVID-19 pandemic, we can be certain about at least two things: First, many businesses struggled last year and will emerge with federal tax liabilities and, second, there’s a solution.

There’s no shortage of misconceptions when it comes to the Internal Revenue Service. Many lenders upon learning of an issue with the IRS will a) turn and run, b) recommend Chapter 11 bankruptcy (a costly alternative, especially if the only issue is an IRS liability) or c) attempt to pay off the IRS from the initial funding. While there’s absolutely a time and place for these strategies, most situations involving the IRS can be better resolved by simply negotiating a reasonable repayment arrangement.

Information is the best defense against uncertainty. Armed with the knowledge of a few basic principles, lenders can provide better advice to their clients, which may be the difference between a business that survives (and ultimately thrives) and one that ceases to exist. As such, it is important to address some common misconceptions.
HOW MUCH IS TOO MUCH?

Many lenders, consultants and even business owners themselves put too much emphasis on the total amount owed to the IRS. They see a substantial federal tax liability and conclude there is no way the business can repay the debt and/or the IRS will not allow the business to continue operating. By focusing on the overall liability, it’s easy to make an erroneous assumption that the business is not viable.

Rather than fixate on the overall liability, a lender should instead determine whether the business is current with its filing and depositing requirements. The highest priority, by far, when negotiating a resolution with the IRS is to a) ensure all returns are filed and b) the business is making its current withholding (941) and unemployment (940) deposits in full and on time. A business that cannot ultimately make its federal tax deposits in full and on time is not viable. However, if the business is current and compliant, an installment agreement can allow the business to service its debt and operate into the future without interference from the IRS.

A representative who understands how the IRS operates, as well as the lender’s concerns, can negotiate an agreement that covers all the unpaid liability regardless of the amount owed.

DOES THE IRS REQUIRE LARGE PAYMENTS?

Generally, a business owner (or local attorney or local accountant, none of whom deal with the IRS Collections Division on a regular basis) initially approaches the IRS with uncertainty. The first question posed to the revenue officer is typically: “What’s it going to take to make this go away?” At that point, the IRS can frame the issue and take advantage. Frequently, the revenue officer will respond by saying, “The IRS requires 20% down and the remainder paid within two years.”

Unfortunately, the business owner likely will agree to those terms because of the perception or belief there is no alternative. That perception is incorrect.

The vast majority — approximately 95% — of all installment agreements with the IRS fail. Occasionally they fail because the business simply was not viable. More often, IRS agreements fail because they were set up to fail in the first place. Businesses working with factors or asset-based lenders already have issues with cash flow, and many are just breaking even. Cash flow cannot support the combination of a substantial down payment with a large monthly payment. The business cannot pay its current bills, remain current with federal tax deposits and make large payments to the IRS. The owner will be forced to choose between paying rent, vendors, current taxes or the back taxes. Usually, the business accrues new liabilities, the agreement with the IRS terminates and the business is in worse shape than before.

There is no basis for the idea that the IRS requires 20% down and the remainder paid within two years. Instead, the monthly payment should reflect the business’s ability to pay on a monthly basis throughout the duration of agreements. If full payment cannot be achieved by the collection statute expiration date, and taxpayers have some ability to pay, the Service can enter into partial payment installment agreements. The amount of the monthly installment payment should not be based on an arbitrary timeframe or the size of the liability. Instead, the monthly payment should reflect an amount the business can afford, which fits into cash flow and substantially decreases the likelihood that an agreement will terminate.

WILL MY CLIENT PAY FOREVER?

The IRS’ ability to collect delinquent taxes is not infinite. Rather, it’s limited by a statute of limitations, which is generally 10 years. Once the statute of limitations expires, the IRS can no longer collect the debt. At that point, the taxpayer can stop making the monthly installment payment.

There’s no need to panic when a liability with the IRS, even a large one, is uncovered. There is a solution. An installment agreement neutralizes the threat of the IRS liability, regardless of the amount.

