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Thank you to those who attended the 21st annual Factoring Conference in New Orleans, April 15-18. Evaluations have shown that this year’s conference was the highest rated Factoring conference on all levels from speaking sessions to networking events. We again surpassed attendance levels from previous years with 800 attendees!

My favorite comment was from Carol McDonald at AeroFund Financial, “Going to the IFA Conference each year is like attending your high school reunion, except we’re older, smarter and we like everyone.” Attendees were full of energy and in high spirits as the good times rolled at the largest gathering of commercial finance companies in the world. The Closing Event at the House of Blues topped off the already sensational week, especially with the Second Line Parade leading the way there. Make sure you check out the photos from the conference at www.factoringconference.com. I’m excited to see what next year has in store for us! You will want to save the dates of April 13-16, 2016, where the 22nd Annual Factoring Conference will be held at the Fairmont Scottsdale Princess in Scottsdale, AZ.

The 2015 Factoring Industry Survey Report is complete and now available to purchase for those that did not complete the survey. This report is a comprehensive analysis of the Factoring industry that spans 10 years of data. Go to www.factoringsurvey.com to see the questions covered and you can purchase the report at www.factoring.org in the store.

Even though we’re nearly halfway through 2015, the IFA still has more exciting events and developments that are yet to come this year. Our summer and fall training class schedule is filling up with not only some of our most popular annual offerings, but also some new and original courses as well. Turn to page 25 or visit our website for our current list of events. Classes fill up fast, so register soon!

Other ongoing projects that will be completed this year are updated standardized take out agreements to facilitate buyouts and keep camaraderie within our members and our legal compendium project that the IFA legal counsel has spent a great deal of time compiling. Steve Kurtz, Esq. is also completing sample Invoices with Notice of Assignment that will be available on our website soon.

I would like to thank our 2013/2014 IFA Advisory Board Members that have completed their two-year term and welcome four new members to our board:

- Glen Dalzell - TCE Capital Corporation, Toronto, ON CANADA
- Tony Furman - Interstate Capital Group of Companies, Santa Teresa, NM
- Crystal Han - Pipeline Financial Services, LLC, Downey, CA
- L. Gabriel Segura - CV Credit, Inc., Miami, FL

Advisory Board Members returning for the second year of their term are:

- Mike Hilton - Brookridge Funding, Danbury, CT
- Niko Kluyver - FactorPlus, Willemstad, CURACAO
- Marc Mellman - LSQ Funding, Maitland, FL
- W. David Tull - Crestmark Bank, Troy, MI

The IFA’s Advisory Board assists the IFA in broadening the public understanding of the uses and benefits of Factoring as well as helping design training programs and fostering new ideas to benefit the IFA’s member organizations. We look forward to working together to serve the Factoring industry and continue to offer new and exciting benefits to our members and community.

We appreciate all of the support from our members and sponsors. It’s through your feedback that we are able to provide such a strong organization that benefits not only Factors, but the commercial finance industry as a whole. I look forward to seeing you at one of our upcoming events this year and our annual conference next April!
The International Factoring Association’s (IFA) goal is to assist the factoring community by providing information, training, purchasing power and a resource for factors. The IFA provides a way for commercial factors to get together and discuss a variety of issues and concerns about the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

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

The Commercial Factor magazine invites the submission of articles and news of interest to the factoring industry. For more information on submitting articles or advertisements, email news@factoring.org, or call 805-773-0011.

The views expressed in the Commercial Factor are those of the authors and do not necessarily represent the views of, and should not be attributed to, the International Factoring Association.

INDUSTRY NEWS

Accord Financial Corp. (ACD) to Issue Quarterly Dividend of C$0.09

Accord Financial Corp. (TSE:ACD) declared a quarterly dividend on Wednesday, May 13th, StockRatingsNetwork.com reports. Shareholders of record on Monday, June 1st will be given a dividend of 0.085 per share on Monday, June 1st. This represents a $0.34 annualized dividend and a yield of 3.51%. The ex-dividend date is Wednesday, May 13th.

Shares of Accord Financial Corp. (TSE:ACD) traded up 9.14% during mid-day trading on Friday, hitting $10.75. 16,500 shares of the company’s stock traded hands. Accord Financial Corp. has a 1-year low of $8.50 and a 1-year high of $10.75. The stock has a 50-day moving average of $10. and a 200-day moving average of $9. The company has a market cap of $89.30 million and a P/E ratio of 12.97.

Diversified Funding Services, Inc. and Nationwide Capital Funding, Inc. Announce New Partnership

Mark Little, founder and President of Diversified Funding Services, Inc. and Eddie Thornton, founder and president of Nationwide Capital Funding, Inc. have joined forces to develop a new program for accounts receivable factoring brokers. Little and Thornton have worked closely together for 17 years in a factoring broker and factoring company relationship. As part of the new partnership, Little will not only develop the new program, but Diversified Funding Services, Inc. will also become a micro-factoring company for businesses invoicing less than $15,000 per month.

Marquette Financial Buyer Gets Approval for Deal

UMB Financial Corp. received approval from bank regulators to acquire Marquette Financial Cos. in a deal expected to close May 31. Kansas City, Mo.-based UMB first announced the all-stock deal worth about $182.5 million in December. Minneapolis-based Marquette Financial is the $1.3 billion-asset financial services company owned by the Pohlad family. The Pohlads (who also own the Minnesota Twins) will get a 7 percent ownership stake in UMB Financial (Nasdaq: UMBF). They’ll have the second largest individual stake, behind UMB Chairman Mariner Kemper, who controls voting with an 11.58 percent stake. Additional terms of the deal were not disclosed.

Fast A/R Funding Acquires Continental Business Credit

Fast A/R Funding acquired Continental Business Credit (Continental), a 25 year-old privately held commercial finance company providing factoring and asset based lending to manufacturers, importers, and distributors. Continental will continue operations under its current name as a business unit of Fast A/R Funding and the two companies will cross service more than 150 clients with flexible lending structures and factoring services.
INDUSTRY TRANSACTIONS

Crestmark Closes Six Transactions in First Half of May
Crestmark secured a total of $7,065,000 in financial solutions for six new clients.

DS-Concept Pakistan Announces $50 Million in Recent Transactions
Among the industries served are exporters of various sizes in the ready-made garments, home textiles, textiles, food and sporting goods sectors.

Veritas Financial Partners Closes $30 Million Financing to Media Company
After performing complex due diligence, Veritas was able to close the transaction within 60 days and provide the borrower with seamless execution between the two lenders.

PERSONNEL

Utica Leaseco Hires Ryann Whitmore as General Counsel
Ryann is an attorney with extensive experience in the commercial finance arena. Ryann, through her previous employment, has been working closely with Utica and its clients for the past year.

DS-Concept USA Appoints Bryan Maloney as West Coast Business Development VP
As the Vice President of Business Development for DS-Concept USA, Bryan is based in Los Angeles and specializes in structuring supply chain finance and factoring programs for small and middle market companies globally. Since joining DS-Concept in 2013, he

CANADA CHAPTER EVENTS

June 9, 2015
Legal Cases

July 2015
No Meeting - Summer break

August 11, 2015
Summer Golf Gathering

September 15, 2015
Transportation in Canada

October 13, 2015
Social Media Update

November 17-18, 2015
IFA Canada Annual Two Day Seminar Factoring in Canada is a two–day seminar designed to help participants understand a multitude of issues related to Factoring in Canada.

December 15, 2015
End of the Year Gathering: TBA

Meetings Location:
Mississauga Living Arts Centre
Scotia McLeod Room
4141 Living Arts Drive
Mississauga ON L5B 4B8

For more information, contact Oscar Rombolà at (905) 603-6284 or orombola@accutracapital-itc.com.
Visit IFA Canada’s website at www.FactoringAssociationCanada.com

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has focused on business opportunities in dealing with trade between China and the US and Europe.

