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The IFA and the AFA have been, and will continue to be, the voice of the Factoring industry. In support of Factors, we have had a busy year and plan to have many new offerings that will be released in the next quarter. Some of these are:

- Both the IFA and the Factoring industry have continued to experience strong growth. The IFA has added over 60 new members during the last year. Membership in the IFA is still limited to Factors, Asset Based Lenders and PO Finance companies.

- We have just released our fifth biennial survey of the entire factoring industry. This is, by far, the largest and most comprehensive report of this industry and shows in great detail how factors operate and the ways in which the industry has changed over the last decade.

- We will be releasing a brand new website. It has been important to us to retain the functions that we’ve developed in the existing website. For that reason, we could not simply install an off the shelf product. The new site is being tested and should be up soon.

- We will be releasing the first ever legal compendium of the factoring industry. This product will contain a detailed legal analysis of legal issues. The initial release will contain about 25 of the largest states with the remaining states to be released soon. The overall topics covered are:
  - Assignment of Claims Act / State Government Entity Assignments • State Tax Liens
  - Liability and Penalties for Unauthorized Filing of Financing Statement • Enforcement of Judgment Liens
  - Confessions of Judgement • State Sales Tax Liability • Lending License

- We are finishing up the study guide for the factoring industry, entitled “Factoring: A Guide to Account Management”. It is not specifically designed around the CAEF exam, but rather meant to assist Account Executives as they brush up on their Factoring knowledge in preparation to sit for their certification. Sections in the guide include:
  - Factoring Terminology • Is it Factoring or a Loan? • The Factoring Transaction • Complementary Products
  - The Factoring Process • Client • Credit • Portfolio Management • Loss Prevention

- All of our training courses are being updated for changes that are occurring in the Factoring industry. This includes an updated return of the extremely successful “How to Compete Against the World of Fintech” Training Class.

- The AFA continues to support the Factoring industry through our trips to Washington DC to educate law and policy makers on the value of Factors to the American economy. We are also continuing to work with specific Senators and Congressmen who have indicated they will support the Factoring sector.

- This year’s Annual Conference will be biggest and best yet. As of the time of writing, registrations are running ahead of last year. With over 70 speakers and more networking time than ever before, this year’s event will again show why the IFA Annual Conference is considered to be the “Must Attend Event of the Year”.

Thank you for your support of the IFA, AFA and the entire Factoring industry. I look forward to meeting you in Fort Worth or at a future IFA event.

But Goldberg
James Rothman, January 9, 1961-March 12, 2017

James Rothman, 56, of Boca Raton died peacefully in his home with his girlfriend, Meg by his side. He was born in Mount Vernon, NY. Son of the late David and Barbara Rothman. Jim is survived by his beautiful twins, Eliana and Danielle. He is also survived by his two sisters, Roberta and Deborah Rothman and his niece and goddaughter, Hannah Rothman. Always loving and generous to his children, Meg, and entire extended family.

He was loyal to his friends and colleagues. Jim has been active with The March of Dimes for over nine years and served as President of his Boca Raton chapter three times.

In lieu of flowers the family has kindly asked for donations in his memory to The March of Dimes, South Florida Chapter.

Jim is probably best known as a staffing industry expert for his years at Capital TempFunds, part of Capital Business Credit, LLC from 1996 to 2009. Although he joined Wells Fargo briefly, after the sale of TempFunds to Wells Fargo, he moved to Crestmark as a Group President for the eastern region of Crestmark in 2009.

James Rothman was a pioneer in funding staffing companies. When I started my factoring firm, he provided me with a senior credit facility when everyone else turned me down. I cannot be more thankful to the man who gave me an opportunity of a lifetime. The thing that I admired most of all was his unbelievable commitment to his two miracle children. I will forever be grateful and miss my mentor, colleague, and friend, Jim. -With solemn regards, Eric Feinstein, Prosperity Funding

Jim Rothman was a credit to our industry in numerous ways and a wonderful father to his two twin girls whom he loved more than life. Thank you, Jim, for exerting such a positive influence to so many, for so many years. You will be missed. -David Rains, Commercial Finance Consultants

INDUSTRY NEWS

International Factoring Association Adds Preferred Vendor Program Members

The International Factoring Association (“IFA”) announced that FactorsNetwork and Clarus Merchant Services have joined its Preferred Vendor Program. The vendors will now offer exclusive discounts to IFA members. The IFA’s Preferred Vendor Program enhances its member’s investment by helping to control their firm’s costs.
David Levy, President of Utica Leaseco, LLC Joins Panel Discussion on Strategic Lending Partnerships at IFA/NYIC Joint Factoring Luncheon in NYC

On March 7, David Levy joined leaders of the factoring community in a discussion of a team approach to providing financing solutions to factoring clients and prospects. Moderated by Stu Rosenthal, EVP of Prestige Capital, the panel also included John Bettex, Senior Counsel of DS-Concept Factoring, Harvey Friedman, COO of Lenders Funding LLC, Lee Haskin, CEO of Crossroads Financial and Paul Schuldiner, SVP of Rosenthal Trade Finance.

INDUSTRY TRANSACTIONS

Bibby Financial Services Provides Nearly $3 Million in ABL Financing to Georgia-Based Building Products Firm

Bibby Financial Services (BFS) provided nearly $3 million in financing to a Georgia-based distributor of insulation, garage doors and exterior gutters for residential and commercial buildings. The asset-based funding will be used to refinance existing lines of credit and provide needed working capital to support the company’s strategic growth plan.

Big Shoulders Capital Provides $3.3 Million Term Loan to Short-Line Railroad Operator

Big Shoulders Capital provided a $3.3 million senior secured term loan to a short-line railroad operator. Big Shoulders was able to unlock the equity in the Company’s assets in order to fund working capital needs.

Crestmark Closes 20 Transactions Totaling Nearly $7.7 Million in the First Half of March

Crestmark secured a total of $7,680,000 in financial solutions for 20 new clients in the first half of March.

North Mill Capital Funds $2 Million Accounts Receivable Credit Facility for Air Contact Transport

The funds were utilized to pay off the company’s existing lender and provided additional working capital. Air Contact Transport is a freight transportation company specializing in the ground transport of automotive parts.

Sallyport Commercial Finance Closes Record Month in February, Providing Facilities Totaling $25.2MM

Sallyport was able to support businesses across a number of industries and sectors, including a Petroleum Distributor, a Seafood Distributor, a Lender to the Construction Industry, a well-known Shoe Designer and Manufacturer, a Guitar Builder, and a Landscape Gardener to New-House Builders. The above businesses were financed using almost a full range of asset based lending facilities including AR Financing, Inventory, Equipment, Cash Flow Loans, and Purchase Order Finance.

TAB Bank Provides a Flatbed Heavy Hauling Company in California with a $1 Million Revolving Credit Facility

TAB Bank provided a $1 million revolving credit facility for a flatbed heavy hauling company located in California.
The new facility is extended through a multi-year agreement and will provide for the company’s ongoing working capital needs. The company is a family-owned business that specializes in same-day delivery, oversize transportation, and LTL services.

**PERSONNEL**

**Erik Madsen Joins Accord Business Finance**

Erik Madsen has joined Accord Business Finance as Director to support new business development. Erik hails from Denmark where he received a Bachelor’s of Business Economics from Aalborg School of Economics. After graduating as a CPA in Denmark, he immigrated to the US, where he helped European companies get their receivables paid, by setting up repayment plans for their business debtors in the US. For the past 20 years, Erik has helped many US companies with financial analysis, auditing, A/R management and collections advice.

**Kelly L. Collins Joins Crestmark as Vice President, Business Development Officer for East Division**

Based in North Carolina, Collins is responsible for helping small- and medium-sized businesses in the Carolinas access financing, and for creating greater awareness for Crestmark’s brand within her territory. She reports to James Farrell, first vice president, East Division sales manager. Collins joins Crestmark from Amerisource Funding, where she was a regional market manager for the Southeast Region, and the company’s 2015 Top Producer.

**Hitachi Business Finance Hires Thomas Bayer as Syndicated Credit Origination Leader**

Thomas will concentrate his efforts on asset-based lending and syndicated credit deals locally in the Northeast region and across the United States. He is responsible for managing and expanding relationships with financial institutions, regional banks, and other lending institutions in syndicated transactions, with typical hold positions ranging from $5 - $25 million.

**Sallyport Announces New Hires**

Greg Dyson has been hired as National Sales Manager. Greg has over 20 years’ experience providing creative finance solutions to growing companies nationwide.

Danny Krasna joins Sallyport Commercial Finance as Vice President of Business Development. Danny is based in New York City, helping Sallyport expand their footprint and bringing with him a breadth of knowledge of business development and portfolio management from his years at Bridgeport Capital, Prestige Capital and Crestmark Bank.

**Utica Leaseco, LLC Announces a New Sales Team Member, Allan Gibbel**

Allan Gibbel has joined Utica’s sales team as Western Business Development Market Manager. Allan has been a leading marketer of lending solutions for nearly 2 decades. Allan is located in Southern California.

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The International Factoring Association is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website, www.learningmarket.org.
About 35 years ago, I started Burrus Research, my forecasting company. This is my sixth company that I’ve started. Five were profitable in the first year. Three of them were national leaders in the first year. One of them, in the aviation business, had 37 national locations in the first year. I’m mentioning that so that the readers know that I don’t just write about things; I actually do them. I’m an entrepreneur as well.

Before I started my first company, I taught biology and physics. I only mention that so that you know that my forecasting methodologies are based on a scientific approach versus just an idea or something that seems logical.

I’ve written six bestselling books. My last book was Flash Foresight: How to See the Invisible and Do the Impossible and that was a New York Times and Wall Street Journal bestseller as well as being a bestseller in China and Europe and the books are required reading by companies like Bill Lloyd, IBM, Google, American Express, and Visa.

Over the years, what I’ve done is amass a leading position as a technology and business trends forecaster by having accurate forecasts. So let me give you my secret to how to predict the future and be right. First of all, I leave out the parts I can be wrong about. Now that sounds funny in a way, but it’s also true. Most people think that the only thing you can predict about the future and know you’re right about is death and taxes, but actually there are thousands of things you can be right about if you know how to do it, which is what I teach people how to do in my speeches and in my consulting and my books.

For example, right now it’s winter. Next will be spring, followed by summer. Well, there’s another one that you’re sure about, and we know when the stock market goes down it’ll go back up again and it’ll go back down again, too. Those examples I gave you are cycles, and there’s over 500 known cycles that allow you to see the future other than death and taxes. So that’s one way to look at the future. Economists have been using cycles to predict the future for a long time. The problem is,
we all know, economists have been increasingly wrong in the last five or ten years. Why are they so wrong? That’s because there’s another kind of change that used to be so slow that economists didn’t have to know anything about it, but today that other kind of change is changing your world and mine in a year or two, and that kind of change, economists don’t know about that. That’s where I’m going to help you.

I call it linear/exponential change; linear in that, unlike a cycle, it’s one way; you’re not going back, and exponential, meaning it’s growing at an exponential speed. An example of a linear/exponential change is, once you get a smartphone, you’re not going to go back to a dumb phone. That’s not a cycle. Once the people in India park their bicycles and get a car, they’re not going back to their bikes. Once the people in China get refrigeration for their homes, they’re not going to say “we don’t need refrigeration”. Those one way, linear changes are actually being driven by exponential technologies that create predictable problems, as well as predictable opportunities. So what I’ve done over the years is come up with a way of separating trends into two categories, and that’s the foundation for helping you when you look at fintech and factoring.

There’s no shortage of trends. Matter of fact, in the beginning of 2017, everybody’s publishing their list of trends. Deloitte has them and Gardner has them and everybody’s got their trends. And I would say, so what? The problem still is: which ones are going to happen and which ones aren’t? So what I’ve been able to do is come up with which ones will happen and which ones don’t. That’s why I am a consultant to the Pentagon, to the Joint Chiefs and the head of the DOD. That’s why I consult with the top 40 of IBM, the top 20 of GE, with Visa, with banks, with the financial industry, and insurance CEOs, because this model works. It changes how you look at the future which is why the IFA is having me speak at the conference this year and why this article can be important.

