DEBTOR TRENDS & CREDIT ISSUES

ALSO INSIDE:

2012 Credit Conditions & Trends
Federal Tax Liens: Search or Be Burned
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The Commercial Factor | January/February 2012 3
Factoring & the IFA - Looking Back to Look Ahead

The factoring industry and therefore the IFA have seen positive changes during 2011. Most factors who I have spoken to indicated that they have experienced growth during the previous twelve months. Overall business and the demand for factoring services have increased. This has resulted in existing members improving their portfolios and new companies entering the factoring industry. As a result, the IFA added 74 new members during 2011.

To accommodate this growth, the IFA continues to add new services for our members. Some of the services we implemented during the previous year are:

- The IFA website has been redesigned to make it more streamlined and easier to use. You can see the new site at www.factoring.org.
- Logons have been redesigned and implemented at the individual level rather than just the corporate level. Now every employee of member companies can access the website.
- Implementation of the new IFA community site. This site is using the latest in social media technology specifically designed for associations. The engine of this site is from Higher Logic and this replaces the old Yahoo group. As an added benefit, all of the previous discussions from the Yahoo group have been imported into the new site, keeping what is the best knowledge base for factors in existence. If you haven’t checked it out yet, you can view it at http://connect.factoring.org/Home/
- Implementation of the social media site via your mobile device. This allows all members to easily find and contact other IFA members using an Apple or Droid app.

Be assured that we are not resting on our laurels, but have many new services planned for 2012. They include:

- Due to popular demand, we are increasing the frequency of The Commercial Factor from quarterly to bi-monthly.
- Implementation of our new Mentoring program. This will allow existing members to sign up to be mentors to new members.
- Implementation of the Account Executive Certification Program. We have been working on this for four years and will be able to begin the program this year.
- New training courses. Information can be viewed on our website at www.factoring.org.

The American Factoring Association (AFA) has had a productive year, sending multiple contingents to Washington DC to meet with various lawmakers on behalf of the factoring industry.

Finally, we are very excited about the upcoming Annual Conference to be held April 18 – 21 at the Hyatt Regency Resort in Huntington Beach, CA. Registration is currently running about 20% above 2011 (which was also a record year!). If you have not signed up yet, we hope that you will do so soon and join us for this convention.

Thank you for your continued support and I look forward to seeing you in Huntington Beach.

Bert Goldberg
EXECUTIVE DIRECTOR

The International Factoring Association’s (IFA) goal is to assist the factoring community by providing information, training, purchasing power and a resource for factors. The IFA provides a way for commercial factors to get together and discuss a variety of issues and concerns about the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

The Commercial Factor is published quarterly by the International Factoring Association. To subscribe, please email info@factoring.org.

The Commercial Factor magazine invites the submission of articles and news of interest to the factoring industry. For more information on submitting articles or advertisements, email info@factoring.org, or call 800-563-1895.
PERSONNEL ANNOUNCEMENTS

Marquette Welcomes Carl Pigg as VP
Marquette Commercial Finance announced that Carl Pigg has joined their team as a Vice President. Carl will be based in Kansas City and be responsible for origination of both factoring and asset based credit facilities throughout the Midwest.

Franklin Capital Network Announces New Hire Charlie Pearl, BD Officer
Charlie Pearl has joined the company as a Business Development Officer to spearhead achievement of Franklin's future growth objectives with an emphasis in the Midwest region. Charlie will be located in Chicago, IL.

Bibby Financial Services Names Sean Lelchuk Florida Head of Sales
Bibby Financial Services announced that Sean Lelchuk has been promoted to Head of Sales, BFS Direct. In his new role, Lelchuk will lead the Florida office’s sales team, reporting directly to Managing Director Marcus Ferrari.

Peter Austin Joins Rosenthal & Rosenthal
Peter Austin, 34, has been appointed a Senior Vice President/Team Leader for Rosenthal & Rosenthal (New York City, Los Angeles, Shanghai). Mr. Austin will be based at their New York City (midtown Manhattan) headquarters, where he will oversee several account executives.

Basolo is New VP at Hartsko
Cynthia Basolo, 49, of Portland, Oregon has been appointed a Vice President of Business Development for Hartsko Financial Services, LLC, based in Bayside, New York.

Suskavcevic, CEO of the Commercial Finance Association Tapped to Lead CHA
The Craft & Hobby Association (CHA) Board of Directors announced Andrej Suskavcevic as new President and Chief Executive Officer of CHA. The appointment of Mr. Suskavcevic concludes an eight-month executive search during which Tony Lee, Vice President of Meetings & Expositions, served as CHA’s interim leader.

Mark J. Simshauser Joins TAB Bank as Vice President
As TAB Bank continues to expand its financial offerings to a broader spectrum of industries, it is pleased to announce the addition of Mark J. Simshauser to the Business Development team as Vice President and Business Development Officer based in Long Island, NY. Mark began his asset-based lending career over 15 years ago with Finova Capital.

INDUSTRY NEWS

Gallium Technologies & Bayside Business Solutions Announce Partnership
Gallium Technologies and Bayside Business Solutions announced that they are partnering to develop a new A/R Tracking solution.

Bayside Business Solutions Announces Release of CADENCE 2.15.3
Bayside Business Solutions announced the release of Version 2.15.3 of its flagship product CADENCE. This substantial
upgrade includes an array of new interfaces for integrated credit monitoring, integrated faxing, automated shipping and delivery verification, as well as built-in data visualization and intelligent data collection for accelerated check processing.

**North Mill Capital Acquires PrinSource Capital**
North Mill Capital LLC, a leading provider of asset based loans for small and medium sized businesses in the Northeast, has acquired PrinSource Capital Companies LLC, a Minneapolis based provider of factoring and asset based loans in the Midwest. This transaction will significantly expand North Mill’s geographic markets and enhance the combined company’s product capabilities.

**TCI Business Capital Staff Drives Away Hunger**
The staff at TCI Business Capital recently completed the third annual food drive to benefit Second Harvest Food Bank of St. Paul, MN. The food drive, which began in early December, netted 570 pounds of food, and $2,050.00 in cash donations. The donated food will provide 428 meals for needy families in the Minneapolis-St. Paul area.

**INDUSTRY TRANSACTIONS**

**Brightpoint Announces Completion of Five Year $500M Credit Facility**
Brightpoint, Inc., a global leader in providing supply chain solutions to the wireless industry, announced the amendment of its global credit agreement. The amendment:

- Increases total borrowing capacity to $500 million (prior capacity of approximately $450 million).
- Permits factoring transactions up to $250 million and investments in majority-owned joint ventures up to $30 million.
- Extends the term of the agreement to September 2016.
- Reduces the interest rate to 2.25% over LIBOR or approximately 2.50% (with 30-day LIBOR at approximately 0.25%).

**First Capital Funds Two Deals Totaling $20M to Edge Adhesives & Apparel Distributor**
First Capital announced that it has provided a $4 million Asset-Based credit facility to Edge Adhesives, a manufacturer of specialty tapes, sealants and adhesives.

They also announced a $16 million working line of credit to M.M. & R., an apparel distributor. The credit facility is in the form of a factoring agreement.

**Graystone Capital Provides $400K Accounts Receivable Line of Credit to Interactive Media Company**
The Company was founded in 2002 and has since become the world’s largest provider of Interactive Media content for the automotive industry, transforming the face and feel of thousands of dealer websites worldwide. These products include: interactive media virtual tours, organic online marketing for dealerships and online accessory sales solutions for dealers and a digital publishing platform for newspapers.

**GE Capital Provides £70 Million to Energy Alloys**
GE Capital announced it is the sole lender on a £70 million senior secured credit facility for Energy Alloys LLC, including Energy Alloys UK Ltd, a global provider of oil field metals and services. The loan will support growth and working capital needs.

*Continued on page 23*
Credit Conditions and Trends—2012 Retail

By Bonnie Gerrity & Bob Carbonell

Main Street USA is seeing more empty storefronts as leases expire or “mom and pop” operators just walk away. For the factoring industry, retail is an important sector, with the biggest retailers representing the largest exposures and risks.

The good news and the bad news: a bifurcated economy with big companies doing well, small ones not so well and many still going out of business. Main Street USA is seeing more empty storefronts as leases expire or “mom and pop” operators just walk away. For the factoring industry, retail is an important sector, with the biggest retailers representing the largest exposures and risks.

