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table of contents
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7 INTERNATIONAL TRADE FINANCE IN THE NEW ERA: SMALL BUSINESS SURVIVAL IN A BIG-BUSINESS ECONOMY
By Zack Tatum

10 ATTORNEY RECEIVABLES: ASSETS BUILT TO FACTOR
By Joseph Genovesi

15 NO MANAGER IS AN ISLAND
By Bryan Ballowe

18 FACTORING IS SO SIMPLE; WHY DOESN’T EVERYBODY DO IT?
By Stephen Troy

22 WHAT’S NEW AT IFA

28 THE INDUSTRY IMPACT OF CERTIFICATION PROGRAMS
By Terri Baker

columns

26 legal factor BE CAREFUL ABOUT WHAT YOU SAY: THE PAROL EVIDENCE RULE
By Steven N. Kurtz, Esq.

32 sales and marketing NEW AGE COMPETITION: THE SILENT ASSASSINS
By Thomas G. Siska

34 small ticket factor THERE ARE NO SHORTCUTS IN THE FACTORING BUSINESS
By Don D’Ambrosio

ADVERTISER INDEX

3i Infotech ................................................................. 29
Accord Financial .......................................................... 31
Bayside Business Solutions, Inc. .................................. 8
CapitalPlus Equity LLC ........................................... 19
Capital Software ....................................................... 31
Credit2B ................................................................. 16
FactorFox Software, Inc. ........................................... 35
FactorsNetwork ........................................................ 9
First Corporate Solutions ......................................... 36
FirstLine Funding Group .......................................... 12
Gateway Commercial Finance ................................... 5
Gibraltar Business Capital ......................................... 20
Gulf South Receivables Fund LLC .............................. 18
Health Capital Investors, Inc. ....................................... 2
International Factoring Association .......................... 13, 20, 30
King Trade Capital .................................................. 11
Platinum Credit Management LP ............................... 33
RMP Capital Corp .................................................... 17
RMP Trade Credit LLC ............................................. 6
Sentinel Portfolio Solutions ....................................... 5
TAB Bank ............................................................... 27
Tax Guard, Inc.......................................................... 28
TransUnion Risk and Alternative Data Solutions, Inc. ... 21
Utica Leaseco LLC .................................................. 35
William Stucky and Associates, Inc. ......................... 12
The IFA is continuing to show amazing growth in both our events and membership.

In the previous twelve months, we have signed up 84 new members representing companies that are engaged in factoring, asset based lending, and PO Finance. Our annual conference continues to grow, and we are expecting record attendance at this year’s event in San Francisco.

The IFA and AFA remain the sole voice in support of the factoring industry. IFA members are required to adhere to our code of standards, helping to present the industry and our members in a positive light. The IFA certification program continues to receive rave reviews from all who have taken the test as it develops. Those individuals that have sat for and passed the exam have shown that they possess an in-depth knowledge of the factoring industry. By creating and promoting this certification program, the factoring industry continues to demonstrate our ability to monitor ourselves.

The AFA continues their support of the factoring industry by visiting with key law and policy makers in Washington, D.C. We’ve had multiple constituents making trips to D.C. (at their own expense), to meet with and educate key decision makers on how valuable factoring is to the entire economy. In support of the factoring industry, the AFA will be conducting a survey of US based factors to determine the economic value that the factoring community brings to the US economy in terms of dollars and jobs created. We will be creating a report that can be utilized by participants, and those visiting Washington D.C., about the economic impact that factoring brings to the US economy.

On behalf of the IFA, I’d like to thank everyone for their continued support of the IFA, AFA, and the entire factoring industry.

But Goldberg
INDUSTRY NEWS

Deals Recently Funded by Utica Leaseco, LLC

Utica Leaseco, LLC completed a combined Sale/Leaseback and Secured Loan transaction in the amount of $825,000 during the second week of March, 2014. Utica closed and funded the Sale/Leaseback and Secured Loan for a specialty textile manufacturing company headquartered in Hickory, North Carolina. Utica was able to provide the needed working capital by unlocking the existing equity in the company’s textile manufacturing equipment.

Utica Leaseco, LLC completed a Secured Loan transaction in the amount of $745,000 during the second week of February, 2014. Utica closed a $745,000 Senior Secured Loan funding for a Romulus, Michigan headquartered common carrier trucking company. In this transaction, Utica was able to provide the needed working capital support by unlocking equity which existed in the company’s current pool of machinery and equipment.

Utica Leaseco, LLC completed a Sale/Leaseback transaction in the amount of $2,900,000 during the second week of February, 2014. Utica closed a $2,900,000 Sale/Leaseback funding for a Los Angeles, California headquartered garment manufacturer and retailer. In this transaction, Utica was able to provide the needed working capital support by unlocking equity which existed in the company’s current pool of machinery and equipment.

Utica Leaseco, LLC completed a Secured Loan transaction in the amount of $1,137,500 during the third week of February, 2014. Utica closed and funded a $1,137,500 Senior Secured Loan for a Baltimore, Maryland headquartered caisson and directional drilling and civil engineering company. Utica was able to provide the needed working capital support by unlocking equity which existed in the company’s current pool of heavy equipment and drilling units.

Bibby Financial Services Funds Equipment Exporter

Bibby Financial Services funded a $750,000 combined purchase order and accounts receivable facility for a Florida-based equipment exporter. The business supplies a variety of products such as air and oil filters, hydraulic systems, and heavy equipment to contractors, utilities providers and other industrial businesses.

CapitalPlus Equity Provides Factoring Facility for $100,000/month to Demolition Subcontractor

CapitalPlus Equity provided a factoring facility for $100,000/month to a demolition subcontractor doing work for commercial and municipal clients located in the Southern U.S. The subcontractor will use the funds to make payroll, pay vendors, and expand their business.
The Commercial Factor
March/April 2014

A transportation company located in the Midwest has chosen TAB Bank for a $1.5 million revolving credit facility. The company is a long haul transportation company that focuses on temperature-controlled and dry van transportation. The new facility is based on accounts receivable and will provide for the ongoing working capital needs of the company.

TAB Bank provided a $2 million revolving credit facility for a wholesale distribution company located in the Southeast. The company is a distributor of prescription and non-prescription pharmaceuticals as well as over-the-counter products such as toothpaste, shampoos, and beauty aids. The new facility is based on accounts receivable and inventory, is made available through a multi-year agreement, and will provide for the ongoing working capital needs of the company.

TAB Bank provided a $10 million revolving credit facility for a wholesale distribution company located in the Midwest. The company produces, markets, and distributes skate and lifestyle shoes, apparel, and accessories. The new facility is based on accounts receivable and inventory, is made available through a multi-year agreement, and will provide for the ongoing working capital needs as company grows.

TAB Bank provided a $2 million revolving credit facility for a sports apparel company located in California. The company produces, markets, and distributes skate and lifestyle shoes, apparel, and accessories. The new facility is based on accounts receivable and inventory, is made available through a multi-year agreement, and will provide for the ongoing working capital needs as company grows.

TAB Bank provided a $10 million revolving credit facility for a wholesale distribution company located in the Midwest. The company is a distributor of prescription and non-prescription pharmaceuticals as well as over-the-counter products such as toothpaste, shampoos, and beauty aids. The new facility is based on accounts receivable and inventory, is made available through a multi-year agreement, and will provide for the ongoing working capital needs of the company.

Crestmark Closes Seven Transactions Totaling Nearly $15 Million in February
Crestmark secured a total of $14,700,000 in financial solutions for seven new clients in February. A $1,000,000 ledged line of credit was provided to a digital formatting and recording company located in California. The funds will be used for working capital purposes. A $500,000 ledged line of credit was provided to a Minnesota LED lighting manufacturer to provide additional working capital. A $200,000 ledged line of credit was provided to a Michigan steel service center. A $500,000 accounts receivable purchase facility was provided to a Washington honey producer. The funds will be used to provide working capital. A $1,000,000 accounts receivable purchase facility was provided to an oilfield services company in Texas. The funds will be used to pay off a prior lender and to provide additional working capital. A $4,000,000 asset based lending facility with advances on accounts receivable and inventory was provided to a Colorado medical supply distributor. A $7,500,000 asset based lending facility was provided to a developer and distributor of nutrition products located in New Jersey.

PERSONNEL
Bibby Financial Services Welcomes Brian Weiner to NY Sales Team
Weiner brings more than 20 years of experience to his new position as VP, Business Development. Most recently, he founded Protein Funding Group, Inc., a factoring business focused on financing food companies in the New York City metro area. Prior to that, Weiner was a partner at Atlantic Veal & Lamb, New York for 12 years; he was instrumental in turning a family-owned business into an industry leader with $100M in sales. Weiner will report to Robert Meyers, Head of Sales, Bibby Financial Services, Midwest.
International Trade Finance in the New Era: Small Business Survival in a Big-Business Economy

Because economic realities of the day exclude them from previously accessible credit markets, SMEs need to consider their cash and inventory balance to maximize turnover. The balancing act has become a game... All of these actors within the realm of international trade... perform a distinct and well-defined business discipline which is predicated on trust between counterparties. 

