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Thank you to those who attended the 22nd Annual Factoring Conference in Scottsdale, Arizona, April 13th – 16th. With nearly 800 attendees, over 60 speakers and 57 exhibiting companies, the 2016 Factoring Conference exceeded all expectations as the number one event of the year for the commercial finance industry!

Along with two full days of educational content, attendees gathered at socials and networking events that provided access to some of the highest caliber of industry experts and peers in the industry. Thank you also to our sponsors who helped make this year’s conference such a success. We look forward to seeing everyone next year at the 23rd Annual Factoring Conference at the Omni Fort Worth in Fort Worth, Texas, April 5th – 8th. Save those dates now!

Even though we’re nearly halfway through 2016, the IFA still has more exciting events and developments this year. Our summer and fall training classes will provide you with not only some of our popular annual offerings, but some new and original courses and webinars as well. Turn to page 29 or visit our website for our current list of events.

We just announced a new training course titled “How to Successfully Compete Against the New World of Fintech” that will be held October 27th-28th in Las Vegas, NV. During this class you will learn how the Fintech industry operates and various ways in which you can compete directly with them. We will be discussing methods you can put into place in order to protect your existing clients from being poached as well as new methods to modernize your operation to compete more effectively. Don’t get left behind; you can’t afford to miss this groundbreaking new training course!

We perceive there will be an increased likelihood of regulation for US-based Factors. The IFA and the American Factoring Association (AFA) continue to monitor current legislation in order to protect our members from this reality. Meetings with members of Congress have occurred, and will continue, in order to build the support of the Factoring industry. If you are not involved with the AFA, please consider doing so in order to protect your future. More information can be found on page 27.

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

- Robyn Barrett – FSW Funding – Phoenix, AZ
- Harvey Friedman – Lenders Funding – Williamsburg, VA
- Cole Harmonson – Far West Capital – Austin, TX
- John La Lota – Sterling National Bank – Factoring & Trade Finance Division – New York, NY

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

- Glen Dalzell – Liquid 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

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 continuing to offer new and exciting benefits to our members and community.

We appreciate all of the support from our members, vendors and sponsors. It’s through your patronage and 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

Paragon Financial Releases Guide on How to Start a Staffing Agency
Paragon Financial Group published a guide: How to Start a Staffing Agency. Staffing is a historically high growth segment of the US economy. Paragon Financial wrote this guide in an effort to provide entrepreneurs with an excellent base of knowledge for starting a staffing company when facing the myriad of challenges in 2016. The guide is available online: https://www.paragonfinancial.net/how-it-works/articles-resources/industry-factoring-articles/how-to-start-staffing-agency.

United Capital Funding Corp. Client Satisfaction Exceeds 93%
United Capital Funding Corp. received the results of their client satisfaction survey and the overall level of client satisfaction exceeded 97%. United has conducted client satisfaction surveys since 2005, with the objective of measuring client satisfaction, while simultaneously gathering feedback that enables United to improve the client experience and client retention levels. Several of the key results of the client satisfaction survey included the fact that United Capital Funding received a 93% excellent rating for overall quality of services provided by the survey respondents. United received 95%+ excellent ratings in professionalism, 97% excellent ratings in willingness to help, and a 91% complete confidence level in the professional services provided to clients.

Amerisource’s Factoring Division Named 2016 Best Large Factoring Company by Factoring Club
Amerisource announced that its factoring division, Amerisource Funding, was named Best Large Factoring Company by FactoringClub.com, which published this annual award earlier this year. The finalists included finance companies from 25 states, with criteria based on customer feedback, as well as financing structures, terms and conditions. FactoringClub serves as a resource for small businesses seeking financial solutions from top tier finance companies across the United States.

Hitachi Expands Vendor Finance Business, Acquires Creekridge Capital
Hitachi Capital America signed a definitive agreement to purchase Creekridge Capital, a healthcare and IT-focused vendor finance company based in Edina, MN.

Creekridge and HCA have had a relationship since 2009. The transaction, which is expected to close in June, will add assets of over $300 million and will expand HCA’s vendor finance capabilities for its business partners, including the Hitachi group companies.

INDUSTRY TRANSACTIONS

Allied Affiliated Funding Announces Recently Closed Transactions
• $2,000,000 accounts receivable facility including a $250,000 brokerage line and a $200,000 revolving line of credit to a Texas-
based transportation company that hauls general freight for a variety of large customers

- $450,000 accounts receivable facility to a licensed manufacturer and distributor for one of the largest and most recognizable food companies in the United States

**North Mill Capital Provides $1.5 Million Facility to Parts Manufacturer**
North Mill Capital provided a $1.5 million accounts receivable financing facility and equipment term loan to a manufacturer of military vehicle parts.

**TAB Bank Provides Trucking Company in Illinois with a $750 Thousand Revolving Credit Facility**
TAB Bank provided a $750 thousand revolving credit facility for a trucking company located in Illinois. The new facility is extended through a multi-year agreement and will provide for the company’s ongoing working capital needs.

**Utica Leaseco, LLC Closes Two Transactions Totaling $3,000,000 During the Week of May 16th, 2016**
Utica funded $1,000,000 for new equipment for an oil field services company in western Pennsylvania. Utica also funded $2,000,000 of a $5,000,000 loan transaction. Utica provided financing based on the company’s collateral, not their credit.

**Crestmark Closes 19 Transactions Totaling More Than $16 Million in the First Half of May**
Crestmark secured a total of $16,265,000 in financial solutions for 19 new clients in the first half of May.

**CapitalPlus Equity Announces Recent Transactions**
CapitalPlus Equity provided a revolving factoring facility for $514,000 to a commercial interior finishes general contractor in New Jersey.
CapitalPlus Equity provided a revolving factoring facility for $59,000 to a general contractor in Texas.

**Amerisource Closes $250,000 New Line of Credit for Molded Parts Company**
Amerisource announced the closing and funding of a $250,000 new line of credit for an upstate New York manufacturer of plastic injection molded parts for original equipment manufacturers. Proceeds of the facility were used to refinance their existing bank line and to provide additional working capital to support the company’s growth.

**Hitachi Business Finance Maintains a Strong 2016 With Two New Clients**
Hitachi Business Finance provided two new clients with working capital assistance. One of the clients Hitachi Business Finance helped is a creative marketing firm based in the Midwest. The company was provided a $2 million line of credit supported by accounts receivable, inventory, and equipment, putting them in a position to take on additional clients, as well as ensure a stable cash flow. Hitachi Business Finance was also able to assist a
company in the energy industry with their financing needs.