Credit managers are uniquely positioned to see business trends, as their dealings are multi-dimensional including a view of their company, the industry and customers. Smyth’s recent “Credit Conditions” survey of trade credit managers provides interesting results, as their industry and customer interactions provide a good view of the near term economy. The credit manager often occupies the “best seat in the house”.

This pessimistic view from credit managers is interesting when contrasted with the Payment Quality Index (PQI), which reached a recent-era high of 81 in September 2011. As we analyze payments on tens of billions of dollars in factoring throughput, we are able to closely monitor payment trends on hundreds of thousands of companies, both large and small, across a wide variety of industries.

We believe this contradiction of lower expectations yet better payments demonstrates continued caution and deleveraging on the part of small businesses. This caution is the new normal for business, the US economy could be flat-lined for some time. The silver lining here is that deleveraging provides a storehouse of dry powder when business psychology moves into expansion territory.

Retailer Performance Trends

In the past few years, we have seen several prime examples of the good getting better, with stronger profits, and the weak falling to the wayside. When we look closely at department stores we are drawn to the outstanding performances of, say, Nordstrom and Macy’s, who have carefully managed costs and rewarded shareholders with strong profit growth. Dillard’s and Belk seem to be holding their own against the market leaders and have solid fundamentals in place. Others, such as JC Penney, continue to struggle with declining sales, and Bon Ton continues to lose sales to competitors and will be the object of close credit manager and factor scrutiny in 2012.

The off-price leaders, Ross and TJX, with their massive buying power, are burying smaller competitors such as Syms and Filene’s Basement, while others such as Loehmann’s, struggle to mount a comeback. Smaller, regional, privately-owned off-price retailers have also been struggling against the tidal wave that is Ross and TJX.

As we enter 2012 the remaining laggards may be running out of room to maneuver. As we look at the trials and tribulations of operators such as Sears, American Apparel, Pacific Sunwear, and Christopher & Banks among others, we have to wonder how such large companies have slipped so far in such a short time.

Sears—a great legacy

Montgomery Ward, Woolworth, WT Grant. Will Sears be the latest in the list of historic names destined for the dustbin?

How does a $50 billion a year company consistently lose its long-standing customer base to newer and smarter competitors? While hindsight is always 20/20 it would appear that having a hedge fund operator (instead of a marketer) at the helm of such a behemoth was not such a smart move after
all. Sears could very well be the big story of 2012 as suppliers, factors and credit insurance companies have already begun to reconsider their credit limits.

So where did all those Sears customers go? The year 2011 was definitely the year of the Internet shopper. Market researcher ComScore reported that holiday season retail e-commerce spending for the first 56 days of the November – December 2011 holiday season hit $35.3 billion, up 15% from the same period last year. Amazon continues to pound away at competitors in a wide variety of categories. Target continues to provide a better shopping experience for customers as it expands it food & pharmacy offerings and begins to chip away at Wal-Mart, Sears, Kohl’s and others.

Looking at December 2011 same store sales, we see several of the companies we’ve mentioned among the top ten performers, while specialty apparel chains lead the “Laggards” group. According to the RetailNext Insights: traffic and sales on 40 retail chains from Thanksgiving Day to December 31, 2011, overall December traffic in specialty stores was down 4% from 2010 and a flat conversion rate left sales down 5% year over year. Bon Ton stands out as the only department store operator in that group but the performance of Fred’s and Duckwall-Alco also reflect the economic difficulties faced by their lower income customers.

Data by Bernard Sands Comp Store Sales Report

**Summer Doldrums to Holiday Spirits**

The doom and gloom of summer changed to holiday cheer as retailers ramped up discounts, extended their hours, brought back layaways, and catered to consumers’ brighter spirits. Redbook Research reported that same-store sales for all of December 2011 rose 3.7% over the prior year, even if it declined 2.1% relative to November 2011 – the company had forecast last month that same store sales would grow 3.6% year-over-year.

Still, the healthy overall growth offset the post-Thanksgiving drop. Thomson Reuters noted a 3.4% aggregate increase. Retail Metrics echoed the positive news, reporting that the 22 stores it tracks gained 3.3% in December.

**Holidays and Beyond**

Analysts sounded a cautionary note about profit margins as retailers discounted heavily to pull in traffic and drive sales, but those promotions lowered profitability. If consumers become trained to shop only when deep discounts are offered, and rewarded with even lower prices by comparison shopping in the aisles with smartphones surfing, profit margin pressure increases with every sale. How consumers react now that the holidays are over remains to be seen. Credit card bills appearing in January will reflect the increase in online shopping and may cause a January freeze on shopping. Stores withdrawing discounts may have the same effect.

**Credit Insurance Outlook**

We see the demand for credit insurance and other forms of credit protection remaining strong. From the insurers’ perspective, the current environment is akin to being able to remain in the eye of the storm. The economy remains generally anemic with poor prospects for the significant private sector growth necessary to achieve meaningful post-recession economic expansion.

Despite this discouraging outlook, overall U.S. corporate credit quality has not deteriorated and in fact in many cases, has improved markedly with the large scale deleveraging which has taken place after the 2008 financial crisis. If we didn’t have enough to be worried with the domestic economy, credit managers remain nervous, some very much so, because they understand how vulnerable the U.S. economy is to events from left-field, including possible system shocks from oil spikes, Mid-East wars, political violence, disintegration of the EU, a China bubble bursting, PIIGS, European bank defaults, etc.). These market dynamics portend well for continued corporate demand for insurance and receivable put contracts. Our experience is that the best time to seek protection, however, is before others run for cover.

**Retail Real Estate Trends**

U.S. neighborhood and community center vacancies averaged 11 percent in the fourth quarter, unchanged from the third quarter, up from 10.9 percent in the fourth quarter of 2010 and just a notch away from the all-time-high of 11.1 percent hit in the fourth quarter of 2007, according to real estate research firm Reis Inc.

Nevertheless, open-air center landlords did manage to fill 3.18 million more square feet of space in the fourth quarter of 2011 than they did in the third, marking the sector’s largest occupancy gain since 2007. But the 1.89 million square feet of new open-air properties that came to market during the period managed to bring down the average, Reis reported.

“This while this represents welcome news, we remain wary about pronouncing a turnaround until we observe a few more quarters of improvement,” Victor Calanog, Reis’s head of research, said in the firm’s quarterly vacancy report. The fourth quarter tends to be the strongest period of the year for retail leasing, he added.

Meanwhile fourth-quarter U.S. regional and super-regional mall vacancies declined to 9.2 percent from a 10-year high of 9.4 percent in the third quarter. But they were still up from 8.7 percent in the fourth quarter of 2010.

**2012 Trends Include E-commerce**

Looking into the crystal ball for 2012, several things stand out. The burst of credit card use in 2011 may cause consumers to pullback in 2012 as the bills come due. With employment seeming to stabilize, retailers may squeeze by, but last year’s emphasis on big deals conditioned consumers to wait until such deals appear before buying.

Six Trends For 2012 Retailing include (1) more interactive customer experiences, (2) more tech demands on retail employees, (3) more supplier/manufacturer dating of product releases to lock in sales before competitors, (4) more discounting, (5) more mobile tech hype, and (6) more social media use, according to the Retail Doctor blog.

An AisleBuyer LLC December survey of retailers found that only 14% had an in-store mobile shopping app available, but among the 86% that do not, half of them plan to introduce one in 2012. Among those that will unveil apps, 54% plan to include promotions functionality as part of the app, 24% plan to add mobile self-checkout via smartphones, and 46% plan to add a tablet-based
mobile store associate app for retail employees. A major concern however, is that those that de-emphasize front-line employees in favor of tech risk alienating customers and employees alike.

**Summary**

We pretty well know who the major retail credit risks are for 2012, some mentioned above, but the largely hidden story is the continued destruction of Main Street. Maybe as in past eras with high unemployment, a new wave of small entrepreneurs will start to move back into the space later in 2012, but they will largely have to do it by bootstrapping their savings, since loans are hard to come by for startups. We can only hope.

Credit managers will need to protect against the big, enterprise-shaking customer default and can, to some extent, cover these with accounts receivable puts or other capital markets strategies. They will also need to be vigilant against the many smaller accounts that fail, none of which will take down a company but, in the aggregate, can wipe out the year’s profits.

