EFFECTS OF COVID-19

ALSO INSIDE:

Addressing Minimum Requirements During the COVID-19 Pandemic
How to Respond to Requests for Client Overadvances Under the CARES Act
Why is Force Majeure the Topic Du Jour?
What If One Software Could Do It All?

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- Experian allows you to import transportation trade data

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First off, I’d like to say that I hope everyone is staying safe and healthy during this interesting and trying time.

This issue was intended to be our conference issue. Given what is happening in the world today, we’ve modified this to be an issue about COVID-19 and the Factoring industry. We’ve tried to present relevant and timely articles, but we also know that the world is changing on a daily basis and so many of the statements may become dated quickly.

There are many items that are occurring with the IFA & AFA that are affecting you:

• The 2020 Factoring conference in Nashville has been cancelled. We are working on rescheduling to the late September/October timeframe. As of the time of writing this article, nothing has been set, but there are a few possibilities that we are exploring.

• The IFA has been conducting weekly webinars on various topics related to COVID-19. Our webinars have dealt with Client Credit, Transportation Factoring and Legal Issues. All webinars are recorded and available as a download from the IFA Store. Watch our events page for future announcements.

• The AFA & IFA have been leading the cause to have the PPP outlined in the CARES Act be made available to Factors. We have made contact with individuals in the House, Senate, Treasury and White House to try to open up the first round of funding and to ensure that future rounds are made available to the Factoring and Commercial Finance community. We have also been coordinating with SFNet to ensure that their message is in line with what the AFA is trying to accomplish.

• The IFA Online Community has been an excellent resource for members to communicate with other IFA members and preferred attorneys regarding issues they have been having. It has proven to be a valuable resource.

• We have scheduled some excellent training courses set for later on this year. Information about these courses can be found on our events page. We will continue to evaluate information regarding travel so that we can determine if the courses can be held safely.

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

We hope that you and your families stay safe and we look forward to having our lives return to normal.
I took over the role of managing editor of Commercial Factor in an unprecedented and frightening time.

As the COVID-19 pandemic swept across the globe, its effects were and will continue to be felt in all corners of everyday life. The factoring industry has not been immune, with event cancellations just one of the many results.

This issue of Commercial Factor was meant to be the conference issue, but we have shifted to focus on the most pressing concern in the industry: COVID-19. With that shift in mind, I and the rest of the team at Commercial Factor would like to thank our sponsors 3i infotech, Clarus Merchant Services, FactorCloud, FactorFox, Ansonia Credit, HubTran and Utica Leaseco for their flexibility and for helping us continue to bring you the most relevant content to the factoring industry.

Stay safe and healthy, keep washing your hands and thank you for reading.

BY PHIL NEUFFER
**INDUSTRY NEWS**

**Factor Finders Pays $137,000 to Referral Sources**
In 2019, Factor Finders, an accounts receivable match-maker, paid referral sources $137,000, comprised of 167 transactions funded by 34 factors. In addition to traditional referral sources, a number of leads were referred by factors who identified leads that were not in their “sweet spot” or were looking to outplace clients that no longer were a good fit for their portfolio.

**Global Merchant Fund Acquires Bibby NAM**
Global Merchant Fund acquired Bibby NAM, the North American operation of Bibby Financial Services, a UK-based independent SME funder with operations in 14 countries. The deal advances Global Merchant Fund’s strategy to expand its specialty finance business through the acquisition of companies and portfolios.

**Capital Now Team Continues to Pursue CAEF Certification**
Capital Now is working to ensure the company’s entire core team is CAEF certified. Currently, Capital Now has 66% of its operational and management team certified, which is the highest percentage in North America, according to the company.

**GCBC Celebrates 20-Year Anniversary**
Gulf Coast Business Credit celebrated its 20th anniversary as an accounts receivable and asset-based lender. “We started GCBC 20 years ago with a mission of being a top-tier provider of working capital financing solutions for small to middle market businesses throughout the country,” Wade Hladky, division CEO of GCBC, said. “As we celebrate our 20th anniversary year, we remain committed to the success of those businesses that pick GCBC as their preferred financing partner.”

**Artis Trade Systems Adds 5Star Bank to Portfolio**
Artis Trade Systems added Colorado Springs, CO-based 5Star Bank to its supply chain finance (SCF) software platform, ArtisPay. After qualifying as a bank vendor, Artis and SCF received BOD and bank approval in the second half of 2019.

**BBVA and Nordex Sign Three Green Factoring Operations**
BBVA closed three green non-recourse factoring operations from the wind turbine manufacturer Nordex for approximately €265 million ($287.75 million). The operations will deduct invoices from wind turbine supplies that the German company will provide to the builder of various wind farms.

**HubTran Makes FreightWaves’ Top 25 List**
At the FreightWaves LIVE conference in Chicago, HubTran was named to the FreightTech 25 as one of the 25 “most innovative and disruptive companies across the freight industry.” FreightWaves described the company as “at the forefront of the digital push for automating the back office.” While HubTran made the top 100 list in 2019, this was the company’s first time on the FreightTech 25.

**Factris Report: European SMEs Shift Financing Methods**
New financing solutions are changing how small and medium-sized enterprises do business throughout Europe, as shown by the 2019 year-end results from the fintech company, Factris. The results from the Netherlands-based company revealed a sharp increase in alternative-financing activity in 2019, as well as a change in what customers could achieve by financing their invoices via factoring.

**CapitalPlus February Funding Exceeds $10MM**
CapitalPlus Construction Services, a provider of accounts receivable financing for the construction industry, funded more than $10 million in February 2020. The company helped build hospitals, cell towers, wireless infrastructure and enabled contractors to purchase materials, hire additional workers, eliminate high-interest MCA loans and take on new projects.

**Tax Guard Resolves $2.5MM IRS Liability**
Tax Guard successfully resolved a $2.5 million IRS liability through an installment agreement of $75,000 per month for a West Coast contract delivery service. As a result, the business continued funding with Meritus Capital and 1,200 employees kept their jobs.

**Commercial Factor Moves to Digital**
IFA’s magazine, Commercial Factor, switched to primarily a digital format. Print copies of the magazine will still be created for the March/April and September/October issues and will be available at the IFA conference.

**Atlantic Responds to COVID-19 with Extended Desktop Audit Services**
Atlantic Risk Management Services prepared to carry out collateral examinations remotely with desktop audit services as COVID-19 began to affect daily life. It will utilize technology including end-to-end encrypted video conferencing, data transfer in secure data rooms and an information security infrastructure.

**Crestmark Provides $20.25M Asset-Based Loans in H1/March**
Crestmark secured a total of $20.25 million in asset-based lending financial solutions for seven new clients in the first half of March. In addition, Crestmark Equipment Finance provided $13.76 million in six new lease transactions, Crestmark Vendor Finance provided $5.5 million in 52 new lease transactions and the company’s Government Guaranteed Lending Division provided $9.9 million in financing for five new clients.

**IFA SoCal Chapter Formation Underway**
A chapter of the International Factoring Association will be formalized in the greater Los Angeles area. John Cummings of ACS Factors spearheaded the initiation of this new chapter of the IFA in Southern California.

**INDUSTRY TRANSACTIONS**

**TAB Bank Provides $2.5MM Revolver to Technology Company**
TAB Bank provided a $2.5 million revolving credit facility for a technology company based in California. The new facility is extended through a multi-year agreement and will provide for the company’s ongoing working capital needs.

**Capital Now Provides $50K Facility to Oilfield Hauling Company**
Capital Now provided a $50,000 credit facility to an Alberta-based oilfield hauling company. The company’s major client pays it in 90 to 120 days, which caused a cash problem. Capital Now’s facility provided additional cash flow.
Encina Provides $50MM DIP to McClatchy Media

McClatchy Media began a voluntary restructuring under Chapter 11 of the U.S. Bankruptcy Code following the solicitation of a plan of reorganization among its key stakeholders. As part of the proceedings, McClatchy Media obtained new $50 million debtor-in-possession financing from Encina Business Credit.

Allied Affiliated Closes Two Transactions Totaling $1.8MM

Allied Affiliated Funding completed two transactions for a total of $1.8 million. The first transaction included $1.5 million in receivables financing for a Texas-based trucking company that hauls frac sand, along with cement, fly ash and other non-hazardous dry bulk commodities for the oil and gas markets. The second transaction featured $300,000 in receivables financing to a Texas-based boutique staffing company that provides temporary and permanent placement receivables, focusing on IT, finance and accounting, HR and office support roles.