By Zack Tatum

As someone who is engaged in business development for a boutique global trade finance firm, my observations of global trade finance opportunities as they relate to small and medium size enterprises (SMEs) are a result of a day to day engagement with SMEs throughout the world. From my hands-on perspective, I view international trade finance as a current-asset balancing act. Because economic realities of the day exclude them from previously accessible credit markets, SMEs need to consider their cash and inventory balance to maximize turnover. The balancing act has become a game that’s played by professionals ranging from global supply chain managers; to local independent importers; to first-time entrepreneurs, where the importation of goods may not be the core discipline of the business. All of these actors within the realm of international trade—of varying levels of experience and credibility—perform a distinct and well-defined business discipline which is predicated on trust between counterparties.

Too Big To Fail

Large-cap importers have the luxury of dictating terms to suppliers and can pay on their own schedule with impunity. For most of their suppliers, the financial benefit of a large order outweighs the inconvenience and uncertainty of unfavorable terms. Even some mid-cap importers wield enough influence within their sector that their suppliers are, to a degree, beholden to them. For these businesses, they are ahead of the eight-ball with respect to their suppliers because their size or reputation affords them the luxury. However, it is only a small minority of importers who are able to live by these terms.

For the vast majority of importers—small-caps—there simply isn’t enough of a balance sheet or reputation involved to motivate a supplier to provide open terms on manufactured goods which require significant lead-times. In this most common scenario, the importer is behind the eight-ball and is, in effect, beholden to the supplier.

In the case of most SME importers conducting international trade, the supplier seeks to hedge against credit risk, and the buyer seeks to hedge against QA/QC risk, and delivery risk. The obvious way to protect both buyer and seller is to employ a third party who can guarantee funds to the seller and opportunity to the buyer. Traditionally, these protections can be found in a letter of credit, whereby a financial institution with a presence in the country of both the buyer and the seller will certify the transaction. However, this business has grown substantially unrewarding for large financial institutions because the margins on these services have tapered.

In an era of quantitative easing, where banks can approach the US Federal Reserve and buy money for almost nothing, and with near-zero risk involved, it makes little sense to pay an army of staff to secure high-risk transactions for SME client importers when they may only make a percent or two on the deal. For a large bank, returns on letter of credit services simply do not outperform other endeavors with similar cost requirements and risk profiles, so either the products are no longer offered, or they are offered at very high rates. This trend is expected to continue, and the industry is adapting accordingly.

As the evolution of capital markets pushes large finance institutions to further exclude SME importers from traditional sources of financing, specialty financial institutions have recognized opportunity and stepped in to fill the gap in the marketplace. Small, regional banks, particularly ones with a presence in select producing countries (e.g. China, Bangladesh or India) and satellite offices in consuming countries (e.g. US or EU), have differentiated themselves by offering trade finance services to address SME importers with relatively strong balance sheets and acceptable business reputations. Such client businesses may have a decade of operational history, be turning over 25-50 million US dollars per year, and have a somewhat sophisticated approach to importing goods—meaning they require very little consultation from trade finance service providers. This portion of the market makes up the majority of importers in the Western world, and in turn, the globe. They are an integral cog in the world’s supply chain, and while they do not process orders in comparable...
magnitude to their large-cap brethren, collectively, they sustain the industry by spreading default risk across many thousands of small-cap businesses, as opposed to centralizing default risk among a handful of large-caps.

The Real Market Makers

Suffice it to say, the small players in the importing world are critical to the health of the global supply chain, but all too often, these players have succumbed to an economy which has proven so favorable to large-cap firms. A large portion of import-based businesses underserved by ever-constricting capital markets are either family businesses or they are being run with a skeletal staff of international traders who may be unsophisticated, meaning they can be susceptible to costly rookie mistakes. For such businesses, there may be a great deal of goods they could theoretically sell, but their cash position makes it impossible to capitalize on the opportunity. Many such firms are small retailers who today are coming off of a weak holiday buying season and may be finding it increasingly difficult to finance the inventory they need to grow. Others may have allocated capital poorly in other aspects of the business and now find themselves short of target on inventory financing. It is clear that for SME importers, there are various significant barriers to their growth.

Money Never Sleeps?

When cash is left stagnant and not, at minimum, earning interest, it may be considered a loss of revenue and, in turn, a barrier to growth. One major barrier to growth is that, in most cases, SME importers are required by their suppliers to use letters of credit for the protection of the seller (an added benefit is that the buyer is protected as well). A letter of credit works the same way escrow works when buying a house—the buyer must furnish the cash value of the transaction to an independent third party who is trusted by both counterparties. The difference is that when buying a house, ostensibly the buyer receives the benefit of that purchase almost immediately, therefore putting their money to work without delay. When sourcing goods from overseas, one must wait up to 90 days or more before goods are available to be booked as inventory, and only then is it possible to trigger a profit event by selling them on or approaching a factor. When using a letter of credit, money simply does not work hard enough for its owner; anytime money is dormant, particularly in the US, it is being inflated out of its value. For most SME’s, keeping money dormant for an order fulfillment period (one-quarter of the year or more) represents an incredible loss of profit and is a significant barrier to growth.

Economic Darwinism

This reality has created an opportunity in the trade finance marketplace for an additional layer of differentiation. For instances involving a client importer who understands the time value of money, the market has adapted to provide services whereby SME importers may have their international transactions certified without having to contribute cash as security. This is analogous to a letter of credit with no capital commitment, and it is an up-and-coming tool in the trade finance marketplace. What this means is that for importers who would rather generate a return on their capital instead of laying it dormant behind a letter of credit, inventory may now be acquired and other financial
obligations or opportunities may be met in parallel.

It is up-and-coming because the product makes sense—for practitioners in this field, whether a business is credit-worthy is peripheral to the point of the exercise; clients are not debtors, and no liens are filed in the event of default. By virtue of this, the application process is streamlined, and qualifications are rooted in the nature of the transaction, as opposed to the operational history and financial health of the client, which can be costly and time-consuming to verify. This reduces operating costs. Under this scenario, the import finance service provider who certifies the transaction uses their own collateral to protect the seller and mitigates liquidity risk by retaining ownership of the goods until the client pays for them, which is usually immediately following the arrival of goods to port. In the unlikely event the client defaults on payment, the goods can be liquidated.

The Choice is Yours
If the client knows they will not have sufficient cash on hand to pay for the goods as they reach port, the client may seek factoring services, in which case, the factor would pay the import finance service provider directly, effectively adding an element of insulation between the importer and the flow of funds which pay for the goods and, in turn, providing another layer of security for both trade finance service provider and seller. This benefits the importer by streamlining remittances and reducing operating costs. In either scenario, the SME importer is provided the privilege of ordering goods, and for all intents and purposes, converting a remittance structure which leaves money dormant for months at a time into a much-preferred COD transaction. Such services have the substantial benefit of accomplishing the import needs of the business, while leaving cash on hand for the importer to fund other profit centers or simply accrue interest.

Of course, there is a downside; predictably, such services can be pricey. Typically, practitioners in this field will add 4% to the cost of the goods. Service fees at or around 4% sound like a lot, but for SME importers who are unable to achieve open terms with suppliers or unwilling to let cash remain stagnant during a lengthy order fulfillment period, the cost of the service must be weighed against the value of foregone business opportunities. The reason this product is able to exist within the trade finance industry is because, for much of the time, the

Continued on page 31

Zachary Tatum is vice president of business development at CFP International, a firm which specializes in providing bespoke trade finance services direct to SME clients. Prior to this, he spent several years consulting privately for client businesses in the disciplines of business development, strategy, and operations. This followed a six year career with an alternative fuels company which, during his tenure, grew from a startup to over $400m in assets. Zachary can be reached by phone at 212-724-8333 ext. 119 or by email at zack.tatum@lettercredit.com.
Contingency fee attorneys and law firms have always faced the challenge of obtaining enough capital to successfully try cases while simultaneously expanding their businesses. Financial ambiguities plague contingency fee attorneys because of the uncertain nature of the practice. Even after reaching a favorable verdict or settlement, an attorney could wind up waiting a long time before being compensated for his or her work. The waiting period for payout could be years, depending on the type of litigation and the nature of the individual case. Most attorneys cannot afford to wait this long to receive payment, and because of this, they will turn to outside sources for funding.

Historically, banks and credit unions, as the most traditional funding sources, are often considered as the first funding option by all businesses, including contingency fee legal firms. Banks and credit unions typically offer low interest rates, which make their funding options appealing. In addition to having low interest rates, banks are ubiquitous, so businesses don’t have to look hard to find one. The business of banks is to lend money with the least amount of risk.