However, an exogenous system shock, as mentioned earlier, could be the big story of 2012, taking all plans off course. Our view of the year ahead is to think positively, but be very prudent, and develop plans for worst-case scenarios, just in case. And, remember the old saw that “It’s always darkest before the dawn.”

*Smyth and Bernard Sands LLC: Since 1925 - Credit For the Factoring Industry*  

Bernard Sands, one of the Smyth companies, is a leader in credit information and decision services with a focus on the factoring industry. With proprietary predictive technology, expert analysts, and a database of millions of buyers and over one hundred million payment histories, Bernard Sands is a leader in credit information, reporting, scoring, and ratings including outsourced credit department services.

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**Platinum Partners**

Platinum Partners Credit Opportunities Fund (“PPCO”) is an asset-based investment fund providing loans to markets that are underserved by traditional sources of financing. PPCO is active in the trade finance marketplace, providing warehouse lines to established factoring and purchase order finance companies while also working directly with a variety of businesses to provide the capital necessary to finance the purchase or manufacture of their products.

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Credit Trends in 2012: A Year for More

Predicting the trends for tomorrow is not always as easy as it may appear. Today, we live in an environment where companies are working on predictive models for everything we do. Historical patterns can drive these trends. When evaluating debtor credit, these trends can be helpful. And staying on top of the current data and statistics remains essential by Gen Merritt-Parikh

Predicting the trends for tomorrow is not always as easy as it may appear. Today, we live in an environment where companies are working on predictive models for how we shop, what we buy, where we buy, how businesses can gain a marketing advantage, and of course which companies will prevail where others may fail. Historical patterns can drive these trends. Further, when evaluating debtor credit, these trends can be helpful. Staying on top of the current data and statistics still remains essential though.

I would equate this to the underwriting versus the ongoing credit monitoring process. They are both necessary to appropriately set and manage credit risk and exposure. Debtor credit begins on the front end but never ends. Successfully reviewing the risks up front is part of a factor’s business model, even more so in today’s economic environment. As Tolbert Marks, owner of Dallas based Landry Marks Partners, LP, noted, “This is no different than any other business cycle experienced – good or bad. I believe that diversification and diligent underwriting can overcome any of the conditions that exist today.”

As we discussed last year, staying on top of debtor credit more frequently is necessary. The days of evaluating debtor credit are no longer limited to an annual or semi-annual review. Many factors are and continue to identify new methods to receive and review data almost instantly. Factoring companies are looking to broaden their available data
resources and credit tools. They are not just relying on one credit reporting resource, or even one type of credit resource. For example, we are looking at credit reports from multiple credit reporting agencies (i.e., Ansonia, Cortera, Dunn & Bradstreet, Experian, and Smyyth just to name a few) in addition to credit insurance recommendations and credit rating agency briefings. More credit tools equates to more data availability.

This is one of the reasons more and more commercial finance companies are also reporting their own data to credit providers. These credit reporting companies will provide email updates on customer credits and offer discounted costs for those factors who report their own information. It also adds value to understand where the actual data stems from when reviewing credit reports. Some credit companies allow debtors to self report credit and trade information. Others do not. In a time when we are all looking to gain access to more data while also looking to reduce our costs, understanding the reporting and gaining access to more information more often can be invaluable.

Factors have also been seeking new ways to create trend models, not just for clients but also for debtors. How are debtors paying now compared to how they historically paid, are we seeing changes in their payment patterns, are they requiring longer payment terms, etc.?

Gaining access to more resources and getting this data faster, especially in today’s technology-driven environment, will continue to help credit departments better manage their portfolios. And, fully understanding the data is critical. These trends will continue in 2012. More tools. More data. More monitoring. More of the time.

Finding more efficient ways to review debtor credit and predict trends seems to be becoming the norm, as many factors and lenders continue to streamline their administrative functions to reduce costs as price compression occurs within the marketplace.

What else have we been seeing and what do we expect to see in the next year? Well, in my discussions with other factors out there, we all have seen a general slowdown in payments over the past year. Mr. Marks shared these
held although credit demand has been muted. We believe debtor credit will be relatively stable, but we would not be surprised to see credit demand pickup to the extent that the economy becomes more robust. Businesses have mostly gone through the deleveraging process. Once the economy and sales pickup, loan demand should follow.”

As noted above, though the economy is expected to improve, many feel that it will be at a gradual pace and not much better than 2011. However, even with this minor improvement, many also believe that the payment patterns will not reduce back to prior levels. Debtors will continue to pay more slowly than years’ past, as they look to utilize their own capital more efficiently. As Chesters said (and I liked the analogy), “The psyche of ‘cash is king’ and credit lines being protected like a hoard of Mayan treasure will not recede quickly…”

Stewart Chesters, Managing Member and COO of Louisiana based Republic Business Credit, also saw a slowdown in debtor payments over the past year but did note that the last few months of 2011 remained steady. One of the challenges they faced, as many of us, was evaluating the outcome for certain household names such as American Airlines, Hostess, and the continuing review and determination on Sears. As credit became more rigid and scarce for these types of credits, more vigilance was needed in evaluating the overall risk associated with the debtors and the clients. Chesters went on to say, “For each of these [situations], we saw the usual facilities with high concentrations being presented... Catching these debtor credits at underwriting and protecting our portfolio has been the key.”

As we have all seen more of these concentrations within our portfolios overall or within individual debtors for a particular client, this has prompted an increase in participations as well as credit insurance requests or reliance. Sometimes, this information from the credit insurance company is utilized just to help evaluate the credit being extended. However, when these insurance companies hit capacity levels for certain debtors, there are still puts and other credit guarantees that can be purchased from third parties to help mitigate credit or concentration exposure.

Yet, the economy is expected to improve. With this slight recovery, many believe credit demand is sure to increase as well, making monitoring just as important if not more for this next year. Rob Flowers, Partner at New York based Atalaya Capital Management, LP, noted this same trend stating, “… Overall, credit quality has
So, what are the takeaways for what we should expect to see for 2012?

- Concentrations are still a big deal.
- More tools and resources will be critical to stay on top of debtor credit management.
- We need to review credit more often and using technology can help.
- We are all looking for more ways to improve our capital positions, reduce costs and get more ‘bang for our buck’ essentially – factors and debtors alike.
- The slowdown in debtor payments we saw in 2011 is not likely to reverse as the economy only somewhat improves in 2012.

We are all trying to do more with a variety tools and resources but for less money, all in an effort to reduce risk while maximizing revenue.

Of course, not many of us can truly predict where we will be or what we will see. Uncertainty still exists which is one of the causes for the slower recovery. Part of this may be political since it is an election year as well. In any case, predicting trends for the next year is much like evaluating credit itself. It is based on reviewing our own historical data and trends and trying to stay on top of new information as it arises.

Welcome to 2012. The year for more. •

Gen Merritt-Parikh has worked in the factoring and asset based lending industries for over 15 years, serving in roles from account management to underwriting to portfolio management. She has also been a consultant to factoring companies across the United States, helping them establish better underwriting and credit processes, training personnel on underwriting and monitoring protocols, and effectively measuring and reviewing overall performance within their organizations. Ms. Merritt joined Allied Affiliated Funding in 2009. As Chief Operating Officer, she is responsible for underwriting, account/portfolio management and workout oversight. Ms. Merritt is currently serving as a Subject Matter Expert for the IFA’s Factoring Account Executive Certification program. Gen can be reached at Gen.Merritt@FundingByAllied.com.
Federal Tax Liens: Search or Be Burned

Why should you be concerned about federal tax liens? The short answer is because they may take priority over loans made in revolving lines of credit, and you ultimately may not be able to recover your investment. This article will examine why and how.

BY AMANDA N. RASIZZI

In this article, we’ll:

• Explain why factors and ABLs must stay alert to federal tax liens if they want to protect their investments
• Examine the ‘45-day rule’ in more detail
• Explore best practices for developing a proactive due diligence strategy that will maximize a lender’s protection against risk from federal tax liens

Why you should care about federal tax liens

So, you’ve done your initial due diligence and approved a client for a revolving line of credit secured by assets such as inventory or accounts receivables. You file a UCC and begin extending loans, and everything seems to be going smoothly, until you get wind of the infamous “f” word...federal tax lien, filed on your client! If you’re hearing about this as a result of routine, recurring due diligence, chances are you’re in an excellent position to mitigate your risk. If you’re not searching for federal tax liens routinely, your lien position and ability to recoup your investment may already be lost.