North Mill Capital Closes $3MM Revolver for Seating Concepts

North Mill Capital funded a $3 million revolving line of credit and a $500,000 equipment term loan facility to Seating Concepts. The proceeds were used to pay off an existing lender and provide additional working capital. Founded in 1980, Seating Concepts is a manufacturer of furniture and decor for the restaurant and food service industry.

Sallyport Provides $1.3MM AR Facility to Flower Distributor

Sallyport Commercial Finance supplied a $1.3 million accounts receivable facility to a wholesale distributor of plants and flowers. The company needed additional working capital to fulfill large orders. It was referred to Sallyport by a broker who had worked with the company in the past and felt confident that Sallyport could provide a structured solution to support growth.

Rosenthal Provides $3MM Factoring Facility for Cady Industries

Rosenthal & Rosenthal completed a $3 million non-recourse factoring deal with Cady Industries, a Georgia-based specialty chemical manufacturer. The client was in need of additional working capital to assist with paying out the company’s minority investors. When the company’s lender, an institutional bank, was unable to offer more flexibility and capacity on the existing line, Cady turned to Rosenthal for a new financing solution.

Brookridge Funding Completes $4MM in Purchase Order Funding Facilities

Brookridge Funding completed $4.05 million in purchase order funding facilities for four new clients, including $1.5 million for a Georgia provider of school security systems, $1.3 million for a New Jersey distributor of recreational equipment, $750,000 for a Kansas importer of private label sportswear and $500,000 for a Florida wholesaler of shopping carts. The clients were introduced to Brookridge by its factors and asset-based lenders.

Versant Funding Closes $2MM Factoring Facility

Versant Funding closed a $2 million non-recourse factoring facility for an airplane cabin technology company.

Capital Now Provides $100K Credit Facility to Calgary Water Management Specialist

Capital Now assisted a Calgary-based water management company with its cash flow needs via a $100,000 credit facility. This allowed the company to stay on top of expenses, further its business in Alberta and take on more projects.

CaixaBank & Siemens Gamesa Sign First Sustainable Factoring Agreement

CaixaBank signed the first sustainable factoring agreement in Spain with Siemens Gamesa. The operation includes sustainability criteria in the pricing policy. The inclusion of ESG (environmental, social and corporate governance) criteria means that Siemens Gamesa will be able to improve the conditions of the factoring that it pays to CaixaBank according to its sustainability rating.

Capital Now Provides $150K Credit Facility to Alberta Oil & Gas Tools Co

Capital Now assisted an oil and gas tools company with its cash flow concerns, allowing the
North Mill Provides $5MM ABL Revolver to 203 Trading
North Mill provided a $5 million asset-based revolving line of credit to 203 Trading, a distributor of refurbished computers and electronics headquartered in Norwalk, CT. The funds will be used to repay a previous lender and provide additional working capital to support growth.

Capstone Capital Closes $53.4MM in Factoring Facilities
Capstone Capital Group’s Spot Factoring platform provided $53.4 million in cash flow to four companies. For a chemical distributor, Capstone established a $20 million purchase order financing facility and a $20 million recourse factoring facility. Capstone established an $11 million purchase order facility and recourse factoring facility for a kosher food manufacturer. For a debris hauling contractor, Capstone established a $600,000 non-recourse factoring facility, and for a flooring company, Capstone established a $1.8 million non-recourse factoring facility.

SG Credit Partners Provides $3MM Capital Loan to AI Software Company
SG Credit Partners provided a senior secured $3 million growth capital loan structured around an AR borrowing base to a founder-owned AI software subscription and services company, and provided amortization around the company’s cyclical cash flow.

Republic Business Credit partnered with a West Coast private equity group to provide a $4.5 million asset-based loan with an accretion of up to $7 million to support a food manufacturer. In addition to the revolver, Republic structured a $3 million equipment term loan and a $1 million sublimit for new capital expenditures.

North Mill Capital Closes $19MM Credit Facility for Allied West Paper
North Mill Capital closed a $19 million credit facility for Allied West Paper. The credit facility consisted of a $15 million revolving line of credit and a $4 million equipment term loan. The proceeds were used to pay off the existing senior revolving and term loan lenders and provide additional working capital.

Republic Provides $750K Non-Recourse Facility to Apparel Manufacturer
Republic Business Credit partnered with a broker in the apparel community to provide a $750,000 non-recourse factoring facility for an apparel manufacturing company. The facility was used for larger wholesale accounts as well as some collection only services for some of the boutique sales and house accounts.

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Austin Financial Provides $2.75MM ABL Facility to a Midwest-based Freight Transportation Co
Austin Financial Services closed a $2.75 million ABL facility with a Midwest-based freight transportation company that provides freight management and brokerage services of fresh produce and refrigerated goods. Proceeds from the facility were used to pay off the company’s existing bank line, provide new funds for working capital and support business growth.

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IFA CALENDAR OF EVENTS 2020

- June 8-9
  The Law and Business of Factoring Training Class
  Planet Hollywood, Las Vegas, NV

- June 11-12
  Account Executive/Loan Officer Training Class
  Planet Hollywood, Las Vegas, NV

- July 27-28
  Credit, Underwriting & Collections Training Class
  Planet Hollywood, Las Vegas, NV

- September 9-11
  Transportation Factoring Meeting
  The Westin, Seattle, WA

- October 5-6
  Small Factors Meeting
  Planet Hollywood, Las Vegas, NV

- October 19-20
  Niche Industry Training Class
  Planet Hollywood, Las Vegas, NV

- October 22-23
  Fraud Detection & Prevention Training Class
  Planet Hollywood, Las Vegas, NV

Registration Information: www.factoring.org
As market volatility peaks, factoring businesses find it extremely challenging to mitigate the ever-rising risks, consistently ensure regulatory compliance and meet customer expectations while growing revenue and improving margins. Choose the right technology solution with proven capabilities that provides you the edge to stay competitive.

3i Infotech’s Factor/SQL®, a SOX (Sarbanes Oxley) compliant and pioneering factoring solution, provides the much needed control over all your operations - be it portfolio management, risk analysis, commission tracking and investor activity monitoring to optimize your returns. Factor/SQL® is an ideal partner to comprehensively provide sharper visibility into transactions, enhance customer service, improve decision making and grow your profitability.

Are you standing at a crossroads, and looking at an unpredictable future?

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facility to an organic foods company in Saskatchewan and a $300,000 credit facility to a wholesale operator in Ontario.

PERSONNEL

Bahr Joins Triumph as EVP of Sales
Triumph Business Capital hired Erik T. Bahr as executive vice president of sales. He will report to Geoff Brenner, CEO. Bahr will oversee Triumph Business Capital’s overall sales strategy, leading its national sales organization and collaborating with the company’s marketing department to align and shape Triumph’s go-to-market vision.

Cohn & Dussi Add National Director of Sales and Marketing
Cohn & Dussi, a law firm based in Boston, added Robert Hanna as director of national sales and marketing. “Bob has been influential in the creditors’ rights and commercial collection industry,” Lewis Cohn, managing partner of Cohn & Dussi, said. “He is well respected by financial companies throughout the country. We are pleased to have him as a valuable member of our firm.”

Axiom Bank Appoints Scheff VP, Commercial Relationship Manager
Axiom Bank, a Maitland, FL-based community bank, named Bryan Scheff vice president, commercial relationship manager. In this role, Scheff will develop relationships with Axiom’s commercial partners in Central Florida. “With almost two decades of commercial lending experience, Bryan has the skills to provide customized solutions that meet our clients’ financial needs,” Ted Sheppe, executive vice president of commercial banking at Axiom Bank, said.

Utica Equipment Finance Hires van Reede as BDO
Utica Equipment Finance hired Francois van Reede as a business development officer. Based in Arizona, he will be responsible for sourcing and developing client and referral relationships throughout the U.S. “Francois is a seasoned sales professional and has an extensive background in equipment finance,” Ed Stolarski, president of Utica Equipment Finance, said.

CBC Business Credit Names Scoggin VP of Marketing & Business Development
Alexandra Scoggin joined the CBC Business Credit team as vice president of marketing and business development. CBC Business Credit offers asset-based financing. Scoggin will be based in Southern California. “Alexandra joins our team with more than 13 years of experience in factoring,” Amy Effand, senior vice president for CBC Business Credit, said.

Gibraltar Names Oertel SVP/BDO of Upper Midwest Region
Gibraltar added Robin Oertel as a senior vice president and business development officer, based out of Minneapolis. Oertel will use her 20-plus years of experience to originate and execute new asset-based lending relationships in the upper Midwest.