There’s no need to panic when a liability with the IRS, even a large one, is uncovered. There is a solution. An installment agreement neutralizes the threat of the IRS liability, regardless of the amount.
consideration is not the overall liability but whether the business can comply with the terms of the agreement.

**CAN LENDERS FUND?**

Lenders are understandably concerned about IRS liabilities. They want and need to protect their collateral from levy and conversion — two situations in which the IRS can take their money. The IRS plays by different rules and has what some refer to as a “super priority” based on the 45-day rule. Once a federal tax lien is filed, the IRS moves into first position on any revolving assets — inventory and receivables — upon the lender’s actual knowledge of the lien or 45 days from the date the lien is filed, whichever is earlier. The lender’s exposure is the total amount of the liability subject to the federal tax lien. The total liability is one of a few elements that determine a lender’s exposure to the IRS, but that exposure can be mitigated by an affordable installment agreement.

After determining the total liability, the lender should ask what happened to create the liability in the first place. If the problem has been addressed and fixed, the total amount owed is much less important. Rather, the lender’s attention should shift to whether the business has entered into a formal installment agreement with the IRS.

The installment agreement is important on several levels. So long as the business can remain current and compliant and service its debt, regardless of the size of the liability, the business is viable (at least relative to the IRS). The IRS cannot levy bank accounts or receivables while the installment agreement is in effect and in good standing. More importantly, the installment agreement is a prerequisite/requirement for a subordination of a federal tax lien, which puts the lender’s secured interest relative to the inventory and receivables back into first position ahead of the federal tax lien. So long as the business has an installment agreement in place with the IRS and the lender has secured a subordination of the federal tax lien, the lender has nothing to fear from the IRS in terms of levy or priority.

**SHOULD YOU PAY FROM INITIAL FUNDING?**

Paying off the IRS liability from the initial funding is an understandable temptation. No one wants an IRS liability hanging over their head. Again, it all comes down to cash flow. If the business can make a large down payment and/or large monthly payments and cash flow is not adversely affected — i.e., the business can meet all its current obligations — then there’s no problem. However, if the business is already struggling to meet its current obligations, to the IRS or otherwise, removing a substantial sum of money from cash flow will only make the situation worse. Once a business gives the money to the IRS, it can’t ask for it back later when it’s struggling to pay bills. The business will exchange one IRS liability for another — the old periods may be paid, but the business will fall behind in the current and future quarters.

Falling behind with the IRS is also costly because of the assessed penalties — failure to file, failure to deposit and failure to pay. These penalties are front-loaded. For example, the IRS assesses a failure to deposit penalty on each untimely deposit with a maximum of 10% for deposits made 15 days or more late. The IRS assesses an additional 5% on unpaid amounts 10 days after the initial notice requesting payment. If a business pays off old debt without also paying its current obligations, it’s actually getting further behind with the IRS. For every dollar paid toward old taxes (that should be used to get current and compliant), the business is accruing $1.15 on new liabilities. Lump sum payments to the IRS can be costlier in the long run and contribute to pyramiding, with a business accruing liabilities on top of liabilities. The better solution is to stop the bleeding, negotiate an installment agreement and secure a subordination of the federal tax lien.

The existence of a federal tax liability with the IRS, even a large one, does not mean a business isn’t viable. The lender doesn’t have to turn down the deal, recommend bankruptcy, or struggle to repay the entire liability from the initial funding. A representative who understands how the IRS operates, as well as the lender’s concerns, can negotiate an affordable installment agreement with the IRS, thereby removing the uncertainty from the situation. The business can continue to operate, the IRS can be paid in full (or a substantial portion can be paid over the statute of limitations), the business can avoid costlier alternatives and the lender can fund a happy and healthy client. Uncertainty will be replaced by opportunity.
Insights to power decisions and move people forward

For more than 100 years, Equifax has been committed to serving customers globally, to create insights that power decisions to move people forward.

Powering the World with Knowledge™
Mapping Out a Plan to Avoid Fragmentation of Financing Disclosure Laws

BY PALMER C. HAMILTON, ESQ.