Why should you be concerned about federal tax liens? The short answer is because they may take priority over loans made in revolving lines of credit, and you ultimately may not be able to recover your investment. Let’s begin to examine why and how.

First, consider that you are issuing revolving lines of credits to your clients over a period of time—and, these clients are typically high-risk borrowers. They’ve checked out in the initial due diligence phase, but what about events that may happen during the life of the loan? Specifically, how confident are you that a client is paying its federal taxes on time? Should the IRS file a federal tax lien against your client (we’re assuming you already have a perfected UCC filing on the record), you have only 45 days from the date of this IRS filing (or until the date you become aware of the federal tax lien, the earlier of the two) to take appropriate action to protect yourself, including halting any new extensions of credit. The onus is on you to find out that the tax lien was filed. My guess is your client is not going to tell you, and the IRS is generally remiss in notifying lenders (as appointees of the 8821 form) that a lien was filed. Even giving the IRS the benefit of the doubt that they will provide notice—will you receive it in time?

The bottom line is this: If you have extended any credit to your client beyond the 45th day after the filing of a federal tax lien that you were unaware of, or beyond the day you knew the filing existed, your lien is second in priority to the IRS. Should the matter go to collections, the IRS will be entitled to claim its share of the pie first, and you’ll be left hoping for any crumbs left over.

In depth: 45-day rule for federal tax liens

The 45-day rule is widely known in the industry but little understood. The Internal Revenue Code (IRC) provides for certain situations in which a lender may retain priority over a federal tax lien, where the federal tax lien was filed after the lender entered into a security agreement with the borrower. Below is an example timeline. Can you recognize which of the four loans depicted allow for the lender to retain first position over the IRS?

45-DAY RULE: EXAMPLE SCENARIO

ABC Factor enters into a security agreement with XYZ Retailer, with the debtor’s account receivable secured as collateral. The UCC is filed. Then:

<table>
<thead>
<tr>
<th>Loan</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15k</td>
<td>April 15th</td>
<td>Loan made on April 15th for $15,000</td>
</tr>
<tr>
<td>$5k</td>
<td>May 6th</td>
<td>IRS files a federal tax lien on XYZ Retailer</td>
</tr>
<tr>
<td>$2k</td>
<td>June 3rd</td>
<td>ABC Factor files XYZ Retailer $5,000 with no knowledge of federal tax lien</td>
</tr>
<tr>
<td>$1k</td>
<td>June 4th</td>
<td>ABC Factor files federal tax lien on XYZ Retailer</td>
</tr>
<tr>
<td></td>
<td>June 5th</td>
<td>ABC Factor files XYZ Retailer $1,000 with knowledge of federal tax lien</td>
</tr>
<tr>
<td></td>
<td>August 31st</td>
<td>IRS files a federal tax lien on XYZ Retailer</td>
</tr>
</tbody>
</table>

Who has priority on a) the $15k loan; b) the $5k loan; c) the $2k loan; and d) the $1k loan? Answers below:

• a) LENDER! The loan made on April 15th for $15,000 has priority over the federal tax lien. The agreement was entered into and the loan was made before the federal tax lien was filed.

• b) LENDER! The loan made on June 3rd for $5,000 has priority over the federal tax lien. It is in compliance with the IRC Section 6323(c)(2) because lender and borrower entered into the loan in the ordinary course of business; the agreement was entered into before the federal tax lien was filed; at the time of the loan, the lender had not received knowledge of the existence of the federal tax lien; and the loan was made within 45 days of the filing of the federal tax lien.

• c) IRS! The federal tax lien has priority over the loan made on June 5th for $2,000, because the bank had actual knowledge of the existence of the federal tax lien at the time it made the loan. Because of this knowledge, the 45-day time limit does not apply. ABC should not have extended credit to XYZ after learning of existence of the federal tax lien.

• d) IRS! The federal tax lien has priority over the loan made...
on August 31st for $1,000, because the bank had actual knowledge of the existence of the federal tax lien, and the loan was made after the 45th day of the filing of the federal tax lien.

Remember the onus is on the lender to be aware of federal tax liens. In the above scenario, if ABC Factor never learned of the existence of the federal tax lien, any loans made to XYZ after the 45th day following the federal tax lien would still have been second in priority to the IRS.

So what does it take to stay aware?

Implications to due diligence best practices. It is recommended that lenders search for federal tax liens before issuing any new credit to any borrower, especially those of high-risk. Practically speaking, when you issue a revolving line of credit, this is often best achieved by setting a recurring search schedule of, for example, every 30 or 60 days.

Because lenders may want to discontinue all new funding immediately upon becoming aware of the federal tax lien, you’ll want to use a carefully managed process for conducting these searches and reviewing their findings.

Developing a search strategy

Here are a few “best practice” tips for developing a search strategy:

Currency is king. Once a federal tax lien is filed on one of your clients, a clock starts ticking. Don’t speed it up by relying on data that lags behind the times. Information culled from online databases is inexpensive, but you get what you pay for. It’s not current. In fact, it often lags months behind real-time data. By the time you find evidence of a lien filing, you have likely already issued credit that will be second in priority to the IRS.

Instead, get your data straight from the source. Hire a service provider to do manual searches at the state and county level, which means sending someone physically to the clerk’s office. This is the surest and most effective method of detecting federal tax and other liens quickly and effectively. With this kind of data currency, if there’s a tax lien, you’ll find it in time to act.

State or county? There are a number of jurisdictions that require federal tax liens to be filed only at the county—not state—level. So, in these jurisdictions, if the database or service provider you are using is relying on state data, then you will never find that lien at all. For this reason, county data is an imperative.

How often to search? The next question is how frequently you should be searching. The answer really depends on your comfort with risk, but decisions can be made on a deal-by-deal basis, based on the value of the deal or the risk profile of the borrower. If you want the most comprehensive protection, you should perform state and county-level manual searches every 30 days. If you decide a particular deal is lower risk, you may want to search every 60 days, or quarterly.

The bottom line

We recommend that you conduct what is known as “recurring searches” at the state and county levels. This recurring due diligence will be essential to protecting your interests throughout the lives of your loans; you’ll be alerted with immediacy to events such as federal tax liens that can threaten your portfolio, so you can take appropriate action to protect yourself. You decide how frequently you want to search, on a deal-by-deal basis. A service provider can help you perform the searches, and some service providers, such as CT Lien Solutions, manage the process and the results. For more information on CT Lien Solutions’ innovative new recurring search technology, visit www.ctliensolutions.com/recurringsearch or e-mail info@ctliensolutions.com.

Amanda N. Rasizzi is the Senior Manager of Marketing of CT Lien Solutions. Amanda is a frequent author on public records search and filing best practices—including authoring the CT Lien Solutions blog, http://clts.typepad.com. CT Lien Solutions is a provider of lien management, debtor due diligence and life-of-loan risk management solutions to asset-based and other lending professionals. Amanda can be reached at amanda.rasizzi@wolterskluwer.com.
Many factors like to take “abundance of caution” collateral. This collateral adds minimal value to the transaction but there seems to be a mentality that, like good looks and money, you can never have too much collateral. This mentality says if you can get a second on equipment, grab it. If real estate is available, take it - especially if it is a guarantor’s residence. Factors talk about the psychology of having the client’s home on the line.

Abundance of caution collateral is usually in a second, third, or even fourth position and has substantial debt ahead of it. However, based on appraisals or estimates, there is some value remaining for the factor - at least on paper.

**Is There Really Any Value?**

If equipment appraises at $750,000 and the prior liens total $600,000, is there really any value in taking a security interest? Is the factor going to pay off the $600,000 lien on the chance he can then sell the equipment for a price that will cover the $600,000, the interest on carrying the $600,000 while preparing for the sale, the costs of sale, and then make enough to be worth the risk? It will rarely make sense to foreclose. Factors sometimes think there is value in collateral that is only an illusion and not worth the risk to try to liquidate.

The first step in avoiding problems is to be honest and realistic in placing a value on extra collateral.