Here’s the core of it. There are actually two types of trends; I call them Hard Trends and Soft Trends. Hard Trends are based on future facts and they will happen. You can’t stop them. It’s a matter of fact. They’re going to happen. If you have Google and you have all the money in the world, so what? It’s going to happen anyway. Then there are Soft Trends. Soft Trends are not based on future facts; they’re based on different levels of assumptions about the future, and they might happen. Again, it doesn’t mean they won’t happen; it means they might happen. By separating those two, you get some clear power. For example, every disruption that has ever happened was there to see ahead of time because they were based on Hard Trends that make disruption visible.

I write roughly a little over 100 articles a year. I’ve been doing that for 30 years. I’ve got six bestselling books. I’ve got a newsletter. If you look at all of that history, if you go back to, for example, my 1993 book, Techno Trends, there’s even a section in that ‘93 book talking about what we today call smartphones and when they would come out (accurately), talking about streaming videos, and I even had a section in that ‘93 book called “Blockbuster is Busted”, and if you read underneath it, you’ll see me describing what Netflix became. And heck, that was in ‘93, and I was talking about social media and what that would do in the 2000s. Back in ‘93. So I’ve got a long track record of being right. At the association meeting and here, my goal is to show you how to do it so that I’m not the only one that can see the future more clearly.

The advantage of a Hard Trend is that you get to see what’s going to happen before it happens. It turns disruption into a choice.

The advantage of a Hard Trend is that you get to see what’s going to happen before it happens. It turns disruption into a choice because you don’t have to be disruptive. So, if you’re in the factoring business, and you’re looking at Fintechs that could possibly disrupt you, actually what’s happening is that Fintechs are using Hard Trends to be the disrupter by choice, and if you’re in the factoring business, you have two choices. You can learn how to be agile and react faster to the Fintech’s disruptions, which will not help you that much, or you can be what I call anticipatory, and look at the Hard Trends that are out there right now and become the disrupter yourself because you have two choices: either you’re going to the disrupter or the disrupted. My message is, thanks to Hard Trends and Soft Trends, you can make it a choice. Now, you might think Soft Trends are not usable because they
You know I mentioned my 1993 book. When I was launching that book, it was two years before Amazon started and I gave a speech at the American Booksellers Association. There were ten thousand bookstore sellers there including Barnes and Noble. You can still get the audiotape of that speech, and in that speech I said within the next two years there will be a virtual bookstore, and I basically described Amazon now. I couldn’t predict that it would be called Amazon but you’ve got to leave the parts that you can be wrong about out, but I knew the tools would be there to do it and if you don’t do it, someone else will. In my speech, I even said “Any of you ten thousand bookstore sellers, big or small, could do this right now, but I don’t think you will. I think you’ll continue to do

are things that might happen, but the reality is Soft Trends do have an advantage. You can’t change a Hard Trend, but you can change a Soft Trend because it’s not a certainty.

Now, let’s talk about Fintechs disrupting the factoring business and the factoring business model. The technologies to do the disrupting are already there. That’s why the Fintechs are doing it. Now, does that mean that, if you are an established factoring company, you’re going to be disrupted? The answer is, “well, if you don’t make changes and start becoming the disruptor, yes.” But that’s a Soft Trend. You could change that. You don’t have to be disrupted.

During the real estate meltdown back in 2007-2009 when we had the big financial crisis and real estate was doing terrible, most real estate agents were reacting to that change and going out of business. However, there were some anticipatory real estate agents I know, and they made hundreds of millions of dollars by turning that into an opportunity by becoming a disruptor in the real estate world rather than sitting back and being disrupted. My point is, disruption is a Soft Trend, and the tools to do the disrupting are Hard Trends.

My message to the factoring community is to, first of all, start realizing that you are not helpless and that you can indeed do some disrupting yourself. There is a principle I will teach when I’m giving my speech, and I’ll share it with you now, and that is: “if it can be done, it will be done, and if you don’t do it, someone else will.” So, wouldn’t you like to know what can be done one year, two years, three years, four years from now? Well, that turns change into an opportunity because instead of, “well, we don’t know what the Fintechs are going to do next”, actually, it’s quite predictable. It’s a matter of fact.
what you’ve always done and end up being disrupted.” By the way, that’s what happened.

So I’m now throwing this same thing to the world of factoring in saying the need is still there. You would not exist if there was not a need in the industries you serve. You do a lot with temp agencies; you do a lot with manufacturing; you do a lot in transportation. Those are just some of the big niches, but there’s small ones as well. You are serving a need. The key is: the needs don’t go away but they shift and how you serve them does some shifting. So the need is still there. It’s just “how is it done?” So better questions might be “is there a way to use technologies like Blockchain to become more efficient and to disrupt?” Everybody thinks they know what Blockchain is, but actually, it’s more than what they think. But what if we find out more of what Blockchain could actually do? You know how people are currently using Blockchain. That isn’t going to help people. Why don’t you look at the Hard Trends around what Blockchain will be able to do over the next two or three or four years and maybe start doing that now. That’s how you innovate. I’m just picking one thing called Blockchain; I could pick others. Because factors work in a variety of industries and customer segments, digital disruption will have a powerful impact on their present and future clients. In addition, A.I. and its predictive capabilities, has the potential to disrupt the factoring model as we know it by providing instant solutions to clients at the moment of need. In my speech, I’m going to help factors understand the difference between Hard Trends and Soft Trends in detail and then look at factoring and look at some of those trends that are shaping that are hard and also some of the soft ones that we could change.

There are three categories of Hard Trends: demographics, government regulations, and technology.

There are three categories of Hard Trends: demographics, government regulations, and technology.

Regulations: It is a Hard Trend that we will see more regulations in transportation (for example increasing autonomous capabilities will require safety and other regulations), manufacturing (for example, increasing use of A.I. and mobile robots that can move in spaces that humans occupy) and other sectors that use factors. New regulations can be tracked and factors can alert clients to new regulations, possible impact on their businesses, and actions to take as a way to add consultative value.

Demographics: For example, we’ve got 78 million baby boomers and it’s a Hard Trend that they’re going to get older. They’re not going to get younger; that’s not a cycle. We can predict a lot, not just problems. Usually we look for problems. We can predict amazing opportunities as they go forward. For example, there’s a lot of family-owned businesses that would like to pass them down to their younger siblings or their kids but their kids aren’t interested. There are a lot of service businesses that are trying to sell those businesses but they haven’t thought ahead and come up with a way to turn it from a practice into a business that could be sold, yet that could be done. There are also younger people, millennials, coming in that are wanting to use technology in a way that the baby boomers aren’t used to. So there’s a disconnect. There’s also a lot of wisdom that is retiring, experience and wisdom that has not been captured ahead of time. It doesn’t mean that you have to lose it, you only lose it if you haven’t thought about it ahead of time and captured it.

Technology: there’s been a lot of people talking over the years about how the smaller banks, the local banks, are going away. Yet, I’ve worked with some banks up in Canada that have used an Apple approach, and made their bank kind of like an Apple store, and the parking lot is always packed, but they’re not doing what a normal bank does. For most transactions, I don’t have to go in the bank. I can use the ATM outside, and when I go in the bank, there are just a few people and they don’t really have a good grasp of all the things the bank has to offer unless they get in line; but what if instead, you go to the bank to talk to people that are excited, enthusiastic? Just like the Apple store, there’s a place for the kids to play computer games so that you can actually talk to somebody. You can make an appointment ahead of time to see somebody just like you can at an Apple store or you can just walk in and you’re getting help with all of the different things that a bank can do that most customers don’t even know they can do. All of a sudden, you change retail banking into a whole different thing. If you don’t do that, the physical location of your bank is going to do less business and become less relevant every year. That’s called redefining and reinventing what you do. So, in this case, the bank has decided to use new strategies and new technologies to redefine and reinvent retail banking because, if it can be done, it will be done. When you learn how to use Hard Trends to anticipate disruptions as well as game changing opportunities, you can turn change and disruption into opportunity and advantage. •
The Potential Impact of the Trump Administration on the Factoring and Asset Based Lending Industries—Part 1 of 2

When this article is published, we will be about two and a half months into President Trump’s new administration, and his policies are being quickly implemented and news stories dominate the media. However, unlike prior presidential elections, nearly two months in, this country is still very polarized.

Unfortunately, civil discourse has largely gone by the wayside, and it’s becoming pretty rare for reasonable people of diverging political beliefs to have a rational conversation, understand that the other person has different views, and then have a pleasant lunch. The new administration has promised, among other things, to be more business friendly, cut back on regulation, and bring jobs and more industry back to the U.S.A. This two-part article, will, in what is hoped to be a completely non-partisan and non-judgmental manner, discuss the potential impact of our new President’s policies on the factoring and asset based lending industries.

President Trump has promised sweeping legislative changes (laws), new policy changes via executive orders, and appointment of judges who share his views. In other words, he promised new changes which impact all facets of our government. The United States government is separated into three branches, the Legislative, Judicial and Executive. The Legislative Branch is responsible for enacting laws and engages in business related to its lawmaking function. The Judicial Branch determines legal disputes at the federal level. The Executive Branch sets policy and runs the various agencies that make our government work. We operate on a system of checks and balances, which are designed to make sure that one branch of the government does not become too powerful, or engage in overreaching. A good example of our system of checks and balances working the way it is supposed to, is the case where President
Trump’s first immigration ban was struck down by the U.S. District Court in Seattle and the Ninth Circuit Court of Appeals. Both courts found that the Executive Order targeted one religious group and was vague in many areas. This decision caused the President to scrap the first immigration ban and come up with a new plan that may fit within the President’s statutory authority to set immigration policy as it relates to national security. As of press submission time for this article, the U.S. District Court in Hawaii issued a temporary restraining order on the second immigration ban on the grounds that the executive order is grounded in religious discrimination. While the immigration ban executive order is a hot button topic for the folks who support and reject the Trump Administration, the various court decisions (and more to follow after this article is submitted) illustrates how our system of checks and balances operates.

The Legislative Branch, comprised of the Senate and House of Representatives, (collectively, the Congress) enacts laws. The clause of the U.S. Constitution which our Legislative Branch relies upon to pass laws, which affects our industry, is the Commerce Clause. This allows Congress to pass laws that affect or regulate interstate commerce. For the most part, the factoring and asset based lending industry has been impacted very little by the laws passed by Congress, because we primarily operate using state laws that govern the various agreements and the effect of our agreements. One of the President’s campaign promises has been to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). This law was enacted in July 2010, in part, to correct problems linked to the financial meltdown in 2008. The President has gone on record stating that he would like to see banks lend more aggressively. Factors and asset based lenders mostly serve a market segment that can’t obtain traditional bank financing. Assuming that Dodd-Frank is repealed, and the accompanying regulatory framework is more relaxed, deals that were at one time not initially bankable, or thrown out of banks, may stay with the banks.

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The Judicial Branch enforces the laws that are passed by Congress. As always, there are and will be vacancies within the federal judiciary. President Trump has made campaign promises about appointing a new Supreme Court Justice like Justice Scalia, with the logical inference being that this will result in similar appointments in the lower courts. While this campaign promise was directed primarily at folks who oppose abortion, there is some concern that there will be one-sided and extreme judicial activists appointed to the federal bench. However, generally, once judges are appointed, politics usually goes out the window, especially in the federal system when deciding commercial cases, because federal judgeships are lifetime appointments and a judge’s prime directive is to follow the law. In other words, the oath of the judge’s office normally overrides the politics which caused the judge’s appointment. While judges often get it wrong on the law and facts, for a number of reasons, including the fault of the lawyers/parties, they almost always try to do the right thing from a legal perspective. A good example of this is the Federal Judge in Seattle who struck down President Trump’s first immigration ban. He was a George W. Bush appointee. When factors and asset based lenders are in the federal judicial system, it is usually because of diversity jurisdiction. That means, you have parties on opposite sides of the case, who are citizens of different states, and the amount in controversy exceeds $75,000. The most common reason for a factor or asset based lender to be in federal court will be an enforcement action against the client, guarantor or account debtor. The federal court system can be very strict and harsh. Federal judges typically like
to determine commercial cases without trials and are quick to dismiss cases or grant judgment. This means there is little room for error, and one must be exact in their pleadings.