**Capstone Business Funding, LLC Announces Recent Deals**
- $1,000,000 non-recourse factoring facility for a Michigan-based crane services company
- $3,875,000 recourse factoring facility for an IT consulting company
- $5 million non-recourse factoring facility for a Central Texas general construction company
- $6 million non-recourse factoring facility for a cell tower construction and maintenance company
- $360,000 non-recourse factoring facility for a painting contractor located in southern California

**Alleon Healthcare Capital Closes $1,500,000 Accounts Receivable Line of Credit Financing Facility with NJ Specialty Pharmacy**
Alleon Healthcare Capital (“Alleon”), a specialty finance company focused on providing medical receivables financing, medical receivables factoring, and cash flow solutions to medical providers in the US, recently closed a medical accounts receivable financing facility with a NJ-based specialty pharmacy, HomeCare Rx Inc. (“HomeCare Rx”). Alleon was approached to help HomeCare Rx facilitate its growth and secure a discount with its vendor for quicker payments. The transaction was structured with a borrowing base made up of medical accounts receivable that are billed to third party insurance carriers.

**Marquette Business Credit Provides $6 Million Credit Line to Nova Products**
Marquette Business Credit provided Nova Products, Inc. with a $6 million revolving line of credit for working capital. The company imports and distributes exotic prefinished and unfinished hardwood flooring, exterior decking, plywood, truck trailer decking, and kiln drying sticks from around the world.

**Federal National Commercial Credit Announces Recent Funding**
Federal National Commercial Credit announced the recent funding of a $4,000,000 asset based line of credit, with a $2,000,000 inventory sublimit, to a southern California-based wholesale distributor.

**Vertex Financial Provides Funding for 15 New Companies in the First Quarter of 2016**
Vertex Financial provided funding for 15 new companies in the first quarter of 2016. Their clients are from a variety of industries: telecommunications, staffing, trucking and various contractors. Their most recent client is an advertising agency.

**PERSONNEL**

**Bibby Financial Services Appoints Rasian as Senior Vice President of Underwriting**
A 35-year industry veteran, Rasian will support underwriting efforts as the company accelerates its growth strategy. Rasian will be based in the company’s Westlake Village, CA office. Rasian joins BFS from Wells Fargo Capital Finance where he served as Audit Manager.

**Carrie Jenkins Joins Crestmark’s Los Angeles Office as Vice President, Business Development Officer**
Crestmark welcomes Carrie Jenkins, vice president, business development officer, for the West Division. Jenkins joins Crestmark’s growing team in Los Angeles, and will be responsible for providing financial solutions to business clients in the busy California marketplace. She reports to Ray Morandell, senior vice president, national sales manager. Jenkins has more than 25 years of experience in the finance industry.

**Christopher Foss Joins Prestige Capital as Direct Sales Manager**
Prestige Capital Corporation hired Christopher Foss as Direct Sales Manager. Foss will be responsible for originating new business relationships with a sole focus on working directly with customers throughout the US.
Wells Fargo Capital Finance Names Baymiller to Direct Loan Originations

Wells Fargo Capital Finance announced Eric Baymiller will lead Direct Loan Originations for the Western US. Baymiller, a 27-year asset-based industry veteran based in San Francisco, has been with Wells Fargo since 2008.

Republic Business Credit Announces Promotion of Chesters to CEO

Republic Business Credit promoted Stewart Chesters to Chief Executive Officer, Managing Member. Robert Meyers, Chief Commercial Officer, was formally appointed to Managing Member and will support Chesters in his new role.

A management-led buyout of the majority of the shareholders was completed by Chesters, Meyers and a large single family office, securing an extension of both its senior secured facility and institutional investor structured capital line.

Meyers, Chesters and the single family office contributed significant capital to buyout all of the existing shareholders, including its prior CEO, Allen E. Frederic, who will continue to provide his valued experience to Republic Business Credit as Vice Chairman and will continue to be actively engaged in the American Factoring Association, International Factoring Association, and the Commercial Finance Association.

Chesters, previously Republic’s President & COO, has stepped into the role of CEO and Managing Member. Meyers, following the investment, became a Managing Member in addition to his responsibilities as Chief Commercial Officer.

Rhonda Clarke Accepts New Position as Operations Manager at Federal National Commercial Credit

Clarke has been a key contributor to the Federal National operations team for a number of years. Clarke’s knowledge, demeanor and leadership have been instrumental in leading Federal National through numerous periods of transition.

Wells Fargo CF Expands UK Team, Names Weedall as Director

Wells Fargo Capital Finance (UK) Limited appointed Tom Weedall to the role of director, Loan Originations. Based in their Manchester office, Weedall will be focusing on developing new business across each product group. Weedall is responsible for sourcing and structuring asset-based and technology financing for opportunities originated in the UK, and will be reporting to Chait.

Ignatius “Nat” Marotta Joins Express Trade Capital, Inc. as First Senior Vice President

Ignatius has over 35 years of progressive senior level factoring & banking experience. The combination of his superior reputation along with his new business and credit skills make him a welcome addition.
Public records searches miss 60% of outstanding tax liabilities. Tax Guard can show you what you’re missing.

See Tax Problems Before You Fund

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

Monitor Tax Issues While You Fund

Monthly monitoring includes proactive alerts to notify you of potential risks.

Solve Tax Problems So You Can Fund

Our tax experts offer transparent resolution strategies for you and your borrower to ensure no disruption to the funding relationship.
How Do We Get To The User?

When first starting out as a factoring sales manager in 2001, I was fortunate to not only inherit a group of veteran, productive salespeople, but also to enjoy the emergence of the internet as a powerful new source of leads. This combination resulted in no shortage of leads, but inevitably, salespeople were torn between pursuing Internet leads and continuing the traditional development of their own leads.

BY BLAINE WAUGH
At one point a few years later, I calculated that approximately 75% of our production was coming from sources other than our salespeople, for example, client referrals, internet inquiries, and brokers.

With this in mind, my question became: “How do we get directly to the end user – the client?” Other than the internet, how can we get in front of the actual users of our product? Remember the Yellow Pages? How about direct advertising in magazines and business journals? Direct mailers? Fax blast campaigns (gasp)?

The internet was really the last “silver bullet” that dramatically changed the landscape of factoring lead generation. Overnight, people who knew how to work the internet, but knew nothing about factoring, were generating dozens, if not hundreds, of leads a month and making a lot of money brokering those deals out to factoring companies. That landscape has changed a lot in the last 15 years, and it is much, much harder to do this, with Google being the big winner in terms of revenue!

But this simple question remains; how do we (factoring salespeople) find businesses (users) that are caught in that unique phase in their business cycle when they need capital and begin searching for a solution? Timing is, as they say, everything, and, in our case, it must be sublime.

Let’s start by putting ourselves in the shoes of the business owner – the user of our product.

You own a staffing company, and it’s Sunday evening when you suddenly realize that between the worker’s compensation insurance and 941 tax payments coming up this week, you’re not going to have enough cash to make the Friday payroll. You do not wait until 9:00 a.m. the next morning to talk to your banker; instead you obsess about

this problem and search madly on the Internet. What search term do you use? What do you search for? Is anyone even going to be working on Sunday afternoon to respond? Help!