**The Cash Collateral Risk**

Not only is abundance of caution collateral often without any real value, it carries significant risks and downsides. The first risk is cash collateral in bankruptcy.

Under the Bankruptcy Code, cash collateral is defined as cash, deposit accounts, and other cash equivalents - in other words: money. The collections coming in on accounts receivable are cash collateral. The client, who is now a debtor-in-possession in a Chapter 11 bankruptcy, may not use cash collateral unless the secured party who has a security interest in the cash collateral consents or the court, after notice and hearing, authorizes such use. If the court finds that the secured creditor has “adequate protection”, the court will authorize use of the cash collateral.

Your client files Chapter 11 and comes to you asking to use $150,000 in collections from factored accounts. Of course the factor says no, explaining that even though there has only been an 80% advance rate and there is a reserve, the factor will be lucky to collect out and break even. The factor then gets served with an emergency motion to authorize use of $150,000 in cash collateral. The motion demonstrates that the factor is adequately protected because of the equipment security interest taken in an abundance of caution. That second position on the equipment valued at $750,000 with $600,000 in liens ahead of the factor suddenly constitutes the adequate protection for use of cash collateral.

The abundance of caution collateral has no real value but becomes the justification for use of cash collateral. The abundance of caution collateral that looked so attractive at the underwriting stage has now become a serious problem.

**One Action Rules and Anti-Deficiency Statutes**

Abundance of caution real estate collateral creates another set of problems. About a dozen states have statutes known as one action rules. These statutes limit a creditor to one lawsuit to recover on a debt. One action rules create many questions that are unanswered by the courts. The rule can require a creditor to foreclose on real estate before taking other actions, even when the creditor doesn’t want to take that action.

Several states have an anti-deficiency statute. These statutes usually only apply to a residence. The statute provides that foreclosure of the real estate is a satisfaction of the obligation. No other collateral can be foreclosed and no judgment can be obtained against the client. When coupled with a one action rule, this can be a very serious problem.

Almost every state has a provision requiring that the deficiency owing after foreclosure of real estate is calculated not on the actual sale price but on the fair market value of the property. The deficiency that can be recovered after foreclosure is often less the amount remaining after crediting the net proceeds from sale of the real property.

Before taking real estate as abundance of caution collateral, be sure to know and understand the foreclosure procedures, requirements, and deficiency limitations in the state where the property is located.

**Does Abundance of Caution Collateral Ever Make Sense?**

In most cases, the answer is no. Before taking abundance of caution collateral, the factor should ask itself these questions:

Is there any real value in the abundance of caution collateral that I am likely to realize? If not, don’t take the collateral.

Am I willing to pay the prior liens before foreclosure sale to realize on this collateral? If not, don’t take the collateral.

Am I willing to do this deal without the abundance of caution collateral? If yes, then don’t take the extra collateral.

If I won’t do this deal without the extra collateral, should I be doing it at all?

Information provided in this article is general information only and not legal advice. Readers are encouraged to consult an attorney for specific legal advice.

John A. Beckstead, Esq. is a partner in the law firm Holland & Hart LLP. He can be reached at jabeckstead@hollandhart.com or 801-799-5823.
Two years ago, I learned about Wonders & Worries through my friend, Matt Mathias. Matt’s sweet wife was diagnosed with cancer, and it was suggested he and his family seek counseling through Wonders & Worries. Wonders & Worries is a Central Texas nonprofit that helps countless families and children, like Matt and his family, cope when a parent has a serious illness.

I got to see, first hand, how difficult it is for children and the entire family to deal with a parent being ill. Wonders & Worries helped Matt’s family in so many ways and I wanted to get involved.

One of Wonders & Worries biggest fundraising events is the annual Beretta USA No Worries Classic. This event is the nation’s most successful Sporting Clay Fundraiser. The Classic raises money and awareness for Wonders & Worries and 100% of the proceeds raised go to direct program services provided by the charity. There are twenty teams of five individuals participating in a 50 Bird Shoot. For all of you animal lovers out there, let me clarify. A “bird shoot” involves shooting a clay “pigeon.” No live birds are shot during the fundraiser, although I was almost shot when people thought I was raising money to shoot live birds. Yikes! The goal is for each shooter to raise a minimum of $3,000 in pledges. This is easily accomplished if each shooter recruits at least 10 people to pledge at least $5 per hit.

Our first year, my team raised a record-breaking $66,351 for the charity. We were proud of our accomplishment, but in the spirit of always wanting to improve, we aimed to double that goal at the 4th Annual Berretta USA No Worries Classic in 2011. Because of the hard work of my entire team, which included my employees at Far West Capital, and our generous donors, my team raised $105,000 and $33,000 of that was raised by my Far West Capital colleagues. The event surpassed its $300,000 fundraising goal, raising more than $400,000 for Wonders & Worries! Many IFA members donated to help us reach this goal. Thank you, again, for your support.

Raising money for Wonders & Worries has been an honor and I’m proud of our team at Far West Capital and what we did together to support families and children in our community.

Getting the Far West Capital team involved brought us closer as a group and reinforced one of our five company core values – team. My Berretta team won the fundraising competition because of the Far West Capital team involvement – proof that you can get more accomplished together than apart. Everyone had a great time and someone from our team even won a car – the top prize for the top fundraiser.

The money raised will make a big impact by providing free counseling sessions and support programs for families and children coping with a parent who has been diagnosed with a serious illness or is going through treatment. It also makes a difference because:

- More than 3,600 individuals and 900 families have participated in a Wonders & Worries program
- Nearly 700 people in more 225 families are currently being served by Wonders & Worries
- Wonders & Worries programs can help children with their mental health, family functioning, school performance, friendships, growth and development, and overall adjustment
- All Wonders & Worries services are offered free of charge to people of any age, gender, socio-economic status and ethnicity

At Far West Capital, we’re involved with numerous charities from Wonders & Worries to March of Dimes and Greenlights for Nonprofit Success. In fact, my employees and I are about to start our fundraising for our March of Dimes walk in May. We believe in giving back and we strongly encourage you to do the same. Donate to our causes or put a team together and get involved in causes that are near and dear to your heart. You won’t regret it.

Additional information on Wonders & Worries can be found at www.wondersandworries.org
A Primer on Subordination Agreements

Although subordination agreements are common, the ramifications are often not fully understood. Factors frequently need some sort of intercreditor subordination agreement when they enter into a new funding agreement or are being “taken out” of an existing agreement. **BY SCOT PIERCE**

Although subordination agreements are common, the ramifications are often not fully understood. Factors frequently need some sort of intercreditor subordination agreement when they enter into a new funding agreement or are being “taken out” of an existing agreement. Many factors also use form agreements that they probably have not reviewed in quite some time. Since these agreements dictate a factor’s lien rights, it is important that factors have a good understanding of some of the issues to consider when entering lien subordinations. Many times, these issues are overlooked. The issues become very important, however, when a lien dispute occurs or a client files for bankruptcy. At that point, secured creditors are usually in a feeding frenzy to collect as much money as possible. Factors, therefore, need to be aware of the problems that can arise with these agreements.

At their core, subordination agreements are simply a contract between two creditors. That is how the courts will interpret them. If a lien dispute occurs that is not addressed by an agreement, then a court will look to other law to resolve the dispute. Unfortunately, factors may not like the answer a court provides. The lesson is to pay attention to what is in your intercreditor agreements.

**Payment Subordination versus Lien Subordination**

As a preliminary matter, a subordination agreement can be a payment subordination agreement, lien subordination agreement or both. It is important to understand the difference. Payment subordination is much broader than lien subordination. Payment subordination involves a creditor subordinating its right to be paid on a debt to another creditor’s right to be paid.

Lien subordination is different. Lien subordination involves a secured creditor subordinating its lien rights in collateral to another secured creditor’s lien rights. Payment subordination, therefore, is not only broader than lien subordination, a senior lienholder almost always prefers payment subordination over lien subordination.

Many times, an agreement that the parties intend to be a lien subordination agreement is, in fact, full of payment subordination language. A subordinate lienholder needs to fully understand and consider whether the subordination agreement reflects what the parties intend. Unfortunately, my experience has been that since pre-drafted agreements are frequently used, parties are often reluctant to make any changes to the agreement no matter how reasonable or necessary the request.

