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The Commercial Factor | MAY/JUNE 2020 1
Normally in our June issue I am writing about the IFA Annual Conference and thanking all the attendees who joined us.

This year’s conference was supposed to be in April. One of the themes was to be disruptive trends in the commercial finance industry. Little did we know COVID-19 would disrupt our conference altogether.

In my 17 years at the IFA, I have witnessed many events that have disrupted the factoring industry. During all those times, the industry pulled through and remained strong. Make sure to utilize the IFA’s online discussion groups, webinars and educational offerings so we can help each other through this trying time.

We have some new and exciting educational opportunities this year. We have been offering weekly webinars on a wide range of topics relating to COVID-19. We will continue to offer these webinars, so please check the IFA website for future topics. You can also purchase the recordings in the IFA online store.

The value of IFA in-person meetings and training classes goes beyond unmatched industry education. The only way to fully understand the internal challenges that factoring companies face is to learn from others’ experiences. When it comes to business connections, there is no substitute for face-to-face meetings. The ability to create authentic, meaningful and valuable connections is one of the main reasons IFA classes and meetings are so successful. We look forward to offering in-person meetings again this fall.

Our upcoming in-person seminars include:

• Transportation Factoring Meeting – Sept. 9-11
• Account Executive/Loan Officer Training Class – Oct. 5-6
• Niche Industry Factoring Training Class – Oct. 19-20
• Fraud Detection & Prevention Training Class – Oct. 22-23
• Credit & Underwriting Training Class – Nov. 9-10
• 2021 Presidents & Senior Executives Meeting – Jan. 27-29

More information is listed on page 13 and can also be found on our website in the events section.

The COVID-19 crisis shows the importance of having relationships in Washington. The American Factoring Association (AFA) has established meaningful relationships with members of Congress, the executive branch and federal agencies to champion our industry and call attention to issues that directly affect our members. Cole Harmonson gives an update on the work being done to include factors in the Paycheck Protection Program and also on the implementation of Section 1071 of Dodd-Frank on page 18. Please consider supporting the AFA, as your contributions help protect the factoring industry.

I also would like to welcome four new members to the IFA’s Advisory Board. These individuals help design training programs, assist the IFA with current challenges and foster new ideas to benefit member organizations. Each member serves a two-year term. The newly appointed Advisory Board members include:

• Bud Crawford – CEO of PrimeArc Capital, LLC
• Dean Landis – President of Entrepreneur Growth Capital
• Meg Roberson - Senior Vice President and National Sales Manager of Gulf Coast Business Credit
• Glen Shu – President of Heritage Bank of Commerce Specialty Finance Group

Returning members are:

• Chris Abel – Co-Founder and Owner of iThrive Funding, LLC
• John Cummings - CEO of ACS Factors
• Tania Daniel – Managing Director, Factoring, of ENGS Commercial Capital
• Gerry Wawzonek - Founder and CEO of Capital Now Inc.

Through the support of the Advisory Board, as well as support from preferred vendors, sponsors and contributors to training classes, webinars and conferences, the IFA remains the leading organization for the commercial finance community. We strive to keep you informed with current events and educated with quality training. We look forward to seeing you at one of our events soon. Please stay healthy.
NEWS

PEOPLE

TCI Business Capital Adds Holland as SVP of Business Development

TCI Business Capital hired Michael Holland as senior vice president of business development. Holland joined from Pivotal Advisors, a national sales improvement firm, where he had been a senior consultant since 2017.

Hitachi Capital America Adds Williamson as VP of Sales, Technology Finance

David Williamson joined Hitachi Capital America as vice president of sales, technology finance. Prior to joining Hitachi Capital America, Williamson was a regional sales manager at Wells Fargo Capital Finance and vice president of ABL originations at Union Bank.

Tischer Joins TCI Business Capital as VP of Business Development — Staffing

TCI Business Capital hired Sheri Tischer as vice president of business development — staffing. Tischer has more than 15 years of front-line staffing experience. Before joining TCI Business Capital, Tischer was an area manager for Spherion (now Ranstad). She also worked at Doherty and Kelly Services.