Over the last several years, a number of states have taken up and, in some cases, passed legislation at the state level mandating financial disclosures in transactions with businesses. In some respects, these laws have resembled the Federal Truth in Lending Act (TILA), which governs lending to consumers.

Though factors, with the support of the IFA and AFA, endeavored to persuade the legislators to recognize that factors purchase receivables as opposed to extending credit to businesses, the legislators chose to cover factors, primarily as a result of concern that MCAs would abuse small businesses. Despite our effort to explain that MCAs were distinguishable from true factors who purchase existing receivables, the concern that MCAs be covered was too great in the end.

Of course, one of the biggest problems with such disclosure laws would be calculating APR and the accompanying risk of litigation relating to such disclosures. While these laws will be an administrative burden on factors, as well as a possible litigation risk regardless of how careful factors are in complying with the law, the greatest risk is that more and more states will enact such laws. If this occurs, which seems likely at this point, there is the real possibility of a fragmentation of lending laws across the country. This would require a factor, each time the factor purchases a receivable, to check the law in the state where the selling business is located and make sure the disclosures given match the disclosures required in that state. Furthermore, since laws are constantly amended, it could be a very burdensome and risky compliance burden.

If just a handful of states enacted such disclosure laws, the burden would be more manageable; however, if the current trend continues, the burden will increase exponentially. As a result, as you know, for several years we have been deliberating on whether we should seek to enact a federal statute that would provide a federal standard that would be both clear and uniform across the country. It would preempt differing state-mandated disclosure standards.

As with most things, there would be tradeoffs. If enacted, disclosures would be required nationwide, not just in those states with disclosure laws. On the other hand, the disclosures would be both uniform and clear. Also, the risk of inadvertent violations would drop significantly.

So, where does this leave the AFA and its members? I recommend the next step: If the AFA Board concludes a federal law is potentially desirable, there should be discussions within the AFA membership to see if the membership concurs.
The IFA Conference will provide a venue for this. It is very important, of course, that the membership is united. In way of background, the Secured Finance Network has reached out to me to discuss this subject. They are currently having similar discussions within their membership. It appears they believe a federal law is needed.

At the end of the day, if the AFA Board and membership concurs that a uniform federal standard is needed, the following is the sequence of events I would foresee. The first step would be the formation of a legal team to draft potential legislation. We would do this, I would think, in coordination with SFNet in that we would want to ensure we were all on the same page. Of course, SFNet members include asset-based lenders, so our priorities are not identical but may not conflict in this instance. But we need a draft bill as a first step.

The second step would be to approach one or more small business advocacy groups such as the NFIB. In order to succeed, it would be very helpful to have a united front of small businesses and factors. The AFA has always had a powerful story to tell of small businesses helping small businesses. On the Hill, I have always been able to say, “Factors have no natural predators.” This will be a time in which we can show this to be true. Our enemy has always been the danger of becoming collateral damage. This is why we have always been deeply concerned that MCA conduct could lead to legislation that would have a damaging impact on true factors.

Hopefully, once we have established our small business allies, we can go jointly with them to potential champions on the Hill to find the lead sponsors in the House and the Senate. Ideally, we will find sponsors reflecting bipartisan support for the legislation. Having the factoring

Continued on page 36

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- Sallyport Commercial Finance, LLC
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**Other (Under $500)**
- Plus Funding Group
- Stonebridge Financial Services, Inc.
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As of March 31, 2021

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WHAT'S NEW AT IFA

ASSOCIATIONS

The following trade associations offer member pricing for events attended by IFA members:

Commercial Factoring Expertise Committee of China (CFEC)
http://cfec.org.cn

FCI
www.fci.nl

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https://woa.community/

COLLECTIONS

The Collection Law Group, Inc.
The Collection Law Group ("TCLG") is a group of lawyers who collect past due commercial accounts receivables from businesses across the United States. Our collection approach has been helping finance and factoring organizations collect past due amounts more quickly more efficiently and more cost effectively than other approaches. Our approach combines the best of collection agencies with the best of new firms giving our clients higher recover amounts more quickly with less cost. At TCLG we call our approach our "Attorney Driven Approach".