By Joseph Genovesi

While getting capital from traditional financial sources is popular for attorneys, it does have its many drawbacks. Banks and credit unions have stringent underwriting procedures, and can have long processing times. If the attorney seeking financing does happen to make it through the process, he or she will most likely be approved for a lower amount than initially requested. Typically, when an attorney is approved by a bank or credit union, they are given a line of credit. Once the attorney starts using it, they have to start making monthly payments. Many times contingency fee attorneys would not be able to withstand the bank or credit union underwriting process because their credit profiles would be deemed too risky. Banks and credit unions like to lend to businesses that have strong profiles and collateral they can seize if the loan defaults. Since many contingency fee attorneys lack both of these, they would not go to a bank or credit union for funding.

The weak economic climate has had a huge impact on the lending capacity of traditional financiers. Regulations on traditional lenders have increased and caused them to regulate their capital much more closely, which has resulted in fewer loan approvals. Moreover, traditional lenders such as these do not value legal receivables or attorney fees as collateral, making it difficult for attorneys to qualify for credit. Luckily, alternative finance companies have emerged to aid small businesses and law firms, and as a result, the factoring industry has grown.

Alternative financing options, such as factoring, have become viable options for attorneys who have been denied by, or offered unreasonable sums by, traditional lenders. Factoring legal receivables as a form of legal funding can be a huge benefit for attorneys who face cash flow issues like the ones described above. Since the early 1990s, legal finance companies have emerged as an alternative to traditional funding companies because they accept legal fees and other receivables as collateral. Legal factoring companies provide a variety of services based on the stage of litigation. Different companies offer pre-settlement funding, post-settlement funding, appeals funding, and/or judgment/verdict funding. The different kinds of funding are tied to the
ongoing case. Factoring also permits an attorney to reinvest in their firm and experience growth that would be impossible if the attorney had waited to receive a fee.

Legal factoring companies often offer non-recourse post-settlement financing, meaning that the funding company takes full responsibility if the obligor, or the party accountable for paying the settlement award, does not pull through. Though the risk of non-repayment is very real in legal factoring, it is a risk accepted by the factoring company, giving the attorney assurance of payment. Few factoring companies that provide legal funding offer recourse funding.

Post-settlement funding, though still relatively new, is proving itself to be a staple of contingency fee work. The industry is rapidly growing, and as a result, many smaller law firms and individual practitioners have been able to expand their practices. Legal publications speculate that BigLaw firms,
which have been asked to change their billing models because their clients do not want to pay exorbitant legal fees, may move to a contingency fee model. The legal press has reported several stories about complaints lodged against large companies that charge excessive fees. A few BigLaw firms have already started to offer contingency fee services to their commercial clients.

Adopting this new model would not only expand the reaches of the legal finance industry, but the benefits of factoring would also become more apparent. Some members of the legal finance industry have pointed out that attorneys at large firms would not only receive fresh capital to invest in current and future lawsuits, but would be able to assure their big-business clients that they could participate in a lawsuit without draining their balances. This means that the client company could potentially save millions of dollars that would otherwise go towards legal counsel, and instead, invest those funds towards productivity.

Legal funding in the form of factored legal receivables can serve as a lifeline for some attorneys. Factoring allows attorneys to pursue multiple cases and make large-scale improvements to their practices without having to worry about cash flow or wait for future payments. Legal funding has already proven itself to be a viable alternative for those attorneys who were unable to find success with traditional lenders. For any attorneys facing concerns about income, opportunity cost, or fee delays, legal factoring is the right choice.

Joseph Genovesi has 12 years of experience in the alternative investment industry. He was the SVP at an alternative investment advisory firm and was responsible for manager due diligence and new business development. Joseph was VP at a global asset manager with over $3 billion in hedge fund investments and was responsible for manager due diligence and sourcing new managers for portfolios. He has an MBA in Finance from Rutgers University and a BS in Finance from Villanova University. He became president of RD Legal Funding in 2013. Joseph can be reached by phone at 201-568-9007 or by email at jgenovesi@legalfunding.com.
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UPCOMING EVENTS

2014

6/23-24 Law & Business of Factoring
Planet Hollywood, Las Vegas, NV

6/26-27 AE/LO Training
Planet Hollywood, Las Vegas, NV

7/14-15 Meeting for Women in Commercial Finance
Paris, Las Vegas, NV

9/11-12 Transportation Meeting
Omni Nashville Hotel, Nashville, TN

10/13-14 Portfolio Operations and Monitoring / Learning Through Examples
Planet Hollywood, Las Vegas, NV

10/16-17 Credit, Underwriting and Collections
Planet Hollywood, Las Vegas, NV

10/27-28 Small Factor’s Meeting
Planet Hollywood, Las Vegas, NV

2015

1/23-24 President’s & Senior Executive’s Meeting
The Fairmont Kea Lani Resort, Wailea, Maui, HI

3/3 Luncheon Meeting w/ NYIC
New York, NY

4/15-18 Annual Factoring Conference
The Roosevelt, New Orleans, LA
FEASIBILITY

FACTORS EVALUATION VALUE COST

INVESTMENT ANALYSIS

ECONOMIC INVESTIGATION
No Manager is an Island

Managing the day to day operations of a business requires executives to be forward thinking and strategic in their thought processes. There are many facets of the operations of a business that can add complexity to the daily decisions managers make. All aspects of a company’s operations are intertwined, and the choices managers make in one area can directly affect the entire organization and the overall direction it is headed. **BY BRYAN BALLOWE**

Companies that are growing quickly and/or are seasonal in nature are many times starved for cash, as well as human capital, and find too late that they are running inefficiently. Organizations must be structured in a way to promote visibility throughout all departments, from finance to logistics, no matter how diverse. It is imperative that managers strive to maintain transparency and communication among the different departments by putting in place protocols and fostering a corporate atmosphere that facilitates such transparency and communication. Company-wide departments must be in sync with one another, regardless of whether they work closely on a daily basis. For managers to perceive their respective division as a separate entity, while necessary at times, can be a critical mistake that could eventually cripple the company as a whole.

A typical organization is usually made up of the following departments: finance and accounting, sales and marketing, human resources, research and development, and production/sourcing and logistics. The finance and accounting department handles payables and receivables, reports financial results and enables the organization to access the working capital necessary to grow. Sales and marketing is the engine that drives top line revenue and fosters and builds customer relationships. Research and development is responsible for keeping the company’s products and services one step ahead of the competition. Production/sourcing and logistics is responsible for the actual production and delivery to meet customer demand. Human resources deals with the overall management of people within the organization. Managers in each area must focus on the daily responsibilities of their respective department and
ensure the department operates as efficiently and profitably as possible. Each department must have access to the necessary inputs and resources from the organization as a whole to make it thrive. All departments must communicate and work together to realize the company’s goals. There is simply no way for the organization to thrive and grow if any of the individual departments are operating in a vacuum.

To better understand the dynamics and subtleties of how important it is for managers to be mindful of the interplay between departments, let’s examine how the finance and accounting department should work on a day-to-day basis. As discussed above, the finance and accounting department follows the financial results of the organization and taps into the financial markets for the company’s working capital needs. Every department has its own importance within the organization; however, the finance arm of any organization is what fuels the entire machine. Without accurate reporting, there is no way for the company to know how profitable it has been, what capital investments have the highest return, how the company is trending, and what decisions the company should make to maximize profitability. Managers must be able to interpret the results accurately. Are margins increasing? How can the company better realize scale and scope? Is cash flow improving? Is profitability truly being maximized, and is the company in the best position to continue to realize profitability in the future? These are vital questions that must be answered. Next, managers must be able to not only take the “financial pulse” of the company, but also relay the pertinent information to many different vested parties including other department managers. If top line revenue is flattening or trending downward, what is sales and marketing doing about it? Are sales and marketing initiatives working or should the department focus on other products and target markets? If margins are decreasing, is there a problem with sourcing, production inefficiencies, logistics issues, or all of the above? Are expenses such as SG&A in line with revenues, or is the company getting weighed down by these fixed expenses? Does the company currently employ too many people, or should the labor base be more variable? This may require guidance from not only human resources, but also production to identify where costs can be cut.

Finance managers must not only be able to interpret financial results, but they must also possess knowledge and understanding of the different forms of working capital that are available to the organization. Is the company’s capital structure best suited for the company’s working capital needs? Is it structured in a manner that is most cost effective and flexible to maximize profitability? Working capital can be accessed through a wide spectrum of sources from trade debt to bank financing to equity.

The many forms of capital available to companies each have their own set of positives and negatives. Trade debt provided by suppliers is the cheapest form of financing, but it can be very limited. Bank financing is another cost-effective form of financing, but it can be restrictive in terms of availability, based on the size of a company’s
to try and take advantage of better pricing? How will these dynamics affect the ability of the company to access working capital from one or all of the potential capital providers that are in the marketplace? These are some of the questions that financial managers must ask, and have answered with the help of other divisions within the organization, to make the best decision. Organizations are living and breathing entities that are ever-changing. Managers must have a very good understanding of the diverse factors that affect the company as a whole. While managers must focus on day to day tasks within their own division, it is impossible to make critical decisions without knowing how those decisions will affect the entire picture. Communication, transparency, and a complete understanding of how all departments work together is imperative to the sustainability and growth of an organization.