In the meantime, you’re frantically trying to think of everyone you know that either has money or might know someone with money who would be willing to help. Depending on the size of the need and the overall situation, this might be easy or impossible to find.

Chances are, by this time, you’ve exhausted all friends and family-type investors, and it’s down to sinking or swimming on your own.

Monday morning, you call your banker – “Help, I need money to make payroll; can you give me a loan?” We all know the answer to that, mainly because banks need...
to gather a rather extensive loan application package. The banks then run it through an exhaustive underwriting process, which under no circumstances is going to result in loan proceeds being available in two days from the date of application. Hopefully, your banker has been working in the community for some time, doing networking events and may know of someone who can help you, like a CPA who does investment on the side. The bank may have a factoring program that your banker refers you to, and maybe that solves the problem.

Now, stop and think of this from a factoring lead generation standpoint: How does this business owner find you? If your company is successful at internet marketing and paying lots of pay per click (PPC) money to Google, then those Sunday night searches may have resulted in an online inquiry that shows up in your email, but it is likely that your company is not the only factor this user has found. You’ll be competing against at least two or three other factors, with the main criteria being: “Can you get the deal done by Thursday?” This is a speed and closing skill problem. As a salesperson, you’ve not participated in the generation of this lead; instead your marketing team gets credit for a “web generated lead.”

As a factoring salesperson, how do you plug into a network of contacts that will connect with a business owner like this? I believe the road to building a successful referral source network and getting in front of the user starts by thinking like the user.

The road to building a successful referral source network and getting in front of the user starts by thinking like the user.
persistence, creativity, focus, planning, and oceans of hard work. Often, to be considered, your business card, coffee mug or some other giveaway has to be on that banker’s desk when the staffing company owner shows up on Monday morning. In other instances, you have seen that banker many times at networking events, lunch or via email blasts and he or she remembers you and what you do. (For the record, I’m picking on bankers only because for many business owners they are the default place to start when searching for a loan).

The first stop of many factoring salespeople is factoring industry-centric networking events. These are useful and provide a good forum for exchanging industry challenges, avoiding potentially fraudulent deals and generally staying abreast of developments in the business, but let’s face it – rarely is someone going to share state secrets, their best referral sources or other information that would give their competitors a true advantage in the marketplace. Obtaining referrals from your competitors is the other major agenda item at events like this. But here’s the thing; everyone in that room is there for the same reason – they would like a referral of a turn down. The visual that pops into my head is one of standing on a pier with 100 other fishermen (and women), all packed in next to each other, trying to hook the three or four fish that might be under the pier.

Find other networking events that small business service providers are going to attend. This could include a local Small Business Development Center event where you would run into a couple of bankers, CPAs, insurance agents, and business coaches. You could also look into a local lead exchange networking group with a good cross section of service providers to small businesses. The point is to find events in which you may be the only factor in the room, while still having the target demographic of referral sources. It takes time and patience, but if you work the system you will find yourself going to events that produce results. There is a good website called Eventbrite that can serve as a starting point for finding events in any city.

The hybrid version of this, networking the internet, is also a skill set that today’s salespeople need to master. Imagine you start using LinkedIn to find people who own staffing companies or service providers to the staffing industry. It takes time, and you must also have a plan to reach out to these people via a LinkedIn message. You might need to be a little bit of a private detective, finding their information through Google or Bing. Once you’ve done your investigation and found a nugget of information that is useful, it’s time to reach out and contact that person. This is a version of using the internet to get to the user, but it’s obviously different than spending $50,000 a month on PPC advertising. It involves good old fashioned hard work that’s focused on a goal: building your referral source network and getting to the users.

This brings me to an important point: make sure you, personally, and your company have an online presence that prospects and referral sources can find. Whether it’s a LinkedIn profile, another professional networking site, a website, blog or other business-centric site, you, personally and professionally, need a presence out there for people to find. The owner of that staffing company might just call and take it on faith that his banker knows good people, but a lot of business owners will first Google your name and see what comes up. If I see a half-baked LinkedIn profile with 15 connections and no picture…eh…I’m moving on to someone else. It’s almost better not to be found at all than for them to find this!

Getting to the user today is more challenging than ever. Competition, in the form of new fintech companies, has flooded the factoring marketplace with independent sales organizations that cold call businesses all day long. Combine this with the millions of dollars these fintech lenders have deployed in PPC advertising directly into the factoring space and it makes for a challenging landscape for any factoring company. For a factoring salesperson, the irony of this leads back to having a traditional, strong, deep referral source network of people. Business owners today are being solicited endlessly for their business—whether it’s financial services or something else – so put yourself in their shoes and see where it leads you. It might just be that we’ve come full circle and are back to having to deal with—gasp—actual people.

Blaine Waugh is the Senior Vice President, Business Development at Triumph Business Capital. He brings over 20 years of factoring experience to the Triumph Business Capital sales team. Blaine started his career with Riviera Finance, serving in various roles. In addition to leading Triumph’s sales team, he’s assumed a pivotal role in numerous strategic partnerships. Blaine graduated from Southern Methodist University, earning B.A. degrees in History and Political Science. Blaine can be reached by phone at (214) 494-8641 or by email at BWaugh@triumphbcap.com.
What is Your Personal Brand?

Have you ever had the experience of listening to someone speak, and thought to yourself: “Wow, she really knows her stuff!” or “There’s something special about him!”? You realize they have leadership qualities and can articulate ideas clearly and succinctly. They deliver on what they promise. The perception they give is that they are diligent and meticulous. If so, what you might be observing is someone’s “personal brand.”

BY MAX TOLEDO
The term “branding” has long been synonymous with companies. But in today’s competitive marketplace, it’s imperative that you develop your own personal brand so that you can stand apart from everyone else.

We are all brands. The challenge is in discovering yours and building upon it.

So what exactly is a personal brand? Personal branding is essentially how you appear to others in the world — what you are known for and for what people seek you out. Personal branding focuses on “self-packaging,” where “success is not determined by individuals’ internal sets of skills, motivations and interests but, rather, by how effectively they are branded.

Put in simpler terms, your brand is your reputation. Think of it as your calling card. It’s how people experience you and expect you to be each time they meet with you.

Tom Peters first wrote about personal branding in his article, “A Brand Called You”, which was published in Fast Company Magazine’s August/September 1997 issue. He got it right when he started his article by saying, “It’s a new brand world. … Regardless of age, regardless of position, regardless of the business we happen to be in, all of us need to understand the importance of branding. We are CEOs of our own companies: Me Inc. To be in business today, our most important job is to be head marketer for the brand called You. It’s that simple — and that hard. And that inescapable.”

Why should you develop your personal brand? A personal brand can help you advance in your career and help you develop into a leader. Think about product branding. Strong brands are said to be based in authenticity and become a part of the consumer’s identity and lifestyle, while giving the product substance and meaning. Personal branding does the same thing — it promotes your strengths to a target audience that wants to connect to you and your work. And just like consumer branding, personal branding requires you to find a strong name and/or memorable logo, a unique voice and a standard that your audience can grow to recognize. In time, your personal brand can become intrinsic to your audience’s identity.