CIBC Appoints Buren Managing Director, U.S. Business Development
CIBC expanded its U.S. asset-based lending capabilities with the addition of Mark Buren as managing director of business development in Baltimore. “Mark’s strong asset-based lending experience and understanding of the market will allow us to deliver very client-focused commercial banking solutions to family-owned or sponsor-backed middle market companies throughout their various business life stages,” Bruce Denby, managing director and group head of U.S. asset-based lending at CIBC, said.

Built for the Factoring Industry

ACCEPT CREDIT CARDS WITH CONFIDENCE!

With the help of current IFA members Clarus has developed a cost-neutral credit card acceptance program

CONTACT US
Dave Powers
540-222-3925
dave.powers@clarusdc.com

FOR MORE INFORMATION VISIT clarusdc.com/factoring/
Utica Equipment Finance Adds Healey as Managing Director

Stephen J. Healey joined Utica Equipment Finance, a North American provider of equipment-based term loans and leases, as a managing director. Based in Boston, Healey will be responsible for sourcing and developing client and referral relationships throughout the U.S. “Stephen is a goal-oriented producer with deep relationships with private equity groups, venture capital firms, family offices, intermediaries and lenders in New York and New England,” Ed Stolarski, president of Utica Equipment Finance, said.

Allied Affiliated Funding Appoints Smotherman Chief Credit Officer

Kimberly Smotherman joined Allied Affiliated Funding as chief credit officer, factoring and asset-based lending. Smotherman is responsible for credit risk management and portfolio oversight. “With more than 20 years in transportation and over 10 years in factoring, focused on underwriting and credit risk management, Kimberly’s knowledge and leadership bring a unique skill set that will give us an even greater advantage as we continue to grow in the marketplace,” Gen Merritt-Parikh, president of the factoring and ABL division at Allied Affiliated Funding, said. “We’re excited to have her on our team to further help our company, our employees and our clients succeed.”

First Business Growth Funding Appoints Perez as Senior Account Manager

First Business Growth Funding, the accounts receivable financing arm of First Business Financial Services, added Erika Perez as senior account manager. Perez has more than 17 years of experience in factoring and banking. “Our team is very excited to have Erika Perez join us,” Bill Elliott, president of First Business Growth Funding, said. “Her experience will help our clients and will strengthen our operations team.”

Milberg Factors Names Austin Senior Vice President

Peter Austin joined Milberg Factors, a factoring and commercial finance firm, as senior vice president. Austin will manage portfolio accounts, enhance client relationships and develop new ones. Additionally, he will take an active role in business development, working with colleagues in the Los Angeles and Winston-Salem, NC offices.

Hitachi Business Finance Adds Simshauser to Business Development Team

Mark Simshauser joined Hitachi Business Finance’s business development team, concentrating his efforts on attracting new factoring and asset-based lending clients. Simshauser is based in the New York region and is responsible for connecting with business owners and advisors and communicating the financing options offered by Hitachi Business Finance.

Gibraltar Adds Pickering as SVP, BDO in Atlanta

Mark Pickering joined Gibraltar’s business development team as senior vice president. He will be based in Atlanta and cover Georgia, Tennessee, Alabama and Mississippi. Since beginning his career as a CPA for KPMG in New York, Pickering has gained more than 25 years of experience in asset-based lending.

Infinity Financial Group Adds Frederic as Managing Director

Allen Frederic joined Infinity Financial Group as managing director. With 47 years of experience in commercial banking, asset-based lending, factoring and M&A, Frederic will use his experience to find solutions for his clients.

First Business Growth Funding Adds Frederick as VP/BDO

First Business Growth Funding hired Scott Frederick as vice president and business development officer. Frederick has more than 25 years of experience in the financial industry. He has held various roles in the Midwest focused on both factoring and asset-based lending.

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The Commercial Factor | March/April 2020
Factoring in Crisis: Addressing Minimum Requirements During the COVID-19 Pandemic
Professionals in the factoring industry live with a level of uncertainty. That’s just part of everyday business. The onset of the coronavirus (COVID-19) pandemic has caused that uncertainty to reach unforeseen heights. Disruptions to the supply chain and social distancing practices have put businesses on hold, rapidly changing the economic landscape and the way factors conduct business.

This disruption, of course, is not only affecting the factoring industry, but there is no doubt factoring professionals are facing unique challenges. One of the most critical is what to do about monthly minimum requirements, both when dealing with banks and with debtors.

Aging invoices are what stand to create the largest roadblock to factors and their relationships with their funding banks, according to Robyn Barrett, managing member of FSW Funding. As businesses are forced to close stores, they will cancel orders and put payments on hold in an effort to retain cash. That will cause invoices to age, which will create problems for factors.

In the midst of the coronavirus (COVID-19) pandemic, minimum requirements create challenges both on the bank side and the debtor side for factoring companies. Robyn Barrett of FSW Funding and Stewart Chesters of Republic Business Credit detail how proactivity and flexibility with minimums can lead to important short- and long-term gains.

BY PHIL NEUFFER
“That will be an issue for a lot of factors,” Barrett says. “As they see factored invoices age and then become ineligible due to cross aging or aged over 90 days. Concentration issues could also arise as a factor’s portfolio shrinks because clients are non-essential or are on lockdown and can’t sell invoices.”

A rise in aging invoices is also a symptom of a drop in collection volume for larger companies, according to Stewart Chesters, CEO and founder of Republic Business Credit. This is dangerous for small businesses, who will suffer as large companies protect their cash while invoices get older.

Factors who maintain communication with their debtors and their bank will have the best chance at surviving through this pandemic. Factors may need to ask for exceptions from banks while stepping up collection calls and ensuring all data is collected in debt factoring software, according to Barrett, who adds it is important to determine the length of expected payment delays.

“[This] allows the factor to be proactive with their senior lender,” Barrett says. “It also gives the factor time to look at the debtors and to really consider which ones might be liquidated and which ones are just delaying payment because they’re conserving cash.”

Chesters has already seen the positive results that can be achieved by maintaining a proactive and communicative relationship with a bank partner.

“We’ve had a conversation with our bank, which is Wells Fargo Capital Finance, and they’ve indicated that pretty much as we see problems occur, they’re going to work with us,” Chesters says. “I’m expecting it not to be an issue on the bank side.”

When it comes to minimum monthly requirements from debtors to factors, there is room for nuance even if these requirements are still technically enforceable. Just how easy it is to enact effective strategies will vary depending on the factor itself. Many of FSW Funding’s clients don’t have minimums to begin with, and the ones that do are growing in this environment, according to Barrett. Meanwhile, Chesters says that Republic Business Credit has taken the unilateral approach of not enforcing minimums at this time.

For other factors, Barrett says it is important to take a case-by-case approach to determine what to do about minimum requirements. Making decisions that will be beneficial to both sides is the key. Businesses are struggling enough as it is and piling on by enforcing minimums could end up being harmful in the long term.

“It really doesn’t serve anybody’s purpose,” Barrett says. “When the economy finally does turn around, you have a client now who really doesn’t like you, and the first chance they can to leave you, they’re going to leave. So I think this is really more about factors being smart and working with their clients, and if they want to retain those clients, work toward a win-win relationship.”

Of course, factors still need to conduct business and maintain a level of consistency. Some strategies to consider include waiving minimum requirements for up to 90 days and ensuring that clients are still submitting their receivables.

“I would rather do that and keep the client, keep the relationship and have that client loyal to me than trying to enforce a monthly minimum for a very short-term gain,” Barrett says.

It’s not entirely a doom and gloom scenario for every business, however. Chesters notes that there has been 20% portfolio growth for Republic Business Credit in the midst of this pandemic, including work with a manufacturer that is producing surgical masks for the Federal Emergency Management Agency.

“We’ve also had clients take additional availability because they want the comfort of funds in hand, so extra cash,” Chesters says.

The effects of the coronavirus (COVID-19) pandemic will be felt far beyond the short term. How factors adapt and provide support in this environment will go a long way in guiding businesses through the turmoil and in shaping how the factoring industry is viewed in a time of crisis. To Chesters, this is a time where factors can truly step up.

“We are probably going to be seen as businesses that helped small businesses get through this,” Chesters says. “[We have] the ability to prove that we are a good delivery system for funding working capital for small businesses.”