Finance managers in considering their options should not look at these financing options in a vacuum merely on cost or structure alone. They should fully understand what is best for the entire organization and the direction the organization is headed. Is the company realizing a spike in sales? Are the company’s sales seasonal? Does the production department work on just-in-time inventory needs, or will it better serve the company to maintain a certain level of stock inventory management, and has been assisting CFOs in creating and executing funding strategies to meet their companies’ specific objectives since 1997. Bryan is also a principal and member of King Trade Capital’s Investment Committee and has been in the finance industry for over 17 years, having been a global Financial Analyst for Bank of America, underwriting senior debt and high yield bonds for companies in the media and telecom industry. Bryan holds a B.B.A. in Finance and a B.S. in Economics as well as an MBA in Corporate Finance, all from Southern Methodist University where he was a varsity letter winner and member of the men’s Southwest Conference Championship basketball team. For more information on how purchase order funding can help you build your company’s profits and create long term value for equity holders, call us at 214-368-5100 or email info@kingtradecapital.com.

Bryan Ballowe is Vice President and Chief Operating Officer at King Trade Capital, where he oversees underwriting and portfolio management, and has been assisting CFOs in creating and executing funding strategies to meet their companies’ specific objectives since 1997. Bryan is also a principal and member of King Trade Capital’s Investment Committee and has been in the finance industry for over 17 years, having been a global Financial Analyst for Bank of America, underwriting senior debt and high yield bonds for companies in the media and telecom industry. Bryan holds a B.B.A. in Finance and a B.S. in Economics as well as an MBA in Corporate Finance, all from Southern Methodist University where he was a varsity letter winner and member of the men’s Southwest Conference Championship basketball team. For more information on how purchase order funding can help you build your company’s profits and create long term value for equity holders, call us at 214-368-5100 or email info@kingtradecapital.com.

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What could be easier and safer than factoring invoices? Your client sells a product or provides a service to say, Walmart. All you have to do is simply buy the invoice that was sent to Walmart, at a discount of course, and Walmart, not your client, pays you the full face value of the invoice 30 days later. No need to even do a check credit on Walmart; you already know they are a Dun and Bradstreet 5A2 triple A credit. It’s just too simple. **BY STEPHEN TROY**

If you are the factor, there is no shipping of goods, minimal labor, no heavy lifting, no inventory or equipment to deal with and no dealing with Chinese manufactures. You even get rewarded by making three, four, even five times the interest of what a bank would charge your client. It’s just too easy; what could possibly go wrong? Surely, should Walmart inadvertently send payment in error to your client instead of you, the factor, your customer would promptly forward those funds to your office to pay off the invoice they sold to you. If they didn’t, they would have been paid twice for the same invoice. I guess it could happen if your client has a gum-chewing, clueless secretary who is just simply not aware of your arrangement with her boss, and accidently deposits the check Walmart sent into their bank account. No worries; your client obviously must have found they had more money in the bank than they expected when they balanced their account, having been paid twice for the same invoice. Obviously, your client will rectify the situation promptly and wire you, the factor, the Walmart funds or, at the very least, send you a check. Simple. What could go wrong?

If you are the factor, there is no shipping of goods, minimal labor, no heavy lifting, no inventory or equipment to deal with and no dealing with Chinese manufactures. You even get rewarded by making three, four, even five times the interest of what a bank would charge your client. It’s just too easy; what could possibly go wrong? Surely, should Walmart inadvertently send payment in error to your client instead of you, the factor, your customer would promptly forward those funds to your office to pay off the invoice they sold to you. If they didn’t, they would have been paid twice for the same invoice. I guess it could happen if your client has a gum-chewing, clueless secretary who is just simply not aware of your arrangement with her boss, and accidently deposits the check Walmart sent into their bank account. No worries; your client obviously must have found they had more money in the bank than they expected when they balanced their account, having been paid twice for the same invoice. Obviously, your client will rectify the situation promptly and wire you, the factor, the Walmart funds or, at the very least, send you a check. Simple. What could go wrong?

It’s not possible that the clueless secretary/bookkeeper, having found so much money in the bank, would decide she should mail out all of those checks she had been holding, and now your money has gone to pay her old bills. It’s OK; your client is very apologetic and swears he is even going to fire the secretary for making such a boneheaded mistake. You shouldn’t
showed a big loss because of returned goods, Ford has not found defects in any of the widgets your client has shipped in years. It would really be bad, if because of labor issues, (that you are unaware of at your client’s shop), quality control went down and Ford started to find defective parts—or worse yet, noticed that the shipments they have been receiving into the warehouse, and not yet checked, contained fewer parts than they were invoiced for. Yes, that would be bad.

Certainly, your third customer is doing everything correctly. Their business is easy to understand and very simple; they provide a service: temporary IT employees to Hewlett Packard. Good thing you only buy invoices from triple A credit debtors like HP. You have this account nailed down. You get the timecards and you make a call to make sure that the temporary employees have all showed up at HP headquarters. Your client would never think of overbilling HP on the agreed hourly wages, and certainly, the client would worry, Mr. Factor; you will just be making that much more interest.

Good thing you are a smart and experienced factor and did a full notification to Walmart telling them they have to pay you, the factor, again under the Uniform Commercial Code, and the debt isn’t discharged unless you, the holder of the invoice, is paid in full. Whew!

Obviously, Walmart will rollover, seeing the error of their ways, and issue a new check for $108,453.52, the exact amount they accidently sent to your client, their vendor, to clear the debt with you, the factor. Good thing too, because if they didn’t pay the debt promptly, you, the factor, would have to hire a lawyer at $300-$600 per hour and sue Walmart. Who would want to do that?

If Walmart hadn’t caved so quickly, that invoice you have on the books for over $100,000 would have to be made ineligible on your borrowing base with your bank, and that would eat into your equity ratios and hamper lending to your other clients, not to mention jeopardize your credit line.

You must be happy your other clients are more honest, like the company you have had on your books, that has been selling widgets to the Ford Motor Company, for the past ten years; how well that has been working out. You have only had them for a year, and they are great. You buy the invoices at a nice discount, and Ford sends you a check, like clockwork, within 30 days, for the full balance stated. With the birth of the Internet, your staff doesn’t even have to call Ford on the phone anymore. All of the invoices are posted online with the pay dates, making funding a breeze. What an easy business this factoring is.

Except for 2012, when your client
never forge a Hewlett Packard manager’s name on a timecard, stating more hours than were actually worked. They would never submit that to you, the factor.

You, the factor, would figure that out right away when you started getting short pays. Then again, you have received assurances from your client that there was clearly a mistake on HP’s part, and the missing hours would be on the next check run.

In the meantime, your client is requesting that you fund the $75,435 schedule they have in. You see, they need to make payroll or they might have to close the doors and lay everyone off. Just think of all the interest you will be making on that new funding. Oh, and by the way, you were just notified they hadn’t paid their payroll taxes for the last five quarters and just received an IRS lien for $269,687.87.

Yes, factoring is a simple business. How many businesses can you take your life savings, sit at your desk at home in your pajamas, receive invoices by email, make a couple of phone calls, wire money to your clients and get paid by triple A rated debtors. What could possibly be easier than that?

Stephen Troy is an accomplished business executive, lecturer, author, and founder/CEO of AeroFund Financial, Inc. Stephen established AeroFund as a prominent national finance company, which provides secured loans to small and medium-sized businesses. He is also the founder and chairman of AeroBank.com. Stephen is a regular guest lecturer at the business school at Santa Clara University and sits on the university’s advisory board for entrepreneurship. He serves on the governing board of Junior Achievement of Northern California and is the past chairman of Junior Achievement of Silicon Valley Monterey Bay and the Northern California chapter of the Commercial Finance Association. Stephen can be reached by phone at 408-224-7080 or by email at STroy@aerofund.com.
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Why did Bert Goldberg, executive director of IFA, ask you to form the chapter and serve as executive director?

Bert and I have worked for more than 5 years on joint factoring programs and now workshops with NYIC where I serve as managing director. Our events have been outstanding. In addition to my role with NYIC, I have served with TMA on the National Board and New Jersey Chapter. My knowledge of leadership in associations and my 50 years of factoring gave Bert confidence in the selection.

As the first IFA chapter to launch in the US, what will be your territory and why?

We have selected Boston to Northern Virginia. We felt this corridor would serve the Northeast, and many of the industries are similar.

How did you select your officer slate?

A slate was selected based on individuals with good experience in our industry and a working knowledge of each other’s strengths and ability to work together. Stu Rosenthal of Prestige Capital will serve as president. An experienced factoring executive of 26 years, Stu serves on the IFA’s advisory board and has always promoted the value of the IFA. I have worked with Stu on the TMA Board and have formed a networking group with him in Northern New Jersey.

Robinn Mikalic of JD Factors will serve as vice president. She is an experienced factoring executive and is also active in other associations and their leadership. We have worked closely with networking groups in South Jersey and Pennsylvania.