**David Fortner Joins The Southern Bank Company as BDO in Commercial Finance Division**

Based in Atlanta, David will focus primarily on sourcing new factoring opportunities and building The Southern Bank Company’s brand in the specialty lending community. David brings more than 20 years of experience in finance to his new position. Most recently, David helped lead AeroFund Financial’s business development efforts in the Southeast.

**Fuesz Joins TCI Business Capital as VP, Marketing**

Bill Fuesz is responsible for leading the company’s go-to-market initiatives and relationship development programs. Prior to joining TCI, Fuesz led commercial marketing for Frontier Communications Corp.

**Marquette Business Credit Promotes Pacifico to SVP**

Marquette Business Credit is pleased to announce the promotion of Todd Pacifico to Senior Vice President/Loan Officer. Pacifico has been with Marquette since 2012 as an Underwriter/Loan Officer in the firm’s Atlanta office where his high level of professionalism and extensive banking industry knowledge quickly resonated with our customers’ needs in this vastly growing region. Pacifico has over 20 years of experience in banking.

**Shane O’Grady Joins TAB Bank as VP and BDO**

Shane will be based in Phoenix, AZ and will be responsible for sourcing new business opportunities by providing asset-based and factoring working capital facilities to commercial entities with annual revenues of $2 million to $150 million. Shane brings over 20 years of experience in finance to his new role at TAB Bank.

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**Accord Financial Appoints Mr. Gary J. Prager to its Board of Directors**

Gary is nationally recognized as a leader in the Commercial Finance industry in the US. Spanning almost two decades with CIT, Gary was responsible for the creation of vertical platforms, having assets under management in excess of $2B. Most recently, during his tenure as a senior member with GB Credit Partners, he played a key role in the sourcing of fund investments which resulted in the doubling of the fund’s size since formation in 2006.

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

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**Platinum Credit Management LP**

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The Consultative Approach to Sales and Marketing of Alternative Lending Products

This article will attempt to guide up-and-coming business development personnel through the obstacles of marketing and selling what is considered by some prospects and conventional lenders to be “expensive” financing.

BY PAUL SCHULDINER

Having served as business development officer and managed teams of business development personnel for over 25 years in the commercial finance market, it would be an understatement to say I have encountered challenges in successfully selling and marketing what is perceived to be “expensive” capital. Whether it’s factoring or purchase order financing (or for that matter, any non-bank credit product), there is generally excitement displayed by conventional lenders and prospects about the solutions alternative lenders offer and why we can facilitate successful transactions that conventional lenders may have difficulty financing. However, the exuberance can fade when the subject of price arises. Conventional lenders can be uncomfortable that they have to discuss the “price” of alternative lending solutions with a prospect. They may feel it risks the future of their relationship with the prospect due to their misperception that discussing higher-priced capital has negative connotations. In order to provide a guide for successfully navigating the process of sales and marketing to both referral sources and prospects, let’s first take a look at the substance of the business development individual in today’s marketplace. Then, we can assess how to overcome the obstacles.

The New yet Old Norm of Business Development and Marketing in Commercial Finance

The source of new business development personnel has traditionally been from the ranks within the commercial finance industry (field examiners, account management, underwriting, etc.). Recent trends in the alternative finance market have been to hire business development personnel that come from outside the commercial finance industry, even from non-financial sectors. Many of these newcomers are highly skilled at using social media as a marketing tool. This type of new candidate may prove they bring a fresh perspective, especially for an alternative lender who can leverage specific industry knowledge (i.e. staffing, transportation, healthcare, purchase order financing, etc.) to assist in building a line of business. However, the business development candidate must demonstrate their ability to quickly grasp the nuances of alternative lending.
The more complex the financing being offered, the greater need for a special skill set beyond just opening doors and networking. Once a business development person is sitting with a referral source or prospective customer, they must listen and be adept at understanding the needs of the referral source and business owner. These needs may be financial or non-financial. Unfortunately, time is not typically the ally of the business development person, nor is patience! It’s important the sales manager or principal of the alternative lender develop a team that can perform a needs analysis and create a rapport quickly with referral sources and the prospect’s owner or decision maker. If the type of financing is complex, the business development person must be able to “walk the walk” and “talk the talk” in order to successfully win the deal. There is no shortcut, which is why a combination of the ability to structure credit solutions, combined with selling skills, is what ultimately is needed to help a business development person be successful.

If you can redirect the business development person’s focus away from “term sheet” selling, then you can get them to effectively sell the value proposition of your solution. The amount of leads that convert to qualified prospects and new clients will directly increase if done properly.

“Selling” to Referral Sources
Most business development personnel use a two-pronged approach when marketing to referral sources.

The first approach is developing a calling strategy on referral sources such as banks, consultants, brokers, investment bankers, CPAs, and attorneys. The execution of the strategy begins after an initial introduction, which should be a face-to-face meeting when possible. The direct meeting gives the business development person the ability to discuss the nuts and bolts of their solutions and how they can be a useful tool in the conventional lender’s arsenal when they are unable to meet the needs of a prospect or client. The more knowledge and situational experience the business development individual can display relative to prior success stories, and yes, even failures, the more comfort provided to the referral source. The referral source will be more likely to contact them with the confidence that they can discuss a multitude of different financing opportunities requiring a creative solution. This results in more swings in the business development person’s strike zone. The individual is also regarded

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as a trusted referral resource that takes a consultative approach when the needs don’t fit the profile of the referral source. Ultimately, the business development person’s network expands due to the fact that referral sources will have confidence when referring you to other members of their company, thus increasing valuable contact multipliers and opportunities.

The second approach consists of direct marketing through electronic platforms such as LinkedIn, as well as through database marketing. This approach allows you to reach referral sources and potential customers by perhaps targeting an industry that has a need for your solution. The challenge is managing the time needed for this effort and determining how much contact is enough, or too much, and making sure you are reaching a decision maker in your direct calling efforts. We are all overwhelmed with the amount of emails we get and the tendency is to hit the delete button when we feel overloaded from a referral source. Also, how many LinkedIn pieces can one look at in a day?

When using these channels, it is imperative to become a “thought leader” in your segment of the commercial finance market. Public speaking, group presentations, webinars, article writing, tombstones of deals completed and case studies illustrate your body of knowledge, leaving you regarded as a “trusted advisor”. Once your reach this status, you have the ability to mitigate the concern any referral source may have about price being the fundamental reason behind making a referral or not. The ultimate goal of a business development person should be to offer referral sources confidence in you and your alternative finance solution so they feel that it is a “risk” for them to not refer you and your solution!

“Selling” to the Prospect

You have now received an introduction by the referral source to whom you have successfully marketed your solution and demonstrated the value and applicability of your product. The first discussion with the prospect should entail the business development person having a general understanding of the prospect’s operations and industry. The business development individual should always be a “listener” first. The ability to listen to the background or history of the business, how the business or transactions work and the goals of the company and/or its principals are critical in performing a “needs analysis”. The needs analysis helps the business development person ascertain the amount, structure and timing of the financing requirements. It also provides a better understanding of the goal and/or purpose of the financing (e.g., make an acquisition, procure inventory to fulfill an order or contract with a defined delivery/cancel date, repay an existing lender seeking an exit, or the financing may be an alternative to raising equity). The more of this information a business development person can extract from the company’s principals, the more effective they can be in creating a rapport. This is the building block of demonstrating the value proposition of the business development person’s alternative lending solution. By adhering to the rapport, you will be able to show the prospect you offer a better alternative (you shouldn’t be afraid to point out the alternatives to doing business with you and the advantages/disadvantages of other alternatives compared to your solution). Also, be prepared to have client and referral source testimonials available for the prospect as part of building the rapport.

The end result of creating the rapport will allow the business development person to gain knowledge of the prospect’s business, goals of the principal and empower the business owner to want to close with you as quickly as possible. You now have the ability to overcome the pricing perception and make it a secondary reason in the decision-making process to move forward with you.