Phil Neuffer is managing editor of Commercial Factor.
## 2020 Upcoming Events

### Training Courses & Educational Meetings for the Receivable Finance Industry

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<tr>
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<td>Jun 8 - 9</td>
<td>The Law &amp; Business of Factoring Training Class</td>
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<td>Account Executive/Loan Officer Training Class</td>
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<td>Jul 27 - 28</td>
<td>Credit, Underwriting &amp; Collections Training Class</td>
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<td>Sep 9 - 11</td>
<td>Transportation Factoring Meeting</td>
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<td>Fraud Detection &amp; Prevention Training Class</td>
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**REGISTRATION INFORMATION**

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**Payment Method:** Check, VISA, MasterCard, Am. Ex or Discover. Cancellations made 30 days or more before the course will be refunded the registration fee less a 20% cancellation charge. No refunds for cancellations after the 30 day deadline. You may substitute attendees without penalty. Accommodations: Special room rates have been negotiated for all training courses & meetings. Refer to the International Factoring Association rate when calling for hotel reservations. United is the official airline of the IFA. Call 800-426-1822 or visit united.com and put in Offer Code: ZF5629134. (Codes are good for 2019 classes only)

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Effect of COVID-19

March/April 2020

Although the world has seen pandemics before, the novel coronavirus (COVID-19) is unique in its dangers and effects on daily life. According to Mark Zinder, the speed at which information is being disseminated is only matched by the rapid pace at which developments have been evolving, and that speed may be the key to finding a solution.

By Mark Zinder

As much as I prefer to speak about how we got to where we are, my clients are asking me to ignore the history and comment on the hysteria. We must all pause, reflect and remember in times like these, there have always been times like these.

In 2002, Donald Rumsfeld, when referring to the government of Iraq, famously stated that there were the known knowns, the known unknowns and the unknown unknowns. At first, he was chided for the ludicrous nature of his comments but today, we find ourselves exploring those very sentiments. As I write this article, with the television on mute in the background, I can occasionally look up to see another school, another city and even the entire country of Italy on lockdown. Planes are flying without passengers, hotels are empty and toilet paper is in short supply.

I once had the honor of working with famed money manager and market forecaster, Sir John Templeton. On numerous occasions, he said, “The four most dangerous words in the English language are: ‘this time it’s different.’”

Is it different this time? Have we seen this before? Are the reactions warranted? More importantly, the question that should be on our minds is: “What happens next?”
the short-term thinkers that they are, are reacting accordingly. The general public also is being made acutely aware of what is going on in real time as headlines buzz our smartphones with every new announcement. A journalist once told me the media’s mantra is “if it bleeds, it leads.” Today, the news is spreading many times faster than the virus, which when taken in the appropriate construct, is a blessing to us all.

We have seen similar periods before and with each new dilemma came the discovery of a new solution, making the world a better and safer place to live. What’s different this time is the speed in which we are all aware, and that, I propose, is a good thing. •

Yes, we have seen this before. According to the CDC, the SARS epidemic in 2002 had a fatality rate of 9.6%. In 2009, the health scare was the H1N1 virus. In 2014, the Ebola outbreak alarmed so many. I believe what makes it different this time is how well-informed we are and the steps we are taking to address the situation. The impact on the economy and international commerce will certainly be felt in a shorter period, and that is why we are witnessing such wild swings in the stock market. Rather than playing out over a couple of years, the hope is to contain the virus in months. The speed at which the world is responding is playing out in our financial markets as well.

Is it different this time or will everything eventually return to normal? Whether it was the fear of war, the fear of natural disasters or the fear of pandemics, history has taught us that we will eventually right the ship — that, as President Franklin Delano Roosevelt said, the only thing we have to fear is fear itself.

When I am asked by family and friends about the volatile sessions in the stock market, I simply state that stocks go up because earnings improve, period. The historical return on the stock market and the historical returns of corporate earnings are closely aligned. With people traveling less, eating out less and generally purchasing less, the forward-thinking stock market is taking into account the immediate loss of profits and money managers,
COVID-19: Why is Force Majeure the Topic Du Jour?

Jason Medley of Clark Hill discusses the recent focus on “force majeure” clauses in contracts and proposes a more important practical reality regarding the state of commercial finance.

BY JASON M. MEDLEY

During the COVID-19 pandemic, we are experiencing a major slowdown of the payment cycle for obligors and the outright cessation of many businesses. Many factors have corresponding lines of credit or refactoring agreements, so this crunch cuts both ways. What is a financier to do? Much of the focus has centered on the impact of the “force majeure” clause in contracts. This focus is too myopic. Most factoring agreements and commercial loan agreements do not even have specific force majeure clauses like many commercial lease agreements or other performance-based contracts.

Regardless of what is in a contract, or whether the force majeure clause fails to refer to pandemics or government mandates, an alternative common law and statutory defense of “impossibility,” “impracticability” or “frustration of purpose” still exists, depending on the particular state law at issue. This exception to performance can create an excuse for breaching a contract, but only if it is impossible to perform through no fault of the defaulting party, and after the exhaustion of all reasonable alternatives.

The defense also is limited if the event was something that could have been reasonably anticipated. The defense of impracticability and frustration of purpose are easier to prove, in theory, but they are not available in every state, and in some states, they are just interchangeable terms with no real distinction. Importantly, these defenses are not always available if the parties anticipated certain events and therefore added a force majeure clause. In other words, these catch-all defenses may not even be available if there is a force majeure clause in the contract, or if there are other reasons for the breach.

Regardless, factoring companies can’t ignore the practical reality that courts are temporarily ineffective or, in some cases, entirely unavailable. For example, during this event, while electronic recording of financing statements seems unaffected, the ability to seek emergency injunctive relief in court is basically nil. Additionally, you would be hard pressed to evict someone, or even hold a public foreclosure at the courthouse. Most courts are accepting electronic filings, with some exception, so lawsuits can be initiated, but jury trials are suspended and oral hearings are shifted to submission dockets, meaning the judge will take it under advisement with written briefs instead of listening to oral arguments, unless they offer telephonic or video hearings. Plus, process servers may find it difficult to pick up and hand deliver citations notifying defendants. Even where courts are available, this pandemic will likely cause a backlog to already slow dockets.

PROCEED WITH CAUTION

Now, that doesn’t mean you should not initiate the process and get your case in the queue. It also doesn’t mean you are barred from effectuating self-help remedies and repossessing equipment. Most contracts provide the free ability to notify and renotify account debtors of the assignment of invoices. They are your invoices, so you can seek collection and communicate with account debtors accordingly. This recent crisis simply means you should not expect immediate relief from the court system. Similarly, judges and juries have discretion, and they are likely to be sympathetic to companies able to tie their non-performance to COVID-19’s economic impact. There is a reputational risk to consider as well. We have legal rights to enforce, but you are still vying for new business, and when this event subsides,
finance companies that added salt to wounds may find it difficult to get new business.

This is not to say we should disregard our rights and convert to being charitable entities. We are in business to make money, and we have our own lines of credit and refactors that will likewise be demanding payment. But if taking legal action is not going to help in the immediate sense, and if it could bring you dispute and hurt you in the long run, you should proceed with caution.

These principles apply with respect to simple nonpayment due to economic circumstances. They do not excuse disputes based on the failure to provide goods and services as promised. These defenses do not apply to a breach of warranty. Selling false invoices and dummy paper cannot be forgiven because of a pandemic — lying is never protected by the defense of force majeure. If the reason for nonpayment precedes the pandemic, that will certainly help negate the defense. In most cases, failing to provide quality goods and services cannot be blamed on the government mandate to engage in social distancing.

The defense not only applies to the account debtor’s inability to pay but also may be asserted by the factoring customer with respect to its ability to satisfy the recourse obligations. Additionally, if the factoring agreement has an early termination, minimum volume or utilization fee, as long as it can be reasonably tied to the pandemic, the defense of impossibility or force majeure can hinder the ability to pursue collection of these fees. There are limitations to capturing these types of exit fees if they are seen as overly punitive.  

If your company is the borrower under a line of credit or subject to a factoring agreement, and if you anticipate a potential inability to pay as a result of downstream economic issues, you should seek counsel promptly and review your credit agreement for any applicable provision. You and your counsel should discuss putting your own creditor on notice of the above defenses, being mindful that it will trigger an anticipatory breach argument by the creditor. Therefore, at least initially, you should attempt to negotiate informally for an abatement, extension and/or reduced payment during this crisis instead.

NEGOTIATE & VERIFY

While the defenses raised during this crisis are not unlimited and are not “get out of jail free cards,” they do allow customers and account debtors an opportunity to hang their hat on a viable excuse. Regardless of the legal arguments that can be raised by both sides, factors would be wise to negotiate such matters as much as possible. They would be equally wise to show little fear in vetting these defenses thoroughly to make the customer or account debtor prove them sufficiently. Factors should still pursue their rights and claims for payment, just with the reduced expectation of seeing swift or sweeping relief from the court system and being mindful of the reputational risk of being too unforgiving. Be careful about the arguments you assert in writing to defeat these defenses against your customers and account debtors; your own lenders and financiers may say the same to you.