Paul Schuldiner of King Trade Capital will serve as treasurer. Paul is very well known on the purchase order financing side and brings that experience to our chapter leadership. He has also practiced as a CPA. I have worked with Paul at TMA/New Jersey Chapter and watched his leadership, especially as a treasurer.

Richard Simon of Mandelbaum Salsburg will serve as secretary. Richard is an attorney who was a principal of Westgate Financial Corp., Director of Trade Finance, and has practiced law in both the recourse and non-recourse factoring market. Richard’s knowledge of the practical and business sides of factoring, together with his legal experience, will assure meaningful educational programming as well as chapter governance.

What guidelines did you follow to establish the rollout?

IFA forwarded us their procedures and suggestions on starting a chapter. We enhanced that further, with our team adding points we felt would be beneficial in our territory.

How will your membership be structured?

All members of the IFA will be added to our chapter membership. Presently, IFA members are finance companies that finance or factor receivables, to include purchase order finance. New members will need to join the IFA directly to be added to our chapter. We will establish an associate membership for those companies who are not eligible to join the IFA but work within the industry, like professionals and service providers.

What type of events will you be planning?

We will provide education during most events, and although we will be holding joint events with other groups, we will hold many on our own. We hope to avoid scheduling conflicts with other groups, and our sessions will cater to many levels of experience. We will do training as well. On May 13th, IFA and NYIC will host a Fraud Workshop at Arno’s Ristorante in New York City from 2:30 PM-5:00 PM. For more details on this event and to learn how to register, please visit http://www.instituteofcredit.org/Events/051314.html.

Will you be setting up committees in addition to your board?

Yes. We will be forming membership, education, event, and sponsorship
In the movie The Wizard of Oz, Glinda the Good Witch of the North asks Dorothy, “Are you a good witch or a bad witch?” Dorothy replies, “I’m not a witch at all.” This is how I sometimes feel when I am asked, “Are you a good factor or a bad factor?” At times I feel like replying, “I’m not a factor at all; I’m a receivable finance company.”

In reality, I explain how factoring really works and why it is important. I hope that I have left someone who originally did not have all of the facts with a better understanding of how factoring really works. We all do it every day. As factoring companies, we are often painted with a broad brush. “Oh, you are like those payday lenders”, someone will say. Perhaps they just call you a “loan shark”. I feel like we belong to the most misunderstood industry in America.

A business owner does not think twice about paying a high percentage to a credit card processor to accept credit cards. However, when a factoring company asks for a comparable fee for taking a higher credit risk, we are the scourge of the business landscape. As any marketing professional will tell you, perception is reality. As we all know, the perception of factoring is not always a positive one. It seems that even the companies that have benefited the most from factoring do not always appreciate the role factoring plays.

This misconception is why we need the American Factoring Association. To make sure that the perception of factoring is viewed as it should be—as an essential part of the American financial landscape. There seems to be no place in the world where we need to correct the misconceptions of factoring more than in Washington, D.C. The very thought of any kind of financial arrangement that is not regulated seems to be an anathema to most of the 202 area code.

As of March 3, 2014, the administration had finalized only 52 percent of the regulations under the Dodd-Frank Wall Street Reform and Consumer Protection Act. In fact, they have not yet proposed 28 percent of the regulations under the Act. Whether it is the many rules still to come from a law passed in 2010 or simply a rule issued by some agency in Washington, the AFA must remain active to protect all of us.

To end with another quote from The Wizard of Oz, Dorothy asks the Scarecrow, “How can you talk if you haven’t got a brain?” The Scarecrow replies, “I don’t know, but some people without brains do an awful lot of talking, don’t they?” Let’s make sure the people with brains are the ones talking about factoring in Washington.

Founded in 2009, to provide a unified voice for the factoring industry, the AFA is dedicated to promoting and protecting the interests of the factoring community. The AFA board is made up of volunteers who devote time and their own funds to travel to Washington, D.C. on behalf of the factoring industry.

2014 MEMBERS & DONATIONS

As of March 11, 2014

**Diamond Member ($10,000+)**
- Advance Business Capital
- Apex Capital Corp
- Bibby Financial Services, Inc.
- Crestmark Bank
- D & S Factors
- First Capital Corp.
- Gulf Coast Business Credit
- International Factoring Association
- J D Factors
- National Bankers Trust
- TBS Factoring Service, LLC

**Platinum ($5,000 - $10,000)**
- Accord Financial, Inc.
- Far West Capital
- Great Plains Transportation Services
- Interstate Capital Corporation
- MP Star Financial, Inc.
- Phoenix Capital Group, LLC
- RMP Capital Corp.
- Sunbelt Finance
- TemPay, Inc.
- Vertex Financial, Ltd.

**Gold ($2,500 - $5,000)**
- AR Funding
- Bay View Funding
- DB Squared, Inc.
- Federal National Commercial Credit
- Gateway Commercial Finance, LLC
- Lenders Funding, LLC
- Payestone Capital
- Prime Financial Group
- Republic Business Credit, LLC
- United Capital Funding Corp.

**Silver ($1,000 - $2,500)**
- Amerisource Funding, Inc.
- Commercial Business Finance
- Durham Commercial Capital Corp.
- Entrepreneur Growth Capital, LLC
- Evergreen Working Capital, LLC
- Factor King, LLC
- FactorPlus
- Firstline Funding Group
- J.O.B.E. Services, Inc.
- K.W. Receivables
- Levinson Arshonsky & Kurtz, LLP

**Bronze ($500 - $1,000)**
- Advantage Business Capital
- American Funding Solutions LLC
- Brookridge Funding
- BTB Capital Corp.
- G Squared Financial, LLC
- Gateway Trade Finance, LLC
- Leland Capital Advisors
- QC Capital Solutions

**Other (Under $500)**
- Downtown Capital Partners, LLC

Match Factors, Inc.
Nationwide Capital Funding, Inc.
Northwest Capital, LLC
Paragon Financial Group, Inc.
PRN Funding, LLC
Prosperity Funding, Inc.
Saint John Capital Corporation
SouthStar Capital, LLC
Spectrum Commercial Services Company
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 or service to the Factoring Industry and are interested in applying for Preferred Vendor Status, please contact the IFA at 805-773-0011.

CERTIFIED EMAIL

RPost
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.
www.rpost.com/ifa
IFA 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.
Phone: 630-270-3072 • www.12five.com
Email: ryan@12five.com
IFA Member Benefit: One free hour of initial phone consultation

FactorHelp
FactorHelp has come to be regarded as the factoring industry’s premier resource provider. Their manuals, in use on every continent of the world, are setting the industry standard, and their reputation as the one-call solution for factoring problems is growing. By consistently introducing innovative, viable products, vigilantly cultivating an extensive alliance of Strategic Partners and providing the professional expertise demanded of an industry leader, FactorHelp strives to maintain its goal of providing the unparalleled service the factoring industry expects from a solutions partner.
Phone: 972-722-3700 • www.factorhelp.com
Email: dwilson@factorhelp.com
IFA Members receive a discount of 10% on their consulting fees and 5% discount on all FactorHelp products in the IFA store.

CREDIT

Ansonia Credit Data
With over 150 factors and growing, Ansonia Credit Data is the leading provider of affordable business credit reports. They understand the unique needs of ABL/Factoring companies. With no set-up or annual fees, Ansonia’s reports feature real-time access to a global database on companies of every size, industry and market segment. Whether you’re looking at a company in the USA, Canada, Mexico or beyond, Ansonia credit reports are priced at a low $8 with a substantial discount offered for participation in our A/R data exchange.
Phone: 855-ANSONIA • 855-267-6642 x.103
www.ansoniacreditdata.com
IFA Member Benefits: Free VIGILANTE™ Portfolio Analysis. Try Ansonia’s unique new program for monitoring credit portfolio risk. Call today to receive a comprehensive review of your entire portfolio.

Credit2B
Credit2B is a transformational cloud-based platform that combines third party credit information with what we call the Intelligence of the Community™, that is a network of the thousands of leading credit professionals and credit grantors that have a common interest in accessing better credit information about their trading partners. Our mission is to provide our clients better, timely, more relevant and highly accessible credit information at incredibly affordable prices. We do this through a compelling solution that leverages the power of peer network intelligence, quality bureau data, and advanced computer analytics to create an unparalleled experience.
Phone: 201-714-4514 • www.credit2b.com
IFA Members receive free trade reports in exchange for AR data. Also receive free bankruptcy notifications & preferred rates for collections - 15% contingency fee.

Dun and Bradstreet (D&B)
D&B is your source for the best business insight in the world. D&B’s global database contains the deepest, broadest, most rigorously quality-assured business insight available, covering more than 210 million businesses worldwide. With this insight, D&B has been enabling companies to Decide with Confidence™ for more than 170 years.
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IFA Member Benefits: New & Returning customers: receive DISCOUNTS off D&B solutions. Discount is for IFA members that are not current D&B customers or have been gone for a period of one year. Existing customers: receive discounts on other D&B solutions not under contract. (ie: Hoovers, Supply, DBNI Modules)

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CREDIT CARD PROCESSING

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Phone: 901-385-5335 • www.epaymentamerica.com
Email: factoring.program@epaymentamerica.com
IFA Member Benefits: Interchange Plus Pricing* Bundled Monthly Service Fee of $30.00 (includes IRS regulatory compliance, account maintenance, PCI compliance, virtual gateway & online management tool). * Based on volume/transaction count.