Conclusion

The rising business development person needs to make sure they have the skill set needed to sell alternative lending solutions effectively. It is important the commercial finance company management team provides training and feedback on the technical aspects of the solutions to their business development team. By doing so, the business development person can confidently demonstrate they are “best in class” to both referral sources and prospects. Listening, probing, reflecting, and again, listening to referral sources and prospects will enable you to be empathetic to their needs and position yourself to navigate through obstacles like price and structure in any alternative financing proposal you put forth. The fruits of your labor will be rewarded with higher levels of success in number and quality of referrals, and ultimately, the closing of more new business.

Paul D. Schuldiner is the Managing Director of the New York office for King Trade Capital. He was previously Senior Vice President and Business Development Manager of the purchase order finance group of Wells Fargo Capital Finance. Paul has been interviewed in Women’s Wear Daily, Entrepreneur Magazine, Time Magazine, Forbes On Line and California Apparel News and has contributed articles to The Secured Lender and ABF Journal. He has been a panelist and/or feature speaker for nationwide seminars and conferences regarding alternative financing solutions. Paul can be reached by phone at (212) 946-2888 or by email at PSchuldiner@kingtradecapital.com.
Collateral-based Financing in the New Banking Age

Carl got that fateful call from his loan officer at his long-time bank. His metal fabrication company had gotten burned on a large job, and for the first time in a decade, he took a sizeable loss on his P&L. Now his bank has put him into their workout group and it is clear they no longer want him as a customer. He has a large backlog of work and he knows the business is already bouncing back, but the bank is ratcheting down his borrowing base availability, they are loath to provide the cash he needs to do his work, and capital for any meaningful growth is out of the question.

Carl’s advisor knows that he has a lot of assets on the company’s balance sheet and recommends that he turn to the commercial finance markets to pay off the bank and get the working capital that he needs to continue in business. The ABL lender that the advisor recommended has provided him with a proposal for a credit line for his accounts receivable and inventory, but he’s still short of the funding necessary to pay off the bank and run his business. The most valuable assets he owns are in the plant, in the form of machinery and equipment, making the inventory that creates the cash flow that drives his business. The reality is that neither the current bank nor the ABL takeout lender has any interest in financing the machinery and equipment portion. Who can blame them? It’s not what they are experts in. The key to the solution may be the growing field of collateral-based equipment lending.

Hard asset equipment lenders fill the need for financing fixed assets that the traditional asset-based lenders and factors are generally not equipped or have no appetite to provide. Due to a number of factors, including increased federal banking regulations, providing equipment financing to non-bankable customers is a small, but growing niche in the commercial finance industry. The focus is 100% on the collateral with little or no reliance on the creditworthiness of the debtor. It is a great complement to the vital financing provided by the working capital lenders. The added strength and stability brought to a company’s capital arsenal, by a good “hard asset” financier, when coupled with solid current asset lenders, can be the difference between survival and failure. Often the term portion, when using machinery and equipment, or other hard assets, as collateral, is the missing piece that makes a deal actually work and allows the customer to turn-around, survive and thrive.

A wide variety of equipment works well as collateral for a hard asset financing. The key characteristic is a liquid and verifiable secondary market. The rule of thumb is that if it can readily be sold at auction it is probably a good candidate for financing. In just the last year, the sector has seen pure collateral financings completed in transportation (trucks, buses, aircraft, liveries, even a classic car collection), industrial and manufacturing equipment (machining, welding, roll-forming,
stamping, slitting, cutting, etc.), construction (yellow iron, dump trucks, water trucks, paving), food processing, medical (big ticket items like CT scan), pharmaceutical manufacturing, textiles, and even oil and gas (drilling rigs, frack tanks, etc.). There are certainly a number of asset categories, including specialized equipment, equipment that is very expensive to move, tooling and fixtures, and “off brand” equipment, that are not suitable to serve as collateral for the hard asset financier, but as you can see, many equipment types are excellent candidates to serve as the underpinnings for a term finance piece.

Hard asset lenders are generally industry agnostics. While highly attuned to industry cycles, they are more concerned with how industry trends affect the potential auction sale of equipment than the financial performance of the debtor. The drop in oil prices has sent banks scurrying for the door with oil field service companies. While some of the equipment is specialized (drilling rigs, workover rigs, frack tanks) much of the equipment currently used in the industry are general construction and transportation equipment that is readily transferable to other applications. It is no surprise that this is the current hot spot for hard asset lenders.

The structure of the financing can be in the form of a Sale/Leaseback (True Lease), a Capital Lease or a Senior Secured Loan, depending on the situation and the nature of the equipment. The typical leasing deal amortizes the investment over 4-5 years with a buyout at the end. The typical loan also amortizes over 4-5 years with a cash coupon rate plus a “deferred interest” portion. To accomplish the financing, utilizing a lease structure has a couple of distinct advantages over using a loan structure in most instances. This is due to the customer’s ability to amortize fees and expenses over the life of the lease as opposed to having to pay large costs, at the time
of closing, related to loans. Leases also offer level payments, which can be a huge help to a customer’s cash flow especially in the first eighteen months of financing. There are many occasions when the structure of a True Lease cannot be employed (usually due to other creditors or tax issues). In those situations, using a Capital Lease structure can be an excellent alternative. A capital Lease possesses many of the positive attributes found in a True Lease, with the added benefits often associated with a secured loan. In a Capital Lease, the customer may take the depreciation, avoid sales and federal tax issues and offer a second lien to other creditors.

Whether structuring the transaction as a loan or lease, the funding amount or the lease or loan to value (LTV) is generally in the range of 75% of the assets’ forced liquidation value (FLV). From time to time, a Bridge Loan can be an alternative financing solution. The Bridge Loan is best utilized when the customer has a short-term need and is certain of exiting within twelve months and want an interest-only option. In these bridge situations, the LTV is usually no more than 60%.

Without credit underwriting, the transactions are quick and relatively simple. Term sheets go out after a quick review of the asset lists. Due diligence consists primarily of an inspection and evaluation of the collateral by a third party appraiser and the hard asset lender. All of this amounts to a fraction of the inconvenience and time spent with audits and credit checks required by traditional lenders. Closing prerequisites are primarily focused on assuring a first security or ownership interest is perfected in the equipment. The other industry standard closing requirements center on appropriate insurance coverage and facility access agreements. Most transactions can close in 2-4 weeks. There are few or no questions about past financial performance and forecasts for the future. There are usually no financial covenants or reporting required. Post-closing, the end result is a very simple relationship between the borrower and the hard asset lender. The general rules
of the relationship include: on-time payments, equipment being well-maintained, and of course, taxes and proper insurance coverage being kept current and in place throughout the life of the financing.

Hard asset loans can be an attractive alternative to other, more permanent sources of capital. Hard asset lenders are usually priced above banks and traditional ABL lenders, but are generally regarded as being significantly less expensive than subordinated debt and equity. Subordinated debt not only costs more, but often comes with onerous prepayment costs and equity kickers. Equity may not require cash payments in the short term, but the dilution lasts forever. The advantage to a flexible secured debt financing is that it is there when you need it and once you pay it off it is gone.

Carl, and his metal fabrication company, is just one of many

---

**David Levy** is a 30-year plus veteran of the financial services industry with a focus on asset management and control. He is a founding member and the current CEO of Utica Leaseco, LLC, which is a leading national provider of hard asset equipment leases and loans. David started his career as a machinery and equipment appraiser with Norman Levy Associates in 1982 before moving on to hold the Executive Vice President position with Dovebid Valuation Services in 2000. He has been the Director of Mergers and Acquisitions at MNP Corporation since 2004 while also maintaining his post at Utica Leaseco. David attended the University of Michigan for undergraduate studies and The Harvard Business School for executive education. He can be reached by phone at (586) 323-6807 or by email at david.levy@uticaleaseco.com.