Developing a strong personal brand also adds value to the company you work for. Think about it. As you work, you learn and hone your skills; you may even take on new challenges that allow you to develop new skill sets, and in time you...
Studies continue to show that in today’s social media-focused world, people trust others—complete strangers—more than they trust branded advertisements and marketing messaging.

How do you build your authority and your following?

In his article, Smale offers these tips to help develop your personal brand:

Understand and be your authentic self. Your brand should be a reflection of who you are. Do you know what you believe? What you stand for? What your strengths and weaknesses are? Never forget—people connect with other people. If you don’t appear to be a real person, or if it just looks like you’re faking it, how likely do you think others are to trust you? Even if they do buy into your fake persona for a while, the slightest bit of inconsistency could prove problematic. Building a personal brand is, first and foremost, developing an understanding of your true self, and then sharing that with the world. Take your masks off and don’t be afraid of being vulnerable.

Sign up for speaking engagements. Speaking engagements are opportunities to be seen and heard. Start small, and keep building. You may not land high-quality speaking engagements off the bat, but if you keep swinging, you’ll build your following and get invited to speak at bigger, more notable events and conferences. Buckle down and offer the greatest amount of value you possibly can everywhere you go.

Write articles and participate in interviews. Thought leadership articles and interviews establish your credibility. As with speaking engagements, landing the best opportunities takes time and effort, but if you remain open to what comes your way, pretty soon you’ll be showing up everywhere.

Build your online presence. Do you know how you’re coming across online? This is something you’re going to want to monitor on an ongoing basis, and improve upon whenever and wherever possible.

Do you have social media profiles? Do they present you in the best light possible and make you look professional? Are you using high-quality professional photography? Are you interacting with others and sharing their content?

Do you have a website for your personal brand? One of the best ways to rank in search for your name is to build a website. This gives you considerably more control over your online presence than social media.

Remain a student of your industry. No matter how well you know your industry or area of expertise, it would be wise to remember that things are changing at a faster rate than ever before, and you have to stay up-to-date with the latest changes and trends. It also pays to learn new things, develop new skills and to expand your knowledge. If you’re not growing, then you’re stagnating, and that’s the last thing you want to do as an entrepreneur.

As Peters wrote, “Everyone has a chance to stand out. Everyone has a chance to learn, improve and build up their skills. Everyone has a chance to be a brand worthy of remark.” •

Max M. Toledo

is the Executive Vice President and National Sales Director for Bridgeport Capital.

Max has over 25 years of knowledge and experience in the financial services industry. Bridgeport Capital is a premier factoring company that offers flexible, low-cost solutions to a wide variety of companies across the United States. Max is active in a variety of industry organizations. He has been a speaker at the IFA’s annual conference, is a past Florida Chapter President for the TMA, a board of director for TMA, CFA, F.L.B.F.P and a member of the IFA. Max can be reached at (954) 345-5797 or max@bridgeportcapital.com.
Cross-Marketing Equipment Financing Solutions

Matt, a successful business development officer for a factoring firm, got a call from a turnaround consultant working with a company that was having difficulty with their local bank. The machining company had gotten sideways on a bad contract and lost a significant amount of money the last couple of years. The bank wanted out by quarter-end. Another nice prospect in what was shaping up to be a good year. This deal was going to be won by the provider that came up with the swiftest solution.

BY JIM JUNKER

Matt quickly asked for the financials and typical information on the A/R and set about writing a brief underwriting memo. When he got to the sources and uses, he exclaimed: “Where are the easy deals?” The bank was owed $3.5 million and the A/R would only cover $2.5 million. There was a little inventory, but by far, the biggest asset of the company was the equipment and the bank had lent on it heavily. The bank knew there was a lot of collateral there and would not take a discount. Even an ABL lender wouldn’t be excited about lending primarily on equipment. Their appetite is usually limited to 25% of the deal size.
Matt’s initial thought was to propose on the factoring and let the consultant figure out the rest. But Matt knew that you need to make the deal, not wait for it to happen. To beat the competition, he knew he had to do something different. He needed to provide a timely and comprehensive solution to take out the bank. He needed to cross-market an equipment loan to win this deal.

A fast growing part of the commercial finance industry is hard-asset equipment lending. Think of it as factoring for equipment. Unlike ABL, bank term lending, and typical equipment financing, this lender is primarily concerned with the collateral coverage rather than any measure of financial performance. It is the perfect complement to factoring.

As a relatively new and specialized segment of the commercial finance market, the key challenge to the handful of providers is to be certain that every salesperson in factoring, every commercial loan broker and every turnaround consultant knows that this type of financing is available and how to bring this product to the companies that need it. It is likely that every successful salesperson in the factoring industry will run across at least one deal a year where working with the right equipment lender would make the difference between a successful deal and just one more dead deal coming off the pipeline report.

Your success on the deal depends on a partner that will help you successfully win and execute. You need to find a partner that is comfortable with the distressed borrowers with whom you routinely work. There are some excellent equipment lenders in the B and C credit space that provide financing with rates under 10% and advance rates based on Orderly Liquidation Value (OLV). If a borrower has a positive fixed charge and a decent credit profile, they may be the best fit.

However, for the typical high risk borrower that a factor is targeting, the hard-asset equipment financier is your best bet. You can send them all the forecasts, turnaround plans, and financials you want and they will politely put them in a drawer unread. Hard Asset Equipment Lenders rely solely on the auction value of the equipment and have virtually no credit criterion. This greatly simplifies and streamlines the proposal and closing process. The provider will simply do an appraisal based on Forced Liquidation Value (FLV or Auction Value) and provide financing for up to 60 months at rates that are usually less than the typical all-in factoring costs.

The three most important factors...
in choosing an equipment financing partner are: relationship, relationship, relationship. Choose a partner you can count on. Look at the history and reputation of the provider. How long have they been in business? There are occasional entrants to the business that don’t have the experience (or sometimes the actual funds) to execute on a deal. Do they have a reputation as being easy to work with? Do they get deals done quickly and efficiently? Are they responsive or do they dither over making a decision? Are they honest and straight shooters? What is their reputation as a partner? Do they treat their factoring counterparts as partners or adversaries to be taken advantage of? And very importantly, do they root for or against you and your customers? Not every provider is a good partner and may just be another shark in the tank, looking for a quick meal.

What should you avoid in choosing your partner in equipment financing? Beware the broker who pretends to be a direct funder of deals. Brokers are great allies when they are clear about their role. However, a small minority pass
themselves off as direct lenders and put out term sheets that they cannot execute on with the hopes of finding a lender after the fact. And beware the deal factory that is more interested in collecting fees, regardless of their success, than in actually closing transactions.