Crestmark’s Healthcare Team Adds Kerr as Underwriting Manager

Crestmark’s healthcare financial services group added Chad Kerr as an underwriting manager. Kerr first joined Crestmark in 2005 as vice president, underwriting for Crestmark’s east division, and subsequently was promoted to first vice president, team lead. In 2015, he joined the newly formed government guaranteed lending group as SBA portfolio manager. Prior to joining Crestmark, Kerr worked for Comerica Bank and Fremont Financial. He also owned a field exam firm that provided services to banking institutions.

White Oak Commercial Finance Adds Efron as Portfolio Manager

Martin F. Efron joined White Oak Commercial Finance as the portfolio manager in New York, serving the Northeast region. Efron has 20 years of commercial banking experience. He previously served as partner and senior vice president at Milberg Factors for 10 years.

Axiom Bank Names Jensen SVP, Commercial Relationship Manager

Axiom Bank named Richard Jensen senior vice president and commercial relationship manager in Tampa, FL. Jensen will develop and manage relationships with Axiom’s commercial clients. Jensen has three decades of experience in the Tampa area.
designs, markets, sells and services refueling and related equipment.

**Amerisource Business Capital Funds $5MM Facility for Steel Fabricator**
Amerisource Business Capital closed and funded a $5 million credit facility for a steel fabricator based in Montana.

**Gerber Finance Supplies $1MM to Nona Lim**
Gerber Finance funded a $1 million line of credit to Nona Lim, a manufacturer of Asian comfort foods. Nona Lim is headquartered in Oakland, CA, and was founded in 2014.

**TAB Bank Delivers $8MM Revolver to Outdoor Products Company**
TAB Bank provided an $8 million asset-based revolving credit facility to an outdoor products company based in Utah.

**Alleon Provides $2.4MM Medical AR Financing Facility to MSO**
Alleon Healthcare Capital closed a $2.4 million medical accounts receivable financing facility with a management service organization (MSO) in California.

**Sallyport Commercial Finance Provides $2MM AR Facility to Traffic Control Company**
Sallyport Commercial Finance provided a $2 million accounts receivable facility, including a $500,000 cash flow loan, to a company that provides traffic control services.

**Utica Leaseco Completes $2.25MM Refinance for Automotive Company**
Utica Leaseco completed a $2.25 million refinance transaction secured by machinery and equipment to an automotive company based in Missouri.

**Allied Affiliated Funding Provides $2.1MM in Factoring Facilities**
Allied Affiliated Funding, a division of Axiom Bank, closed $600,000 in receivables financing to a Texas-based company specializing in the recycle, repair and resale of used electronics and $1.5 million in receivables financing to a Texas-based company providing inspection services for pipeline/rigs and consulting and training services to the oil and gas industry.

**Tradewind Finance Closes $650K Export Financing Facility for Electronic Accessories Manufacturer**
Tradewind Finance closed a $650,000 credit facility for a manufacturer of mobile chargers and other consumer electronic accessories based in Hong Kong.

**PNC Agents $75MM AR Facility for Covia**
According to an 8K filed with the SEC, PNC Bank served as administrative agent and PNC Capital Markets

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**NEWS**

**NORTHEAST CHAPTER EVENTS 2020**

**June 16**  
**The Impact of Covid-19 and Disaster Recovery Financing on Commercial Lending Revisited**  
Webinar: 10am EST  

**July 2 & August 5**  
**Summer Virtual Chat Rooms & Networking Hour**  
4pm–5pm EDT  
Free for IFA Northeast Chapter members, $25 for Non-Members  
For more information, call Harvey Gross at (732) 672-8410 or e-mail hgross4@verizon.net or visit www.ifanortheast.org

**DEALS**

**Capital Now Provides $800K in Financing to Two Companies**
Capital Now provided a $500,000 credit facility to an organic foods company in Saskatchewan and a $300,000 credit facility to a wholesale operator in Ontario.