While the topic du jour is force majeure, creditors should remember debtors will be tempted to cut corners or even commit fraud when they find themselves in a tight spot such as this. Most of the factors I have spoken to reported positive collections but expected a severe decline to begin shortly. Your customers may find it too easy to accept a merchant cash advance, or they may doctor up an invoice or intercept account debtor payments. Now is the time to reverify, renotify and implement strict controls.

In closing, there is no doubt that the health and well-being of our nation is of utmost importance, but our physical vitality is dependent in large part on our economic viability. A crisis is often misused by defaulting parties. As those parties who are responsible for payment start to raise defenses based on the coronavirus pandemic, factors should evaluate those defenses from practical and legal perspectives. We should not ignore the human element at play here, nor should we ignore the fact that even during hard times, we still have an obligation to fulfill promises, unless circumstances make that impossible. Even then, the obligation returns once the crisis ends, and this too shall pass.

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1. §261 of the Restatement (Second) of Contracts; Centex Corp. v. Dalton; Article 2A of the UCC (applying to sales of goods); Article 79 of the United Nations Convention on Contracts for the International Sale of Goods.


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Jason Medley was born and raised in Texas and has been practicing commercial finance and related work for 20 years. He represents banks, factoring companies and real estate interests in a variety of transactional matters, from due diligence to contract negotiations, workouts, intercreditor relations and secured party collections. He also represents businesses in corporate governance and general matters, including entity formation, contracts, leasing, mergers and acquisitions. He is a preferred attorney of the IFA.
The COVID-19 crisis unfortunately shows the importance of factors having relationships in Washington. This was underscored by the recent enactment of the CARES Act, the $2 trillion package Congress passed in late March.

As has been widely reported, the act contains relief for small businesses in the form of forgivable loans to be used to meet payroll during the crisis. The goal was to help small businesses and keep employees on the payroll. Unfortunately, despite clear language in the act that “any small business concern” with fewer than 500 employees could utilize the program, the Small Business Administration chose to retain its prior restrictive limitations on which types of small business would be eligible. For purposes of the SBA’s 7a loans, factors were excluded from receiving such loans.

As soon as the SBA’s Interim Final Rule was released, fewer than 24 hours before applications for Payroll Protection Plan loans could be filed, the American Factoring Association jumped on the situation.

This article is being written while events are unfolding. As a result, it may be outdated in part by the time you are reading this, but the AFA is asking its friends on Capitol Hill to weigh in with the SBA and the Treasury Department, which played a large role in the drafting of the PPP process. Our first objective is to seek to have the SBA follow the CARES Act’s explicit language. The CARES Act does not permit the SBA limitations which are being placed on the PPP loans. It is our hope that the SBA will reconsider.

If the SBA and Treasury will not eliminate the restrictions the Interim Final Rule has imposed, we will seek legislative relief. The Majority Leader, Senator Mitch McConnell, announced further funding will be considered as one of the elements of the next supplemental appropriations bill in the coming weeks. When this occurs, the AFA will seek to amend the PPP language to directly address these improperly imposed restrictions.

In recent days, we have been reaching out to major figures in Congress, making them aware of the problem and urging them to assist in correcting the situation. Not only is the SBA position at variance with the statute, it is directly contrary to good public policy. When this crisis passes, the economy will need a major boost to get it jump-started.
The last thing the economy needs is to have crippled the factoring industry just when it needs it the most.

A very senior senator once observed to me, “You can’t place insurance coverage after you have sustained a loss. It is just like that in Washington. You need to develop relationships before you need them, or it will be too late.” This is what the AFA has been doing for more than 10 years and this crisis shows why such work is needed.

**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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As of April 7, 2020

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WHAT’S NEW AT IFA  MARCH/APRIL 2020

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.

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

Beijing Commercial Factoring Association (BCFA)

Colombian Association of Factoring (CAP)

Commercial Factoring Expertise Committee of China (CFEC)

Ecuadorian Factoring Association (ASOFACOR)

FCI

Romanian Factoring Association (RFA)

World of Open Account (WOA)

https://woa.community/

BROKER
Rainstar Capital Group

Rainstar Capital Group is a multi-strategy private equity firm based in Grand Rapids, Michigan that makes direct investments and provides advisory debt capital. Rainstar partners with factoring firms who have clients seeking debt capital products separate from the factoring solution for growth needs. Through its multiple lending platforms with over 250 registered lenders, Rainstar provides factoring firms’ clients’ debt financing product lines for commercial real estate, corporate finance, small business and equipment needs. Product lines include: Unsecured Lines of Credit, Revenue Based Lines of Credit, Revenue Based Advance, Merchant Cash Advance, Business Lines of Credit, Inventory Financing, Purchase Order Financing, Equipment Leasing, Accounts Receivables Factoring, CMBS loans, Agency loans, Bridge Financing, Hard Money and Commercial Contractor Credit Lines. Rainstar’s lending platform finances clients from $10k to $300M and covers all credit profiles across the listed product lines.

Kurt Nederveld: Kurt@rainstarcapitalgroup.com • 616-953-6036 • www.rainstarcapitalgroup.com

IFA Member Benefit: Rainstar Capital Group will pay your IFA membership dues. Members will pay IFA directly and Rainstar will reimburse member within 30 days of payment. Members will be eligible for membership fee reimbursement if they either:
  • Fund a client that was presented by Rainstar during the preceding 12-month period.
  • Refer a company to Rainstar that is funded through a Rainstar funding source during the preceding 12-month period.

CERTIFIED MAIL
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 all but eliminating the accounts receivable aging clock.

www.rpost.com/ifa

IFA Member Benefit: IFA Members save $300! Subscribe to 1000 units RMail plan for only $390! (Normally $690)

COLLECTIONS
The Collection Law Group, Inc.

The Collection Law Group (“TCLG”) is a group of lawyers who collect past due commercial accounts receivables from businesses across the United States. Our collection approach has been helping finance and factoring organizations collect past due amounts more quickly and more effectively than other approaches. Our approach combines the best of collection agencies with the best of law firms giving our clients higher recovery amounts more quickly with less cost. At TCLG we call our approach our “Attorney Driven Approach”. Brad Magill • brmagill@tclginc.com • www.tclginc.com • 888-304-4347

IFA Member Discount: For the first five collection files sent to TCLG by IFA members that are $10,000 or more in amount due, TCLG will offer a reduced fee from our normal 20% contingency fee to a 15% contingency fee. Future discounts if any will depend on the volume of files and nature of the files.

VeriCore

VeriCore is the pioneer of ZERO fee collections! ZERO fee collection takes place when VeriCore compels the debtor to pay for the cost of collection. ZERO fee collections don’t happen every time, but many IFA members have already experienced ZERO fee collections over 100 times! VeriCore is a contingent, fully licensed and bonded agency with an A+ rating with the BBB and a strong focus on compliance. Our proprietary process is designed to create constant and methodical pressure on a debtor which compels them to prioritize you at the top of their AP list. We have a national and international presence and we would relish an opportunity to show you how good we truly are.

800-433-4903 x1162

Chris Dawson: chris.dawson@vericore.com

www.vericore.com

IFA Member Discount: Contingency rate of 22% or will match the rate of any agency that is fully licensed.

CONSULTING
FactorHelp

FactorHelp has come to be regarded as the factoring industry’s premier resource provider. Information collected directly from the accounts receivable aging clock is designed to create constant and methodical pressure on a debtor which compels them to prioritize you at the top of their AP list. We have a national and international presence and we would relish an opportunity to show you how good we truly are.

800-433-4903 x1162

Chris Dawson: chris.dawson@vericore.com

www.vericore.com

IFA Member Discount: Contingency rate of 22% or will match the rate of any agency that is fully licensed.

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 aging clock. Ansonia’s unique new program for monitoring credit portfolio risk. Call today to receive a comprehensive review of our entire portfolio.

Credit2B

Trusted by all of the majors because of the sheer volume of Factor trade and 98% third-party data coverage of active businesses in North America. Credit2B is a cloud-based platform that empowers accurate and timely decisions by connecting the experiences of trade credit grantors around their common business benchmarks. We combine 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.

212-714-4500 • www.credit2b.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.
FactorsNetwork
FactorsNetwork provides an online platform where Factors share trade experiences with each other. Members are able to pull unlimited Credit Reports as well as monitor and analyze their portfolio. Transportation Factors benefit from our CarrierMonitoring and ChameleonCatcher programs and their clients profit from our LoadBoard. We even offer a Sales Tool to help you find new clients.
435-659-4612
www.factorsnetwork.com
IFA Member Benefits: 50% cost savings for the monthly membership fee. It is normally $1,000 per month, but IFA members will pay $500 per month.