**Jim Junker** is a 25-year veteran of the financial services industry including commercial banking, investment banking and asset-based lending. He has been the lead banker on over $4 billion of transactions, including syndicated loans, M&A, high yield bonds, investment grade bonds, commercial paper, sales-leasebacks, asset securitizations and mezzanine debt. Jim started his career with NBD Bank in 1988 and has held Senior Vice President positions at First Chicago, JP Morgan Chase, General Electric Capital Markets and Wells Fargo. Jim is currently the Vice President of Utica Leaseco, LLC. Utica Leaseco, LLC is a leading national provider of hard asset equipment loans and leases. Jim earned a BA (1983) and an MBA (1988) from the University of Michigan. He can be reached by phone at (586) 323-6809 or by email at James.Junker@uticaleaseco.com.

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Occasionally, I am asked about the changes I have seen over my 35-year career in the factoring industry. There have been a lot. After all, 35 years is a long time in any industry. Many of the changes have been immense and have made a fundamental impact upon our workflow processes and methods of communication, such as the advent of desktop computers, fax machines, cell phones, mobile devices, and email communications.

BY KEVIN O’HARE

However, the basic credit aspects of factoring haven’t changed and they remain as tried and true today as they were my very first day on the job as a young Account Executive. Nonetheless, I have seen many changes with regards to marketing, operational sequencing and the expansion of factoring-related funding products and mechanisms. After all, we must evolve to stay relevant.

In the early days of my career at Riviera Finance, our standard program was a flat eight percent fee with a ninety-two percent advance rate. It was straightforward and simple. By striving to obtain an eighty percent collection ratio it made for some handsome yields. I suppose those were the good ol’ days. Soon after, we implemented a rebate program that offered a lesser discount rate for quicker paid invoices in order to remain flexible and competitive. This was followed by a vendor payment assurance program that enabled us to assist our clients with their supplier needs while enhancing our services.

From an operations perspective in the early days, IBM keypunch cards were provided to our outsourced data processing person every other Friday. On Monday, a stack of updated A/R Agings for our entire portfolio was returned to us. Much of that day was spent transferring our handwritten notations regarding payment schedules and verification notes from the previous aging to the new one. It’s a far cry from the automated ticklers, CRM options, GUI and related interfaces, alerts, rules-based engines, big data analytics and business intelligence tools available today.

Nearly 25 years ago, while working for Silicon Valley Bank’s factoring division, we acted as an incubator for the bank’s technology division by providing financing to our technology-centric clients prior to them qualifying for the conventional side of the bank. As these companies had revenues, they were typically in between their Series A and B rounds. The bank coveted these relationships as many of these clients would transform their balance sheets by raising significant sums of money from their Venture Capital investors. The clients were then graduated to the conventional side of the bank along with their large deposit balances emanating from their fundraising efforts. It was a wonderful recipe for all facets of the bank.

Later, a colleague from the bank’s technology lending group and I realized that by utilizing the underwriting principles of factoring to attract these early-staged high-technology clients we could offer a factoring solution at a highly reduced cost in exchange for Detachable Warrants. These equity kicker derivatives gave us the right to purchase stock in the company at a specific price for a prolonged
period of time. For select clients, we even financed their very first revenues so the Warrant strike price was at a pre-money valuation rendering us with a great potential upside. Of course, it was imperative we remained judicious in determining which companies were worthy of us foregoing our higher yields for potentially, but certainly not guaranteed, greater yields in the future. Sometimes, this could be five or more years hence. To assist us in that assessment, we would evaluate the prospective company’s management team and consider their previous track records, the strength of their Cap Table, the barriers to entry as well as an analysis of the possible disruptive nature of the actual technology. Our technology banking team members were instrumental in those efforts. In combination with the bank’s standard Warrant incentivized loans we collectively generated a robust Warrant portfolio for the bank. It became a very successful endeavor, and in some cases, we had clients that signed up with us with little intent to ever use our factoring service. Their sole desire was to employ our line as window dressing in their attempt to impress potential investors on their “road show” with the notion that the bank had provided them with a $1,000,000 AR line of credit priced, for example, at Prime + two. Optically, this was an endorsement of their company and its financial capacity to leverage any potential equity investment with lesser cost debt, all of which was quite favorable.

As the bank and our factoring services grew, we began to accumulate a wide range of technology clients from our early-stage customers to large corporate borrowers. The latter of which had perhaps gone public and, in some cases, were in need of more specialized forms of financing. One such product was our introduction of an Off-Balance Sheet form of financing that once again relied upon factoring as the underlying credit apparatus. In these instances, we provided our large technology corporate borrowers with the ability to sell to us up to $10 million of their Accounts Receivable, typically at quarter end, in compliance with the FASB-125 rules for derecognizing assets. This option was very appealing to our public clients as their liquidity could be drastically increased while improving their day’s sales outstanding (DSO). These were critical metrics the market analysts would ascertain to measure and rate their performance. In order to qualify, there were specific and rigid rules. For instance, the purchased A/R had to be on a non-recourse basis with flat fee pricing. If handled properly, these transactions were considered extinguished liabilities instead of being accounted for as debt. Insomuch as there was no impact upon the liabilities side of the Balance Sheet, this rendered the

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client a valuable financial management tool.

About twenty years ago, after having started our factoring company, Pacific Business Funding, we were growing rapidly and wanted to improve upon our operating efficiencies. After conducting extensive research, we decided to take advantage of the technological advancements being developed in the contact management space and consequently installed the first web-based document management tool offered to the market, known as Xerox’s DocuShare. It was a solution enabling the scanning of check remittance images and providing them to our clients via a secure portal accessible on our website. It was tantamount to having a desk in our office that eliminated the necessity of having to mail or fax over copies of checks to our clients. It was an operational game changer at the time, and yet today, it’s seemingly de rigueur.

As time went on, many new pricing twists occurred and it seemed no two factoring companies were alike. Some began to charge on the amount of the funds employed instead of on the face amount of the invoices. Others charged incremental pricing, stepped pricing, block pricing, batch pricing by schedule of accounts, prime based, origination fees or not, and with or without float, among others. Nowadays, it is entirely plausible to customize any factoring program to meet specific needs with term or no term contracts, minimum or no minimum charges, recourse or nonrecourse, reserves or no reserves, domestic or foreign AR, personal guaranty or no PG, transactional or relational. Moreover, new verticals in traditionally underserved industries from the past, such as: contracting; medical; telecommunications; headhunting; retail; judgment creditor claimants; and commission oriented currently have numerous factoring options.

In the past ten years, many in the industry have been pushing the factoring envelope by expanding services to include Purchase Order financing or offering pro-forma factoring for industries known to have earned, yet unbilled, A/R. To a lesser extent, these options have also been offered to those businesses that inherently have contracted pre-billing rights. The more aggressive amongst us are providing a form of bridge loans and/or stretch pieces that are usually tied to a take-out source or are designed to finance an expanding balance sheet that should be repaid as the assets contract. The basis for repayment for most of the aforementioned products is still largely focused upon the ensuing A/R that will, perhaps with a bit of luck, be generated with the help of

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said financing. It’s not for the faint of heart, and caveat emptor, as the saying goes.

I have also seen how factoring has become mainstream as more and more banks offer factoring-related services. Here in Silicon Valley alone, we have no less than eight banks that do full service factoring with captive backroom/operation centers. Having sold two of my factoring companies to banks, most recently, Graystone Capital to Scott Valley Bank, I can speak firsthand on this topic.