If you offer a good or service to the Factoring industry and are interested in applying for Preferred Vendor Status, please contact the IFA at 805-773-0011.

IFA Member Benefit: Rainstar Capital Group
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Kurt Nederveld: Kurt@rainstarcapitalgroup.com
(616) 953-6036  www.rainstarcapitalgroup.com

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IFA Members receive a discount of 10% on their consulting fees and 5% discount on all FactorHelp products in the IFA store.

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855-ANSONIA  855-267-6642
www.ansoniancreditdata.com

IFA Member Benefits: Complimentary review of your portfolio’s risk distribution. Includes a breakdown of debtors by risk category (high, medium, or low) and visibility to how debtors are paying other factors as well as all industries and much more. Ansonia Alerts $20 per month (20% savings)

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435-659-4612
www.factorsnetwork.com

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David Powers • dave.powers@clarusdc.com
540-222-3925  www.clarusdc.com

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Haversine Funding

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Liquid Capital Corp.

Liquid Capital has been in the factoring industry since 1999 and entered into a partnership with Next Edge Capital in 2015. This relationship has allowed them to pursue an aggressive growth strategy focused on the following key initiatives:

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Robert Thompson-Sp • 866-272-3704 901-385-5327 • www.liquidcapitalcorp.com

rts@liquidcapitalcorp.com

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**RECRUITMENT AGENCY**

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469-402-4000 • www.searchcf.com

crains@searchcf.com

IFA members will receive an additional 60 days added to the guarantee on all placements.

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480-250-8168 • www.artstrade.net

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EQ Riskfactor

EQ Riskfactor is the leading provider of risk management and fraud analytics software for the global commercial finance market including factoring organizations, banks and alternative lenders. EQ Riskfactor’s risk management technology uses automation to identify potential frauds along with advanced analytics. The technology highlights unusual activity so lenders can better investigate fraud and reduce risk. The tools also help lenders to eliminate manual processes, saving time and money.

Aaron Hughes • aaron.hughes@equiniti.com

Melissa Havers • melissa.havers@equiniti.com

www.equinitiriskfactor.com • +44 1903 698600

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Rachel Presley: rachel@factorcloud.com

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Andrew Bertolina

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Matt Bernstein

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IFA Member Benefit: IFA members will receive a 10% discount off of the retail rates of their signature state and county account monitoring product.

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Tax Guard fills a critical gap in a commercial lender’s credit risk management with an efficient, real-time and actionable insight into the true, non-public IRS tax compliance status of their prospects and clients. Our due diligence reports, tax compliance monitoring and resolution solutions support commercial lenders throughout every stage of the funding life-cycle.

646-502-4478 • www.tax-guard.com

Rich Porterfield: rporterfield@tax-guard.com

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First Corporate Solutions

First Corporate Solutions is a full-service public records provider specializing in the research, retrieval, and filing of public records nationwide and internationally. Their services include industry standards such as UCC, lien and litigation searching, UCC and corporate filing services, nationwide registered agent coverage, and real property title searching, as well as unique solutions such as state and county account monitoring designed specifically for Factors.

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Issues to Consider When Entering Subordination Agreements with the SBA

With the financial assistance and the extension of the loan programs offered to small business under the CARES Act, factors and asset-based lenders will need to keep working with the SBA to enter subordination agreements to obtain priority in their clients’ collateral, among other issues. Jared Ullman outlines the key points of the process and how to avoid hurdles and mitigate these issues.

BY JARED ULLMAN, ESQ.

Millions of small businesses have received financial assistance from the Small Business Administration during the ongoing COVID-19 pandemic. Many factoring companies that provide working capital to businesses have found that prospective and existing clients have obtained SBA loans, creating the need for factors to seek subordination agreements from the SBA. This article discusses certain key provisions that may be contained in SBA subordination agreements, potential risks and ways in which factors may try to minimize or mitigate these issues.