Your equipment partner needs to make you look good to help win the deal and then execute seamlessly with you in closing the funding. They need to respond quickly with proposals and tweak their deal to assist in getting the deal done. They need to be polite and pleasant to deal with for both you and your prospects. Ours is a tough business, but courtesy and respect should be a given, no matter the situation. If you choose your partner well, they can help you win, rather than making your job harder.

Although you may not be an expert in equipment, it is relatively easy to recognize what assets may lend themselves to a hard-asset financing. In general, if you can imagine a lively auction for the equipment, it will likely be a candidate. Transportation, manufacturing, food processing, and construction equipment are the broad categories. What usually doesn’t work is very specialized equipment, computer and tech equipment. Fixtures, leasehold improvements, and machinery that needs to stay in-place and can’t be moved, are often problematic. The good news is that a quick call to your partner is all you need to know if there is a potential deal.

The typical terms are pretty straightforward. A term of 48-60 months in the form of a Sale/Leaseback, Capital Lease or loan are usually offered. A Sale/Leaseback is an operating lease where ownership is transferred to the financer and there is often a buyback of the equipment at the end. A Capital Lease is basically a loan with fixed payments where title stays with the borrower and a UCC is filed. The advantage to this structure is that the fixed payments are lower at the beginning of the deal than a typical commercial loan. The loan and Capital Lease allow for a second lien on the equipment for the working capital lender so that, as the equipment loan is paid off, there is equity available as boot collateral. Advance rates are typically 70-80% of the net FLV.

A key to winning is to integrate the equipment financing proposal into the marketing of the factoring so that you are selling a solution, not just a piece that is insufficient by itself.

Matt knew that having the right partner in providing a funding solution is the way to win in a highly competitive financing market. By getting his equipment partner involved early and providing a solution that included both working capital and equipment financing, he got the jump on the competition and put himself in the position to win.

**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.
Cost-Effective Marketing and Sales Strategies for Factoring Companies

The receivable finance industry has experienced remarkable growth and change in the last decade. Although the banks have loosened up in the past year, allowing more business owners to borrow money, most factoring companies feel that banks will have very little impact in regard to competing for new customers seeking factoring services.

BY RAUL ESQUEDA

There is far more concern with a new trend of competitors offering alternative financial services by pitching “cash advances” against future sales. Specifically catering now to businesses with a consistent healthy bank deposit record, this form of financing has left many borrowers in confusion and faced with an ongoing shortfall of their cash flow solutions.

Not only has this new wave of alternative finance, referred to as the Cash Advance Industry, confused borrowers, but this service has also baffled factoring companies in a way that has never been seen before. In the past, the only competitors that existed were within the invoice factoring and asset based lending community. Now, leaders in these sectors must contend with a competing force that might weaken their position in the financial services industry, or worse, this influx of a “new” cash flow solution could diminish marketing efforts to attract new business.

It is not uncommon to hear of a client receiving a cash advance in the $500,000 range with yields at 35% to 70%. With these types of returns, many investors and hedge funds are racing to the cash advance market. This new competition has increased the cost of advertising, marketing, and sales staff to existing invoice factoring and ABL companies.

SO, WHAT CAN BE DONE TO SURVIVE THIS NEW COMPETITIVE ATMOSPHERE?

Today, factoring companies not only have the challenge of acquiring new clients on an ongoing basis, but also retaining those clients in order to recoup the funds used to acquire their business.

If the demand for factoring companies continues to decline due to the immense amount of cash advance companies competing for the same prospects and clients, one might question the importance of marketing. The good news for the factoring industry is there are still many businesses looking
for short-term financial solutions that don’t qualify for a cash advance. Therefore, a marketing strategy remains a vital aspect of running a successful factoring company and allows it to pace ahead of existing and upcoming competition.

Marketing efforts are most successful when a target market segment is defined. The factoring company may have the greatest services on the planet, but those services are only relevant for a specific sector. It is within that group of potential clients that the lender also has the best competitive advantage for successful sales. Marketing everything under the illusion that clients have no other option to consider is a terrible oversight. Get to the basics of reaching potential clients. Factors must research the competition because every business has at least one other company that offers the same. Find out what the competition offers and how their pricing is structured. Look at their strengths and weaknesses, and identify the competitive advantage, also known as value proposition. Once key advantages over what the competition offers are identified, it is necessary to consistently message these advantages in every marketing vehicle that is created. Lastly, an audit of existing marketing materials will ensure there are no inconsistent messages. It is imperative to master this concept before another dime is spent on marketing activities.

Additionally, management should not allow the marketing team to spend too much time, effort and money on a new program or product offering without allowing the sales team to vet the efforts. The worst thing is to have the sales team reject the materials and campaign when the most compelling selling points are missing. What happens is they will simply produce their own presentation or brochure that sends mixed messages to prospective clients.

The good news for the factoring industry is there are still many businesses looking for short-term financial solutions that don’t qualify for a cash advance. Therefore, a marketing strategy remains a vital aspect of running a successful factoring company.

Every marketing campaign will fail when there is no clear integration between marketing and sales. This causes the factor or ABL company to lose money in wasted expenses and lost opportunities for generating new revenue. So what kind of strategies can these companies implement?

Simple Suggested Plan of Action:
1. Find out what kind of prospects have the highest conversion ratio and stop calling on the industries that take too much effort to convert. Prospects or industries that have the highest conversion ratio will reduce customer acquisition cost immediately.
2. Analyze the best clients and develop a new marketing strategy that targets that specific type of prospect.
3. Involve salespeople in the marketing strategy process, otherwise this plan will not work. Salespeople know more about the prospects than the marketing department.
4. Identify current strengths and advantages that are working. Find out the best attributes the factoring company offers. Everybody in the organization should be reciting the same sales pitch.
5. There needs to be a focused repositioning strategy to make sure the financial products remain relevant and viable options for prospects.
6. Concentrate on prospects or industries that have a long retention cycle; this will replenish the expense for the initial customer acquisition cost many times.
7. Every effort made towards marketing should focus on the client’s needs and wants. Sell “solutions”.

WHAT IS THE DIFFERENCE BETWEEN MARKETING AND SALES?

For some companies, marketing and sales is handled by the same people in the organization. However, there should be distinct differences between marketing and sales, regardless of who handles them. Marketing is connecting with and persuading prospects to have an interest in what the factoring company offers. Sales is what is done to close the deal with the prospect. Both are needed to have a successful business. However, an imbalance between the two will become a detour to business growth.

Marketing revolves around creative strategy techniques, research and development, executing ideas and analyzing the results. For sales, it is about building relationships, qualifying opportunities for more potential clients and developing the right solution to change their status to a happy, existing client.

Markets and industries change constantly, and require marketing to stay ahead of those changes to help the sales team focus on the most profitable prospects. Marketing must also provide sales with proper
ammunition to break through and beat out the competition. If, however, the focus of the marketing team is to only deliver enough ammunition for today’s potential clients, everyone misses the industry’s shift towards a different direction. The company runs the risk of remaining stagnant.