A radically changing market has seen scores of new entrants moving into our ecosystem as capital formation has redoubled its efforts. It’s a sign of our industry’s maturation as new products and markets are being developed, which is especially evident with the traction factoring has made on a global basis. Yet, how about the market innovation we are seeing from non-bank entities that have become the new alternative lenders and aggregators like The Lending Tree, The Lending Club, Kabbabe, On Deck Capital and LeaseQ, each of whom are morphing the customer experience, harnessing the latest FinTech ideologies and redefining lending models? We are all witnessing these changes, especially with respect to junior secured and even unsecured ACH business loans. I am sure many of you have received UCC alerts on your clients indicating a new lender has perfected a filing against their assets. Some of them are even stacked as clients take out multiple ACH loans. Longer-term specialty financing is also expanding with Structured Settlement financing as well as Installment Sale financing becoming popular alternatives. It’s a sign of the times.

It’s a brave new world, and if the next 35 years is anything like the past 35 years, it’s going to be quite a ride and a whole lot of fun. Just remember to perfect your senior security position, watch those debtor credit limits, verify, notify and keep tabs on your concentration risk as those prudent credit measures won’t be changing anytime soon. •

Kevin O’Hare is Senior Vice President and Asset Based Lending Group Manager for Scott Valley Bank. In 2005, Kevin founded Graystone Capital, a commercial finance company providing ABL and factoring products. In 2014, Kevin sold Graystone’s ABL platform to Scott Valley Bank, founded in 1858 and known as California’s oldest independent bank. Today, Kevin manages the rebranded SVBusiness Capital as a new division for the bank. He can be reached by phone at (408) 275-8006, ext. 1 or by email at kmohare@scottvalleybank.com.
Benefits of Using Social Media to Build a Brand

As more companies within our industry and beyond become active on social media, it begs the question: Can social media replace face-to-face communication? My short answer is no, it cannot and will not. In my experience, people want to get back to seeing and communicating with people. However, that’s not to say that having a social media presence is without its benefits.

BY JIM DICAMILLO

No matter what business you’re in, being visible online is important. Moreover, it’s vital that you remain consistent and keep up with the times. There’s no doubt that your potential clients are looking for you on Facebook, Twitter, Google+ and LinkedIn. If you’re not discoverable on social media, your competition will be—you can bet on it.

Not convinced? Below you’ll find some telling statistics about social media marketing for brands, via AdWeek:

• **74 percent** of shoppers depend on social media to influence purchasing choices.
• **47 percent** of Americans named Facebook as their top influencer of purchases.
• On average, business-to-business marketers promote their brand on **six different** social media platforms.
• **97 percent** of consumers turn to the Internet to discover local businesses.
• Facebook has nearly **1.5 billion** active users.

So, yes, it’s imperative that you build your brand online. But does that mean you have to make your company available on every social network? Not necessarily.

For example, you’d be hard-pressed to find a finance factoring company on Pinterest or Instagram, both of which are image-heavy social networks. The key, then, is to have a solid presence on social networks that matter. That is, the social networks where customers are looking for you. This may take a bit of trial and error.

What about return-on-investment (ROI)? It can be challenging to measure ROI when it comes to social media. It depends on your goals – what factors are you looking at?

According to social relationship platform Hootsuite, the best way to measure ROI is to connect it to your business goals. “It’s important for social data to be relevant to stakeholders within your organization, not just social media practitioners. Tying social media to the big picture by linking it to organizational and departmental goals will help you achieve that,” the company advises. Keep this in mind when trying to determine ROI for social media.
However, it’s my opinion that social media is not all about ROI. I got involved in social media five years ago, because I quickly realized that being absent across the social web could negatively affect a company’s reputation and bottom line. For me, social media has never been about making money. Rather, it’s about keeping your business conspicuous, consistent and cognizant.

As summer approaches and things quiet down, it may be time to create a social media strategy for your business. Starting from scratch? Not sure where to begin? Take the following steps, via social relationship platform Buffer:

1. **Determine which social networks are right for your business.** Each platform has unique best practices, style and audience. Find the social networks that best fit your business’ strategy and goals. Things to look at include demographics like gender, age and education.

2. **Completely fill out each profile.** It’s not enough to simply fill in your company’s name. Be sure to keep profile photos, cover photos, descriptions and profile information current and complete. Otherwise, you risk coming off as unprofessional.

3. **Give your brand a voice.** Creating a consistent tone and voice will make your brand more relatable, agreeable and persuasive. Businesses in our industry will likely want to use a more formal tone, but don’t be afraid to be a little more conversational if it suits your company!

4. **Choose a posting strategy.** Should you post to social media three times a day or once a week? There’s no one answer for every business; it will vary based on audience and niche. As for what to post – in general, photos, videos and quotes tend to perform best. Of course, sharing content relevant to your business and for your audience is paramount.

5. **Evaluate and test.** It may be difficult to get things right at first, but don’t be discouraged! Analyze your results to determine what type of content works for your brand. A lot of social media marketing comes down to trial and error.

6. **Engage your audience.** Automation in social media is helpful to an extent, but engagement is of utmost importance. When social media users talk to you, listen and respond. If you don’t get back to potential clients fast enough, they’re going to look for answers elsewhere.

By now it should be clear that your company needs to be on social media. Building your brand and communicating with clients online is a smart way to expand your reach and increase your client base. However, social media cannot and will not replace face-to-face communication.

Many businesses within our industry rely on social media to generate leads. It’s a great start, but how do you build trust with potential clients and referral sources? My recommendation is to have your salespeople get out into the field to “press the flesh.”

Indeed, you may find success in scoping out and forming relationships using social media, but nurturing those relationships is a different story. Visiting potential clients in conjunction with posting to social media is the best course of action, in my opinion. Use your team’s strengths to build and solidify relationships with potential clients.

It’s no secret that millennials are adept social media marketers. They’ve grown up with social media, and they use it in their everyday lives. Some have even created new social networks! Why not allow the younger talent at your business to help develop and implement a social media strategy?

Meanwhile, the veterans of your company, especially those who may not feel as comfortable dabbling on the digital side of things, can follow up in-person. Get them back out into the field to meet and talk with leads. Sometimes, a personal visit can make all the difference when it comes to turning a lead into a sale.

Not having a presence on social media just isn’t an option anymore. Choosing to keep your business off the social web is a disservice to its success and growth. But remember, while online marketing needs to be done, people still need to be in the field. They’re simply not interchangeable, especially in our industry!

Maybe you’ve heard it all before, but it certainly bears repeating. If you’re going to compete in today’s ever-more-digital world, you’ve got to make your brand accessible online and face-to-face. I believe that creating and maintaining that balance is the key to success in this digital age.

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**Jim DiCamillo** is the Executive Vice President of RMP Capital Corp., an invoice financing company that provides cash flow solutions to small and midsized companies throughout the United States. Prior to co-founding RMP Capital in 2000, Jim was the Chief Operating Officer of CTA Industries, a manufacturer of insulation products for industrial and residential applications. Jim has served on the executive committee for The Commercial Finance Association and has presented and served on a number of finance panels offered by The International Factoring Association. Jim has been featured on CNN, Fox Business News and the “Bull and the Bear” in order to express his thoughts about alternative financing solutions for small and midsized businesses. Jim can be reached by phone at (631) 630-9278 or by email at jdicamillo@rmcapital.com.
When the Going Gets Tough...

One of the greatest lessons I learned from my father was that when things weren’t going well, that was the time to go back to the basics. Most people’s reaction is just the opposite. They usually try doing more, figuring increased activity will lead to increased sales. I’m not against increased activity, but if things aren’t working well, more unproductive activity will probably only lead to more frustration. The other reaction is to start trying new things.

BY THOMAS G. SISKA

Now, I’m not against change either; in fact, I’m for it. However, change for change’s sake probably just takes you further from the correct path. Reaching goals, like everything else in life, depends on staying focused on the ABCs.

The Successes

Clients use your factoring service because it is helping with their cash flow issues. They are the proof of your company’s value to the business community. And as they say, “birds of a feather flock together”. Most entrepreneurs know other entrepreneurs. And some of these business people will have cash flow issues of their own. The most successful salespeople I have known always went back to their clients when new business was slow to check in with their existing clients to see how things were going and to look for referrals.