**Different Objectives**

Each party to a subordination agreement has different objectives. The senior lienholder wants control over the collateral without interference from the subordinate lienholder. It wants to ensure that it is paid before the subordinate lienholder. The senior lienholder wants the right to foreclose on the common collateral without interference from the subordinate lienholder. It also wants to prevent the subordinate lienholder from foreclosing on the collateral and jeopardizing its payment stream. The senior lienholder wants to be able to modify its documents without interference from the subordinate lienholder. And the senior lienholder wants to be able to manage the collateral in bankruptcy without interference from the subordinate lienholder.

The subordinate lienholder, on the other hand, has a very different set of priorities. The subordinate lienholder wants to impose a limit on the senior lienholder’s control over the common collateral. It does not want the senior lienholder to arbitrarily eliminate the subordinate lien in a foreclosure sale of the collateral. It also does not want to be subordinated to the senior lienholder if its lien is avoided in bankruptcy or held to invalid. The subordinate lienholder usually wants to limit the dollar amount of the senior lienholder’s debt. Finally, the subordinate lienholder wants to preserve as many rights as possible in a bankruptcy.

The negotiation over the agreement occurs within these parameters and from these very different objectives. The relative bargaining power of each determines what the agreement ultimately dictates.

**Perfection/No Contest Clauses**

One of the major points of negotiation is to determine what happens if the senior lienholder’s lien is invalid, unperfected, or avoided by a bankruptcy court. Often, the subordinate lienholder enters into a subordination agreement without considering this issue. Language in the agreement may
be so broad that it simply grants the senior lienholder priority against the common collateral regardless of the validity or enforceability of its lien. The subordinate lienholder needs to be diligent to ensure that language is included requiring the senior lienholder’s lien to be valid, perfected and not avoided by the bankruptcy court. Otherwise, the subordinate lienholder is essentially providing a safety net to the senior lienholder protecting them if the senior lienholder’s lien is defective. In a bankruptcy or liquidation context, this oversight can result in the subordinate lienholder receiving less than it would receive if there were no subordination agreement.

The subordinate lienholder will want to preserve its ability to challenge the validity of the senior lienholder’s lien. The subordinate lienholder will want to reserve the right to challenge the senior lienholder’s lien in case a dispute between the parties occurs and will want a mechanism to ensure that it is not operating as a safety net for invalid liens as discussed above. The senior lienholder, on the other hand, usually wants the subordinate lienholder to waive these rights.

**Limits on the Senior’s Lien**

Another concern for the subordinate lienholder is ensuring that the senior lienholder does not subsume all of the equity in the common collateral. Not only is this a function of the value of the collateral, but this is also a function of the amount of the senior lienholder’s debt. If possible, the subordinate lienholder should negotiate a cap on the amount of the senior lienholder’s debt being secured by the common collateral. Otherwise, although sufficient equity may exist when the relationship begins, when a default later occurs, the equity may be gone. Consider that the senior lienholder is likely to claim a right to default interest, attorney fees, maintenance charges and the like when a default occurs. This may leave the subordinate lienholder completely unsecured. Because of this, the subordinate lienholder should attempt to negotiate a cap on the amount of the senior lienholder’s debt. And the parties need to negotiate how the amount of the senior lienholder’s debt that exceeds the cap will be handled. Otherwise, the priority of the amount of the senior debt that exceeds the cap will be determined according to the Uniform Commercial Code and case law which may result in the cap being meaningless if the senior debt is entitled to first priority status.

**Foreclosure**

The senior lienholder will want an agreement giving them control over the collateral without interference from the subordinate lienholder. The senior lienholder will also want to prevent the subordinate lienholder from foreclosing on the common collateral for nonpayment. The senior lienholder may want an agreement where the subordinate lien is released in the event that the senior lien is released by foreclosure. This will facilitate the senior lienholder being able to sell the collateral without the subordinate lien causing problems. On the other hand, the subordinate lienholder may want a mechanism that allows it to purchase the senior lienholder’s interest at some predetermined amount. This will allow the subordinate lienholder to protect
its security in the event that the senior lienholder decides to foreclose.

**Modifying Documents**

Finally, each side may want measures preventing the other from being able to modify their own agreements with the client in a way that would prejudice the other lienholder’s interests. For example, the subordinate lienholder may want to prevent the senior lienholder from being able to increase the amount of its debt, increase the interest rate, change the payment dates, and change the maturity dates of the debt without the subordinate lienholder’s consent. It is, however, often difficult to convince the senior lienholder to agree to these restrictions unless the subordinate lienholder has considerable leverage. Likewise, the senior lienholder will want some sort of restriction preventing the subordinate lienholder from modifying its documents in a way that would undermine the subordination agreement.

**Conclusion**

These are some of the many issues that can arise in a negotiation over a subordination agreement. Many times, the situation dictates what can reasonably be negotiated. Ultimately, the final terms of an agreement will be a function of how much leverage each party has. Although there are many more issues that can arise other than what I have discussed in this article, being aware of some of the key issues discussed here should allow factors to better assess risk and make better business decisions. •

1Senior lienholder refers to the party that will be in the senior lien position after a subordination agreement is signed.

2Subordinate lienholder refers to the party that will be in the subordinate lien position after a subordination agreement is signed.

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Scot Pierce is a partner with the lawfirm of Bracket & Ellis, P.C. located in Fort Worth, Texas. He has represented a number of factors with commercial litigation and bankruptcy issues. He also regularly writes articles and presents speeches on creditor rights issues. He can be reached at 817-339-2474 or spierce@belaw.com.
IFA WELCOMES MEMBERS TO PARADISE FOR SPRING CONFERENCE

2012 IFA Spring Conference • April 18-21 Huntington Beach CA

Known for its long 10-mile beach, which results in stellar waves and excellent surfing, Huntington Beach, California, will be a memorable locale for the 2012 International Factoring Association Spring Conference. April 18–21 will bring together the best and the brightest in the industry, culminating in idyllic Orange County, California. How can you say ‘no’ to attending? The temperature rarely reaches above 85 degrees Fahrenheit in the summer and rarely dips below 40 in the winter. It might just be the slice of heaven you need to wake you (and your business) up from winter hibernation.

The Hyatt Regency Huntington Beach Resort & Spa has something for everyone. Looking to relax? There are plenty of options for a calm getaway including Pacific Waters Spa, which features a full service salon and fitness center. Lounging in the poolside cabanas is sure to melt the stress away and with seven (mostly casual) dining options epicureans will be delighted. If you feel like venturing out, this is the town to explore; there are options galore, including many ocean wildlife and artist tours, complete with wine tasting (more excursions listed below). With the stunning views of the Pacific, Spanish-inspired architecture and the superior service, you may just want to stay put and bask in it all.

Off-site attractions are plentiful. For theme parks, Disneyland Resort offers two magical parks, Disneyland Park and Disney’s California Adventure Park. Each are about a 12-mile drive from the hotel. Knott’s Berry Farm, another theme park for thrill seekers, is just 10 miles north and features the world’s largest wooden rollercoaster. A trip to Balboa Island makes a nice excursion. In 1899, successful Californian W.S. Collins bought 1000 acres around the town.

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“A wide variety of relevant topics, impressive depth of information presented by speakers.”
—Gerry Wawzonek, Capital Now, Calgary, AB, Canada

IFO CALENDAR OF EVENTS

FEBRUARY 15-17 Creating and Managing a Factoring Portfolio, Buchalter, Nemer, San Francisco, CA
MARCH 6 Luncheon Meeting with NYIC, Arno Ristorante, New York, NY
APRIL 18 Portfolio Management Training Class, Hyatt Regency, Huntington Beach, CA
APRIL 18-21 2012 Factoring Conference, Hyatt Regency, Huntington Beach, CA
JUNE 18-19 Law and Business of Factoring, Planet Hollywood, Las Vegas, NV
JULY 19-20 Credit & Underwriting, Planet Hollywood, Las Vegas, NV
SEPTEMBER 6-7 Transportation Meeting, Hyatt Escala Lodge, Park City, UT
OCTOBER 18-19 Advanced Factoring Issues, Caesar’s Palace, Las Vegas, NV
OCTOBER 22-23 AE-LO for the Transportation Industry, Caesar’s Palace, Las Vegas, NV
OCTOBER 25-26 Small Factors Meeting, Caesar’s Palace, Las Vegas, NV

FOR DETAILS ABOUT IFA EVENTS, PLEASE VISIT WWW.FACTORING.ORG
“Hands down the best use of time considering the networking opportunities combined with the wealth of knowledge and experience found in one place—the annual IFA event!”