The most likely impact on the factoring and asset based lending industries will be from the Executive Branch, which is the policy and regulatory arm of the federal government, such as the IRS, Interstate Commerce Commission, SEC, and the Comptroller of the Currency. Over the last few years, there has been discussion regarding regulation of the “shadow banking industry”. Fortunately, no laws were passed in this regard, but there has been concern that agencies, such as the Comptroller of the Currency or Consumer Financial Protection Bureau, whose first director was Elizabeth Warren, would regulate our industry. However, the current administration has promised to either dismantle the Consumer Financial Protection Bureau, or greatly scale back its operations. The most obvious effect is that there may be less regulation on banks and the regulators will err on the side of letting the banks function, make loans and not downgrade loans. The easing of regulatory pressure on the banking industry should translate into no federal regulation against factors and asset based lenders—good news for our industry. That said, since factoring and asset based lending deals are grounded in state law, the individual states can regulate lending activities. California regulates factors and asset based lenders through the Department of Business Oversight and requires a finance lenders license, and engages in other regulation. California has taken overt steps to fight policies of the Trump administration. These steps include hiring the former U.S. Attorney General to oversee the “California Resistance” and hiring a deputy state attorney general to work in Washington, D.C. to monitor the federal government. It is doubtful that California will have a more relaxed regulatory environment for our industry. The State of New York may follow California’s lead as it is considering allowing the New York Department of Financial Services the ability to regulate the business of online lenders. So, the net result will be relaxed federal regulation, but more state regulation in, at least, California and New York.

A relaxed regulatory environment should, in the long run, offer benefits to the factoring and asset based industries, especially the innovators. In recent years, we have seen BitCoin players starting up banks. There has also been a synergy between the fintech/merchant cash advance industry and banks. There is no reason why a factor or asset based lender can’t establish a bank. Indeed, CIT purchased a bank around the same time its holding company exited its Chapter 11. The obvious synergistic qualities between a bank arm and its factoring/asset based lending arm is the potential profit by employing money at factoring and asset based lending rates, while having bank costs of funds. Factors and asset based lenders who are owned by banks will have significant opportunities and advantages because of the relaxed regulatory pressures. Assuming the barriers for entry and red tape for establishing a bank eases, we may see a new wave of entrepreneurs open up or purchase banks, with a focus on non-traditional bank products.

While the promise is for a more relaxed and business friendly environment, it remains to be seen if this can be accomplished responsibly. The new administration intends to make good on its promise to bring back businesses to the U.S.A. and in that regard, if this holds up, we will see an uptick in infrastructure projects and new businesses to service this increased demand. Part two of this article will focus on the segments of the factoring and asset based lending industries, which will likely benefit from these new business opportunities and offer big picture tips in structuring these types of transactions.

Steven N. Kurtz, Esq. has represented factors, banks, and asset based lenders on a continuous basis since 1987, and he is the Co-general Counsel to the IFA. A founding partner of Levinson Arshonsky & Kurtz, with offices in California and Oklahoma, he practices in the areas of commercial law, insolvency, workouts, loan documentation and trade finance, in both transactions and litigation matters. He can be reached by phone at 818-382-3434 or by email at skurtz@laklawyers.com.
**Q&A**

**PO Finance Panel**

**Paul D. Schuldiner** is Senior Vice President at Rosenthal & Rosenthal, a commercial finance company specializing in factoring and asset based lending. Paul leads the firm’s newest division, Rosenthal Trade Capital, and is responsible for driving the overall business strategy for Rosenthal’s purchase order financing and alternative inventory financing solutions. Paul is a seasoned financial executive with over 20 years of experience in the purchase order and trade finance business and has previously held senior leadership roles at King Trade Capital, and as a principal of Transcap Trade Finance. Paul can be reached by phone at 212-356-1703 or by email at pschuldiner@rosenthalinc.com.

**Edward P. King** is the Founder and Managing Partner of King Trade Capital (“KTC”), the largest and oldest independent provider of purchase order finance in the United States. The specialized investment firm’s clients have included more than 350 public and private companies worldwide in which King Trade Capital has invested more than $2.00 billion of capital. Edward started King Trade Capital in 1993, with well known high net worth investors, and has grown the business to include major financial institutions. King Trade Capital has produced annual profits with returns well in excess of public market indices over the same period. Edward can be reached by phone at 214-368-5100 or by email at eking@kingtradecapital.com.

**Bret Schuch** is the Executive Vice President, Co-Division Manager, Dallas Office, of Goodman Factors. Bret joined the company in 1992 in a sales capacity, having spent the previous ten years in the commercial banking industry. Benefitting from his finance background and relationships within the industry, Bret has helped the company to grow tenfold in the course of his 20-plus year tenure, mainly by expanding Goodman’s market presence to markets outside of Texas, from New York to California and all points between. Bret can be reached by phone at 877-446-6362 or 972-241-3297 (x213) or by email at bschuch@goodmanfactors.com.

**Q. How has the market changed in the PO funding space over the past few years?**

**Paul:** The market has seen several changes over the past few years. The growth in PO Financing and using letters of credit (“LCs”) as a funding tool has historically been linked with importers sourcing product from China. Suppliers in China who use LCs provided by US-based importers through PO Funding have seen banking and funding in China becoming tighter and more restrictive than ever before. Pre-export loans (i.e., Packing Credits) against LCs issued are becoming more difficult—and more expensive—to obtain for Chinese manufacturers. Many importers are continuing to provide deposits to their Chinese suppliers, something that is very disturbing as it’s essentially unsecured lending and not a customary or particularly desirable funding mechanism for typical PO Financiers. Prospects are sometimes being forced to put up their own cash to Chinese suppliers and PO Financing funds the balance upon shipment of the product from overseas. A relatively new development, some PO Financing providers are beginning to offer back office functionalities and monitoring (“private label”)—and some allow factoring companies to fund PO Financing transactions using the knowledge of the PO Finance company to manage the transactions. In these scenarios, the PO Financing company’s funding risk decreases (especially if they have a high cost of capital or insufficient capital), but yield and upside go down as well.

**Q. What are some of the risks of PO funding or factors working with PO funders?**

**Paul:** One of the historical transaction challenges or risks for factors working with PO Funders has been structuring and negotiating a mutually acceptable intercreditor agreement that addresses the potential business risks to both parties when trying to support a client’s transaction structure. This has been changing over the years as there is now greater
Q. What are some of the challenges PO funders face?

Paul: The business of PO Funding has always been subject to the amount of liquidity that may exist within changing credit cycles. Excessive liquidity in the market may cause factors and asset-based lenders to "stretch" beyond conventionally structured credit parameters without the discipline that PO Funding brings as an alternative to over-advancing. In addition, the rise of hedge funds providing capital to factors, and in particular merchant cash advance companies, has impacted structure as the chase for yield for these forms of capital can cause pressure on factors or merchant cash advance lenders to provide financing again without the structure that a PO Funder is known to bring to the situation. One of the other risks for import and distribution clients that PO Funding companies support is the state of the retail market which represents the customer base for our clients. Retail bankruptcies are on the rise, the number of stores are being reduced, and e-commerce (direct to consumer sales) all impact the need for PO Funding. The PO Funding source that can diversify its product offering to different industries and distribution channels will be a necessity. This will require an evolving use of the known skill set of PO Funding sources. In addition, the PO Funding sources will also need to ensure that they are properly capitalized and technologically proficient to assist in supporting the credit needs of the changing profile of our prospective client base.

Q. How do Letters of Credit work with PO funders?

Edward: LC’s are one form of solution that is offered by PO funders in order to help clients finance the manufacture and or delivery of the inventory or goods necessary to fulfill specific purchase orders. Properly structured letters of credits offer even-handed risk for all parties and it is a finance mechanism that protects both the buyer and the seller. The seller has an absolute credit instrument that they can collect upon once they fulfill the obligations of the order and the buyer has a payment mechanism that assures them that they receive the inventory they need in the timeframe, quantity, and quality necessary to make a successful delivery to their end buyer. Letters of credits are much preferred and have significantly less risk than providing sellers or manufacturers cash in advance.

Q. Will PO funding work with domestic suppliers?

Edward: PO funding works well with domestic suppliers as those suppliers are looking for similar assurance to being paid as overseas suppliers. We happen to have a portfolio of clients that are manufacturers producing and selling their goods to end customers. There are finance solutions we provide to finance goods in process and full production that helps the small to medium-sized companies fulfill larger and larger orders. The true expertise of a PO finance company is to provide the proper finance solution for the particular client’s needs, whether it is providing credit or cash to produce or purchase inventory to fulfill orders.

Q. Do you anticipate Blockchain technology having an influence on international payments? If so, how will it affect PO & LC finance companies?

Edward: Blockchain technology is a developing concept in cross-border trade which intends to add a verifiable chain of funds flow, and perhaps even security and verification of the source of goods being shipped, to the benefit of governments and end customers alike. It seems to be some years off but there are many companies working on different solutions in trade finance. I feel like Blockchain technology will perhaps help PO finance companies, as there will be a distinct recorded verifiable trail of payment and source of goods, making US regulators, banks, and customers happy. Additionally, a secure Blockchain system will have other benefits such as making it harder to commit fraud, as the shipping paperwork will travel through an unbroken Blockchain system, making it hard to forge or change title and shipping documents and steal goods.

Q. Do you work with PO Funders? If so, why? What business opportunities do they allow you to take advantage of? Are they easy to work with?

Bret: For well over 20 years, we have worked in concert with a handful of different PO finance firms, with which both we and our clients have routinely experienced really good results. Utilizing a strategic partner for client needs such as letters of credit and production finance has allowed us to focus upon our core line of business (factoring), which is what we find we do best. Doing so also avails our clients a level of expertise in areas of finance with which we are not as familiar (letters of credit, for example). There are certainly times where we have made accommodations for a client in the form of over-advances, etc., but for the greatest part we prefer to outsource this piece and the risk associated therewith to someone who is more well versed in areas of trade and production finance.
Public records searches miss 60% of outstanding tax liabilities. Tax Guard can show you what you’re missing.

See Tax Problems Before You Fund
Tax Guard reports provide 10 years of borrower tax compliance with missing tax returns, tax deposit verification, and lien filings to measure your risk prior to funding.

Monitor Tax Issues While You Fund
Monthly monitoring includes proactive alerts to notify you of potential risks.

Solve Tax Problems So You Can Fund
Our tax experts offer transparent resolution strategies for you and your borrower to ensure no disruption to the funding relationship.
Q. Can you define Corporate Culture?
Corporate culture is defined as the environment/context in which we live and work, including beliefs (the way we see the world), behavioral rules (the rules that govern our behavior), traditions and rituals (the things we do repeatedly).

Q. How should Factoring companies create a positive Corporate Culture?
By focusing on primary human drives: Connectedness (relationships) and Belonging (belonging to something larger than ourselves), what I discuss as Cause.

Q. How can the various generations (Baby boomers, Gen X, Millennials, etc.) fit into that culture?
I discuss 5 factors to create one culture for every generation in the workforce: Time (time outside of work), Flexibility (time at work); Growth (personal and professional growth), Relationships, and Cause.

Q. Is there anything specific that you recommend doing in dealing with Millennials?
Leveraging primary human drives as discussed above.

Q. Do these techniques work for both small (2-3 people) offices as well as large, multi-location companies?
They work across organizations and departments, regardless of size.

Q. What should Factors be doing now to prepare for Millennials?
Any organization that builds a culture using the five factors above will gain a competitive advantage in the workforce. The above factors create a culture that is particularly attractive to Millennials, and also to every generation in the workforce.