Along the same line, it is also important to find out what associations and other industry networking events the client attends. For there you will find other businesses just like your client. And nothing carries more weight with a prospect than hearing that a peer is currently using your services. In fact, of all the potential referral sources out there, client referrals carry the highest closing ratio of nearly 1 closing for every 2 leads!

Further, each client has a banker, a business attorney, and possibly, an accountant. Each of these people come in contact with other businesses every day. After reconnecting with the client, your next calls should be to the client’s support professionals. This is your chance to remind them that it is your firm that is keeping one of their clients in business. Of course, this is also the
opportunity to see if they know of any other businesses in need of cash flow assistance.

**Past Successes**

Nothing breeds success like success. Knowing this, good salespeople never forget to market to their past clients as well. The story here is even better since these businesses have used your services and then graduated to lower cost financing. It is not very likely that the past client will need you at the precise time that you call, but I have seen the rare occasion where their business is growing with a concentration account and the new financing source isn’t as accommodating as a factor can be. So it is possible to win some business back. But more likely, this business owner surely knows other business owners and may have a referral for you. We all talk about factoring’s place in the life cycle of a business, where we can facilitate its growth to allow the company to move on to traditional bank financing. Talk is cheap. However a referral from a business that did indeed make it to the next level clearly says it all.

Here again, this business has professional support from its banker, lawyer and accountant. After reconnecting with your past client, it is now the perfect time to call these folks. Remember, at this point you’re not telling a story about how your company can help small businesses; you’re reminding them of the great job you did getting their client to where they are today. You’re talking reality, not fantasy. That’s a way better conversation than an introductory call to a new, potential referral source. Yet most salespeople never reach back out to their clients once they have left the roost.

**The Near Successes**

Finally, everyone has more near misses than they do closed deals (usually way more). Every near miss had cash flow problems or they wouldn’t have been in contact with you in the first place. The prospect must have possessed all of the traits your firm looks for in a client, or it wouldn’t have made it to a “near” miss. Just because the timing wasn’t right then doesn’t mean it won’t be right later. When new business is slow, successful salespeople get back in contact with their near misses in hopes of catching one of them at the right time. Even if there’s no opportunity there, it still shows you are a consummate professional by following up and checking in. And unless you lost the deal to a direct competitor, you can (and should) reconnect with the referral source updating them on the situation as well. Any excuse to contact a referral source is a good excuse, especially if it simply shows that you are thorough in your job.

**Conclusion**

There are two ways to hunt: the shotgun approach where you shoot over a wide area with the hope of hitting something and the rifle approach where you have a specific target and you pursue it with purpose. The shotgun approach in sales leaves a lot to luck, while the rifle approach greatly improves your odds of bagging your game. As mentioned at the very beginning, shotgunning for new referral sources is something that must be done from time to time to keep your network fresh. But if this is how you work all the time, then you’re never really creating relationships that can last. It was also mentioned that trying new things, whether it be calling on different sources other than the usual banker-types or attending different events, can be invigorating and enlightening. For if you can stumble upon a source for business that none of your competitors are aware of, you can ensure yourself of success for maybe several years. However, this type of achievement only comes along once in a great while. If you’re not closing deals in the meantime, you’ll be out of a job. So having sources you can count on is a must for every salesperson.

Therefore the question becomes: “Who can I count on?” By now you should know the answer. The sources that brought you your clients in the past are sure things. And there aren’t many “sure things” in the world of sales. Staying in touch with them is critical and easy. Calling them to let them know that your financing is continuing to keep their referral in business says it all! Then you have the referral sources of the clients that graduated. Again, the call here is even better since you not only assisted in keeping the client in business but you also succeeded in graduating them! Of course, it’s not just the referral sources, it’s also the clients and past clients themselves. For if you can just get 2 leads from your clients or ex-clients, the odds say you’re sure to close one of them! Let’s also not

Continued on page 31
“Imagine Macy’s Santa Claus sending customers to Gimbels. But gentlemen, you cannot argue with success. Look at this: telegrams, messages, telephone calls—the governor’s wife, the mayor’s wife. Over 500 thankful parents expressing undying gratitude to Macy’s. Never in my entire career have I seen such a tremendous and immediate response to a merchandising policy.” – Mr. Macy in *Miracle on 34th Street.*

**BY THOMAS NOVEMBRINO**

Sometimes the best marketing you can do is sending customers to someone else.

When it comes to marketing, the trick is showing how you’re different from the next guy. Sure, half the battle is letting your potential customers know you exist, but once they know about you, how do you convince them to do business with you rather than going down the street?

One way to do that is to truly understand your clients’ needs, advise them on services that might help their businesses and then broaden your offerings or point them to quality providers of those services. One service that pairs particularly well for factors and their clients is purchase order finance.

**What to Know**

The first step is to understand the need that purchase-order financing fills. Most people in the lending community have heard about purchase order financing, but they often don’t fully understand what it is. It actually can mean different things to different people. In its most basic manifestation, purchase order financing occurs when credit is provided so a client can purchase product to fulfill a customer’s purchase order.

The most typical scenario involves a company that designs and develops a product that is manufactured overseas by a third-party supplier. The purchase order finance company establishes a lending facility to be used to purchase the pre-sold inventory from overseas suppliers. Assuming that the purchase orders are from creditworthy customers, purchase-order financing allows the firm to grow by aggressively pursuing new orders.

Variations of purchase-order financing include financing for work in process (as opposed to finished product) or production finance. Today, there are significantly more purchase order finance firms in the marketplace than there were 10 years ago, but most still tend to avoid work in process transactions; this is therefore a good question to ask as you build your network.

**Who to Know**

I’m not suggesting that factors should expand their offerings to include purchase order finance. I am, however, suggesting that factors get to know companies that offer these services, and others, so they can use that information to provide valuable
advice to their clients.

In *Miracle on 34th Street*, Kris Kringle, as the Macy’s Santa Claus, directed parents to other stores that carried items on their children’s wish lists when Macy’s didn’t. Parents were grateful and impressed with Macy’s, and your clients will be too if you can help them grow their businesses.

Maybe a client doesn’t know what purchase order finance is and how it can help their business or maybe they’ve heard of it but don’t know where to start in finding the right lender to work with. Guidance or suggestions from a lender they already trust goes a long way toward eliminating the guesswork and stress associated with taking that next step.

The most valuable marketing tool for any lender is networking, but it’s especially true in this area. Purchase order finance companies rely on referrals to find prospective clients, and we find that our clients prefer referrals from their trusted sources as opposed to starting from scratch in finding a purchase order lender themselves.

As a result, if a factor has a list of known and trusted service providers—not just purchase order finance companies, but accountants, attorneys, consultants and brokers—who they know and can recommend, they can offer a value-added service to their clients. In this way, the factor becomes a trusted advisor; an advisor their clients respect and rely on; a firm to which clients will confidently refer others.

**How It Works**

Develop a list of service providers that you know and trust, and to whom you confidently will send your clients. Get to know the service provider; do a small deal with them, see how it goes and whether you’re willing to vouch for that service provider for more significant deals. This, of course, is not a new concept. In fact, it’s the way business has been done since the dawn of capitalism.

Another approach is more involved, but can significantly differentiate the factor from its competition. Develop a strong partnership with a purchase order finance company and offer purchase order finance product as a private or white-label service. In this model, the factor offers purchase order finance services directly to clients, but all of the back-end work (e.g., documentation, administration, monitoring) is handled by the purchase order finance company’s seasoned professional staff.

For instance, a client needs to finance the fulfillment of a purchase order or orders but does not have the availability of an adequate amount of working credit. As a result, purchase order finance seems to be in order. The factor recognizes the client’s needs and suggests purchase order finance services to the client—a service the factor can now offer.

The vetting of the deal and the entire process then takes place directly through the factor, and all materials are branded with the factor’s brand. From the client’s perspective, they are receiving augmented financing from the same lender in a seamless process.