—Brian Center, Far West Capital, Austin, TX

Newport Bay for development for a sum of $50,000. At that time the area was mostly orange groves and did not have much value. He dredged the harbor to create the man-made Balboa Island, connected it to Los Angeles via the Pacific Electric Railroad and within 15 years, property on Balboa was worth $5,000,000. Today the island is a charming retreat for visitors and a residence for those lucky enough to call it home. Sun worshipers have the option to stroll the boardwalk, relax on the beach, shop, and/or ride the Ferris wheel. It’s a perfect California landmark!

Presenters at this year’s conference include Frank Abagnale, likely the most famous con man of modern times and one of the world’s most respected authorities on forgery, embezzlement and secure documents. For over 30 years he has worked with, advised and consulted with hundreds of financial institutions, corporations and government agencies around the world. The Mergers and Acquisition Panel will be lead by three experts in the industry: Mick Goik, Crestmark; Jeffrey Goldrich, North Mill Advisors, LLC; and Tim Stute, Milestone Advisors, LLC; discussing what they look for in a target acquisition. Another panel includes Nick Hart, Bibby Financial Services and David Tatge, Esq., Epstein Becker & Green, P.C. on the evolution of the factoring industry. To stay on the cusp of emerging technology Steve Wiideman,

“A must attend event to learn about factoring, to build relationships and to understand what is occurring in the industry.”

—Gen Merritt, Allied Affiliated Funding, Dallas, TX

search engine optimization expert, will explain important aspects with driving the most traffic to your website and how it can affect your bottom line. To stand on the shoulders of giants, Traits of Top Factoring Sales Performers, will be a session not to be missed. The IFA has spent the last six months conducting comprehensive appraisals on top producers in the industry. Learn their secrets and traits! This is just a sampling of the speakers and sessions planned. For a comprehensive guide (which is subject to change) see the accompany schedule on page —

When sunset arrives painting the California sky a brilliant orange over the vast Pacific --where a few surfers await that last final wave of the day, the

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beach begins to wind down. Downtown Huntington Beach, however, is just gearing up as its Main Street prepares for guests to the various restaurants, bars and entertainment options. For your shopping pleasure, there are California surf shops and beachside boutiques galore, featuring everything from flip-flops to upscale attire. The famous surfing brand, Quiksilver is a local brand. When you get hungry from window-shopping, the options are endless.

Shades, is well known for the romantic views, abundance of Californian wines and their fresh cuisine, the restaurant also features a guitarist on Friday and Saturday nights. For a more casual atmosphere there are many grills, burger joints and local hangouts to familiarize yourself with, such as Sugar Shack Café. The California Dream...the endless summer. We look forward to seeing you in April! •

ATTENDEES SHOULD REQUEST THE ‘FACTORING CONFERENCE’ GROUP RATE FOR THE $235 ROOM RATE.

Group rate expires March 30. Reservations subject to availability.

For more information visit www.factoringconference.com.

Prestige Capital Announces Largest Factoring Line

Prestige Capital Corporation a 26-year-old national factor has announced their largest factoring line in history: Originating a $30M non-recourse factoring facility for a $1B+ Midwest-based manufacturing company. Prestige Capital, led by Harvey Kaminski, Esq., President/CEO and Stuart Rosenthal, Executive Vice President, sourced and acted as agent of this transaction, which includes several participants.

INTERNATIONAL NEWS

The Interface Financial Group’s Annual Conference in UK: New Era of Invoice Factoring

The Interface Financial Group (IFG), an alternative funding source for small business, announced that the company held its first corporate regional conference in Birmingham, United Kingdom the week of September 26, 2011. IFG provides short-term financial resources, including invoice factoring, and serves clients in more than 30 industries in the United States, Canada, Singapore, Australia, New Zealand, UK and Ireland, and offers cross-border transaction facilities. IFG held its conference in the UK to support the company’s growth in the factoring services industry.

GE Capital Launches New Factoring Business in Poland

GE Capital, one of Europe’s leading providers of mid-market and SME finance, has launched a factoring platform in Poland called Factoring BPH, via Bank BPH, part of the GE Capital group. Factoring BPH has been established to meet increasing demand from Polish businesses seeking to improve their financial liquidity through alternative forms of finance.

CIT Appoints Richard Green President of CIT Europe

CIT Group Inc. CIT cit.com, a leading provider of financing to small businesses and middle market companies, announced the appointment of Richard (Rich) Green (45) as President of CIT Europe. In this new role he will be responsible for overseeing the European operations of CIT Corporate Finance and CIT Vendor Finance. He will report directly to CIT Group Inc. President Nelson J. Chai.

India Factoring Looks to Italy for Expansion

Having been granted license, ‘India Factoring’ recently ventured into the international factoring market. India Factoring and Finance Solutions is a joint venture of Punjab National Bank, Malta-based credit institution- FIM Bank Group, Italy-based Banca IFIS and Blend Financial Services of Mumbai. •
what’s new at ifa

Our Preferred Vendors have undergone a screening and evaluation process. When you contact the Preferred Vendors, you will need to indicate that you are an IFA member to receive your benefit.

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

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RPost’s Registered Email services allow factors to end disputes attributed to missing, misplaced or denied receipt of notification emails for notices of assignment, notices of default, borrowing base certificates, and other important notifications. It also helps speed invoice collections with proof of invoice delivery irrefutably starting the accounts receivable aging clock.
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IAF Members receive a $10 discount per 100 pack. Also, the first order from each company will be doubled.

CONSULTING

12five Consulting
12five Consulting provides technology and social media consulting to the commercial finance industry. Born out of its sister company, 12five Capital, 12five Consulting understands the technological needs of the commercial finance industry, as it was their application of these tools that led to their expertise. 12five specializes in software optimization, cloud computing implementation and social media representation.
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The American Factoring Association (AFA) begins 2012 where it left off in 2011. Tirelessly educating public policy makers of the virtues of the industry and how it plays a vital role in assisting policy makers and industry achieve their common goal of producing jobs and growing America’s economy.

The AFA continues to advocate for the factoring industry and the small business clients who use the product to fuel their growth. Through our partnership with our lobbyists, Arnie Havens and Palmer Hamilton with Jones Walker, the AFA continues to efficiently and effectively execute on our strategy.

The AFA’s most recent trip to Washington included meetings with United States Congressman and Senators who applauded the association’s proactive approach of educating the members of Congress and their staff about factoring.

The participating AFA members and our lobbyists also recently met with high ranking officials in the U.S. Department of Treasury, the Office of the Comptroller of the Currency, the Federal Reserve System and the Federal Deposit Insurance Corporation. The executives within the government regulatory bodies generally view the factoring industry as an intricate piece of the financial services ecosystem.

Through AFA members and our partners at Jones Walker we have established a great deal of goodwill the industry may call upon in the future. President Obama’s recent recess appointment of Richard Cordray as the Director of the new Consumer Financial Protection Bureau (CFPB) should serve notice to the entire factoring industry and its beneficiaries that we must continue to educate and advocate.

The current political environment is ripe with instability and uncertainty, attributes that are not business friendly. The AFA is committed to diligently educating and advocating for the industry and its stakeholders to ensure a legislative and regulatory environment that will allow the industry to prosper.

We need IFA members to get in the game. We need your ideas, your expertise, your time and most of all your money! The AFA is run entirely by volunteers. We use your donations to further the interests of our industry. Now is the time to invest in the future well-being of the industry. Visit the AFA website and invest today. Your return on investment will surely outperform any investment available through the public markets.
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FUND WITH CONFIDENCE
Selling Our Most Valuable Service

Selling is all about getting the prospect to choose you (or your firm) over the competition. And in today’s ultra-competitive environment, most Factors will do whatever they can to try and match any “better” offer. Therefore, factoring proposals are all starting to look alike. So it’s more important now than ever before to be able to differentiate yourself and your company from all of the “me too” Factors out in the marketplace.