**Capital Financial Global Provides $800K to Hazardous Material Remediation Company**
Capital Financial Global provided an $800,000 credit facility to a non-regulated hazardous material remediation company based on the East Coast.

**Gibraltar Lines Up $5MM Credit Facility for Sponsored Manufacturer**
Gibraltar Business Capital closed on a new $5 million credit facility with a Missouri-based manufacturer. The company manufactures, supplies,

**SOUTHEAST CHAPTER EVENTS 2020**

**June 25**  
**Fraud Webinar**  
2pm EDT  
Free for IFA Southeast Chapter members, $25 for Non-Members

**July 9 & August 18**  
**Summer Virtual Chat Rooms & Networking Hour**  
4pm–5pm EDT  
Free for IFA Southeast Chapter members, $25 for Non-Members  
For more information, call Harvey Gross at (732) 672-8410 or e-mail hgross4@verizon.net or visit www.ifasoutheast.org

**MIDWEST CHAPTER EVENTS 2020**

**MEETINGS POSTPONED**
For information on upcoming events, contact:  
Robert Meyers  
IFA Midwest Chapter President  
Republic Business Credit, LLC  
rmeyers@republicbc.com

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HubTran’s flexible, per-transaction pricing lets you pay only for what you use. Makes sense, right? When you’re processing more invoices, you pay more. And when you’re not, you don’t. It doesn’t get simpler.

HubTran allows you to work from home without a hiccup. When everyone’s remote, HubTran automation doesn’t miss a beat. This isn’t the first time we’ve helped factors face unique challenges. Read how HubTran helped Single Point Capital thrive in a hurricane: go.hubtran.com/singlepoint.

HubTran is fat-free. Dump overpriced software subscriptions, work 4x faster without mistakes, reduce costs by 60%, and reassign staff to growth-oriented work. More than ever, HubTran’s the most efficient, affordable way to process invoices. Demo fast. Start fast. Fund faster. Contact factors@hubtran.com.
North Mill Delivers $15MM AR Factoring Facility to Hygiene Products Provider
North Mill Capital provided a $15 million accounts receivable factoring facility to a provider of oral and personal hygiene products.

TradeCap Delivers $800K PO Finance Facility to Office Supply Company
TradeCap Partners closed an $800,000 purchase order facility for an office supply company on the West Coast.

Gerber Finance Funds $2MM Line of Credit to MPowerD
Gerber Finance funded a $2 million line of credit for MPowerD, a provider of portable clean energy products.

TAB Bank Supplies $2.6MM Asset-Based Revolver to Dance Apparel Company
TAB Bank provided a $2.6 million asset-based revolving credit facility to a dance apparel company.

Celtic Capital Supplies $2.425MM to Packing Products Manufacturer
Celtic Capital provided $2.425 million in accounts receivable and inventory lines of credit to a California-based manufacturer of packaging products primarily used in the healthcare, cosmetics, pharmaceutical and food industries.

Amerisource Funds $6.5MM in Recent Credit Facilities
Amerisource Business Capital closed and funded a $4 million revolving credit facility for a natural gas compression services firm, a $1.5 million credit facility for an environmental services firm and a $1 million credit facility for a nurse staffing and software firm.

Alleon Provides a $12MM Medical AR Facility to an Accountable Care Organization
Alleon Healthcare Capital closed a $12 million medical accounts receivable financing facility with an accountable care organization. The line of credit was necessary to help the client with its working capital needs and to fund new initiatives as it waits for payment from Medicare.

Gerber Finance Funds $1MM Line of Credit for Spectron
Gerber Finance funded a $1 million line of credit to Spectron Glass & Electronics, which produces tilt sensors for both military and commercial markets.

North Mill Provides $1.5MM Facility to PCR Laser
North Mill Capital provided a $1.5 million asset-based credit facility to PRC Laser.

TAB Bank Supplies Texas Finance Company with $4MM Rediscount Credit Facility
TAB Bank provided a $4 million rediscount credit facility for a finance company based in Texas. The new facility was extended through a multi-year agreement and will provide increased liquidity for the company, which provides working capital financing solutions to small businesses from a variety of industries.