CUSTOMER ACQUISITION COST IS RISING!

Whenever there is a situation where a vast number of competitors enter a market, the outcome for everyone competing is a huge increase in costs from all angles. Some may encounter lower margins and increased salaries due to the new demand in trained staff. If the factoring company decides to keep up with the competition and increase its marketing efforts, it will need to track Customer Acquisition Cost (CAC). It is suggested to know what the CAC is now and compare it later after new marketing efforts are launched.

Factoring companies are experiencing very expensive marketing and sales cost in order to keep a healthy pipeline of prospects at its front door, which has created a large tab on CAC. So how does the company remain in growth mode, but keep the marketing and sales cost at a reasonable level? The only way to reduce CAC is to increase the number of clients that convert to business with the same level of marketing and sales cost it has now. Hopefully, these efforts will help to retain clients for a long time. If marketing and sales expenses increase, there should be a proportional number of prospects that grow along with client contracts closed.

How is CAC calculated? There are several ways to do this, but the simplest process is to separate expenses into two buckets. If an expense is related to lead generation and prospects, then it goes into the CAC bucket. If, however, the expense is for servicing clients, it goes into the internal operating expense bucket.

Typical CAC expenses include outside salespeople, inside salespeople, gas and meal expenses related to taking prospects out (not clients), marketing supplies, advertising expenses, yellow pages, internet directories, and anything related to generating leads.

It is a good idea to break down the cost of all stages a prospect flows through before becoming a client. Sometimes prospects never become a client and should be measured for later purposes in re-aligning marketing efforts. This will help in learning where not to market factoring services. In addition, continually adjust and remember to utilize the marketing budget on prospects that have the highest possibility of converting to business.

In order to start this process, I suggest adding up all CAC expenses for the last 12 months, last six months, and last three months. Next, do the same for the number of clients closed for each month and add up the number for each related month calculation. Some clients take a while to close while others close very fast. This method will smooth out the trend and give companies something to compare for the previous 12 months and the last three months.

**EXAMPLE 12 MONTH TREND:**

- Last 12 months CAC Expenses $100,000
- Last 12 months Clients Closed 36
- Customer Acquisition Cost $100,000 / 36 = $2,777
- CAC Cost $2,777

The same numbers can be used for prospects instead of clients, called Prospect Acquisition Cost (PAC)

**EXAMPLE 3 MONTH TREND PROSPECT:**

- Last 3 months CAC Expenses $40,000
- Last 3 months Prospects Called 80
- Prospect Acquisition Cost $40,000 / 80 = $500
- Prospect Cost $500

It is very important to measure the type of prospects and conversions that are happening with the marketing campaign. Continue to adjust as needed to ensure marketing dollars are being used wisely.

**EXAMPLE 3 MONTH TREND:**

- Last 3 months CAC Expenses $40,000
- Last 3 months Clients Closed 12
- Customer Acquisition Cost $40,000 / 12 = $3,333
- CAC Cost $3,333

Raul Esqueda is the founder of 1st Commercial Credit, LLC out of Austin, TX. He is also a managing partner of Capital Credit, Inc. and Commerce Commercial Credit, Inc. Through 1st Commercial Credit, Raul has funded over 3,200 accounts since 2001 and just recently surpassed $3 billion in accounts receivable funding. He can be reached by phone at (512) 215-4759 or by email at raul@1stcommercialcredit.com.

You may also want to read a related article “Where does your factoring company fit in the market place?“ in a previous issue from Commercial Factor in May/June 2014.
6/13-14  The Law & Business of Factoring Training Course  
Planet Hollywood, Las Vegas, NV

6/16-17  AE/LO Training Course  
Planet Hollywood, Las Vegas, NV

7/13  U.S. Bureau of Economic Analysis Reporting Obligations for Factoring Companies  
Webinar, 1pm - 2pm PDT

7/18-19  Credit & Collections Training Course  
Paris Hotel, Las Vegas, NV

7/19-21  Financial Statement Analysis Training Course  
Webinar, 10am - 12pm PDT

8/10  Back Office Operations  
Webinar, 1pm - 2pm PDT

9/15-16  Transportation Factoring Meeting  
JW Marriott, Indianapolis, IN

9/21  What You Must Know About Your Prospect’s Buying System  
Webinar, 1pm - 2pm PDT

10/17-18  Successful Transportation Factoring Training Course  
Planet Hollywood, Las Vegas, NV

10/20-21  Small Factors Meeting  
Planet Hollywood, Las Vegas, NV

10/27-28  Successfully Compete Against Fintech - Training Course  
Planet Hollywood, Las Vegas, NV

1/25-27  President’s & Senior Executive’s Meeting  
Casa de Campo, La Romana, Dominican Republic

4/5-8  Annual Factoring Conference  
Omni Fort Worth, Fort Worth, TX
The American Factoring Association ("AFA") was founded in the midst of the financial crisis of 2008. The purpose was to avoid factoring becoming collateral damage of legislation. With the help of our lobbyists at Jones Walker, we have been successful thus far. There have been a few of our members who felt the chilling effects of Operation Choke Point, a Department of Justice initiative focused on "undesirable" businesses; however, most of the potential damage to our industry has been avoided because the AFA spent the time and money to build relationships with and educate Washington decision makers, whether they are in the Treasury Department, the Department of Justice, federal banking regulators or Members of Congress. As our Jones Walker lobbyist, Palmer Hamilton, puts it: "Spending time and effort on the Hill is like buying insurance: you don’t need it until you need it, and it is too late if you haven’t done it. There aren’t any insurance carriers who allow you to place coverage after you sustain a loss."

We now face an even bigger challenge to our industry. Everyone in the factoring industry knows what a MCA or ACH company is. But what you may not know is that many of them are calling themselves FACTORS. Their legal documents state that they are charging a "factor" rate and that they are taking a lien on "future receivables." Many of these MCA/ACH companies are not truthful about the interest rates they are charging, nor do they consider if the client can afford to pay back the loans. They often stack one note on top of another and/or offer to extend the term of repayment for an even higher rate when the client cannot make the agreed upon payment. And most of them have the contractual right to draft the client’s account for up to the total amount due if the client does not have enough money in his account on any given day for the scheduled payment. Some even have the client companies sign

Continued on page 35

2016 Members

**Diamond Member ($10,000+)**
- Apex Capital Corp
- Bibby Financial Services, Inc.
- Crestmark Bank
- D & S Factors
  - (Diana Luoma, President)
- Gulf Coast Business Credit
- International Factoring Association
- J D Factors
- LSQ Funding Group
- MP Star Financial, Inc.
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**As of May 31, 2016**
The following trade associations offer member pricing for events attended by IFA members:

- **Beijing Commercial Factoring Association (BCFA)**
- **Colombian Association of Factoring (CAF)**
- **Commercial Factoring Expertise Committee of China (CFEC)**
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12five Consulting provides technology and social media consulting to the commercial finance industry. Born out of its sister company, 12five Capital, 12five Consulting understands the technological needs of the commercial finance industry, as it was their application of these tools that lead to their expertise. 12five specializes in software optimization, cloud computing implementation and social media representation.