DISASTER RECOVERY SERVICES

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Phone: 704-341-8700 • www.agilityrecovery.com
Email: salessupport@agilityrecovery.com
IFA Member Benefits: 5% discount to each respective client’s monthly ReadySuite membership fee.

FUNDING

RMP Capital Corp.
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Phone: 631-738-0047 • www.rpmcapital.com
IFA Member Benefits: RMP Capital Corp. will pay your IFA membership yearly dues.
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50 Words Marketing, LLC

50 Words is a marketing outsourcer for companies that either do not have a marketing department or that need to add more manpower to their existing marketing team. They serve as your dedicated marketing department.

Phone: 610-631-5702 • www.50wordsmarketing.com

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Phone: 703-548-2882
www.gatewaytradefinance.com

IFA Member Benefit: Gateway will pay a 12.5% referral fee on completed transactions on all deals brought to them by IFA members.

RMP Trade Credit, LLC

RMP Trade Credit is the leading source of small ticket Purchase Order Financing. They do deals from $5,000 to $2,000,000 per month. They consider larger deals with participation. RMP Trade Credit closes deals faster than any other competitor. Their staff has over 100 years of manufacturing, importing, and exporting experience to help their clients with their needs.

Phone: 877-340-2388 ext 400
www.rmptradecredit.com

IFA Member Benefit: RMP Trade Credit will offer a 15% commission on all PO deals referred by an IFA member.

RECRUITMENT AGENCY

Commercial Finance Consultants

Established in 2002, CFC is the premier provider of human capital to the factoring industry. CFC’s goal is to provide their clients with the best available human capital and the most current industry information to assist in accomplishing their growth potential.

Phone: 469-402-4000 • www.searchcf.com
Email: dar@searchcf.com

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

SOFTWARE

Bayside Business Solutions, Inc.

Bayside Business Solutions is an innovative supplier of commercial portfolio management software that lets lenders manage factoring, invoice discounting, asset based lending, and more on a single platform—CADENCE (formerly FactorSoft). Control more. Monitor More. Lund More. With CADENCE.

Phone: 203-972-8900 • www.baysidebiz.com

IFA members will receive 10% off license fees and add-on modules. For IFA members who are currently Bayside customers: Free one day refresher course, per year, at Bayside’s training facility in Birmingham, AL.

FactorFox

FactorFox Cirrus is a cloud application for factors, their clients, brokers, lenders, and others who enter or access data. Entries can be made and reports accessed from any internet-connected computer, tablet, or smart phone. As a web-native program, there is no extra cost for setting up your account or to access your data; further, you receive three hours of free training online. FactorFox’s various versions make it suitable for nearly any size factor.

Phone: 866-432-2409 • www.factorfox.com

In addition to the one-month free trial for everyone, IFA Members receive an additional two free months for a total of three free months to try the complete program.

TAX COMPLIANCE

Tax Guard

Tax Guard is the only tax compliance company in the U.S. that works with lenders to expose credit risks in real-time before it becomes public information. Unlike a traditional public record search for federal tax liens, Tax Guard utilizes a proprietary, patent-pending process, providing due diligence and tax monitoring reports to lenders across the United States.

Phone: 303-955-3282 • www.tax-guard.com

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Phone: 800-406-1577 • www.fcicso.com
Email: daves@fcicso.com

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

IFACALENDAR

OFF EVENTS

JUNE 23-24
Law and Business of Factoring
Planet Hollywood, Las Vegas, NV

JUNE 26-27
AE-LO Training
Planet Hollywood, Las Vegas, NV

JULY 14-15
Meeting for Women in Commercial Finance
Paris, Las Vegas, NV

SEPT 11-12
Transportation Meeting
Omni Nashville Hotel, Nashville, TN

OCTOBER 13-14
Portfolio Operations and Monitoring
Planet Hollywood, Las Vegas, NV

OCTOBER 16-17
Credit, Collections & Underwriting - The Art of Getting Paid
Planet Hollywood, Las Vegas, NV

OCTOBER 27-28
Small Factors Meeting
Planet Hollywood, Las Vegas, NV

FOR DETAILS ABOUT IFA EVENTS, PLEASE VISIT WWW.FACTORING.ORG

The Commercial Factor | March/April 2014 25
Be Careful About What You Say:
The Parol Evidence Rule

The power of speech is awesome. Positive words can raise a person to the highest of highs, and negative speech can sink a person to the lowest of lows. The smartest and wisest person I know has said that we have our teeth and our lips as two levels of defense, to guard against the damage our tongue may do. Closely related to what we may say is how others hear what we say. Sometimes people just don’t get it, or for some reason, hear what they want to hear. Sometimes people are dishonest and deliberately twist what you say to fit their needs. In business, once you have reduced an agreement to a comprehensive writing, there is a doctrine called the parol evidence rule, which protects the integrity of the written contract. The parol evidence rule provides that when parties enter into an integrated written agreement, outside evidence may not be used to alter or add to the terms of the writing. The purpose of this rule is to ensure that the party’s final understanding, deliberately expressed in writing, is not subject to change. This means, in simple terms, that once you have a complete written agreement, nothing a person can say will have any impact upon what the contract says. In litigation, this doctrine is used extensively to knock out claims which differ from the four corners of a written contract. The California Supreme Court’s fairly recent decision in Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association, 55 Cal.4th 1169 (2013), has changed how the parol evidence rule is viewed, and is being looked at closely in the lender liability world. The facts of Riverisland seem to fit the typical loan workout scenario. A loan went into default. The lender, borrower, and all guarantors entered into a forbearance agreement which provided that, in exchange for making specified payments and for granting eight additional parcels of real property as further collateral, the lender would forbear from enforcing its default-related rights for three months. The borrowers were unable to make the agreed upon payments, and the lender began its real property foreclosure. The borrower and guarantors eventually repaid the loan. They then brought suit against the lender and claimed that the lender orally promised, before the documents were signed, that the loan would be extended for two years, and the additional collateral would only be two ranches. The plaintiffs further alleged that they never read the forbearance agreement, but instead relied entirely upon what the lender said before the documents were signed. The lawsuit was dismissed on the basis that the parol evidence rule precluded the plaintiffs from varying the terms of the comprehensive written forbearance agreement. The case was appealed, reversed by the intermediate appellate court, and then went up to the California Supreme Court. The California Supreme Court held that the parol evidence rule does not bar evidence of fraudulent promises at variance with the terms of the written agreement. The court also overruled an earlier long-established California Supreme Court decision that limited the fraud exception to the parol evidence rule to the procurement of the agreement (i.e., the person was tricked into signing) or the person used some form of breach of confidence to induce the person to enter into the agreement. This case is important for a number of reasons. First, it is a good discussion on how to get around the four corners of a writing in litigation. Second, it changes the law for those in the IFA community who do business in California. Third, it will be cited as better law by those in other jurisdictions which follow the old California rule. Fourth, it will be looked at by the community who sues lenders, resulting in more lender liability claims, including some potentially creative claims in bankruptcy court. Finally, it serves as a reminder of how not to conduct business.

It’s interesting to note that a large percentage of the parol evidence cases, in all jurisdictions, stem from disagreements about the workout process. It’s clear that if you extend credit to the other side, either through purchasing accounts or through other means, you are entitled to be repaid. The problems tend to start when the deals go wrong, and the parties have different agendas when negotiating and getting through the workout process. When things break down or come to a head, the debtor’s side often raises fraud claims as a defense to payment.

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Although it is difficult to stop the other side from claiming that you entered into promises in the workout negotiation process with no intention of ever performing, there are ways to minimize and hopefully prevent this problem. The most effective way is to immediately send a pre-negotiation letter to the other side once the deal goes into workout. The letter should make it clear that the deal is in workout due to a default by the other side, that there will be discussions and negotiations that take place, but, unless, and until, there is a written agreement signed by the authorized parties on each side, that no discussions will result in an agreement, and the writing that will hopefully be executed, will be the final and complete agreement on the subject. You will want the other side to acknowledge this letter in writing. If they don’t acknowledge the letter in writing, you will still need to send it; but knowing that the other side refuses to sign the pre-negotiation letter will prepare you for potential trouble to follow. Of course, if you are able to obtain a signed pre-negotiation letter, the workout agreement that you hopefully reach will have a one-way release in your favor.