BACKGROUND ON THE CARES ACT

First, let’s look at some background information about the SBA’s significant role in mitigating the economic impact of the COVID-19 pandemic. In response to the COVID-19 public health emergency, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020. The CARES Act significantly expanded the scope of certain SBA loan programs and created new loan programs to provide financial support and loans to qualifying small and medium-sized businesses. The CARES Act, among other things, created the Payroll Protection Program and significantly increased the SBA Economic Injury Disaster Loan (EIDL) program.

The CARES Act remains the federal government’s primary legislative response to the economic crisis that the pandemic precipitated. The breadth of the CARES Act is astounding. By March 21, 2021, the SBA had approved a whopping $718 billion by way of more than 8.2 million individual PPP loans. As of Feb. 21, 2021, the SBA had
Factors may decide to make a request that the SBA subordinate the SBA’s security interest in accounts and other assets of the EIDL borrower.

provide factoring facilities to a business that received an EIDL loan and granted the SBA a priority security interest in its assets, including accounts and general intangibles, the factor must request a subordination agreement with the SBA in order to, among other things, acquire a priority security interest in the assets of the business that is senior in priority to the SBA’s security interest.

ISSUES APPLICABLE TO THE SUBORDINATION PROCESS

In 1979, the United States Supreme Court, in the case of United States v. Kimbell Foods, Inc., announced the rule that when fashioning the federal law that governs the priority of liens and security interest stemming from SBA lending programs, courts must look to nondiscriminatory state laws (e.g., the Uniform Commercial Code), absent a congressional directive to the contrary. Following the Kimbell Foods, Inc. case, lower courts generally have applied Article 9 of the Uniform Commercial Code to determine the priorities and rights among competing security interests held by the SBA and other creditors. Uniform Commercial Code section 9-339 expressly provides that the UCC does not preclude secured parties from entering into subordination agreements to modify priority rights.

The SBA has implemented procedures to permit EIDL borrowers to submit a subordination request to the SBA. The SBA’s approval of a subordination request is conditioned upon, among other things, the lender or factor entering into a written SBA form subordination agreement in the form approved by the SBA, and the transmission of the executed subordination agreement to the SBA via email to pdc.pdcaccountscollateralreview@sba.gov.

After reviewing several versions of the ‘one-size fits all’ form of EIDL subordination agreement used by the SBA, with each agreement approximately two pages in length, it appears the SBA is reluctant to agree to make material changes to the terms of subordination agreements. Factors and other types of entities that wish to provide financing facilities to businesses that have obtained an EIDL may find the SBA’s subordination agreement spartan compared with certain non-SBA commercial intercreditor agreements.

Factors (and asset-based lenders) that want to enter into a subordination agreement with the SBA to provide factoring facilities should take into consideration and address any one or more of the following subjects or provisions contained in the SBA’s subordination agreements.

1. Types of Subordinated Collateral

Factors may decide to make a request that the SBA subordinate the SBA’s security interest in accounts and other assets of the EIDL borrower. If the SBA agrees to subordinate its security interest only in accounts, and not in the borrower’s inventory, the factor is assuming certain risks if the borrower’s account debtor (i.e., customer) elects to reject the inventory or revoke acceptance of inventory sold and/or return the inventory delivered. If the SBA does not also subordinate its security interest in the inventory returned,
then the factor may be unable to repossess the inventory and/or dispose of the inventory in order to apply the proceeds to the payment of the obligations under the factoring agreement. Accordingly, it behooves factors to seek to obtain a subordination from the SBA in both accounts and inventory sold giving rise to the accounts.

2. Senior Debt Cap
SBA subordination agreements may require a factor to agree to limit the subordination to a maximum dollar amount (i.e., a senior ‘debt cap’), making the SBA’s security interest subordinate to a factor’s security interest in the collateral only up to the senior debt cap amount as reflected in the subordination agreement. Factors should consider the impact of the debt cap provision on their ability to increase the maximum factoring facility amount and/or make over-advances to the factoring client in an amount greater than the debt cap. If a factor requests the SBA’s approval to exceed the debt cap, and the SBA refuses such a request, then any advances made that exceed the debt cap may be subordinate to the rights of the SBA in the collateral. In addition, in a draconian scenario, the SBA may treat advances made by the factor to the factoring client in excess of the debt cap as being made in violation of the subordination agreement. Accordingly, factors should carefully consider a factoring client’s future cash flow needs when determining the amount of the factoring facility provided for in the SBA subordination agreement (i.e., the debt cap).