Dr. Gustavo Grodnitzky is a speaker, consultant, psychologist, and author. He works with Global 1000 companies around the world and smaller businesses. He has delivered more than 1,000 presentations on topics such as corporate culture, emotional intelligence, building trust in organizations, and integrating multigenerational workforces. Dr. Grodnitzky can be reached by phone at 720-505-2662 or by email at gustavo@drgustavo.com. Learn more at www.DrGustavo.com.
Unlock Your Business’ Potential Online

Embracing and Implementing New Online Marketing Practices for Business Development

The technological advances over the last few years seem to intimidate business owners when it comes to digital marketing. The reality is, the updates made to the digital world have made marketing much easier and more effective. Since Google is the most used source for web visibility and real time lead generation these days, online marketing is no longer just an option for factoring companies; it’s a must.

As business owners, the biggest struggle for marketing is knowing where your users are spending the most time online. As we prepare for a more data driven B2B future, it is vital to remember the most successful marketing strategy revolves around reaching, engaging, and then converting users.

It is quite obvious everyone wants to be #1 on Google for the most highly trafficked factoring keywords in the industry. However, the reality of that happening could end up costing you thousands of dollars, and anywhere from 6 months to 3 years, depending on how aggressive your campaign is. Even after all of that, there is no guarantee that you will be number 1. That is the most discouraging element about online marketing, which is what tends to scare factoring lenders and brokers away from online marketing altogether. It is generally followed by the ‘why even bother?’ response.

Trying to remain on the optimistic side - there are ways around this! The new channels and strategies available online may offer a better return than what you would see from solely being ranked #1 organically on Google.

First and foremost, make sure your website is mobile friendly. With over 60% of Google searches coming from mobile devices, as well as Google’s shift towards a mobile first world, if you are not mobile, you’re already light years behind where you need to be. The key to designing a successful mobile
content and stay connected with your target audience. While social media has been placed on the back burner in the financial industry as an unnecessary marketing outlet, it’s time to give social media another chance as a marketing strategy. For the B2B world, social media has become more of a referral building source, as opposed to keeping track of how many likes or shares your posts receive. More specifically, LinkedIn has created new opportunities for financial brokers, lenders, and Factors to branch their referral network outside of their local territory.

LinkedIn offers new benefits to the whole idea of networking— you don’t need to worry about collecting business cards at conferences anymore. You can find almost any professional experience comes down to the cliché ‘less is more’ motto. Because of the small screen size on mobile devices, users do not like a lot of distractions while searching. The convenience of searching on mobile devices has made users that much more impatient to receive the information they are looking for. Mobile devices have completely changed the way business owners need to convey information online—everything needs to be much quicker.

Not only does your web design need to remain easily digestible, but so does your content. Keeping content formatted as bullet points, lists, video content, and infographics offers a much quicker and more captivating experience for the user.

Content that offers solutions to your user’s pain points, over content that is a hard sell on your interest rates, is going to be the base success of your marketing campaign. Take it one step further and create content that offers a lead generation benefit to you, like downloadable eBooks or whitepapers that require users to exchange their contact information for the content.

Content marketing is easily the most cost effective and vital strategy to any marketing campaign. Building quality content allows business owners to portray authority in the industry and gain trust from the target audience. About 94% of B2B consumers prefer to research options before they choose who they want to work with. Because timing, trust, & relevance are so important when it comes to B2B marketing, content has become a vital piece to any strategy. Too often, companies rush to pump out content just for ranking purposes and forget the true initiative behind creating it; the user. Create content that offers solutions and resources to both your borrowers and your referral network.

Social media outlets are the most widely used channels to distribute General Contractor
New York
$840,000

Electrical Contractor
New York
$350,000

Excavation Contractor
Tennessee
$75,000

When you have a construction client in need of factoring services contact CapitalPlus Equity at (866) 227-7587 or visit us at www.CapitalPlus.com.
on LinkedIn and contact them directly. Using LinkedIn to find bankers and CPAs you can build referral partnerships with is much more enriching to your business than collecting 100 business cards you need to sort out on a Monday morning post-conference.

For LinkedIn referral networking, keeping the message to referrals short and simple is key. Making sure the benefit to them is highlighted clearly is the best way to sell your factoring services. The recipient must see a value in their connection with your business in order to reply. For pitching CPAs and bankers with factoring services, it is vital to make it clear that you are not looking to take their clients from them. Pitch a partnership with them that allows the referral to cross-sell your services to borrowers and clients they are unable to help.

You may be wondering why I haven’t brought up the term “SEO” as a strategy yet. For a few reasons: one, because all the practices already mentioned are major parts of what SEO is actually made up of. Secondly, I don’t like encouraging link building, for fear that business owners will attempt to build links like it’s still 2002. There are a lot of changes daily in the search engine world, and if you don’t properly implement practices like link building, you may end up hurting your website more than helping.

Regardless, while links and content are still very important to search engines—the more important factor these days is user experience. It doesn’t matter how many backlinks your website has or how many keywords you are ranking for; if your site design and content don’t engage the user, then the possibility of conversions happening is very low.

While all of this can seem exhausting, the increase in user engagement is worth it for the sake of your online reputation, as well as filling your sales pipeline. In the process of waiting for your referral networking to pay off, utilizing marketing practices like pay per click (PPC) advertising is a viable source to fill your sales pipeline.

PPC ads are able to target business owners who are seeking financing in real time. Seems like a no-brainer, right? It is the most efficient way to start bringing in leads for your business; however, it is also the most competitive marketing area online. Since PPC ads are shown above organic search results, lenders and brokers bid competitively to rotate in those positions for desired keywords. Factoring Receivables is going for about $64 cost per click (CPC) these days, which means depending on the lead flow you expect from your PPC campaign,
plan accordingly budgetwise. With PPC being a marketing strategy that does not require so much time to gain traction, what you don’t pay for in time, you will most likely pay for in your budget.

Is PPC the best long-term strategy? Maybe if you’re a multimillion dollar company that has an indispensable marketing budget. For most, PPC is a short-term strategy to help keep the sales pipeline moving along, or even to fill seasonal gaps in referral networking.

The most successful marketing campaigns involve both SEO and PPC strategies working simultaneously to keep a business cross-channel marketing every possible opportunity to target their user. While Google has never officially claimed that PPC advertising directly affects SEO rankings, over the last few years there have been increases in organic rankings and web visibility for businesses that do both. Dominating both the paid and organic markets will always ensure that you are visible to wherever your borrowers are in the sales funnel.

Brittney Holcomb is Director of Acquisitions at The Finance Marketing Group (www.financemarketing.com), a specialized digital-marketing company for lending institutions and brokers. She works exclusively with financial companies throughout the US, helping them develop their presence online, as well as real time lead development specific to their products. Brittney has worked in the digital marketing space for over 6 years and has a vast knowledge in SEO, Content Marketing, PPC, Social Media Marketing, & Email Marketing practices. She can be reached by phone at 518-591-4645 or by email at Brittney@financemarketing.com.
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Q. How did you get involved in the intelligence and investigation field?
I like to say “kicking and screaming”. I was working as a public librarian, at the dawn of the Internet, and subsequently, Internet crime. Police and private investigators would frequent my library for information that would support their cases, or for technical insights. I have both a Master of Library Science and Information Technology, so my help was rich and free.

It wasn’t long before these same early ‘cybercops’ started inviting me to high technology investigators meetings and asking me to speak. While there, I realized a path that I could traverse, creating a niche for my technology and information skillset. Twenty years later, I’m surprised I still love this field, but I don’t kick as high anymore.

Q. Why did you decide to specialize in online investigations?
I’m an online investigator because it permits me to work from anywhere, utilizing my education and experience in resourcing databases and open source information for my clients. The unique library science background was a sure fit for due diligence and online investigations, in that librarians are more attuned to resources even seasoned investigators aren’t aware of. Also, the flexibility afforded by technology means I can travel, train and support my clients, making us a virtual 24-hour operation.

Q. What is different between investigation fraud using social media versus more traditional means?
Investigating fraud through traditional means is supplemented by social media, not replacing it. Social media investigations allow us insight into the motivation and/or actions of the party we are investigating. In the past, we could only see two dimensions in the documents we located, or the statements offered in testimony. Today, social media allows us to monitor and watch fraudsters in an unhindered way. Hence, someone crying poverty on the phone to his vendor may actually be chatting up the neighborhood on social media about his second-story addition to his home or his European vacation.

Q. What should Factors be looking for when investigating Fraud on social media?
Photos! Pictures are worth a thousand words, but the number is even higher when you are talking tens of thousands of dollars. Factors need to focus in on the parties in the pictures, if you recognize any potential fraudsters standing with your subject. They want to look for advertising of fraud schemes. Yes, some fraudsters are brazen enough to brag on how they “get over” on others. You also want to watch for fiduciary or work irresponsibility. The Factor’s client is expected to deliver on their work, which the Factor is covering. Make sure you monitor for any malcontent on the job site, irregularity on the shipment or delivery of product, or “I quit” messages that pop up in social media. These could be an indication that the job isn’t getting done, and the client hasn’t delivered the goods.

Q. How do you see this type of investigation changing in the future?
Data sources are growing exponentially, and the ability to break data into meaningful predictive factors is getting better. The “big data” is not a phenomenon, but a factor that has been occurring for the past 20 years, and predictive analytics makes our work easier. For example, mapping and overlay applications are improving daily. Not only can we monitor the ability of a vendor to manufacture and deliver products, but we can also layer maps of other data over that to project variable items like weather, markets and social media uprisings. The future of open source intelligence and business is a blended view that you can only get insight into from reading Philip K. Dick novels and keeping an open, imaginative mind.

Cynthia Hetherington. CFE has more than 20 years of experience in research, investigations, and corporate intelligence. She is the founder of Hetherington Group, a consulting, publishing, and training firm focusing on intelligence, security, and investigations. Cynthia applies her expertise in library science and information systems to provide clients with strategic insight into research and complex investigations. She has assisted a vast number of clients with Internet investigations related to employee theft and intellectual property loss. She has experience overseeing international investigations for Fortune 500 companies and other organizations in the Middle East, Europe, and Asia. Cynthia can be reached by phone at 973-706-7525 or by email at ch@hetheringtongroup.com.
The AFA has arranged for Congressman Blaine Luetkemeyer to speak at the upcoming IFA Convention in Fort Worth at 9am on April 7th. Congressman Luetkemeyer is the powerful chairman of the Financial Institutions Subcommittee of the House Financial Services Committee. Those factors who were affected by Operation Chokepoint will perhaps recall that this Congressman was the lead Congressional critic of the Operation. He also succeeded in getting the bank regulators to pull back after he introduced legislation to curb their authority.

Congressman Luetkemeyer has a perfect background for chairing this key financial services subcommittee. He is a fourth generation farmer, as well as a former bank examiner, former banker, and the owner of several small businesses. In other words, he knows precisely the world in which our factors live and the businesses they serve every day.

The Congressman represents the 9th Congressional District containing most of east-central Missouri, including the state capital, Jefferson City, as well as some of the southern and northern St. Louis suburbs.

It is a real testament to the growing reach of the AFA that we were able to obtain a Member of Congress of such influence in the areas of real importance to factoring. Creating relationships and gaining positive support from these types of political leaders is the key to the factoring industry’s ability to inform and affect public policy that could have a dramatic impact on future legislation and/or the blocking of harmful proposed legislation. Thus, we are hoping for a big turnout to meet the Congressman.

With the recent and dramatic changes in Washington, a good bit of financial services legislation is expected. Some of this could have a direct impact on factoring. Serious consideration is being given to making changes in the structure and mission of the Consumer Finance Protection Bureau. For example, under Dodd-Frank, the CFPB takes the position that, under Section 1071 of Dodd-Frank, it has the authority to collect data from factors. While we would contest this assertion of authority, it is an issue that will confront us and present a regulatory burden. Thus, this debate could directly affect factoring.