Another area in the factoring relationship where the parol evidence rule comes into play is in an involuntary over-advance situation. Often times, the over-advance is handled through a series of conversations where the account executive gives the factor client a period of time in which to get into formula, and adjusts the reserve or the advance rate until such time as the deal gets back on track. It’s great when this works, but not all clients recover from the involuntary over-advance, and sometimes things get worse. When the over-advance happens, and it’s clear that it’s not something that is going to immediately be put back into formula, it’s best to reduce the deal to an over-advance addendum. This can be a very short addendum to the factoring agreement that states there’s an over-advance, sets forth the time frame and means in which the over-advance will be corrected, reaffirms the factoring agreement, contains a one-way release in the factor’s favor, and is also signed off on by the guarantors.

Everyday dealings with the factor client should also be thought through. Another takeaway from the Riverisland case is that one should never get too comfortable or familiar with the factor client. There is a fine line between providing hands-on good customer service and being too familiar and letting standards slip. That means, all deals which result in modifications to the factoring agreement must be properly documented. Once you have reached the stage where you have a completed oral modification to your agreement, you have effectively blown another hole in your document standing on its own, with all of its wonderful language that your lawyer worked hard to create, because you have established a pattern whereby you modified the agreement without a writing and have opened the door for the factor client to now bring in oral discussions (whether or not they were real). Even situations which do not rise to the level of modifying your agreements should be documented with a follow up letter or email. Also, for those of you who have invested in the various factoring software programs out there, you should get acquainted with the note-taking feature. Although these notes are usually inadmissible in court, they do tend to provide a good paper trail for what really transpired during the deal, and can, if things are

Continued on page 31
Over the last several years, industries worldwide have seen a significant growth in Professional Certification Programs. An increasing number of businesses are using certifications as a tool to test an individual’s professional knowledge and expertise in a particular field. With the number of adults who have college degrees reaching a historic high, employers are looking for different ways to ensure their workforce is maintaining an advanced standard of professional practice. Since a college degree only describes an individual’s level of academic experience, a certification provides evidence of practical skills and knowledge essential to a particular field.

Most industries in the United States provide professional certification programs to ensure a highly trained and efficient workforce. The total number of certifications has skyrocketed over the last few years due to the changing employment market. These programs have provided a variety of different benefits to organizations including:

- Employees who are more motivated and looking for personal achievement: It is a personal investment that increases worker’s confidence in their own abilities.
- Employees with increased credibility and integrity among peers and employers: With this higher recognition, employees are motivated to be more effective and make better decisions.
- Benchmarks that establish measurements of an individual’s skill level: This tool can be used to assess and prioritize improvement opportunities.
- Self-Regulation of an industry: It allows industries to set their own
“CERTIFICATIONS INDICATE AN INDIVIDUAL’S LEVEL OF DILIGENCE AND COMPETENCY, WHICH IS CRUCIAL WHEN OPERATING A BUSINESS.”

2011 CompTIA survey of IT hiring managers, the most valuable benefits of hiring a certified IT professional is better understanding of technologies, more productive IT workforce, more insightful problem solving, and better project management and communication skills. The global demand for innovative technology and IT-driven products and services has left a shortage of qualified professionals, and certifications have proven to be effective in building and accessing a high-caliber workforce.

The banking industry has also seen value through the offering of various certifications. The American Bankers Association (ABA) offers an array of certifications depending on the career path of the individual. The ABA supports the philosophy, “Improving the individual. Improving the industry.”

The International Factoring Association (IFA) has recognized the

standards. Credentialing organizations can regulate industries more efficiently than the government can.

• Workers who are more productive and have a higher level of skill set: According to a 2010 Microsoft Certified Professional study, more than 80% of managers interviewed believe that certified IT professionals are more efficient workers and enhance the performance of teams they are a part of. Certifications indicate an individual’s level of diligence and competency, which is crucial when operating a business.

• Innovation due to increased knowledge: Certified employees often provide businesses with innovative and creative ideas that are essential to maintaining success in a constantly changing environment.

• A proactive risk management approach: Businesses hiring undertrained and incompetent employees run a much higher risk of operational inefficiencies.

• Cost savings to an organization: Standardization improves operations which, in turn, increases the bottom line.

Industries of all sizes have seen a variety of benefits from the use of certification programs. One industry that has seen substantial growth and success with the implementation of certifications is the information technology industry. According to a

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The importance and need for a certification program for the factoring industry. The Certified Factoring Account Executives program was started because of the need for standardization among employees in factoring organizations. Although practices differ in many ways among businesses, the basic operational and legal structures remain the same. The implementation of a certification program creates a standard of knowledge that provides consistency for the factoring industry.

The factoring industry has frequently battled issues regarding credibility. In many circles, factoring is thought of as the “lender” of last resort. Certainly, this perception revolves around a lack of education related to the industry. That being said, the certification program will assist in the efforts to further establish credibility with potential clients, as well as other stakeholders.

Since the inception of the certification program a year ago, there are now a number of Certified Factoring Account Executives. These individuals have shown that they possess the knowledge and skills that are critical to managing accounts in a successful factoring operation. With many others registered for the exam, we are working together to raise the competence level of the factoring industry. By certifying account executives, the level of expertise and knowledge is raised in the factoring industry as a whole.

Certifications have had an array of positive benefits for industries that have established programs. The IFA is continuously looking for ways to provide information and value to the factoring industry, and the certification program will play a critical role in continuing these efforts. To learn more about the Certified Factoring Account Executive Program and how it can benefit you and your organization, please contact the IFA.

Terri Baker is the new marketing director of the International Factoring Association. She is responsible for overseeing the account executive certification program and developing future programs for the factoring industry, supporting and developing IFA training programs, expanding sponsorship opportunities for the annual conference, and promoting the IFA globally to develop new relationships and chapters. Previously, Terri worked for RiskFactor Solutions, which is based out of the UK. She was responsible for expanding their presence in the United States and increasing their client base, and supporting relationships within the factoring and asset based lending industries. Prior to working at RiskFactor Solutions, she worked for K.W. Receivables in Houston, TX for 8 years, where her duties included marketing, business development, loan compliance, credit analysis, and underwriting. Terri can be reached by phone at 805-773-0011 ext. 303 or by email at terri@factoring.org.
done right, be helpful to your lawyer in a lender liability situation.

Sometimes people say all kinds of things that the other side likes to hear in order to close a deal. Sometimes people hear things they want to hear, and reality does not change their misconception. Regardless of the case, the parol evidence rule, and reliance upon your well-written agreement, is subject to attack if the other side can state a case that you made promises with no intention of ever performing. This simply requires that the other side allege, on paper, the legal minimums needed in order to effectively plead a fraud case. If this happens, it will be an expensive and frustrating process. Therefore, in the factoring and extension of credit world, it’s important to create the proper paper trail, which means reducing all agreements, modifications to the agreements, and events relating to agreements to writing. This paper trail will hopefully be your rock and shield in the face of claims made by the other side.

International Trade

ends do a fantastic job justifying the means.

Parting Thoughts

Since the great recession of 2008, global opportunities have changed universally and throughout the world. Capitalizing on financial opportunities in such a complex and evolutionary economic landscape requires an unprecedented level of creativity and entrepreneurialism. Businesses are seeking new support systems. Entrepreneurs—the ones who create and operate SMEs—have begun to demonstrate that the route to their required financing exists if they are able to separate themselves from the habits and customs of the past lending and credit environment and open their eyes to the world of opportunity before them in non-traditional structured finance.
The competition seems to be coming from everywhere these days. Banks, in desperation to add commercial loans to offset bloated real estate exposure, are once again applying the “warm body rule”. If the company is in business and can show any profit over any time period, a bank will lend some amount of money to them regardless of the collateral. And that’s just the “incoming” transom. The “outgoing” transom of classified credits, which was once one of the factoring community’s most productive veins for new business, has quite literally been shut off. Banks aren’t exiting poor credits in an effort to keep their commercial portfolios from experiencing runoff. Add to that Hedge Funds, Small Business Investment Corporations (SBICs), Private Equity Firms, and Asset Based Lenders, all of which are experiencing the same need to book business as the banks, and it seems like the Borrowers are once again sitting in the cat bird’s seat. Even the SBA raised their lending ceiling to pull in larger credits they once shunned. But at least we know who these players are and can see them coming. It’s the new breeds of cats that have cut even deeper into our market without us even knowing that they’re there.

The Corporate Credit Card

About 25 years ago, American Express introduced its Corporate Card, which offered small (up to $50,000) credit limits for businesses to use in paying bills. There was minimal paperwork required, basically the standard one-page credit card application we’ve all come to know, with a few added questions regarding the prospective borrower. In addition, there was no collateral necessary. Therefore, the underwriting was also minimal, unobtrusive and quick. After great initial success, Amex raised the maximum credit limit to $100,000 and then to $250,000 shortly thereafter.