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Phone: 866-364-9696 • www.agilityrecovery.com
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Phone: 866-432-2409 • www.factorfox.com

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As a diverse, global division of Jack Henry & Associates, Inc.® (JHA), ProfitStars combines JHA’s solid technology background with the latest breakthroughs. Our Commercial Lending Solutions help FIs and alternative finance companies expand commercial credit, increase their spread through higher returns, and outpace the competition through four successful, time-tested solutions: Commercial Lending Center, CADENCE, BusinessManager®, and LendingNetwork®.

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

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IFA members will receive a 10% discount off of the retail rates of their signature state and county account monitoring product.
Ideally, the junior and senior lien creditors will work with each other and set out their rights in an intercreditor agreement. These types of agreements, when done right, add order to the situation and prevent problems. Unfortunately, with the proliferation of merchant cash lenders, and the competition being fueled among the players in that industry, there is now a free-for-all situation wherein the factoring and asset based lending communities are being bombarded with merchant cash advance lenders who, often with several of these groups stacking on top of each other, are financing the factor clients/ABL borrowers, when such financings and the liens which go along with them, are contractually prohibited.

Article Nine of the UCC covers virtually every type of situation imaginable, and is ever evolving to keep up with law and technology. Article Nine is, in many instances, the type of code system that will reward the sharper and smarter person. For example, two creditors may be competing for the same piece of collateral, and one may know that the other person signed up the deal first. However, Article Nine rewards the diligent and aggressive, and grants priority to the first to perfect, no matter what that person knew, (UCC Section 9-322(a)). Article Nine addresses when you have multiple secured parties filed against the same debtor, and does not prohibit multiple financings. However, Article Nine does not give carte blanche right for a junior lienholder to violate the rights of the senior creditor by collecting or disposing of the senior creditor’s collateral.

With respect to a priority dispute between the senior and junior lienholders, the first place to start is whether or not the senior lienholder has consented to the junior lien. Section 9-315(a)(1) provides, to the effect, that a security interest continues in collateral notwithstanding the disposition unless the secured party authorized the disposition free of the security interest. Also important in this section is that the secured party’s security interest attaches to any identifiable proceeds of the collateral, (Section 9-315(a)(2)). Thus, a secured party who wants to protect itself against unwanted junior lienholders needs to start with their initial documents. The initial agreement with the factor client/borrower should make it clear, in a number of places, that junior liens and additional borrowings are not allowed unless you specifically consent in writing. Additionally, it is imperative that some kind of warning be put on
your financing statement. Here is an example of what should work, and please feel free to use this:

“All Assets now owned and hereafter acquired. Pursuant to an agreement, the debtor herein is not allowed to grant junior liens against any of the Collateral, sell assets outside the ordinary course of business (including accounts and proceeds thereof), or enter into additional financing arrangements. The secured party reserves all of its rights against any person who participates in the violation of the secured party’s rights.”

UCC Section 9-607 addresses the issue of secured parties collecting on accounts. Comment 5 to this section specifically authorizes a junior creditor to collect directly against accounts and provides that the junior secured party may have priority in the collected proceeds if it qualifies for priority as a purchaser of an instrument under Section 9-330(d)(the account debtor’s check), as a holder in due course under Sections 3-305 and 9-331(a), or as a transferee of money under Section 9-332(a). A junior lien creditor collecting the account debtor’s check that wants to qualify as a holder in due course must show that it took the instrument for value, in good faith, and without notice that it is violating the rights of the senior secured creditor, (Section 3-302(a)). The UCC defines good faith in Section 1-201(a)(20) as honesty in fact and observance of reasonable commercial standards of fair dealing. One of the longest comments in the UCC is Comment 5 to Section 9-331 (priority of purchasers of instruments), entitled Collections By Junior Secured Party. The comment says that the junior secured party may collect the proceeds of the receivables (checks), but only if it is a holder in due course. The comment then contains a lengthy discussion of good faith, a junior secured party’s duty to conduct proper lien searches and standards within the financial industry regarding consenting to junior liens. While the liability analysis of whether or not a junior secured party who collects the proceeds of the senior creditor’s receivable collateral is fact intensive, a junior lienholder runs a big risk when it collects the senior lienholder’s collateral and will likely be responsible for damages.

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What happens when the junior creditor does not collect checks, but is paid by regular debits against the factor client’s/borrower’s deposit accounts? The UCC has a separate analysis for transfers from deposit accounts which can be found in UCC Sec. 9-322(b). This section states that the transferee of funds from a deposit account takes the funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party. The UCC does not define collusion, but the concept seems to imply that the junior lienholder and the debtor must know about the senior lienholder’s contractual provision not to grant junior liens or incur additional debt without the senior lienholder’s permission and violated these rights anyway. Comment 4 to Sec. 9-332 which is entitled “Bad Actors”, says that this section borrows collusion language from portions of...
Article Eight of the UCC which is entitled Investment Securities. The comment then goes on to note that the collusion standard is the least stringent standard and contrasts the collusion standard with other UCC standards such as a buyer in the ordinary course of business, good faith, and holder in due course. Unfortunately, there is not a lot of law or discussion of this problem, so this will eventually have to be decided by a court as to exactly what level of collusion you need to be a bad actor.

To complicate the situation when the senior lienholder is in a dispute with the junior creditor/bad actor (again, probably the merchant cash advance lender, who sucked up all the proceeds of the senior’s advances), a security interest in a deposit account is perfected only by control. Unless the senior lienholder is a bank and the debtor maintains a deposit account at the bank, the non-bank senior creditor only perfects its security interest by entering into a deposit account control agreement with the bank who maintains the deposit account. This practice is common in larger asset based lending deals, but is rarely, if ever, done in a factoring transaction. Therefore, the junior lienholder in a dispute with the senior will likely point out that the senior lienholder never perfected its lien against the deposit account and since the senior creditor is unperfected, the junior lienholder took the funds in the deposit account free and clear of any claims.

However, while the senior lienholder may indeed not be perfected in its deposit account collateral, so long as the factoring/ABL agreement gave the senior lienholder a security interest in deposit accounts, the senior lienholder’s security interest still attached, because there was in fact an agreement, the debtor had rights in the deposit accounts and value was given, (Section 9-203(b)). Therefore, the senior lienholder still has a security interest in the deposit accounts and the funds therein, but is unperfected without a control agreement. Remember, we discussed earlier that according to UCC Sec. 9-315, a security interest continues in collateral unless the secured party authorized the disposition free of the security interest. If the senior secured party had language in its financing statement that put junior secured parties on notice, like the sample above, the senior secured party will have an easier time proving lack of consent. If there is no notice in the financing statement, lack of consent needs to be proven through other means.