This rule could require factors to collect data relating to whether their customers were women-owned, minority-owned, or a small business. In collecting this information, you would be required to keep track of all “applications” for credit and your responses to the requests. Then you would have all manner of requirements concerning how you itemized and maintained the data.

This is just one of the many examples of issues that might arise of regulations which can cause our already thin margins to become
even thinner. While the climate for businesses seems to be vastly improved under the new administration, we must be vigilant in guarding against unfavorable regulation which might be proposed.

Membership and your monetary support of the AFA is a form of insurance. As in factoring, it is not if you have a loss, but when and how much. To mitigate those losses as much as possible, you put in strong policies and procedures. This does not ensure you will not experience losses but it certainly reduces the chances of how often and how much.

The AFA and our representation in Washington have done a phenomenal job of staying in front of what's going on and has protected us from being blindly included in some very negative legislation which was targeting the payday loan and title loan industries. This instance is one of several examples of bullets the AFA has already helped the factoring industry to dodge.

If you are not already a member of the AFA or have not renewed your membership, now is the time to do so. We need your support to continue our fight to maintain favorable regulations in our industry. Membership in the AFA is not just limited to Factors but all vendors serving the industry, and as a Preferred Vendor, I consider it a business investment in the industry. Please help us to continue the good fight in Washington.

Additionally, we hope you will participate in the welcome we hope to give Congressman Luetkemeyer at the IFA Conference.

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

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### 2017 Members

As of April 1, 2017

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<th>Diamond Member ($10,000+)</th>
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<tr>
<td>Apex Capital Corp</td>
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<tr>
<td>Bibby Financial Services, Inc.</td>
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<td>Crestmark Bank</td>
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<td>D &amp; S Factors</td>
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<td>Gulf Coast Business Credit</td>
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<td>International Factoring Association</td>
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<td>J D Factors</td>
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<td>LSQ Funding Group</td>
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<td>MP Star Financial, Inc.</td>
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<td>TBS Factoring Service, LLC</td>
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<th>Gold ($2,500—$5,000)</th>
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<tr>
<td>Accord Financial, Inc.</td>
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<td>AGR Financial, LLC</td>
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<tr>
<td>Assist Financial Services, Inc.</td>
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<tr>
<td>Bay View Funding</td>
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<tr>
<td>Durham Commercial Capital</td>
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<td>FirstLine Funding Group</td>
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<td>FSW Funding</td>
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<tr>
<td>Lenders Funding, LLC</td>
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<tr>
<td>Mickey Seeman</td>
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<td>Owner, Sunbelt Finance</td>
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<td>PRN Funding</td>
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<tr>
<td>Prosperity Funding, Inc.</td>
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<tr>
<td>SevenOaks Capital Associates, LLC</td>
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<td>SouthStar Capital, LLC</td>
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<tr>
<td>The Hamilton Group</td>
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<td>Transport Factoring, Inc.</td>
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<th>Silver ($1,000—$2,500)</th>
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<tr>
<td>American Funding Solutions LLC</td>
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<tr>
<td>Entrepreneur Growth Capital</td>
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<tr>
<td>FactorHelp, Inc.</td>
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<tr>
<td>Gateway Commercial Finance</td>
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<tr>
<td>Levinson, Arshonsky &amp; Kurtz, LLP</td>
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<tr>
<td>Match Factors, Inc.</td>
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<td>Mazon Associates, Inc.</td>
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<th>Bronze ($500—$1,000)</th>
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<tr>
<td>Advantage Business Capital</td>
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<tr>
<td>Business Finance Corporation</td>
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<tr>
<td>Cash Flow Resources, LLC</td>
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<tr>
<td>Dean Landis</td>
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<tr>
<td>President, Entrepreneur Growth Capital</td>
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<tr>
<td>J.D. Kinney</td>
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<tr>
<td>Director Business Development, QC Capital Solutions</td>
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<tr>
<td>Kevin Janusz</td>
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<tr>
<td>President, Cross Key Capital</td>
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<tr>
<td>Kim Deveney</td>
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<tr>
<td>President, American Funding Solutions</td>
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<tr>
<td>Merrell Holbrook, Jr.</td>
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<tr>
<td>COO, Assistant Financial Services, Inc.</td>
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<td>QC Capital Solutions</td>
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ASSOCIATIONS

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

Beijing Commercial Factoring Association (BCFA)

Colombian Association of Factoring (CAF)

Commercial Factoring Expertise Committee of China (CFEC)

Ecuadorian Factoring Association (ASOFACOR)

FCI

Romanian Factoring Association (RFA)

CERTIFIED EMAIL

RMail

Go Paperless. Switch to RMail to Send your Important Notices. RMail 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 irrebuttable starting the accounts receivable aging clock.

www.rpost.com/ifa
IFA Members save $300! Subscribe to 1000 units RMail plan for only $390! (Normally $690)

COLLECTIONS

Greenberg, Grant & Richards, Inc.

Since 1993, GGR has served over 10,000 clients in various industries worldwide. In each of the past two years alone, they’ve also collected $100 million for their clients. Because of their proven track record and ability to collect quickly and efficiently, they’ve worked with many Fortune 1000 companies over the years. Their expertise on client service and collection results makes them a perfect fit for your company in the management of delinquent accounts receivables.

Greenberg, Grant and Richards will monitor each IFA unit’s RMail plan for any 1000 units RMail plan for only $390! (Normally $690)

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 lead 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
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 more than 250 Factors and over $800 billion in data, Ansonia provides Factors and ABL lenders an innovative way of managing debtor and fraud risk. Our business credit reports feature current and historical days-to-pay information collected directly from the accounts receivable departments of small and large factors, and other companies across all segments.

Phone: 855-ANSONIA • 855-267-6642 x.103 www.ansoniacreditdata.com
IFA Member Benefits: New & Returning Discounts on other D&B solutions not under period of one year. Existing customers: receive discounts on other D&B solutions not under contract. (ie: Hoovers, Supply, DNBI Modules)

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.

Phone: 973-605-6344 • Website: www.dnb.com
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, DNBI Modules)

FactorNetwork

FactorNetwork provide an online platform where Factors work together to increase their profitability and competitiveness. Members are able to pull Credit Reports free of charge as well as monitor and analyze their portfolio. Transportation Factors benefit from our CarrierMonitoring and ChameleonCatcher programs and their clients love our LoadBoard. You can even use the Sales Tool to help find new clients.

Phone: 435-659-4612 • www.factornetwork.com
IFA Member Benefits: 33% cost savings for the annual membership fee. It is normally $3 per day, but IFA members will pay $2 per day.

CREDIT CARD PROCESSING

Clarus Merchant Services

Clarus Merchant Services offers a custom program developed specifically for how the Factoring Industry processes their credit card transactions. Our program provides detailed reporting that allows tracking of each invoice and fee transaction for easy account reconciliation with their customers and clients. We work with each member to ensure all processing costs are covered and that they are doing so within the guidelines of MasterCard / Visa. In addition we provide IFA members direct access to their accounant manager for immediate response and support.

WHAT’S NEW AT IFA APRIL 2017

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.

This highly valuable trade network information of approximately $700B in recent receivables with live bureau and public filing information to provide comprehensive financial risk profiles, all in real time. Our dashboard also provides Factor specific scoring, Factor client risk pools, monitoring, peer benchmarks and comprehensive trade data pack solutions for integration into your enterprise software.

Phone: 212-714-4500
Website: www.factorhelp.com

IFA Member Benefits: Join the largest virtual factor community. Receive 10% price discounts for being an IFA member. Complimentary invitations to our hosted events in NYC.

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: Any IFA member that purchases the CardX program will receive a one-time $200 rebate once the member has processed a whole month using the program.

PaymentAmerica
PaymentAmerica is the nation’s leading provider of processing services for the factoring, A/R financing, and P/O financing industries. They offer IFA members exclusive VISA, MasterCard, American Express and discover pricing, a discount on their virtual gateway, and a discount on PCI Compliance Certifications.
Phone: 901-385-5327 • www.paymentamerica.com
Email: factoring_program@paymentamerica.com
IFA Member Benefits: IFA members will receive an additional 60 days

SOFTWARE
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 smartphone. 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 month to try the complete program.

ProfitStars®
ProfitStars® is an industry-leading provider of complete portfolio management systems for commercial finance, including FactorSoft®. Its innovative Commercial Lending Management System™ offers a common framework for factoring, asset-based lending, inventory finance, and lines of credit. ProfitStars’ dynamic Commercial Lending Center Suite™ includes Commercial Lending FinancialCenter®, BusinessCenter®, BusinessManager®, and LendingNetwork®.
Phone: 205-972-8900, option 3
www.profitstars.com/commerciallending

IFA members will receive 10% off new ProfitStars lending solutions product purchase. For IFA members who are currently ProfitStars customers: Free one day FactorSoft refresher course, per year, at ProfitStars’ training facility in Birmingham, AL.

Tax Guard
Tax Guard fills a critical gap in a commercial lender’s credit risk management toolset with efficient, real-time and actionable insight into the true, non-public IRS tax compliance status of their prospects and clients. Our due diligence reports, tax compliance monitoring and resolution solutions support commercial lenders throughout every stage of the funding life cycle.
Phone: 646-502-4478 • www.tax-guard.com
Email: Rich Porterfield, rporterfield@tax-guard.com

IFA Members will receive 10% off new ProfitStars lending solutions product purchase. For IFA members who are currently ProfitStars customers: Free one day FactorSoft refresher course, per year, at ProfitStars’ training facility in Birmingham, AL.

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ExecuCar
This is a premier luxury sedan service that offers private transportation with experienced professional drivers. Whether you are heading to the airport, a business meeting or social event, ExecuCar will get you there safely, in style and comfort.
IFA Member Benefits: Save 10% on your roundtrip transportation by booking online with ExecuCar at www.execucar.com. Use the following Discount Code: CLLMC

SuperShuttle
SuperShuttle is the nation’s leading shared-ride airport shuttle service, providing door-to-door ground transportation to more than 8 million passengers per year. Their friendly drivers, comfortable vans and reasonable rates make the hassle out of getting to and from 33 airports in over 50 US cities and surrounding communities.

Continued on page 39
Pilgrim’s Pride: America’s Very First Factoring Agreement

American factors are justly interested in the history of our industry. The principal purpose of this article is to describe America’s very first factoring agreement, executed in 1628 between (1) a select group of leading Pilgrims resident in the Massachusetts Bay Colony, one of whom was the Governor, merchants, described as "partners and undertakers" in an earlier contract governing their relationship, as the factor’s client, and (2) two of these London merchants, described in the legal documents as the “agents and factors” of the American-led merchants.

BY JEREMY B. TATGE

Under this agreement, the American merchants sent “goods, wares and merchandise” produced in the New World by ship, for the factor’s sale in London, the Old World, to buyers on credit (creating accounts), which accounts the English factors then collected and managed on behalf of their client, the American-led merchants.

This agreement was summarized earlier in Tatge, Flaxman, Tatge & Franklin, AMERICAN FACTORING LAW (Bloomberg/BNA 2009, with 2011, and 2013 and 2016 Cum. Supp.) (hereinafter, “AFL”), in the Main Volume (“Main Vol.”) at pg. 6-7. This article now elaborates on its background and, importantly, provides herein the full terms of America’s first factoring agreement. This agreement is of particular interest because not only was it the very first factoring agreement in America, it is also one of the earliest, if not the earliest, example of a complete factoring agreement prepared under and governed by English law of the period.2

I. FACTORS OF EARLY 1600’S WERE ACTIVE IN ALL MANNER OF COMMERCE

The business practices of common law factors in early England were briefly summarized in the earlier article which I co-authored, Tatge & Tatge, A Brief Look at Factors Under Early English Commercial Law, 18 Commercial Factor No. 2, pp. 18-24 (March/April, 2016). As discussed therein, among the most commercially prominent factors of the period were the textile factors who plied their trade at Blackwell Hall in London from 1397 until the hall was torn down in December, 1819.3 That said, common law factors in England represented clients engaged in all manner of trade and commerce, not just textile clients, in transactions involving boots, cloth, coal, cocoa, cotton, corn, fish, flour, furs, grain, gum, hops, indigo, jute, malt, oats, rice, silk, skins, sugar, tar, timber, wheat, wine and wool.