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 their guidelines of MasterCard / Visa. In addition we provide IFA members direct access to their account manager for immediate response and support.
David Powers • dave.powers@clarusdc.com
540-222-3925 • www.clarusdc.com
IFA Member Benefits: IFA members that purchase the CardX program receive a one-time $200 rebate* *Once the member has processed a whole month using the program

ePaymentAmerica
ePaymentAmerica 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.
901-385-5327 • www.epaymentamerica.com
Factoring program: ePaymentamerica.com
IFA Member Benefits: Interchange Plus Pricing* Bundled Monthly Service Fee of $30.00 (includes IRS regulatory compliance, account maintenance, PCI compliance, virtual gateway & online management tool.) *Based on volume/transaction count.

FUNDING
Liquid Capital Corp.
Liquid Capital has been in the Factoring industry since 1999 and entered into a partnership with Next Edge Capital in 2015. This relationship has allowed them to pursue an aggressive growth strategy focused on the following key initiatives:
• The acquisition of A/R portfolios from Factors looking to exit the industry
• Member benefit: Trailer fees for the life of the acquired accounts
• Soliciting Factors to join the Liquid Capital network to gain access to additional capital, a robust range of working capital and trade finance products, extensive marketing and back office support
Member benefit: Liquid will pay your IFA membership or Annual Conference registration fee for the following year.
• National referrals from existing Factors who would not normally fund this type of transaction
Member Benefit: The referring Factor will earn an origination fee and have the opportunity to participate in the funding.
Robert Thompson-So • 866-272-3704
www.liquidcapitalcorp.com
rts@liquidcapitalcorp.com

MARKETING
50 Words LLC
50 Words is a marketing outsourcing firm for companies that either do not have a marketing department or that need to add more manpower to their existing marketing team. They serve as your dedicated marketing department.
610-631-5702 • www.50wordsmarketing.com
IFA Member Benefits: IFA Members will receive five free hours of marketing services with the purchase of any marketing service. (Offer for new clients only)

RECRUITMENT AGENCY
Commercial Finance Consultants
Established in 2002, CFC is the premier provider of human talent to the factoring industry. CFC’s goal is to provide their clients with the best available human capital and the current industry infrastructure to assist in accomplishing their growth potential.
469-402-4000 • www.searchcf.com
dar@searchcf.com
IFA member will receive an additional 60 days added to the guarantee on all placements.

SOFTWARE
Arts Trade Systems
Arts Trade Systems offers ArtisPay, the revolutionary Supply Chain Finance (SCF) app that allows banks and lenders to provide buyers and suppliers with a flexible, customizable, easy-to-use enterprise-grade software. ArtisPay is a fully cloud-based software-as-a-service (SaaS). Partnering with Arts Trade endows lenders with a high-tech innovative partner with deep industry experience that will help market and grow their SCF program.
480-250-8186 • www.artistrade.net
IFA Member Benefits: IFA members will receive a 33% discount on the registration fee.

FactorFox
FactorFox has been providing factoring software to small, medium, and large companies during the last 15 years. FactorFox is beautifully designed, user friendly, and powerful. With every line of code we write, we challenge the status quo. We are continually finding ways to mitigate risk, and give our factors a competitive advantage in the factoring industry.
877-890-1897 • www.factorfox.com
IFA Member Benefits: In addition to the one month free trial for all users, IFA members receive an additional month to try out the complete software.

Finvoice
Finvoice offers traditional factoring companies and asset-based lenders a simple-to-use and comprehensive software solution to help them become a modern and efficient online lender.
Finvoice came out of a passion to help small businesses who generate 67% of jobs and 50% of the world’s GDP.
Andrew Bertolina
310-951-0896 • www.finvoice.com
IFA Member Benefits: Complimentary landing page review/optimization for digital conversion. 15% discount on pricing for the first year.

HubTran
HubTran is the leading provider of back office automation technology for factoring companies. HubTran’s SaaS platform streamlines invoice processing, document management, and exception handling. Customers increase productivity 4X, reduce errors and increase capacity. HubTran’s innovative technology leverages Optical Character Recognition and Artificial Intelligence to simplify back office work without requiring massive investments of time in training and integration.
Matt Bernstein
630-544-0459 • www.hubtran.com
IFA Member Benefits: 1 week trial and waived setup/integration fees

ProfitStars®
ProfitStars® is an industry-leading provider of portfolio management systems for commercial finance, and offers a common framework for factoring, asset-based lending, inventory finance, and lines of credit. Our dynamic Commercial Lending Center Suite™ incorporates all digital loan origination, decisioning and portfolio management workflows that save time, improve accuracy and improve the overall borrowing experience.
205-972-8900, option 3 • www.profitstars.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.

TAX COMPLIANCE
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.
646-502-4478 • www.tax-guard.com
Rich Porterfield • rporterfield@tax-guard.com
IFA Member Benefits: IFA Members will receive ten free IRS Tax Return Transcripts within the first 30 days of service. One time offer also extended to current IFA members.

UCC SEARCH
First Corporate Solutions
First Corporate Solutions is a full-service public records provider specializing in the research, retrieval, and filing of public records nationwide and internationally. Their services include industry standards such as UCC, lien and litigation searching. UCC and corporate filing services, nationwide registered agent coverage, and real property title searching, as well as unique solutions such as state and county account monitoring designed specifically for Factors.
800-406-1577 • www.ficoso.com
info@ficoso.com
IFA Member Benefits: IFA members will receive a 10% discount off of the retail rates of their signature state and county account monitoring product.
How to Respond to Requests for Client Overadvances Under the CARES Act

Factors will need to contend with the effects of the federal stimulus package created by the CARES Act. Laurie A. Montplaisir of Robbins, Salomon & Patt writes that factors must keep to best practices and communicate effectively with clients to traverse this new avenue of funding.

BY LAURIE A. MONTPLAISIR

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a comprehensive legislation in response to the COVID-19 pandemic signed into law on March 27, 2020 by President Trump, establishes programs and initiatives intended to provide immediate assistance to business owners through a massive $2.2 trillion economic stimulus package. However, as the CARES Act is one of the fastest-moving pieces of legislation in U.S. history, the resulting specific implementation and administrative rules and regulations are still being issued, and qualified lenders expect to be inundated with applications. Factors may be faced with requests for client overadvances or other financial accommodations pending receipt of CARES Act benefits by their clients. In considering these requests, there are several dynamics factors should consider.

STAY CONSISTENT
First, factors should adhere to existing structure and procedures for additional financial accommodation, such as an overadvance. As factoring clients face cash flow issues and financial instability, many may be struggling for survival and request an overadvance to stay in business, while others may have growth opportunities in supplying essential products or services. The current environment should not change a factor’s risk and collateral analysis, but factors may have a different evaluation in making the analysis for an overadvance in light of benefits a factoring client may receive under the CARES Act. It is important that factors not deviate from underwriting policy in this unprecedented environment. In making an overadvance or other financial accommodations, a factor may be relying on receipt by the factoring client of CARES Act benefits. With the CARES Act providing an opportunity for significant funds available to businesses on an expedited basis, there is an inherent risk of fraud, which is one of the most significant risks to a factor. In the event receipt of CARES Act funds is a consideration in providing an overadvance to a factoring client, a factor should request copies of all documentation submitted in connection with a CARES Act application, including all supporting documentation, and confirm the documentation is accurate and consistent with the existing information the factor has regarding the client.

THE PAYMENT PROTECTION PROGRAM
One program that factoring clients may particularly benefit from is the Paycheck Protection Program (PPP), which provides businesses with funds to pay up to eight weeks of payroll costs, including benefits, from the origination date the client maintains or re-hires employees. In summary, the PPP provides for a low-interest loan with loan forgiveness if employees and employee wages are maintained through June 30, 2020, and if the money is spent on specific expenses,
including payroll costs. This program is available for any small business with fewer than 500 employees. PPP loans will be forgiven if funds are properly utilized, and if 75% of the forgiven loan was used for payroll. However, some factoring clients may need an overadvance pending receipt of PPP funds. If a factor is relying on receipt of these PPP funds in evaluating an overadvance request, the factor should be certain to receive all documentation submitted by the client.