Of course, typing that last sentence was the easy part. Being able to successfully distance yourself from the pack is another story. In case you haven’t noticed, everyone’s money is just as green as everybody else’s. How then, does one stand out in the crowd? One thing’s for sure; every salesperson answers the question, “Why should I choose your Factoring company over the others?” the exact same way, “Because our service better!” No one has ever said, “Well, to be honest, our service is slow, our people are rude and we’re poorly financed ourselves”.

Exploit Your Capabilities

The magic is in your ability to effectively communicate how your company’s service can make the prospect’s life better. While there are many, many things that Factors do every day that can make a difference, let’s start with the theme of this month’s issue: Debitor Credit. With the economic collapse still fresh on everyone’s mind, and with high profile bankruptcies continuing (ala Kodak), the subject of prudent debtor credit management remains relevant.

Credit evaluation is one of the cornerstones of Factoring. We are simply more adept at it than any of our clients will ever be. We do it every day, across many industries and for all dollar amounts. We have seen debtors slowly fade into insolvency (the big US airlines) while others spectacularly explode with almost no warning signs (Enron). Many Factors can even do a very accurate job of estimating what pre-petition receivables will be worth after a Chapter Eleven Bankruptcy filing. And we are quick to decide if selling a bankruptcy claim to a third party is better in the long run than holding on for the full resolution from the court. This expertise is valuable. In some cases it is very valuable. It is the kind of education that only comes from actually losing money. So our clients get the benefits of our experience without the pain of the write-offs. Now the key is to make the prospect understand the value they are getting.

Selling the Service

The simplest and easiest way to put a dollar figure on Factoring’s expert trade credit management is to look at the prospect’s bad debt expense on their Income Statement. Obviously, the more information you have, the better. This is where asking for financial statements for both the current year and previous years comes in handy. The longer a company has been in business, the more incidents of bad debts they will suffer. So the farther back you can go, the more value you will uncover. Keep in mind that “summary” financials will probably not give you the account information you need. Therefore, you should be asking for the fully detailed P&L.

The next place you’ll find value is in the “Over 90 Day” column on their Accounts Receivable Aging. These deadbeats could have been avoided if the prospect had already been factoring with you. Adding up these doubtful accounts with the already written off bad debt expenses will give you a starting point when trying come up with a value the prospect can truly understand.

The other significant benefit we Factors provide is the art of asking for and receiving the appropriate information from the debtor. Most clients are afraid to even broach the subject with their customers for fear of upsetting the relationship. We, however, know what to ask for and how to ask for it. Our client’s customers should not be insulted, and in fact should be impressed with the thoroughness to which the client goes about protecting their business. Factors can even obtain information that clients cannot. By simply executing a Confidentiality Agreement, the debtor can submit the necessary data to obtain the unsecured trade credit they desire without having to share sensitive information with their vendor (the Factoring Client).

Conclusion

The world economy is still far from recovery. Large U.S. corporate bankruptcies are still continuing (American Airlines). Other corporations are hanging on by their fingernails. Unsecured trade credit evaluation is not a common skill. But it is to Factors. Clients need this capability. You should know this. Now all you have to do is remember to effectively identify this valuable benefit during your sales pitch and communicate it so the prospect understands how this will make it easier to sleep at night. You are not just selling money, you are selling “peace of mind”!

Thomas G. Siska is Senior Vice President of North Mill Capital, LLC. Tom is a 24 year industry veteran who has built several factoring operations. He can be reached at 609-917-6228 or TSiska@NorthMillCapital.com.
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The IFA offers CLE credits for upcoming programs. Information on approved programs and states is available at info@factoring.org or contact the IFA at 805-773-0011.
Perception Lag

Do you think of yourself – what you look like, how you appear to others, how people think of you – as younger than you actually are? Apparently this phenomenon is quite common for most people.

In my previous career before becoming a factor, I spent a fair amount of time talking with elderly people in nursing homes. I was struck by how often someone in her 80’s or 90’s would say, “I just don’t feel like that old lady I see in the mirror! I feel like I’m much younger, even still a girl. I don’t think of myself as old. It’s like that person in the mirror is someone else, not me.”

As time has gone by in my life, I find myself thinking something similar; I feel like I’m younger than I look. I remember when I was in my 20’s, that despite the person I saw in the mirror, I thought of myself as a kid. My self-perception – the way I thought of myself in my mind – was as a young person, just like these sweet old folks in the nursing home did.

As I’ve grown older and the person in the mirror continues to age, my self-perception still doesn’t keep up. The image I think of as myself has tended to change only when significant life experiences occurred – getting married, having kids, starting a new career. While my self-perception has moved toward reality at these times, it soon became frozen in place again and didn’t continue to advance. Thus my self-perception remained, and remains, younger than my actual years.

Recently I went through another significant life event and a new image-shifting experience hit me. Its effect caught me by surprise. My son, who is now 30, was married just before Christmas and of course many pictures were taken at the happy occasion. As the father of the groom I was in several photos.

As I looked at these new shots for the first time, I was struck by how much older I appeared in these new photographs than I did in my outdated “self-perception pictures.” Prior to viewing the wedding photos, I thought of myself as still looking and feeling like I’m in my 40’s. But the guy in these new pictures was obviously older than that – in fact he looked about the same age as the groom’s mother, the bride’s parents, and everyone else in their 50’s and 60’s. Wham!

My self-perception took a jolt forward to reality and the present: the wedding pictures unmistakably reveal I’m getting gray, more wrinkled, and am beginning to sport…egad…jowls. My once firmly-defined jawbone has given way to slowly sagging skin. I’m getting…there’s no other word for it…old.

I still feel inside like I’m a younger man, but the pictures clearly show otherwise. As the wedding ceremony brought home, my son is no longer the cute little boy I used to tuck into bed; he’s now a married man. And I’m not 40 anymore, either: Gees, life sure goes by fast.

The comforting thing (if it’s any comfort) is that a lot of other people have the same self-perception lag. Plastic surgeons report that many people in their 60’s and 70’s say they feel a lot younger than they look, and want the doctor to make them look like they feel. They realize their actual look is what their self-perceived 40’s person considers old – someone in their 60’s or 70’s.

Reflecting on all this has been good for me. Once the wedding pictures updated my self-perception, I embraced the new one happily. I’ve earned every gray hair and wrinkle from being a parent and a factor for a long time, and wear each one proudly; no plastic surgery for me! I also made a few changes to reflect my revised self-perception: I updated the head shots on my web sites and email signatures, and it actually felt pretty good. So now I no longer unrealistically think of myself as that younger man. Now I’m…distinguished!

In the midst of all these self-perception revisions, however, something equally important occurred to me: I thought about the perception I have of my business. I wondered: does my business self-perception need a similar update? Do I continue to think my company is viewed by others as something it used to be, but is not any longer? Is the image my business projects the best it can be? Is it accurate?

When we make a living the same way for some time and find methods and
routines that work, we can gradually fall into a similar business “perception lag.” We are comfortable in our habits, comfortable with how we run our business. As time goes by, adopting new ways of doing things gets harder. We resist more. But that can be quite a mistake if we want to keep our businesses competitive and profitable.

The way we do things like due diligence, verifications, follow ups, and all the other daily tasks to run our companies may need to be re-examined. With technology advancing at an ever-faster rate, keeping up with the latest methods and resources for doing these tasks becomes harder, yet vital. In other words, if you’re still underwriting with the same methods you used five or even just a couple years ago, you may be behind the curve. It’s like you think of your business as a much younger person than the older adult it actually is.

Take some fresh “pictures” of your operations; then look at them closely and realistically. What are you doing that needs updating? What’s getting old or stale, especially things you may not think about much because they’re routine? Are your business practices, advance and discount rates, other fees charged, and marketing methods still competitive in today’s world? Does your website reflect a dynamic business of 2012, or does it have the appearance it did four or five years ago? Are you and your operation as current with technology as you need to be to remain competitive? What do you need to bring current? What perception lags about your company need to be updated?

While forcing yourself to make such examinations isn’t easy, it’s healthy. Your business probably needs it, and will no doubt emerge the better for it.

It’s kind of like the jolt to my self-perception from the wedding photographs. After all, when you finally realize you have jowls, it’s not the end of the world. It takes a bit of adjusting, but life is still good when you finally accept the fact you’re not a kid anymore. And if you don’t have jowls just yet, remember one last thing.

Some day you will! •
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