As explained in the earlier article, factors in early England were, in large part, simply commissioned
II. IN 1628, ENGLISH COMMERCIAL LAW REGARDING FACTORS WAS STILL DEVELOPING

As readers review the very first factoring agreement in America below they will immediately appreciate how sparse it is. This is not terribly surprising. Among other things, men of commerce of the time, and lawyers as well, were relatively less educated, communications and transportation (by ship) were much, much slower, and there were no typewriters, let alone computers and a world-wide internet, to facilitate the parties preparation and exchange of multiple draft documents prior to execution. Beyond that, in 1628 English law did not yet recognize factors as holding a lien on the goods consigned to them by their consignor clients, often located overseas who, for a fee, aka a “factorage”:

(1) stored safely in inventory the goods sent to them by their consignor clients, the owners thereof;

(2) arranged for sale of the goods, generally on credit, often to a local buyer but, in some cases, to an agent of a foreign principal located in a foreign market overseas who intended to re-sell the factored goods there;

(3) provided their clients with associated sales and marketing advice, both about the credit of the buyer (which the factor was obligated to investigate but, in 1628, did not guarantee) and about what goods and styles might sell best;

(4) sometimes, not always, extended financing to their clients in the form of a cash “advance” against the value and security of the consigned inventory held by the factor; often, 50% or so of its estimated value, pre-sale, then another 20-30% against the accounts receivable arising when the goods were sold, bringing the factor’s total advance to 70-80%;

(5) provided bookkeeping services to their clients, initially, in respect of the inventory of consigned goods held and later, upon its sale, in respect of the proceeds thereof, often in the form of a bill of exchange or a promissory note drawn on the buyer due in, say, 6-12 months’ time;

(6) provided collection services in respect of the accounts that arose when the consigned goods were sold on credit, and

(7) in some cases, provided seasonal over-advances and other financial accommodations to the client when these were requested.

More detail on all these matters can be found in Chapter 1 of AFL.
clients as collateral security for the factor’s open advances to the client and unpaid fees, nor on the proceeds thereof. Not until more than 125 years later, in 1755, did English law recognize the factor’s lien and, even later, in 1775, that the lien extended to the collected proceeds thereof, so long as they were in the factor’s possession. So those advances, necessarily, not covered by the factoring agreement struck between the American-led merchants and their London factors in 1628.

As just noted, in 1628 commercial factors did not yet accept supplemental “del credere” commissions to “guarantee the sale” when they sold their client’s goods on credit. Rather, so long as the factor used reasonable diligence to sell to persons in good credit, if the factor sold client goods on credit and the buyer later went bankrupt or otherwise could not pay, the credit loss was on the factor’s bank and not the factor. To help remedy this problem, and ease criticism from the client, not the factor. To help remedy this problem, and ease criticism from the client, the credit loss was on the factor’s bank and not the factor.

To help remedy this problem, and ease criticism from the client, the credit loss was on the factor’s bank and not the factor. Thus, the essence of the “factoring agreement” in 1628 would have been simply that the factor and its client agreed that the factor would: (1) receive and store consigned goods sent by its client, located at some distance (here, the Pilgrim-led merchants in America); (2) arrange for sale of the goods in the local market (England), including a grant of authority for the factors there to make sales on credit (creating accounts), and (3) provide bookkeeping and collection services to the client regarding the same.

With this very brief background, we now turn to the terms of America’s first factoring agreement and how it arose.

III. RESTRUCTURING OF THE PILGRIM’S DEBT LED TO AMERICA’S FIRST FACTORING AGREEMENT

The Pilgrims who came to America from Europe in 1620 borrowed funds in London to finance their voyage to the New World from a group of seventy or so merchants called The London Company, led by one Thomas Weston. As to that loan:

The agreement which was finally drawn up between them, provided that the entire company [of Pilgrims] would constitute a partnership responsible to the London merchants who were backing the venture “for all credit advanced and to be advanced,” funds to lease a ship to carry them to the new land [the Mayflower], and to purchase all necessary supplies to get settled there. As a guarantee to the investors who were furnishing the requisite credit, the entire body of emigrants bound themselves under the terms of an agreement to work for a period of seven years, to place their produce into a common warehouse and to receive their subsistence out of the common store, a temporary communistic arrangement which it seemed would be for the good of the entire body.

At the end of the seven years there would be a settlement. The services of each emigrant would be rated as a capital of £10. For every £10 of property he brought with him he would receive an additional share. All the profits would be reserved for the seven years, when the entire amount, and all houses and land, gardens and fields, would be divided among the shareholders, according to their respective interests. A London merchant, who had advanced £100 would [upon repayment of the loan, in seven years time] receive tenfold more than the penniless emigrant for his entire service of the seven years!8

The colony’s lenders were soon concerned when, in 1621 or so, the Pilgrim’s ship, the Mayflower, and some later ships as well, sailed back to London without the cargo of riches which had been anticipated. One of the problems was that the Pilgrims were most experienced in planting, whereas the New World’s riches included, among other things, an abundance of fish and furs, two trades in which the Pilgrims lacked both experience and the proper equipment. Thereafter, however, the immigrants’ fortunes started to improve when, in March, 1624, another supply ship, the Charity, arrived in Massachusetts from England carrying a bull and three cows, which cattle would soon multiply. The Pilgrims also produced abundant harvests of corn within a few years of their arrival in America. They bartered the corn to the Indians along with, at the suggestion of early Dutch settlers in New Amsterdam (New York City), wampum (beads), for beaver, otter and other furs gathered on excursions from the Massachusetts Bay colony into what is now Maine (a state north of Massachusetts, just above New Hampshire) and Connecticut (another state, just south of Massachusetts). Within a few years the Fortune returned to London loaded with goods from the New World, included two hogheads of beaver and other furs.

Ultimately, in 1626, faced with the looming maturity of the seven-year
term for repayment of their loan, in the original principal amount of £1,800, the Pilgrims decided to send one of their number, Isaac Allerton, back to England to re-negotiate the colony’s debt to The London Group. The following Spring, in 1627, Allerton brought back to America a draft agreement dated November 16, 1626, calling for the £1,800 debt owed by all of the Colonists, collectively, described as “planters” in the legal agreement, to be repaid to the English investor group (who, ironically, called themselves “Adventurers to New-Plimoth in New England in America” when it was, in fact, the Pilgrims themselves who were far more entitled to that description) over an extended term, at £200 per year, due every year on the feast of St. Michael, the first principal payment to be due on September 29, 1628. The full text of the draft agreement of November 16, 1626 is found in William Davis, Ed., BRADFORD’S HISTORY OF PLYMOUTH PLANTATION 1606-1646 (Charles Scibner’s Sons, 1908) (hereinafter, “BRADFORD”) at pages 214-215. It says:

To all Christian people, greeting, etc. Whereas at a meeting the 26. Of October last past, diverse and sundrie persons, whose names to the one part of these presents are subscribed in a schedule annexed, Adventurers to New-Plimoth in New-England in America, were contented and agreed, in consideration of the sume of one thousand and eight hundred pounds sterling to be paid (in manner and forme following,) to sell, and make sale of all and every the stocks, shares, lands, merchandise, and chatles, what soever, to the said adventurers, and other ther fellow adventurers to New Plimoth aforesaid; as well as by reason of any sume or sumes of money, or marchandise, at any time hereto-fore adventured or disbursed by them [describing the investment group’s loan disbursements as an “adverture”], or other wise

howsoever; for the better expres- sion and setting forth of which said agreement, the parties to these presents subscribing, doe for them selves severally, and as much as in them is, grant, bargain, alien, sell, and transfere all and every the said shares, goods, lands, merchandise and chatles to them belonging as aforesaid [in essence, all the goods in America pledged as loan collateral to the English financiers, it appears], unto Isaack Alerton [sic], one of the planters resident at Plimoth aforesaid, assigned, and sent over as agente for the rest of the planters ther [the Pilgrims], and to such other planters at Plimoth aforesaid as the said Isack, his heirs or assigns, at his or ther arrival, shall be writing or otherwise thinke fitte to joyne or partake in the premises, their heirs and assignes, in as large, ample,
and beneficial manner and forme, to all intents and purposes, as the said subscribing adventurers here could or may doe, or performe. All which stocks, shares, lands, etc., to the advent: in severallitie allotted, apportioned, or in any way belonging, the said advent: doe warrant and defend the said Isaack Allerton, his heirs and assigns, against them, their heirs and assigns, by these presents. And therefore the said Isaack Allerton doth, for him, his heirs and assigns, covenant, promise, and grant too and with the advent: whose names are hereunto subscribed, their heirs, etc., well and truly to pay, or caused to be payed, unto the said advent: [lenders] or 5 of them which were, at that meeting aforesaid, nominated the deputed [the represent the entire lender group], viz John Pocock, John Beuchamp, Robart Keane, Edward Base, and James Sherly, marchants, their heirs, etc., too and for the use of the generalitie of them, the sum of 1800 li. of lawfull money of England, at the place appointed for the receipts of money, on the west side of the Royall Exchaing in London, by 200li, yearly, and every year, on the feast of St. Migchell, the first paiment to be made An: 1628, etc. Also the said Isaack is to indeavor to procure and obtain from the planters of N.P. aforesaid, securitie, by severall obligations, or writings obligatory, to make paiment of the said sume of 1800li in forme aforesaid, according to the true meaning of these presents. In testimoneie whereof to this part of these presents remaining with the said Isaack Allerton, the said subscribing advent: have set their names, etc. and to the other part remaining with the said advent: the said Isaack Allerton subscribed his name, the 15. Nov. An.: 1626 in the 2. Year of this Majesties raigne.9

Bradford's letters say that this agreement was "[d]rawne by the best counsel of law they could get, to make it firme."10

Thereafter, this agreement was accepted by all the Pilgrims and, at the same time, a further, a related agreement was executed, with the consent of the lender group, in July, 1627, between all the Pilgrims at Plymouth, on the one hand, and a new partnership, formed by a group of eight leading Pilgrims, joined by four of the London merchants, who agreed to takeover and repay the Colony’s debt to the London financiers as so restructured. Gov. Bradford’s papers, speaking of the November 15, 1626 agreement, say:

This agreement was very well liked of, and approved by all the plantation, and consented unto; though they knew not well how to raise the payment and discharge their other ingagements, and supply the yearly wants of the plantation, seeing they were forced for necessities to take up money and goods at so high interests. Yet they undertook it, and 7. or 8. of the cheefe of the place [including Gov. Bradford himself] became jointly bound for the payment of this 1800li (in behalf of the rest) at the severall days. In which they rane a great adventure, as their present state stood, having many other heavie burthens all-ready upon them, and all things in an uncertaine condition amongst them. So the next returne [of ships back to England, with the signed agreement of Nov. 15, 1626] it was absolutely confirmed on both sids, and the bargen fairly ingrossed in parchmente and in many things put in better forme, by the advice of the learnedest counsel they could get; and least any forfeiture should fall on the whole for none paiment at any of the days [i.e., a
loan default, by failing to make one of the £200 principal payments], it range thus, to forfeit 30s. a weeke [default interest] if they missed the time and was concluded under their hands and seals, as may be seen at large by the deed itself.