The greatest effect at the time was that factors saw their percentage of high personal credit scores (over 700) in their portfolio drop from approximately the same as medium and low scores (so, around 33% each) to under 10% as Amex systematically picked off this particular grade of borrower. Luckily, the recession of the early 1990s rolled in, causing massive hemorrhaging just after the higher limits were introduced. American Express, while never exiting from the market, retreated for almost a decade. Amex is back, and I dare say it’s difficult to find a small business these days that doesn’t have a credit card line of credit. Making matters worse, Visa and Mastercard have both recently introduced their version of the Corporate Card. These new entrants need to be aggressive in order to gain entry into a marketplace long owned by their rival. This aggressiveness is resulting in all three card issuers lowering credit standards and allowing “stacking”, where a single business may have two different cards (or even all three). It would be great if the only loss to the factoring market were the credit card lines of credit themselves (although it’s hard to call billions in lost advances “great”), but there’s another effect which is much more subtle and much more devastating.

Back before the era of corporate cards, a borrower would turn to factoring when it was having trouble meeting its bank loan obligations. In most cases, the bank would get paid off and exit the credit totally. In other cases, the working capital assets would be released to the factor while the fixed assets would stay with the bank to secure its remaining term loan. Both scenarios resulted in a debt to asset ratio which remained fairly constant, and somewhat reasonable. Enter American Express. Now, when a small businessman cannot generate sufficient profits to cover its debt service, good ol’ Amex will give him the extra cash without requiring any collateral. The bank never notices because their loan is getting paid on time. But what just happened is the borrower’s debt service went up without any offsetting increase in income. So the business will now experience larger losses. However, this extra cash will make everything look fine in the short run. I will sum up the exponential negative effect that’s about to happen, but I would like to first introduce our newest silent assassin.

Merchant Cash Advance Companies

Merchant cash advance companies, or MCAs, bolted onto the scene in the late 1990s and were completely ignored by factors at first because they only targeted small, entrepreneurial retail businesses (restaurants, hobby shops, etc.) and the “future” cash generated through their merchant credit card processors. By establishing agreements with the credit card processor to forward a certain percentage of all receipts to the MCA lender, MCAs could determine how long it would take to be repaid given the average daily sales rate of the borrower. This meant the MCA did not have to rely on the borrower repaying the loan (just like factors), but could intercept its repayments as cash moved from the consumers to the borrower through the processors. MCAs actually called this “credit card factoring”, although one can debate how one can truly factor.
something that doesn’t yet exist, but I digress. We factors deal in accounts receivable that truly exist today but won’t get paid until sometime in the future. We never bothered with credit card charges since once they exist, they turn to cash quickly (anywhere from a day to a week). So, what possible harm could the MCAs be to us? At first, like their Corporate Credit Card brethren, MCAs didn’t even file UCCs. Now, many do, but not all. And even the ones that do are perfectly happy in second position, or third, for that matter.

As the number of MCAs multiplied and large amounts of money (over a billion dollars) from sophisticated investors seeded some of the bigger players, the MCAs needed to broaden their reach. They still liked the daily or weekly pay downs of their short term loans and soon found the new mechanism to satisfy their business model. With the advent of the Automatic Clearing House or ACH, companies could easily and cheaply deduct money directly from a checking account, even setting up repetitive intervals for constant activity. Now the MCAs found that they could siphon from the larger pool of non-credit card cash with the same precision. Better yet, they could now do business with firms that generated little or no credit card sales. This was like leaving a solar system to enter a universe.

**The Multiplier Effect**

As I stated earlier, if the only effect to the factoring market was the low billions of dollars that Corporate Credit Cards and MCAs have outstanding, life wouldn’t be so bad, especially since much of it is to the retail industries that we don’t engage with anyway. But their money has two side effects which exponentially affect factoring. First off, small businesses usually tap into these money sources when they start encountering difficulties with their existing senior lender. So, while the businessman may only borrow $25K or $50K, this prevents a $100K, $250K or even $500K loan from exiting their bank. So, this small loan actually prevents a much bigger factoring opportunity.

Second, because these alternative sources are so easy to get, “stacking” is prevalent. Stacking is the term used when several of these sources are all supplying funds at the same time. So a $50K corporate card line of credit and a $75K MCA loan from provider #1 and another $60K MCA loan from provider #2 ends up as almost $200K in additional debt at significantly higher rates. Now, when the bank finally pushes the borrower to leave, it is damaged beyond repair. Just paying the bank off would be a tremendous feat since we all know banks are notoriously under-collateralized. But now, how do you pay off a bank and at least one MCA who has a UCC filed? It’s simple; you don’t. And this latter point is why I call them the silent assassins. They lend money to and file UCCs on companies that have senior lenders, even though the act of allowing a lien against the senior lender’s collateral is a covenant default in the loan agreement. Most senior lenders never know that the MCA is there. They increase debt and cost of funds while at the same time causing a default, essentially setting off the slow death of the client. In fact, I bet if you researched your portfolio, you’d find at

Continued on page 35
There Are No Shortcuts In The Factoring Business

By now, most of you have already heard about Facebook’s purchase of WhatsApp for $19 billion in stock, cash, and incentives. Before this record purchase, it was Instagram, YouTube, and so forth, down the line. Just a few months ago, another company called Snapchat turned down a three billion all cash offer from Facebook, saying they feel their company deserves a higher valuation based on interest from other parties. Wow, have times changed from when I was a young accountant a few years ago! Back then, valuations were based on multiples of earning ratios, revenues, and operating margins. What’s funny now is that many of these companies had never generated a profit or been in business for more than a few years before they were acquired. These are the kind of rags to riches headlines we all love to read about since the majority of these companies are startups typically founded by a few guys under the age of thirty. I guess the old saying holds true that your company is worth as much as someone is willing to pay. Unfortunately, for those of us in the factoring industry, there are no quick shortcuts to success. I can’t remember the last time I heard about a factoring app going viral or a new asset based startup being purchased for billions. In our industry, it’s kind of the opposite of these quick hit startups.

First, unlike most new businesses, an invoice factor’s goal is to decrease cash. Factors make money by purchasing invoices and getting their funds “out on the street”. The objective is to earn a high enough rate of return on purchased invoices to offset borrowing costs and general administrative expenses. Therefore, an adverse position for a typical factoring company is to have large amounts of idle capital not earning a return. It’s kind of ironic that factoring companies in too strong of a cash position sometimes get themselves in trouble by funding less than perfect applicants in order to get cash out the door.

Secondly, most factors do not want to fund every transaction. I know that may sound crazy, but you need to look at this from a risk-reward perspective. Unlike typical businesses whose goal is to sell as many of their products and services as possible, factors know that every deal has a certain amount of risk, whether it be with the client, customer or both. One of the biggest misconceptions about this industry is that factoring companies will fund almost anyone as long as their customers have good credit. Our position has always been that a strong account debtor is a great credit. Our closing ratio hovers somewhere between ten and twenty percent, depending upon the industry.

We advise our sales staff and brokers of what is important when looking for new prospects. However, at the end of the day, it all comes down to proper due diligence, a thorough understanding of the client’s business model, and a feel of what the client is trying to accomplish by using invoice factoring.

Finally, and most importantly, understand the business. It’s ironic that although our industry is very easy to understand, so few take the time to really understand it well. All too often we come across deals that others have passed on because there was an issue that was rubber stamped as a deal breaker. For example, if the company is in a growth phase where they need additional cash flow to keep up with orders, then it’s probably a good reason to move forward. However, temper this by looking at the company’s profit and operating margins. We have come across several companies that are growing but not making a profit because they have either expanded too quickly or agreed to produce a higher volume at too low a margin. Conversely, if a company is scaling back, then you should know why they are taking this course of action. Is it because sales are declining or are they just tightening their belt as a result of being bloated from accelerated growth? We have found that no two deals are exactly alike even if they...
are producing goods or services within the same industry. In one example, we have funded two clients in the apparel industry with the same customer. It was clear that the one client, who was labeled a “preferred vendor” received preferential treatment through shorter payment terms and greater flexibility in getting the purchase order fulfilled. It’s almost equivalent to a person with a higher credit score getting a better rate on a mortgage loan than someone with less than perfect credit.

At the end of the day, factoring takes time. It takes time to find out where the deals are, and more importantly, the kind of deals you want to fund. Factoring takes patience. So often, you come across great companies with great customers, but the pieces of the puzzle do not connect. The account debtor may not want to work with a factoring company or the client may have a loan, and the bank refuses to subordinate their position. These are just a few of the reasons why factoring business requires planning, understanding, and most importantly, patience. If you follow the correct path, it can be a rewarding business and career.

least one client that has an MCA UCC filed behind you, probably in default of your factoring agreement.

Conclusion
Life is hard enough, taking on opponents in your own business arena. But when you’re fighting your best while other, unseen combatants enter the fray, life gets ever more frustrating. Factoring has always competed against every form of capital out there, be it bank loans, private equity or money from a rich uncle; but at least most of these sources have a plan and expect to be repaid. And somewhere along the company’s life cycle, factoring might be the perfect fit. But the Corporate Credit Card and MCA lenders lend with reckless abandon. Loan losses are expected and desired (if they’re not experiencing some losses, then their model is too restrictive). Additionally, small business life cycles are interrupted, and shortened, many times killing any opportunity for factors.

Sales and Marketing

Continued from page 33

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