CONSENT

The legal documents of factors will likely require a factor’s consent to any loan under the CARES Act. The factor should document this consent, including all the terms and conditions of the CARES Act loan to the client, repayment obligations and requirements for debt forgiveness and an agreement that the client will comply with the loan provisions and loan forgiveness conditions. It is important a factor is aware of what it is consenting to and what the obligations of the client will be. As PPP loans must be used for a specific purpose to qualify for loan forgiveness, a factor should understand how the loan proceeds will be used, and may include this information in the consent documentation and reporting requirements. The factor also should determine if the factoring client will have the cash flow available upon the loan maturity, as applicable.

Factors may receive a request to monetize funds a client expects to receive under the CARES Act, including the PPP. While receipt of funds may be considered by a factor in the analysis of approving and making an overadvance, the proceeds of the PPP must be utilized for specific purposes, including payroll. Therefore, the client may be at risk if the factor controls the receipt of the funds, or the funds are paid over to the factor.

These considerations must go into structuring and documenting any overadvance.

Prior to making an overadvance, a factor should ensure such overadvance is in compliance with the loan documents with the factor’s lender, including the collateral, overadvance and borrowing base requirements. Any structured client overadvance should be properly documented, including all relevant terms of the financial accommodation, and signed by the client.

COMMUNICATION IS KEY

It is critically important that factors ensure their front line staff is properly communicating with clients in connection with requested financial accommodations and overadvances. The terms must be clearly understood by the client. Factoring clients may ask their account professionals for information regarding the CARES Act or may not be aware of potential benefits, particularly in light of the rapidly changing information on the CARES Act programs. As a factoring client may need benefits available under the CARES Act to remain in business, which is typically in the best interest of a factor, it is important for a factor to be prepared to provide information to factoring clients on relevant programs under the CARES Act.

Providing CARES Act information also gives a factor a unique opportunity to provide invaluable assistance and service to a client. Factors should make certain their employees interfacing with clients are instructed in how to respond to client inquiries regarding the CARES Act. While providing information is acceptable and encouraged, factors also should be certain employees are not providing advice or actual instruction to clients. Factors should consider posting links on their websites to the relevant government websites that are providing information and applications for CARE programs. Employees can direct factoring clients to these resources, and clients can easily and readily assess the relevant information.

One of the benefits of factoring is that factors are structured to make immediate decisions for quick funding for clients. These attributes can be leveraged with resources expected to be provided under the CARES Act to benefit factoring clients and provide an opportunity for factors to provide additional and critical information and assistance to their clients. Ensuring a client has access to the information that may enable the business to stay financially viable maintains a solvent factoring client relationship and reduces the ever-present risk of fraud in a stressed situation.

Finally, factors should remain informed on the CARES Act, whether they may benefit from any programs under the CARES Act, and if their organization can qualify to become a certified lender with delegated authority to process benefits under the CARES Act.

Laurie A. Montplaisir
Attorney
Robbins, Salomon & Patt

Laurie A. Montplaisir concentrates her practice in the areas of finance, secured lending, corporate transactions, participations and workouts, and business acquisition and sales, with an emphasis in the asset-based lending and factoring industry. She has experience in due diligence, purchase agreements, financing documentation, forbearance and workout documents, and inter-creditor agreements. Montplaisir represents small to middle market service and manufacturing businesses in various life-cycle phases. She is the founder of the IFA Midwest Chapter established October 2018.
AI and Machine Learning are the Key to Factoring’s Future

Uber and its use of technology rapidly expanded the ridesharing industry. Todd Ehrlich of FactorCloud suggests that, similarly, leveraging artificial intelligence and machine learning will ultimately make factoring more attractive to lenders and affordable for borrowers, resulting in exponential industry growth.

BY TODD EHRLICH

Factoring is a challenging and sometimes cumbersome business. The labor to buy just one invoice requires a deep understanding of the industry. One mistake can set a company back years if it misstates a legal document or buys a fraudulent invoice.

Labor per transaction is much higher with factoring than other forms of lending, and companies must be vigilant to catch the constant fraudulent transactions. Factors are under pressure to make critical decisions quickly and with limited resources. Unfortunately, hyper-vigilance and quick decisions do not always work in a practical sense.

TECHNOLOGY, UBER & DISRUPTION

Generally, factoring has lagged behind other industries in terms of technology. With a relatively small market size, and high transactional complexity, most factors have avoided investing much money to modernize.

Other previously outdated industries can provide examples of what the future could hold for factoring. For instance, when you look at ridesharing pioneer Uber, it measured the ride-hailing industry at $4 billion in an early pitch deck. Today, the industry size is more than $56 billion.

Obviously, the technology behind new ride-hailing services made it much easier to request a ride and pay for it. But it was the use of multiple types of technology layered on top of each other that really made it work.

It follows that factoring will grow exponentially when the right types of technology are stacked in the right way to unlock the expansion of the industry.

AI, MACHINE LEARNING AND COMPUTER VISION

AI and machine learning allow machines to perform tasks that normally require human intelligence, ranging from visual perception (computer vision) to decision-making and more. These technologies can minimize risk and fraud, make underwriting decisions more quickly and objectively, take over monotonous tasks and increase data analysis.

The functionality of these technologies soon will allow factors to do what they couldn’t have even dreamed of in the not-too-distant past.

The expansion of factoring through technology will be beneficial at both the borrower level and the lender level in multiple ways:

**Ease of use:** Tech-based factoring will be so streamlined that companies will not have the same challenges they typically experience when operating with a factor as a lending partner. This reduction in complexity will, in turn, create a larger pool of customers wanting to participate.
**Higher advance rates:** Factors will be more comfortable extending higher advance rates because there will be more data quickly and readily available to inform better decisions.

**Speed:** The process of purchasing receivables and funding clients should rapidly improve to near instant levels for most transactions in the not-too-distant future.

**RISK & FRAUD**

AI can use predictive intelligence to allow factors to be proactive in terms of risk and fraud. In transportation, if the ratio of trucks in the fleet to revenue being billed is out of alignment, AI can see this pattern and raise a red flag. Or if a regular client suddenly shows an unusual spike or decline in fundings, AI can bring this to an employee’s attention for investigation without the need to solely depend on an astute account manager.

On the other hand, a slow, steady increase in funding month after month may also be spotted by AI, which may suggest a proactive credit limit increase rather than a last-minute reactive response when there is a critical client need. As the systems continuously learn individual client patterns, they can begin mitigating risks and potential losses before a human even notices.

**UNDERWRITING**

Underwriting is supposed to be objective, but since it is handled by fallible human beings, it inevitably ends up being subjective. Underwriters are under a lot of pressure to make fast yet accurate decisions, which is inherently challenging.

Imagine how much risk and fraud would be reduced if AI could run every transaction through a robust, multi-level data analysis. This could provide an automated score and allow the factoring company to decide whether or not to buy each individual invoice.

With enough data and machine learning in the mix, the system could begin to make (or at least recommend) buy decisions on its own. This would reduce the likelihood that a single fraudulent transaction could wipe out several years of profit.

**LABOR**

Factoring is labor-intensive for several reasons, including the amount of paper to review, data to enter and reconciling to perform within the system. AI, computer vision and optical character recognition (OCR) can automate much of this. Computer vision and OCR can “read” purchase schedules, supporting documentation and payments, and AI can match them with the correct transaction.

This automation gets smarter over time, thanks to machine learning. For example, the first time an invoice from “Acme Customer” is processed, a human may have to designate which field is the invoice number, which field has the date and where the total amount is located. But the next time an invoice from “Acme” is purchased, the system will already know where to pull the relevant data, and it will be performed more quickly than a human can do it. More importantly, the risk of human error is vastly reduced, if not eliminated altogether.

**DATA & DECISION-MAKING**

The rapid decision-making of AI and machine learning will create huge improvements in profitability and efficiency. Data that was previously unavailable digitally, or was only able to be gathered manually, will now be integrated into every process automatically. This will lower costs, increase speed and reduce risk. The technology will recognize good transactions and predict bad ones.

**EXPLOSIVE GROWTH**

What does this all mean? I predict that technology improvements will enable, and even encourage, more players to enter the market as factoring transactions become easier and the cost to apply AI goes down.

The most shrewd and experienced people in the factoring industry have always had a distinct advantage, and they will continue to hold those advantages for some time. But as technology democratizes the ability to run these businesses adroitly, capital will matter a lot. I expect to see larger institutions with significant balance sheets move into the space.

The expertise of existing factors will continue to be very valuable. I predict the best operators will be highly sought after by well-funded organizations who enter the market as AI makes factoring more accessible. Clerical work in the space will be automated, and independent companies and banks will thrive because of the lower labor costs.

The benefits of AI may be obvious, but there are larger implications for the industry. The lower labor costs and reduced risk of AI will bring competition and, ultimately, lower yields. Banks will be very competitive, but so will institutions with a lot of equity.