The text of the later agreement of July 1627, whereby eight leading Pilgrims took on the entire debt of the Massachusetts colony as so restructured from their fellow Colonists, in exchange for a six year monopoly of its trade with England, is found at pages 227-228 of BRADFORD'S HISTORY OF PLYMOUTH PLANTATION. Therein, William Bradford, Myles Standish, Isaac Allerton, Edward Winslow, John Howland, John Alden and Thomas Prence of the Massachusetts Colony, together with four of the London financiers, James Sherley, John Beauchamp, Richard Andrews and Timothy Hatherley, jointly as "partners and undertakers," agreed to pay off the £1,800 of the Massachusetts colony's debt to The London Company, as so just restructured, plus some £600 in additional debts, at the Royal Exchange in London at £200 per year, in consideration of their fellow Colonists' agreement to give them a six year monopoly on trade with the mother country. This later agreement was as follows:

Articles of agreement between the colony of New-Plimmoth, of the one partie, and William Bradford, Captain Myles Standish, Issack Allerton, etc. of the other partie, and shuch others as they shall think good to take as partners and undertakers with them, concerning the trade for beaver and other furs and commodities, etc., made July, 1627.

First, it is agreed and covenanted betweexte the said parties, that the aforesaid William Bradford, Captain Myles Standish, and Issack Allerton, etc. have undertaken, and doe by these presents, covenante and agree to pay, discharge, and acquite the said colony of all the debts both due for the purchaser, or any other belonging to them, at the date of these presents.

Secondly, the above-said parties are to have and freely injoye the pinass latly built, the boat at Manamett, and the shalop, called the Bass-boat, with all other implements to them belonging that is the store of the said company, with all the whole stock of furs, fells, beads, corne, wampumpeak, hatchets, knives, etc. that is now in the store, or any way due unto the same upon accounte.

3ly. That the above said parties have the whole trade to themselves, their heires and assignes, with all the privileges thereof, as the said collonie doth now, or may use the same, for 6. full years, to begin the last of September next insuing....

4ly. In further consideration of the discharge of the said debtes, every severall purchaser doth promise and covenante yearly to pay, or cause to be payed, to the above said parties, during the full terme of the said 6. Years, 3. bushells of corne, or 6 li. of tobacco, as the undertakers choyse.

5ly. The said undertakers shall dureing the aforesaid terme bestow 50 li. per annum, in hoses and shoese, to be brought over for the collonies use, to be sould unto them for corne at 6s. per bushel.

6ly. That at the end of the said terme of 6. years, the whole trade shall returne to the use and benefitte of the said collonie, as before.

Lastly, if the aforesaid undertakers, after they have aquainted their friends in England with these covenants, doe (upon first returne) resolve to perform them and to discharge the debts of the said collonie, according to the true meaning and intent of these presents, then they are (upon such notice given) to stand in full force; otherwise, all things to remaine as formerly they were, and a true accounte to be given to the said collonie, of the disposing of all things according to the former order.

Speaking of this later agreement, the authors of a document titled Success in Trade² stated, in relevant part:

Under the new agreement, Gov. Bradford, Miles Standish and seven other Pilgrim leaders, calling themselves the "undertakers," agreed to pay off 1800 English pounds at 200 pounds per year at the Royal Exchange in London, besides 'some 600' more pounds in other debts. This agreement made possible a 1627 division of land among the 156 colonists, with each group of six receiving a cow, two goats and some swine. The undertakers were granted full control—a monopoly—of the colony's trade for six years so as to discharge the debt 'which lay so heavily' on the colony....Literally, tons of beaver and other furs were freighted for years from here to the British market through the Pilgrims' partners in London.

IV. AMERICA'S FIRST FACTORING AGREEMENT IS SIGNED, EFFECTIVE NOVEMBER 18, 1628

Finally, the foregoing agreements now in place, this quickly led to the signing of America's very first factoring agreement a few months later, dated November 18, 1628. Therein, five leading Pilgrims, William Bradford, Governor of the Massachusetts colony, Issak Allerton, Myles Standish, William Brewster and Ed Winslow, called "merchants", appointed two of their London partners, James Sherley, a Goldsmith and John Beauchamp, a Salter, as their "true and lawful agents, factors, substitutes and assigns," to receive, store and sell the American group's shipments to London of goods and merchandise of all types, to include, clearly, furs, fish, timber and other goods. The London factors also...
bought goods in England on behalf of the Pilgrims, both for their use and for trade with the local Indians.

The actual text of this document is found in BRADFORD at pgs. 231-232. This rather simple contract says:

To all of whom these pretts shall come greeting; know ye that we, William Bradford, Gov of Plimoth, in N.E. in America, Isaak Allerton, Myles Standish, William Brewster, and Ed: Winslow, of Plimouth aforesaid, merchants, doe by these presents for us, and in our names, make, substitute and appointe James Sherley, Goldsmith, and John Beuchamp, Salter, citizens of London, our true and lawful agents, factors, substitutes and assignes; as well to take and receive all such goods, wares and merchandise whatsoever as to our said substitutes or either of them, or to the citie of London, or other place of the Relme of Engl: shall be sente, transported, or come from us or any of us, as also to vend, sell, barter, or exchaing the said goods, wares, and merchandise so from time to time, to be sent to such person or persons upon credite, or otherwise in such manner as our said agents and factors joyently, or to either of them severally shall seeme meete. And further we doe make and ordaine our said substitutes and assignes jointly and severally for us, and to our uses, and accounts, to buy and consigne for and to us into New Engl. aforesaid, such goods and merchandise to be provided here, and to be returned hence, as by our said assignees, or either of them, shall be thought fit. And to recover, receive, and demand for us and in our names all such debtes and sumes of money, as now are or hereafter shall be due incidente accruing or belonging to us, or any of us, by any ways or means; and to acquite, discharge, or compound for any debte or sume of money,. which now or hereafter shall be due and oweing by any persons to us, or any of us. And generally for us and in our names to doe, performe, and execute every acte and thing which our said assignes, or either of them, shall seeme meete to be done in or aboute the premises, as fully and effectually, to all intents and purposes, as if we or any of us were in person presente. And whatsoever our said agents and factors jointly and severally shall doe, or cause to be done, in or aboute the premises, we will and doe, and every one of us doth ratifie, alow and confirme, by these presents. In witness whereof we have here unto put our hands and seals.


Parsing this document, the clear elements of a factoring agreement, appropriate for the period, are found therein:

(1) the merchant-consignors, who were in America, appointed the two London merchants (who were also among their partners and co-obligors on the partnership’s recently assumed debt of the Plymouth Colony to The London Company) as the new merchants’ “agents and factors” in London;

(2) the factors agreed to store the “goods, wares and merchandise” sent to them by ship by their client, the American-led merchants, for sale in England;

(3) the factors in London were to find buyers in England for the goods and articles so consigned, with the American-led merchants giving the factors express authority to sell the consigned inventory to buyers there (account debtors) on credit (thereby creating accounts);\(^1\)

(4) the factors were given authority to demand payment on and to collect these accounts so arising when the consigned goods were sold from the various buyers (account debtors) obligated thereon, and

(5) the factors received client authority, as needed, to compro mise and settle these accounts with the account debtors.

There is, however, rather surprisingly, no mention in the November 18, 1628 letter agreement regarding the size of the factoring commissions to be charged to the American merchants for these various client services by their London factors. This may have been because (i) customary factor charges of this nature were well-known; (ii) the American merchants were relatively unsophisticated in these matters; (iii) of conflicts of interest, or (iv) due to some other cause. Whatever the reason, it is sufficient to observe here that the authors of Success in Trade report that, perhaps as a result of this lack of specificity, disputes and threats of litigation soon arose, both across the Atlantic and in London itself:

After the new, 1626 agreement was signed, there were four of the London adventurers [investors in The London Company] who functioned as the Pilgrims’ factors—receiving, storing, and selling shipments, and purchasing requested commodities. These Londoners also acted as partners and provided credit. As Pilgrim trade expanded, so did the record of transactions. The Pilgrims, not highly experienced as businessmen, were completely trusting. Cross-Atlantic differences grew increasingly difficult and confusing…. The sums involved exceeded by many times the 1800 English pounds mentioned in the 1626 agreement. Plymouth and London disagreed basically on the size of the debt. Despite the quantity of records extant, a positive judgment is elusive. The records were sloppy, with some items being charged three times. Fluctuations in prices and usurious rates—as high as fifty percent—produced misunderstandings.
sharp letters, and even had the London adventurers suing one another.”
(emph. added).

V. OLD-LINE FACTORING TODAY COMPARED TO AMERICA’S FIRST FACTORING AGREEMENT

Briefly, lest there be any confusion, modern factoring, as it ultimately developed in America between 1889 and 1960, when it was exported to Europe,\textsuperscript{15} has certain similarities to the more cursory understanding struck between the Pilgrims and their factors in London in 1628. However, there are significant differences as well, not surprising given that almost 400 years have now passed since 1628, over which time factoring itself evolved and became far more sophisticated. Modern nonrecourse factors, who became known as old-line factors in the 1930s:\textsuperscript{16}

- Buy accounts from their clients.

In contrast, in 1628 the factors in London not only did not buy from the Pilgrims the accounts receivable which arose when their goods were sold in Europe, the English factors did not yet even have a lien on the consigned goods or the sales proceeds thereof themselves.

- Accept “credit” risk, on those invoices which the factor buys arising from sales for which the factor gave its prior credit approval, that the purchased accounts arising from these invoices cannot be collected by the factor at maturity due solely to the financial inability to pay of the account debtors obligated thereon.

Risks of all other types stay with the factor’s client. For example, if a factor can’t collect on a purchased account, whether bought at factor-risk or at client-risk, because the customer disputes the quality or quantity of the associated goods or services which it bought from the factor’s client as so invoiced, the factor can charge-back the account to its client.

The Pilgrim’s factors in London in 1628 naturally had full “quality recourse” to their American client. However, unlike a modern old-line factor today, they did not credit-check for their client, let alone approve, the financial ability to pay of the various account debtors to whom their client proposed to sell its goods, approving the sale, from a credit perspective, before it is made. Therefore, unlike modern factors today, the Pilgrim’s London factors had full credit recourse, did not “guarantee the sale,” and did not accept any “credit risk” whatsoever that, when the Pilgrim’s consigned goods were sold on credit, the account debtors obligated thereon would be financially unable to pay on the factored accounts at their maturity. As discussed earlier, del credere factoring commissions did not arise under English law until 100 or so years later, around 1720, and del credere commissions would not come to America for almost 100 years thereafter, around 1814. Thus, the first factoring agreement was a “full recourse” factoring agreement. Beyond that, the factors in London never advanced to their American client so, for that reason, again, took no credit risk as, if a factored account did not collect, the English factors in London had no money out to their American client.

- In “advance-factoring” transactions (but not in collection factoring or maturity factoring) provide, in the factor’s discretion, client financing by making advances to their clients, generally, 70-90% of the purchase price of credit accounts purchased at the factor’s risk. This is similar, but not identical, to how, at common law, factors after 1628 advanced to their clients 50% or so of the estimated value of consigned inventory, prior to its sale, and another 20-30% thereafter.

As noted above, in the first factoring agreement of 1628 the Pilgrim’s factors in London did not commit to make any advances to their American merchant client at all, whether pre-sale or post-sale.

- Provide bookkeeping services to their factoring clients, similar to how factors at common law, including the Pilgrim’s factors in London, would have provided such services to their American merchant client;

- Collect the purchased accounts, as owners thereof.

In contrast, at common law factors, whether ordinary factors or del credere factors, had a right to collect accounts arising when consigned goods were sold, but only as agent of the owner, who also had the right to collect because legal title to the accounts remained in the consignor.

Consistent therewith, here, the Pilgrim’s factors in London had the right to collect for their American client, but as agents of the client, not as owners of the accounts. The factors had the right also to settle and compromise the accounts also, again as agent of the American consignor merchants who owned the accounts.

- Provide seasonal over-advances, in their discretion, above the factor’s purchase commitment (whereas, in the agreement of 1628 the Pilgrim’s factors made no such commitments), and

- If a larger old-line factor, lend against client-owned inventory, much as factors at common law advanced against inventory which they held, owned by the consignor, prior to its sale (but, again, not the Pilgrim’s factors here).