Of course, the purchase order finance company benefits from the new business. But the factor benefits too by being able to offer additional services and adding value to the relationship with their clients, while not augmenting staff and its attendant costs.

This model could, I’m sure, be applied to other services and service providers. I can only speak from direct experience in purchase order finance where it has proven to work well.

Even without going so far as developing a partnership and offering services through private or white-label programs, the marketing value of a strong referral network is unassailable. When we focus on our clients’ needs or threats to their businesses and then respond to those needs or threats, we build our own credibility and esteem in their eyes.

We hear comments from clients all the time, and I’m sure you do too. They don’t focus their comments on the nuts and bolts of the transaction, but on the feelings they had from dealing with us.

When it comes to commercial lending, that is the true differentiator, isn’t it? When clients feel understood and supported, they’ll come back, and they will happily send others our way to have the same positive experience.

In the movie, Mr. Macy realized his Santa didn’t commit a cardinal sin of retail. Rather, Santa’s concern for customers’ needs was the best marketing tool Macy had seen in years. We can all take a lesson from that. •
Since this is the Sales and Marketing issue, it is a good time to remind everyone why the American Factoring Association (AFA) was created. The AFA was founded with the purpose of educating the public and policymakers as to the part factoring plays in our economy. The AFA, in conjunction with our consultants in Washington, Jones Walker, continues to focus on our long-term strategy of educating the public, Members of Congress and officials within agencies such as the Department of Treasury, the Office of the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation on the benefits of factoring. In essence, the AFA Board is tasked with “selling and marketing” the factoring industry. The AFA’s goal is to be a positive force in the education and advocacy of the factoring industry. In Washington, we specifically desire to help the Members of Congress and officials in the Executive Branch and regulatory agencies understand how critical factors are to small businesses in this country. It is important for decision makers in Washington to know how much money factoring puts into the economy, how many jobs we support, how many companies we support and the void factoring fills in the economy. With the mood of many in Washington still unfriendly towards financial institutions, it is imperative for the factoring industry to distinguish itself from other financial institutions. Recent statements by senior Federal Reserve officials show agencies in Washington are stepping up efforts to regulate what they describe as the “shadow banking system.” As the regulators define that term, it is important we not allow factoring to be defined as part of the “shadow banking system” or an industry requiring regulatory oversight. Thus, the AFA continuously conducts meetings with various officials in Washington with the goal of educating decision makers as to the value factoring companies provide to the business community and the economy at large. It is necessary for all of us to be involved to ensure our industry remains free from regulation and continue to be part of the vitality of the American economy. Please make a choice to join us today. •

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

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1/27-29 President’s & Senior Executive’s Meeting
Trump Ocean Club International Hotel & Tower, Panama City, Panama

3/8 Luncheon Meeting w/ NYIC
New York, NY

4/13-16 Annual Factoring Conference
Fairmont Scottsdale, Scottsdale, AZ

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COLLATERAL-BASED FINANCING
Continued from page 13
examples of what a typical hard asset borrower might look like.
Companies that have experienced financial difficulties and have
significant equity built up in their existing equipment pools are excel-
ent candidates for funding of this nature. Startups and companies with
no, or a bad, financial track record are also excellent candidates for
the true collateral borrowing arena.
Layering in a hard asset loan is a great alternative to another round of
dilutive equity offerings. A portion of a startup’s capital budget can be
financed in the pre-profit or even in the pre-revenue stages. Think of it
as an equity stretcher. When the situ-
ation calls for capital, large or small,
many borrowers can now call upon
the hard asset financier as another
source for that capital.
This form of equipment financing is a great tool for private equity and
acquisition financing, especially in turnaround asset purchases. Hard
asset financings have helped put a floor on the risk to the acquire
where the target is asset rich and
cash flow poor. By partnering with
a hard asset equipment lender, the
acquirer can minimize the equity
investment and limit exposure.
Traditional ABL and factoring
providers correctly avoid putting
themselves in the position of relying
on the proceeds of an equipment
auction to recover their invest-
ments. Experience, access to
capital, knowledge of the markets,
and very close relationships with the
auctioneers and appraisers are the
hallmarks of consistent success in
the hard asset financing business. It
is not easily reproduced. Hard asset
lenders make a vital contribution to
the commercial finance industry as a
partner and as co-professionals
to working capital lenders. This
emerging group of true collateral
financiers serves as an added tool
in a factor’s arsenal of creative
financing solutions.
Every so often an important UCC case comes along that the finance and commercial law world watches with bated breath. The *In Re Motors Liquidation* case, which was the General Motors Chapter 11 Bankruptcy, is one of these cases. The law itself is not earth-shattering. Rather, the real drama is watching what happens when a big clerical mistake in a loan termination transaction isn’t discovered until after the chapter 11 filing and seeing who is entitled to the $1.5 billion at stake. The players in this case are large and prestigious law firms and upper tier corporate bankers and business executives.

The facts are relatively straightforward. GM was a party to two financing transactions. One was a $350 million synthetic lease transaction (an off balance sheet deal). The other was a $1.5 billion term loan. Both facilities had UCC-1 financing statements securing all assets. JP Morgan was the lead lender on both deals, each of which were syndicated loans with different sets of investors. GM wanted to pay off the synthetic lease and, in that regard, GM and JP Morgan entered into a lease termination agreement. GM’s counsel prepared documents and sent the package over to JP Morgan’s counsel for review. The package included a UCC termination statement for the lease transaction and a UCC termination statement for the term loan. All parties and their counsel reviewed the loan-closing package and signed off on the deal. Nobody realized that the closing package included a UCC termination statement for the term loan, for which nobody intended to pay off. After reviewing the loan closing package, JP Morgan gave the OK for GM’s counsel to file both sets of UCC termination statements. The parties then went along their merry way, and nobody knew that JP Morgan’s $1.5 billion syndicated term loan was now unsecured.

GM was one of the causalities of the economic meltdown. Most of us recall the well publicized federal bailout and the resulting chapter 11 filing. It wasn’t until after the chapter 11 filing that the creditor’s committee in the GM case did a lien search and discovered that the term loan UCC-1 was terminated. For some unexplained reason, JP Morgan failed to check up on its loan documents during GM’s well-publicized slide into bankruptcy and went into the chapter 11 case, with all its first day motions, without a UCC-1 to perfect its lien.

The Creditor’s Committee promptly filed its lawsuit against JP Morgan based upon the strong-arm powers of the Bankruptcy Code. Section 544 of the Bankruptcy Code gives the chapter 11 debtor, or a trustee, the powers of a “perfect” lien creditor who files a judgment lien against all of the debtor’s real and personal property assets and also gives the trustee, the debtor in possession or those with authority to sue, the rights and powers of a lien creditor versus an unperfected creditor. The UCC also has a priority scheme which addresses the right of an unperfected creditor versus a perfected creditor or lien creditor, and in some instances, gives state law receivers and assignees for the benefit of creditors, the rights and status of a lien creditor under the UCC. A UCC lien creditor is a creditor who receives a lien by virtue of a judgment, execution or the like. An unperfected creditor loses in a priority dispute with a lien creditor. The point being that there are

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mechanisms in both the Bankruptcy Code and the UCC to address the security interest of a secured creditor who fails to properly perfect, or loses its perfection, as in the case of JP Morgan.

The relevant UCC issues are as follows: UCC §9-513(d) states that upon filing a termination statement it ceases to be effective. In other words, the termination statement releases the lien. UCC §9-510 requires that the termination statement is only effective if it was filed by a person who is entitled to do so under UCC §9-509, which provides that a person may only file a termination statement if the secured party of record authorizes the filing. In this case, GM had JP Morgan's permission to file the termination statement on the term loan. Nobody realized they were terminating the $1.5 billion term loan UCC-1 and everyone knew that the term loan was not being paid off. Clearly, GM had permission to file the wrong termination statement. The issue was whether the mistaken filing was authorized by JP Morgan under the UCC.