The senior secured party’s failure to perfect in the deposit account should not be dispositive unless the junior creditor perfected first in the deposit account. However, the problem that we’re discussing usually transpires with a merchant cash advance lender. This writer has never seen a merchant cash advance lender obtain a deposit account control agreement. Typically, they get debit authorizations, which effectively gets one control, but that is not the same as a control agreement. The UCC in Sec. 9-322(3) discusses the priority dispute between two unperfected creditors in the same collateral and the creditor whose security interest attached first wins. This means that the senior lienholder who is not perfected against its deposit account collateral may state a claim against the junior lienholder under the right circumstances.

The tension between the junior creditor and senior creditor will continue to play out and this somewhat unsettled area of law will likely have some judicial decisions, which hopefully bring clarity (but not always). The key to protecting your senior account collateral, checks representing payment, and the proceeds of your advances which are now in deposit accounts, likely with no control agreement, is to make sure that the world knows that your agreements do not allow for the grant of junior liens or additional financing without your written consent. Please feel free to use the form of notice, which will be of benefit in this kind of dispute.

Although, not discussed, if you are caught in a dispute with a junior lienholder in the situations described above, you will also have the use of common law type claims, such as interference with contract or inducing breach of contract. The key to winning this kind of dispute is to be diligent. That includes using the services of a reputable UCC monitoring company who will inform you immediately upon the discovery of an adverse filing. Unfortunately, the problems between the junior and senior lienholders will continue to fester, and will have to play out until the inevitable shakeup in the market for those who put out money without regard for underwriting or lien priority. •
Is Business Lending Heading Off a Cliff?

Cash flow for businesses. Whether it’s a new startup or an established business, every company needs capital to grow their business. Back in the “old days”, say six or seven years ago, a typical business would apply for a loan with their local lender. If they were a startup, this usually involved a business plan presentation while existing businesses required previous years’ tax returns and financial statements.

The process was anything but enjoyable and typically involved several weeks of conversations and document gathering with bankers trying to get the candidate qualified for the loan. Although the process was painful, it made sense with the way lenders evaluate risk before approving a business today.

Fast forward to business lending today. Has your company been in business for less than a year? No problem. Is your company profitable? Don’t worry about that either. As long as your gross annual revenues meet our threshold, (in most cases, less than $100k per year) you’re fine. Do the math and that comes to a little over

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If it’s determined that Fintech lenders are required to meet the same capital thresholds as banks, it will place a tremendous strain on them to spread their risk to meet the regulators’ requirements. Will this eventually lead to widespread regulation in the asset-based lending industry that includes invoice factoring companies?

purchase the loans originated by these startups. Hedge funds and other investment companies are starting to pull back, which presents a huge problem within this sector; and to top it off, there’s the possibility of government regulation. If it’s determined that Fintech lenders are required to meet the same capital thresholds as banks, it will place a tremendous strain on them to spread their risk to meet the regulators’ requirements. Will this eventually lead to widespread regulation in the asset-based lending industry that includes invoice factoring companies?

Famed television talk show host and journalist, Charlie Rose, once asked Warren Buffett about the financial meltdown of 2008 and whether wise people should have known better. Buffett responded by saying that there is a natural progression of how good ideas go badly wrong. He referred to the progression as the three “I”s. First, there are the innovators who create value in opportunities that no one else has thought of. Second, there are the imitators who copy what the innovators have done. Imitators can enhance or tarnish the product or service they are copying. Finally, there are the idiots who generally exploit and undermine the innovations out of pure greed.

Our view is that lending comes with responsibility. Is it okay to mass produce loans based on algorithms and simply put up “x” as a loss reserve to cover your losses? Maybe many of my colleagues in the asset-based lending arena will disagree with my position. We feel that every deal includes a business owner, employees, and a plan to acquire capital to expand their existing operations. This is not to say that a successful lender needs to have a detailed account of every client’s story. Firms like Apple and Amazon surely aren’t on a first name basis with every customer that purchases their products and services, but they have extremely loyal customers. They accomplish this by providing superior services and quickly responding to customer inquiries whether they are good or bad. Most importantly, they understand their customers.

If you have read any of my previous columns, you will find a recurring theme. Embrace today’s technology and all that it has to offer. However, be careful when you start to take shortcuts to take the fast track in lending. Whether it’s replacing underwriting guidelines with an app or having the best looking dashboard for a new portal, it’s always important to keep grounded.

I’m hopeful this new wave of Fintech lenders will temper their rush to the goal line with sensible lending practices. It wasn’t that long ago that we witnessed what happens when sound lending practices are replaced by algorithms and a herd mentality. It is wise to say that mistakes are meant for learning, not repeating. •
default judgments in the original loan package to be used when the client is unable to make the scheduled payments.

These practices may seem deplorable to those of us who have spent a lifetime working to help small businesses succeed. But the purpose of this article is not to judge the merits of another product/industry. It is to bring to light how those practices can put our industry at risk of onerous regulation if we are not successful in educating legislators on the differences between factoring and MCA/ACH advances. We are at a critical junction. If we do not invest in our future by supporting the AFA’s efforts to educate Washington on who we are and what we do for the US economy, we could very well find ourselves regulated or legislated out of business as we know it.

Lori Gustaf, Mickey Seeman, Wood Kaufman and I recently visited Washington on behalf of the AFA. Our lobbyist, Palmer Hamilton, scheduled 9 meetings in 2 days with various Senators, the Staff Directors of the Senate Banking Committee, as well as the House Financial Services Committee. In a couple of cases, we met with the Senior Legislative Director or Chief of Staff in the Senator’s office, but in most cases, we met with the lawmakers themselves. It was encouraging to find that they seemed genuinely interested in our concerns, and several validated that we should be concerned and that we are doing what we should be doing—building relationships and educating the lawmakers. They all acknowledged that research is currently underway regarding FinTech and how it should be regulated, and several stated that they are aware that some companies are taking advantage of the lack of regulation in non-bank commercial lending.

So where do we go from here? Like every battle, we need champions who will fight for our cause.

Lawmakers who understand the value that factoring brings to the US economy and how we help small businesses start, grow, and succeed. Lawmakers that will work to ensure that real Factors are not the unintended victims of legislation to crack down on abuses by MCA/ACH companies that call themselves Factors or the Fintech companies that may not be as secure as banks. We cannot wait until the legislation is on the floor to identify and support those champions. As Palmer says, this is like buying car insurance after your car is hit by a train. Too little action, way too late. The time is now!

The AFA needs your support to continue to fight for you. In fact, your support is more important now than it has ever been. We strongly encourage all members to contribute to this effort in two ways. The AFA needs your financial support to cover the ongoing cost of our lobbying firm, which has served us very well in the last six years. Also, you may be called upon to consider being supportive of individual Members of Congress. We should support those lawmakers who understand our industry and help to defend us. Please contact Bert Goldberg at the IFA office to get information on how to support your champions.

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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