SBA subordination agreements also may contain a provision that requires a factor to provide the SBA with written prior notice, sometimes as least 30 days prior notice, before any action may be taken by the factor as a result of the factoring client’s breach of the factoring agreement. If a factor violates such a notice provision by failing to provide prior notice to the SBA before taking any action against the factoring client, or the collateral, the factor may be in breach of the subordination agreement and the SBA may seek to hold the factor liable for potential exposure.

The SBA may agree to waive the notice requirements, otherwise, factors should consider the effect of this provision on their ability to exercise default rights in the event of a default under the factoring agreement. Factors also should consider the internal administrative process that needs to be implemented by a factor to best ensure that the people who are responsible for enforcement of the factoring agreements are aware or are made aware of the duty to provide such notice.

4. Increases in EIDL Loan Amounts
The EIDL program initially capped loans at $150,000; however, that limit will increase to $500,000, effective as of the week of April 6, 2021. Existing COVID-19 EIDL borrowers will be able to request an increase beginning April 6. A spokesperson said the SBA will provide updated instructions on how to request a loan increase on the SBA’s website and also will reach out directly via email to existing COVID-19 borrowers with loans approved prior to the increased loan limit.

Some SBA subordination agreements may not restrict the SBA’s ability to increase the EIDL facility amount to the borrower. Therefore, the SBA may have the right to increase the EIDL loan amount without a factor’s knowledge or notice, which may give rise to a default under the factor’s factoring agreement. As a practical matter, factors should consider implementing an administrative procedure in order to, among other things, verify that clients remain in compliance with the terms of the SBA’s note, including any obligations due as a result of an increase in the SBA loan amount.

Factors and asset-based lenders that enter into subordination agreements with the SBA may find it beneficial to consult with counsel in order to augment factoring agreements with a rider containing provisions that seek to address certain foreseeable risks. In addition, other issues may arise in connection with the enforcement of the subordination agreement that are not addressed in this article, including, but not limited to, default remedies, bankruptcy issues, etc., and factors should consult with their counsel to address these matters. •

Disclaimer: This article is not legal advice. Readers should seek legal counsel for specific help. No attorney-client relationship is created by the dissemination of this article.

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The Keys to Dealing with Intensifying Regulations for Commercial Finance Companies

In part two of a two-part series, Steven N. Kurtz, Esq., provides advice on how factors and asset-based lenders can avoid the pitfalls of increasing commercial finance regulations.

We are now faced with the reality that non-bank commercial finance companies are going to be subject to increased regulation. While this two-part article has mostly focused on state regulation, it is also important to know that there may be a trend toward some federal regulation.

There are rumblings that the Dodd-Frank Act may be modified to include factoring transactions. Also, federal agencies such as the Office of the Comptroller of the Currency may soon take actions that impact the factoring industry.

One indicator of how the Biden administration may address commercial finance lenders will be how the OCC handles the multiple lawsuits brought against it by seven states and the District of Columbia challenging the “True Lender Rule.” This provision allows non-bank lenders to originate loans through state or federally charted bank partners in which the bank is the lender per the loan contract. This structure eliminates state law regulation of commercial finance lender loans made in partnership with a bank. If the OCC does not vigorously defend the True Lender Rule, it may mean that things will change for the factoring industry at the federal level.

Steven N. Kurtz, Esq., has represented factors, banks and asset-based lenders on a continuous basis since 1987. He is the co-general counsel to the IFA and a founding partner of Levinson Arshonsky & Kurtz, which has offices in California and Oklahoma. He practices in the areas of commercial law, insolvency, workouts, loan documentation and trade finance, in both transactions and litigation matters. He can be reached by phone at 818-382-3434 or by email at skurtz@laklawyers.com.
With more regulation on the horizon, this follow-up to part one of this article intends to provide some tips on minimizing the impact through provisions in factoring agreements.