The Bankruptcy Court held in favor of JP Morgan, reasoning that while JP Morgan may have authorized GM's counsel to file its termination statement, it did not authorize the effect of terminating the blanket lien, which secures the term loan. The case was then appealed directly to the Second Circuit Court of Appeals, bypassing the usual intermediate level review of bankruptcy court decisions, which are normally first reviewed by the Bankruptcy Appellate Panel or the local U.S. District Court, depending if one of the parties opts out of the Bankruptcy Appellate Panel. The Second Circuit Court of Appeal saw an important state law UCC issue and asked the Delaware Supreme Court to first decide the following issue: For terminating a UCC-1 financing statement, must the party intend to just file the termination statement, or must the party intend to terminate its security interest? This referral by a Circuit Court of Appeal to a State Supreme Court is a rare occurrence.

The Delaware Supreme Court ruled in favor of the Creditor's Committee and held that the unambiguous language of UCC sections in question only requires that a person authorize the filing of the termination statement. The Delaware Supreme Court held that it would be strange and inefficient for the UCC to make the effectiveness of a termination statement turn on whether sophisticated parties subjectively understood the terms of their filing and the effect the filing would have on its security interest. So, if a secured party authorizes the filing of a termination statement, the termination statement is effective and it does not matter what the person knew or didn’t know.

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The takeaway from this case is that mistakes can and will happen at the highest level and by folks with giant pedigrees. While the GM case involves $1.5 billion, the lessons apply to the smaller and more mundane commercial law transactions. First, do not delegate the task of anything relating to a UCC-1 financing statement or any of the related amendments to a low-level person who does not understand the consequences of not getting the deal right. Second, when possible, always review the subordinate’s work which gives you checks in place to avoid clerical errors. Third, you should operate all deals with a checklist that covers the beginning and end of the transaction, and actually use the checklist and check off the items on the list. Fourth, when deals seem to be heading into the problem world, always check your documents, and make sure that the deal is in order and that you have everything that you’re supposed to have. Also, you should run a lien search so you can see your lien of record. In addition, it’s not a bad idea to use a well-regarded UCC service provider or UCC insurance provider for the basic filings and things of that nature. These service providers also inform you about filings and termination statements.

The GM case will be followed closely. If the bank wins, it will be because of some novel interpretation or use of agency law principles. If the Creditor’s Committee wins, the consequences for the law firm and JP Morgan will be severe. The parties to the syndication will likely sue JP Morgan, and JP Morgan and others may sue the law firm. A billion dollars plus malpractice case may crater the law firm. Also, if the bank loses, there will be a lot of litigation and possibly new law in the area of finger-pointing and apportioning fault. The moral of the story is to pay attention to the smallest of details in every deal.

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Finding the Perfect Factoring Deal

All kidding aside, every company that provides financing whether it’s in real estate, consumer products or asset based lending knows there isn’t a foolproof method to find the perfect deal. If you go back just a few short years ago to the Great Recession of 2008, we are easily reminded of how the perfect deals went south in a very short period of time. Today we are still feeling the effects of overvalued properties and poorly underwritten mortgages that allowed for a chain of mistakes that led to a global financial crisis. Conventional wisdom at the time was that homeowners, whether they were first time buyers or looking to refinance, would be qualified on credit and collateral. The credit determination was usually based on an applicant’s individual credit score and income while the collateral was based on the value of the property. As large investment banks began packaging mortgages in securities (and started making a healthy profit in the process) more buyers of these instruments sprung up and the mortgage boom was created. As the appetite for mortgages grew, newly formed originators and lenders followed suit. Unfortunately, when demand exceeds supply, corners get cut.

In the case of the mortgage boom, credit guidelines were loosened and values of homes were overinflated. Many homeowners saw this as an opportunity to tap their equity or even buy new properties and flip them at a higher price. The demand for real estate was so high leading up to 2008 that values would increase every few weeks. The envelope was pushed so far that the credit quality of borrowers got worse, homeowners were overextended and eventually defaults became inevitable. The downward spiral got even worse as property values declined and those large investment bankers that were so enamored with purchasing mortgages suddenly went away. The bubble had finally burst and the fallout was really ugly.

What does this example have to do with our original quest in trying to find the perfect deal? First and foremost, we all know that there really is no secret place to find the perfect deal. Granted, there are industries that are preferred by invoice factoring companies but that doesn’t make them bulletproof. During the height of the mortgage boom, it was widely believed they had found the perfect deals or at least had perfected a way to evaluate them. As long as the borrower had a credit score of “x” and the value of the property was “y”, lenders could fit you into a rate sheet and make the deal work. Conventional thinking in factoring is that the transportation, staffing, apparel and a few other selected industries are the most suitable to fund. Our take with this line of thinking is that you always take the good with the bad no matter which industry you are planning to fund. Experience has taught us to weigh every deal equally. No matter the client, account debtor or industry, we need to understand the deal before we can even

DON D’AMBROSIO is the president of Oxygen Funding, Inc., an invoice factoring company located in Lake Forest, California. Don has over 25 years experience working in the commercial and residential finance industries. He previously served as Controller of a commercial insurance agency and as Chief Financial Officer of a publicly traded mortgage company. He can be reached at 949-305-9300 or don.dambrosio@oxygenfunding.com.
entertain accepting an application. This includes checking off the boxes on due diligence procedures, constantly monitoring credit quality and engaging with the client whenever necessary. I realize this may sound foolish, but I cannot tell you how many times there are conflicts between what the applicants say and the paperwork gathered with the application. If you cannot understand the deal flow, run it by a colleague or professional in that field who may have more experience and continue to ask questions. Sure, the concept and mechanics of invoice factoring are very straightforward but each deal is unique. Pure vanilla factoring deals are rare. In other words, almost every deal has a “but” in it. How often do you come across the perfect client with stellar account debtors but they have a recent tax lien that has not been addressed? What about the well known account debtor that the prospect just landed but refuses to verify invoices? For those of you new to the factoring game, you will find that much of closing new deals depends on your ability to work around the obstacles while protecting your security interest in the transaction.

Our industry comes with a very high risk reward factor attached to it. What drew me into this line of work is that you really have an opportunity to work with businesses to help them grow. What makes our industry unique is that each funder has discretion in the amount of due diligence they apply when evaluating a new deal. It’s a classic case of how one company’s trash may be another one’s treasure. Your company’s mentality should focus on bringing in new clients to get a return on your capital, but more importantly, concentrate on the preservation of your capital. You may not always find the perfect deal but a bunch of good ones will do just fine. •

WHEN THE GOING GETS TOUGHC
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forget all those professionals that work with them. They may have not been the referral source, but you can talk about a real success story. Since they come in contact with other businesses on a regular basis that could also use a boost to their cash flow, this is a conversation you want to have.

In addition, there’s that filing cabinet full of transactions that you thought you were going to close but for one reason or another never did. The salespeople that routinely (annually) comb through these near misses have told me that they closed at least one transaction every single time through. In other words, they found success 100% of the time when doing this. That is why they choose to search through these files when things are quiet. It doesn’t interrupt any existing momentum and closing a deal invigorates them to get back out there and restore their pipeline.

And finally, the number one complaint from referral sources is that they hand out potential business, then never hear back from the factoring salesperson. It’s hard to believe, but true. If you follow the ABCs above, you’ll be in contact with your most important referral sources on a regular basis. What makes them the ‘most important’? Well, they either referred you a deal in the past or a deal in the present or a potential ‘near miss’ deal for the future. Remember, your relationship with them is built on a solid foundation, either a successful funding or a term sheet proving that you stepped in to help when asked. Again, talk is cheap. Leveraging off of what is working, and has worked, is money in the bank. So when the going gets tough, the tough get going...right back to their ABCs!
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