VI. CONCLUSION

In conclusion, three things seem
clear. First, the factoring agreement of November 18, 1628 discussed in this article is without question the very first factoring agreement in America so is of significant interest for that reason, alone. Second, the 1628 agreement is also one of the earliest, if not the earliest, examples of a complete factoring agreement governed by English common law so, again, is of interest for that independent reason. Finally, the work of the London factors from 1628 forward, coupled with the hard work of their American clients, and the eight-person group of leading Pilgrims1 and their four partners in London, clearly helped contribute to the success of the Massachusetts Colony and, ultimately, of America as a country itself. This factoring contract, albeit perhaps with some problems, is an early example of the spirit of cooperation which has always existed over time among the various English speaking peoples in our world, both in matters of commerce and otherwise. This spirit has endured and survived wars of independence, such as the American Revolution, two World Wars in the Twentieth Century, and even down to the present day (NATO being but one of many examples). It has much to commend it.

1Founder, Manager and sole Member, Capitol National Factors Company, LLC. Oak Hill, VA. jtatge@capitolnationalfactors.com. Review and comments on this article by David B. Tatge, Esq., of Epstein Becker & Green, P.C., Washington, D.C. are acknowledged with appreciation.

2One of the principal, if not the leading sources of English commercial law on factors and factoring in the period before 1628 are surely the cases decided by the English courts during this time. There is a brief reference in the English case law to factors as early as 1220. See AFL 2016 Cum. Supp. Ch. 1.B.1, The Earliest Reference to Factors in English Case Law, pg. 31, citing Averment, Faits, Audita querela, [1220] EngR 20, Jenk. 166, 145 E. R. 107/108 (D). Thereafter, there are only ten or so references to factors in the English Reports in cases decided prior to 1629, generally with only very brief references to factors therein. One of the first, if not the first references in this later period is found in Goods, [1561] Eng. R. 1, (1561-62)

Tothill 104, 21 E.R. 137(E), dealing, very briefly, with property of a decedent’s estate in proceedings before the Orphan’s Court. There, the reference was: “Leate, contra Turkey, Company of Merchants, if a consul beyond sea hath power and doth levy goods upon a private merchant, the company must bear it if the factor could not prevent the act of the consul. Hill. 1630.” Toth at 105. See also Southcote’s Case, [1598] EngR 41, 1598 4 Co Rep 83, 76 ER 1061, at 1063. There, in adjudicating a detinue action (a judicial seizure of personal property, pre-judgment), the court says: “For a factor (although he has wages and salary) does all that by which he by his industry can do, he shall be discharged and shall take nothing upon him, but it is his duty to merchandize the best that he can, and a servant is bound to perform the command of his master…”).

3While the Main Volume of AFL as originally published in 2009 focused on the law in America governing factors and factoring, a robust discussion of the business practices of the factors at Blackwall Hall in London between 1397 and December, 1819, when Blackwall Hall was torn down, is found in AFL Ch. 1.A, 2016 Cum. Supp. pgs. 11-23. English case law of relevance also includes a 50-plus page case where the propriety of regulations adopted in the City of London to regulate the business practices of the textile factors at Blackwall Hall as adjudicated and, on objections thereto, upheld by the court. See Hutchins v. Player, Chamberlain of London, [1663] EngR 10, 1663 Bridg O 272, 124 ER 585.

4The factoring contract between the Pilgrim-led merchants and their London factors did not contemplate any advances by the factors to their American-led merchant client. Had it done so, most courts in England during that period, to the extent they even considered the question, which is not known, might have regarded such factor advances as being mere partial prepayments by the factor to its client of the sales proceeds anticipated to later arise when client’s consigned goods were sold, rather than the advances being regarded as creating indebtedness owed to the factor by its client. At least that is how English and American law later developed during the 19th Century, where the majority rule was that a client was indebted to its factor for advances only the extent that, after all sales proceeds were collected and accounted for, the amount thereof was not sufficient to satisfy the factor’s open advances to its client and the factor’s unreimbursed expenses and fees. (Over-advances, however, above the factor’s contractual commitment to advance, being treated debt ab initio.) See e.g. Horvey v. Archbold, [1825] EngR 359, (1825) 3 B&C 626, 107 E.R. 865 (Jan. 25, 1825), discussed in AFL 2016 Cum. Supp. Ch. 1.B.15, English Case Law Was Split On Whether Or Not A Factor’s Advances Represented Debt to Be Repaid to the Factor on Demand. The Earliest Authority Was That the Factor First Had to Look to Goods and Their Sales Proceeds and Could Only Sue the Factor’s Principal for Open Advances If That Source Proved Insufficient; Later Case Law Recognized a Loan, at pgs. 83-87.

5See e.g. Tatge & Tatge, A Brief Look at Factors Under Early English Commercial Law, 18 Commercial Factor No. 2, pp. 18-24 (March/April, 2016), discussing Kruger v. Wilcox, [1755] Eng. R. 14, 1755 Amb. 253, 27 E.R. 168 (recognizing the factor’s lien on the consigned inventory it held) and, later, as English commercial law developed, Drinkwater v. Goodwin, [1775] EngR 35, 1775 1 Cowl. 251, 98 E.R. 1070 (recognizing the factor’s lien in England on the sales proceeds when the consigned goods were sold; i.e., first, on the accounts arising when the goods were sold and, upon collection of the accounts, the cash proceeds themselves, as long as they were in the possession of the factor.) See also AFL 2016 Supp. Ch. 1.B.8, English Common Law Gave Factors Acting As Commissioned Sales Agents A Lien on the Consigned Inventory Held by the Factor, and a “Property Interest,” More Than A Lien, in Accounts Receivable Due the Factor’s Client, Representing Uncollected Sales Proceeds Arising From the Sale of Consigned Goods, to the Extent of the Factor’s Open Advances and Unpaid Fees, pgs. 49-58, discussing more fully these and other English cases of the period.

6See AFL Ch. 1.1.E., The Scope of the Del credere Factor’s Duties at English Common Law, Main Vol. pgs. 10-12, 11F. Emerging American View of the Del credere Factor as More Than a Mere Guarantor, pg. 13, and 1.1G. Consequences of the Del credere Factor’s “Absolute Liability” to Its Principal, pg. 13-14, with further discussion thereafter at pgs. 25-47. See also the discussion of the advent of the del credere factoring commission in A Brief Look at Factors Under Early English Commercial Law, n.s. supra.

7See, among the many references in Chapter 1 of AFL to del credere commissions and how they worked, including early American case law, on point in the early 19th Century, AFL Ch. 1.II.B.1, Advances by Del credere Factors were nonrecourse to the Principal, Main Volume, at pg. 25, noting that “Beginning around 1800, the del credere commission found in European commercial transactions found its way to America,” and Ch. I.V.A.1, New York City as the Historic Center of American Factoring, discussing an 1863 text which stated that del credere commissions arrived there in 1814, Main Vol. pgs. 50-51.

8Roy A. Foulke, The Story of the Factor (Dun & Bradstreet, Inc., 1953) at pg. 9.

9Gov. Bradford’s letters list 42 of the London “adventurers (financiers) as having signed, who are identified by name in footnote 2 on page 215 of the book. The editors of BRADFORD go on to say, in that same footnote, that 10 more of the London financiers, whom they also identify by name, also
signed. The other members of the lender group had by then withdrawn, apparently, either for lack of hoped for quick profits or, perhaps, for reasons of religious discrimination against the Puritan Pilgrims who had emigrated. 10

11Id., at page 214. I beg to differ, as the “legalese” could have been greatly simplified.

12These partners, termed undertakers, all being named by Gov. Bradford at page 227, perhaps, for lack of hoped for quick profits or, even then, the group had by then withdrawn, apparently,

13Id., at 215-216.

14At common law, factors could not, initially, sell on credit but only for cash, absent express contractual agreement of their consignor principal to allow the sales of its goods by the factor on credit. Over time, however, this changed so that factors could permissibly sell on credit unless their client was clear that only cash sales were permitted. See e.g. Gasden County Tobacco Co. v. Curry, 103 Fla. 217, 137 So. 2d 255 (1931), discussed in AFL Ch. 1.II.A.7, Main Vol. pg. 24, discussing this change in the law. Thus, it was no idle matter when the American merchants contracted to allow their factors in London to sell the consigned goods in England on credit, given that credit sales had risk of non-collectability which cash sales did not. Interestingly, however, the factoring agreement of 1628 between the Pilgrims and their London factors did not expressly obligate the factors to sell the consigned goods to buyers of good credit. Later, however, that duty was imposed on factors by law. Where an “ordinary factor” (selling without receiving a supplemental del credere commission) exercised reasonable diligence, to sell on reasonable credit terms to persons of good credit, any credit loss if the buyer failed to pay fell on the principal, not the factor. If, however, the factor did not use reasonable diligence in these matters (whether by selling on credit terms too long, or to persons who could have, upon investigation, be known to be poor credit risks) the factor, not its client, bore the credit loss when the open account, the buyer’s promissory note or a tendered bill of exchange (of the buyer or, sometimes, of a third party) taken in payment when the consigned goods were sold did not collect. See e.g. Leverick v. Meigs & Reid, 1 Cow. 645, 1824 N.Y. LEXIS 123, discussed in AFL Ch. 1.II.B.6, Main Vol., at pgs. 28-29, where the court said, holding a factor liable for gross negligence when it remitted to its client a third-party bill of exchange taken as sales proceeds where the bill was later dishonored, slip op. at **25-26. “He [the factor] is required to act with reasonable care and prudence, in his employment, and exercise his judgment after proper inquiry and precautions. If ordinary diligence would have enabled him to learn the discredit or insolvency of the [buyer] party, he will not be discharged from responsibility to his principal. (1 Gall. 360, 361; 3 Campb., 291; 1 Liv. 355.)”

15See AFL Ch. 1.IV.A.13.a, Export of Modern Factoring From America Back to England and to the Continent in the 1960s, pgs. 161-162, reporting that in November, 1960 a CIT factoring subsidiary established its own affiliated factoring company in London. Even prior to then, American old-line factors seem to have had some activity in London. See e.g. James Talcott, Ltd. v. John Lewis & Co., [1940], 3 All E.R. 592 (A.C.), adjudicating the factor’s notice to account debtors and finding it deficient because it never advised that the subject accounts had been “assigned” to Talcott.

16So named in the 1930s to distinguish (A) modern factors who buy accounts “without recourse” from (B) newer commercial finance companies which sprang up in America between 1904 and 1920 and who purported to “buy” client accounts but did so with full recourse to the client. See AFL., Ch. 1.IV.A.10, Main Volume, pgs. 70-71, noting that “Many factors were located in [the Fourth Avenue neighborhood in New York City] and their close proximity to one another led them to be referred to as ‘Fourth Avenue houses’; later, they were called ‘old-line’ or ‘straight’ factors to distinguish them from the newer accounts receivable financing companies” (footnote omitted).

17What student of American history cannot say, for example, that he or she is not familiar with Myles Standish and John Alden, names we learned in elementary school, when the origins of our Thanksgiving holiday are taught, with Alden’s name found even today on a leading insurance company in Texas.”

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IFA CALENDAR EVENTS AND WEBINARS

October 26-27
How to Compete Against the World of FinTech Training Class
Planet Hollywood, Las Vegas, NV

October 30-31
Advanced AE/LO Training Class
Planet Hollywood, Las Vegas, NV

Jan 24-26, 2018
2018 Presidents & Senior Executives Meeting
Mauna Kea Beach Hotel, Hawaii Island, HI

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April 5-8
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May 9
Transportation Factoring—June

June 8
Dealing with Millennials—August

August 8
Summer Gathering—Golf
Angus Glen Golf Club

September 12
Legal Cases: Factoring—October

October 10
Know Your Client

December 12
End of the Year Gathering

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Scotia McLeod Room
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For more information, contact Oscar Rombolà at (905) 603-6284 or orombol@accutraccapital-itc.com. Visit IFA Canada’s website at www.FactoringAssociationCanada.com.

NORTHEAST CHAPTER EVENTS

April 5
IFA Annual Factoring Conference—Fort Worth, TX

April 27
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Arno Ristorante, New York City

May 5-6
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