**IMPROVE DOCUMENTATION**

State regulatory power and licenses usually give the state the ability to conduct audits. In California, state audits of finance lenders license holders are common. This will likely be the case under New York’s new rules. Therefore, documentation with an eye toward new laws, administrative regulations and state audits is now an important issue.

The current regulatory schemes in New York and California mostly came about because of merchant cash advance lenders. In addition to routinely charging rates of return in excess of 70%, the actual rates from these lenders are usually very difficult to determine unless you are a quantitative analyst. Easy money coupled with astronomical effective interest rates and confessions of judgment have resulted in numerous defaults in which a small business-person or sole proprietor did not know to what they agreed.

The regulations on the horizon and the examiners who will enforce these rules will be zeroing in on rate disclosures and calculations. While factoring and asset-based lending transaction cost of funds for each advance will vary, mostly depending upon when the advance is repaid, factoring and ABL rates are relatively easy to quantify. Each separate cost of money in the agreement needs to be itemized, defined and explained. In factoring deals, it’s easy to have a fee section tied to a chart that explains how each and every fee is calculated. If the agreement is subject to “float days” or deferred credit, it is critical to explain that. It’s also important to explain in the agreement that the account activity is always available online if there is no event of default. You don’t want to help fraudsters steal and divert accounts by looking online after fraud is discovered. You also need language that provides that the factor client/borrower has a limited time period in which it can dispute its account; otherwise, the stated account becomes binding.

State auditors typically like to take sample deals and ask for copies of the contracts and detailed information on advances and collections. From there, they will seek to find fault in applying credits and insist upon refunds being made. Plain English explanations coupled with these protections are likely to satisfy a state auditor’s inquiries on rate calculation and credits.

**CLEARLY DEFINE WORKING CAPITAL NEEDS**

State auditors and regulators tend to think of factor clients and ABL borrowers as consumers even though factoring and asset-based lenders provide financing to businesses. In California, there has been a trend with state regulators to isolate factoring and ABL advances under $5,000 and call out the factor/lender for failure to include certain disclosures required in “micro consumer loans.” In fact, many states treat small advances to businesses as consumer loans. This trend means that even though you may have a revolving facility of $1 million with varying advances depending on the client’s needs, each individual advance under your facility may be treated by the auditor as a separate loan. The effect of this skewed view is that a state auditor will treat the small advance as a consumer loan, including all related disclosure rules. Thus, it is important that the “look and feel” of your agreement makes it clear that the deal is a working capital line of credit. While all factoring and asset based-lending documents are obviously structured as business deals, because regulators will likely get their hands on the agreements, it makes sense to have some recitals that the client is a business seeking working capital through the facility.

In addition, many state and federal laws that address consumer lending allow for a statement that provides that a transaction is not for personal or household purposes, and lenders are allowed to rely upon that statement. For smaller deals, this clause is important. It’s not uncommon for some of the smaller factoring deals, especially in transportation, to finance an individual. Given the trend toward treating small business financing deals as consumer transactions, it’s best to insist that a sole proprietor form a corporation or an LLC. A small business owner can do so swiftly and at little expense.

**EXPAND DAMAGE WAIVERS**

Unfortunately, new regulations often come with the potential for litigation. While it’s not certain whether individual factor clients or borrowers can state claims for violations of the new laws and corresponding regulations (which are typically enforced by government agencies), a viable argument can be made on the grounds that laws and resulting regulations were drafted for the benefit of debtors. Therefore, a creative lawyer may claim that the factor/lender can and should be held accountable for violations to the party who is the “beneficiary” of the laws and regulations. This is where contractual limitation of damages comes into play. Most traditional damage waivers address a breach of an agreement and include language that precludes punitive damages (probably not enforceable if one is guilty of such conduct) and limits the breach of contract claims to actual losses that flow from a breach.