However, once factoring is a more efficient and affordable alternative for borrowers, many more borrowers will take advantage. Factoring will solidify a position as a widespread and accepted form of lending and will grow exponentially.
Taking Stock: Strategies When Bracing for a Pandemic-Created Recession

Downturns are part of the economic cycle, but few were prepared for the swift decline brought on by the coronavirus pandemic. Steven N. Kurtz of Levinson Arshonsky & Kurtz says for factoring companies to stay above water, it is important they take stock of deals and business partnerships.

As of the submission deadline for this article, the effects of COVID-19 have hit hard. Within a week, a global pandemic has been declared. Nations are on lockdown, travel bans are in place, cities are issuing curfews and “stay home” orders, businesses have shut down or are suspending operations, sports leagues are on hiatus, and people are social distancing and isolating themselves.

Meanwhile, the equity markets have plummeted. The sudden halt in regional and global trading will obviously have significant repercussions. Unlike the Great Recession, when the problems started from the top of the economic food chain, the negative...
effects and problems this time will start with individuals and small businesses and work their way up the ladder. I'm certainly no economist and do not know if this will trigger a significant recession or if this will be a blip and things will sputter along.

Because of this sudden pandemic, this recession-focused article, which has been sitting in my “idea queue,” is being launched earlier than anticipated. Not surprisingly, the factoring and ABL industries tend to do better in a recession. This article will focus on running a financing portfolio in a downturn from the perspective of an individual factoring or ABL shop, recognizing that these shops have borrowers to monitor and lenders to which they must answer. This article also will apply to the bank-owned factoring and ABL shops, whose numbers have significantly increased.

Because factors and asset-based lenders tend to finance businesses that do not fit a traditional bank, this industry has more demand in recessionary times when banks become more conservative in their credit decisions. Unfortunately, based upon my experience in a few up and down business cycles, not all factors and ABL companies survive a recession, but the best, strongest and luckiest do.

**OPPORTUNITIES AND CHALLENGES**

The first step to thriving in a recession is understanding that there will be significant opportunities and challenges. One must be able to identify the problems and opportunities and be prepared for both. From a big picture perspective, the opportunities seem to come before most of the challenges.

The opportunities start with the bank kick-outs. During expansionary times, banks want to put on deals that they would not do in a downturn. The instant the economy contracts, banks tend to identify and kick-out the deals that do not meet traditional banking criteria. The kick-outs may be slightly delayed because nobody was expecting a global plague to suddenly hit, so there will be some “understanding” between banks and their borrowers before the banks take action.

However, the “nice waiting” period won’t last long. In addition, you can expect an increased demand for financing from existing factoring clients and borrowers, which will include overadvances and advances not in compliance with borrowing bases.

Opportunities also will come up in the identification of acquisition targets, such as factor and ABL shops that do not weather the storm. This opportunity is something that’s hard to quantify, but those with good instincts will identify potential acquisition targets.

**TAKING INVENTORY**

Although taking inventory of your deals is always advisable, it is essential when the economy contracts. One can start by taking a survey of the portfolio. Who is in trouble now? Who will be in trouble soon, based upon the factor client/borrower’s business as it relates to the market? Are there deals you need to wind down now or ask to leave? If so, those should be identified now and a plan should be put in place. If there are multiple deals that are problematic and you need to either liquidate or ask someone to leave, develop a strategy on how to accomplish that goal. Sometimes, factor clients and borrowers tend to do bad things when they know the source of funding will dry up. So, while you always have to be paranoid about your portfolio, it’s more likely that bad actors will come out when they know their financing source is going away. If you have multiple deals that you need to exit, you may not want to terminate them all at once. The plan should identify who should leave and in what order.

For factor clients/borrowers who have issues but still fit your deal appetite and can make it, now is a good time to identify and fix problems. If a client has not been performing as well it should be, but you are letting it operate business as usual, it’s a good idea to fix what needs to be fixed, and put that factor client/borrower on a simple forbearance agreement — one which identifies the default, gives you a one-way release, acknowledges all obligations owed to you and has a plan to fix the problem. It is also a good idea to identify what may need to happen with more serious defaults. Also, as alluded to earlier, you may be asked to make advances which are “out of formula,” which might be a good opportunity, if you can make it work on your end.

**MONITOR CAPITAL SOURCES**

While taking stock of your factor clients/borrowers, it’s also important to understand any potential issues with your own sources of capital. Most businesses are financed with equity and debt. On the debt side, most factor/ABL shops are capitalized with some form of rediscount lending agreement or a refactoring agreement with either a bank, other commercial finance lender or a hedge fund. The equity piece of a factor/ABL lender is typically capitalized through self-funding, friends and family, a hedge fund or a family office. There is often sub-debt involved in the capital structure either as debt or disguised equity. You will need to take stock of your capital structure and analyze the players and components. Has your main lender been in a downturn before? How well does your primary lender really know the factoring and ABL industries? Also, lenders have their own issues, so your lender should be monitored to ensure that it is not incurring significant losses.
because if it is, then its business problems may turn into your own problems.

Before the Great Recession, without naming names, there was a dominant player in the rediscount/refactoring business who was lending to and factoring other finance companies. Many of this lender’s factoring company/ABL borrowers anticipated problems and found new lenders. Some stayed with this huge lender out of loyalty. Unfortunately, loyalty on the part of this lender’s side was not reciprocated. A decision was made to get out of the lending to lender business. The lender found “problems” or refused to work through issues which it would have overlooked had it been healthier.

Virtually all loans to factors and lenders are on strong documents which have formulas, financial covenants and/or borrowing base certificates. Rediscount financing facilities are either structured as a committed facility or a discretionary facility. A committed facility requires the lender to lend as long as there is no default. A discretionary facility allows the lender to make or decline loans in its discretion. This means the discretionary lender can refuse to fund for any reason, much like a typical factoring deal. The large unnamed lender took advantage of its discretionary facility language and found “reasons” not to lend to its finance company borrowers. This essentially killed the finance companies and forced the owners to sell their portfolios for the benefit of the lender or otherwise restructure their business, killing off otherwise good and healthy factoring and ABL shops.

The lesson to be learned is to take stock of your financing arrangement. If you have a good lender, work through issues now. This means relaxing covenants and working through anticipated issues. You will likely experience slow-paying account debtors. Your lender will need to understand this and not choke you with borrowing base restrictions that won’t work for now. It also means preparing for possible portfolio hits as well.

**REGULATORY CONSIDERATIONS**

Bank-owned factors and ABL shops have their own unique set of issues which mainly center on federal and state banking regulators. On paper, bank-owned factors and ABL shops are great. Banks have low costs of funds, but don’t typically get high yields and returns on traditional banking loans. Factoring and ABL is different.

Bank-owned factoring and ABL shops have the potential to be very profitable; however, banks are carefully monitored and audited, both at the state and federal levels, depending upon the bank’s charter. There are capital requirements that must be met. The capital requirements are monitored by reporting requirements, and are often addressed by regulators who visit the banks for regular audits. These audits often are done by people with little to no understanding of factoring and the ABL business. You often have to spend time explaining deals and why they work for factoring and ABL when they may not for traditional banking. Banks are required to essentially label their deals and if they are not good enough, have to set aside capital to reserve for losses. For factoring and ABL deals in a recession, that means financing accounts that don’t pay as quickly. A regulator can easily insist upon a different level of capital reporting when reviewing slow paying, but otherwise good account debtors. That requires a back and forth at the audit level.

One solution that I have seen work in factoring is to label the transactions as true sales. If you can get this done, it works better for bank regulators because you won’t have to reserve or downgrade a deal because of slow-paying account debtors. Bank-owned factors and ABL shops must be ready for the eventual regulatory audit and headaches.

As mentioned, there can be good acquisition opportunities. Some will be deals that have to leave the current lender or factor but can work for you. Some factoring and ABL shops may run into issues with their lender. A rediscount lender or refactor who lends to smaller factors and ABL shops may experience a case of lender fatigue. That can lead to the opportunity to take on several new deals through a buyout agreement or asset purchase agreement.

As an optimistic person, it’s never fun to write about grim subjects, but the economy is cyclical, and this is a business that thrives in downturns and recessions. It remains to be seen what will be the ultimate effect of COVID-19. We are dealing with an unprecedented and sudden plague that quickly turned into a global pandemic. We will know more about the results of this pandemic soon and will ride this out, but it’s important to take stock in all aspects of your business and stay financially healthy because our industry will be an integral part of a recovery and will be called upon to help jump-start a lot of businesses. Hopefully, this article has provided some helpful hints.
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