Damage waivers should be expanded not only to include a breach of the agreement by the factor/lender, but a mandatory...
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waiver of all other claims, including breach of a statute or regulation. Although it’s logical that a factor/lender from one state that chose its home state law for its agreement should not be held liable for finance laws and regulations of another state in litigation brought by the factor client/borrower, keep in mind that New Jersey, in its failed efforts, attempted to take away rights from lenders that relied upon their contractual choice of law.

EFFECTIVELY DRAFT OTHER PROVISIONS

If state finance laws and regulations are subject to private claims, that could open the door for class action lawsuits. Typically, commercial finance agreements are not prone to class actions because they require that there be a large group of plaintiffs who have suffered the same type of injury. However, consumer class actions often center around consumer related finance disclosures. A clever class action lawyer can likely craft a claim for some technical commercial finance related disclosure violations.

One possible way around class action liability is to have a well drafted mandatory arbitration provision that requires that each individual claim be resolved by itself through arbitration. Although it’s likely that mandatory arbitration for consumer type claims subject to class actions may erode, most courts enforce arms-length arbitration clauses in commercial/business agreements. Although I have not always advised clients to have a mandatory arbitration provision, because most arbitrations are not subject to review if the arbitrator got it wrong, arbitration has improved. Most commercial arbitration firms have specialized groups that handle financial cases, and the arbitration panel members of these specialized groups are quite skilled. Therefore, commercial arbitration services may play a more important role in the factoring and asset-based lending community.

Most factors have boilerplate provisions in their agreements that they probably don’t always bother to read since that’s where the “standard” provisions like choice of law, jury waiver, attorneys’ fees, venue and things of the like are present. While often neglected by business and legal people, well drafted boilerplate language can save the day. But, more importantly, the boilerplate is a good place to place some of the “gotcha stuff.” By way of example, this is where one could insert damage waivers. Also, it’s a good idea to place a one-way statute of limitations that would require that any action by the factor client or borrower be made six months after the event happened, with failure to bring such a claim in a timely manner resulting in a complete waiver. Most states uphold private statute of limitation clauses in agreements.

We operate in an industry where being nimble is key. Although there is a directional change toward more finance laws, state licensing and regulations, and possible federal oversight, we just need to adapt. Just about every law that addresses financing, whether it’s at the federal or state level, provides that the purpose of the law is to promote easy access to credit. The need for commercial financing is not going away. We just need to remember that some people may be watching and adapt to a slightly different playing field.

AFA UPDATE
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industry united with the small business advocacy groups will be very attractive to members of Congress on both sides of the aisle.

I would suggest we build a strong bipartisan co-sponsorship base through a separate bill from the Velázquez bill. The two committees of jurisdiction would likely be the House Financial Services Committee and the Senate Committee on Banking, Housing & Urban Affairs. (How we draft the bill will determine which committees are referred the legislation when the bills are introduced.) Members of the committees with jurisdiction would be the top targets for co-sponsorship in that this would enhance our chances of getting a markup.

One final point, our biggest challenge will be resistance to federal preemption of state law. This is why having the small business community behind us will be all the more important. The longer we delay taking action, the more difficult it will be to pass a federal law that preempts state law. Members of Congress tend to resist overriding home state law. Hopefully, we can persuade members of Congress from states with such laws that we are providing an adequate uniform standard that doesn’t lessen real protection to businesses in any state but rather extends those protections uniformly nationwide.

The first step is to determine if the AFA membership concurs with the need for a uniform national standard to avoid a fragmentation of disclosure laws that seems headed our way. •

The goal of the AFA is to increase membership and financial support from every IFA member. We urge every IFA member to contribute to the AFA as we are in the midst of our annual membership fund drive. Currently, we have Bronze Members, who have contributed as little as $500, up to Diamond Members, who have contributed in excess of $10,000. This is a very inexpensive insurance policy to help protect our industry from needless regulation which will be both costly and prohibitive. Please consider supporting the American Factoring Association.
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