Gibraltar Supplies $6MM Line of Credit to Bentek
Gibraltar provided a $6 million line of credit based on A/R and inventory to Bentek, a manufacturer of power distribution solutions.
TradeCap Closes $9MM PO Facility for Safety Gear Manufacturer
TradeCap Partners closed a $9 million purchase order facility for a West Coast-based industrial safety gear manufacturer.

Sallyport Commercial Finance Delivers $2MM AR Facility to Printing Company
Sallyport Commercial Finance delivered a $2 million accounts receivable facility to a company that provides printing and finishing services. The working capital will support payroll and ease cash flow constraints.

CapitalPlus Funds More Than $3MM in Recent Factoring Facilities
CapitalPlus Construction Services recently provided more than $3 million in factoring facilities, including the continued funding of a $2.2 million construction factoring facility for an excavating contractor in Tennessee.

TAB Delivers $4MM Revolving Credit Facility to Transportation Company
TAB Bank provided a $4 million revolving credit facility to a transportation company based in Arizona. The new facility is extended through a multi-year agreement and will provide for ongoing working capital needs.

Rosenthal Provides $1MM Work in Process Production Financing to Packaging Manufacturer
Rosenthal & Rosenthal completed a $1 million work in process production finance deal for a food and beverage packaging manufacturer.

Brookridge Funding Lines Up $7.5MM in PO Funding Transactions
Brookridge Funding recently completed $7.5 million of PPE purchase order funding facilities for four clients, including $4 million for a provider of masks and gowns in Missouri. Brookridge Funding also provided $2 million for a Canadian provider of gowns, $750,000 for a provider of gowns and masks in Connecticut and $750,000 for a provider of sanitation supplies in Mississippi.

Drip Capital Supplies $4MM in Inventory Financing to Seafood Importer
GoTrade, the inventory finance product of Drip Capital, provided $4 million in inventory financing to a seafood importer based out of New Jersey.

Capital Now Delivers $450K Facility to Manufacturing Company
Capital Now provided a $450,000 credit facility to a manufacturing company based in British Columbia. The facility assisted the company, which wanted to take on new jobs, with cash flow concerns.

CNH Finance Provides $2.5MM Revolving Line of Credit to Pharmaceutical Provider
CNH Finance provided a $2.5 million revolving line of credit to a specialty mail-order pharmacy primarily serving the southeastern United States. The revolving line of credit loan proceeds included $2.5 million to be secured by accounts receivables.

CapitalPlus Construction Services Logs $3.3MM in Recent Transactions
CapitalPlus Construction Services recently provided $3.3 million in factoring facilities, including a $2 million construction factoring facility to an HVAC contractor in California, a $1 million construction factoring facility to a civil contractor in Texas, a $125,000 construction factoring facility to a drywall and painting contractor in
Georgia and the $175,000 last funding of a $3.4 million contract for an interior construction company in New York City.

**Prestige Capital Closes $2.5MM Factoring Facility for Medical Equipment Distributor**

Prestige Capital Funding closed a $2.5 million factoring arrangement for a Florida-based designer and distributor of vascular tubing, catheters and pediatric intravenous kits for sale to institutional medical concerns.

**Capital Now Provides $500K Credit Facility to Construction Company**

Capital Now provided a $500,000 credit facility to a construction company in Alberta. The facility will allow the company to avoid cash flow concerns.

**Crestmark Secures $7.8MM in ABL Transactions in H1/May**

Crestmark secured a total of $7.8 million in asset-based lending financial solutions for 10 new clients in the first half of May. In addition, Crestmark Equipment Finance provided $7.56 million in four new lease transactions, Crestmark Vendor Finance provided $10.79 million in 17 new lease transactions and Crestmark’s Joint Ventures Division provided $1.05 million in financing for one new client.

**J D Factors Delivers $775K in Recent Factoring Facilities**

J D Factors provided $775,000 in recent factoring facilities, including $300,000 to a transportation company in Quebec, $100,000 to a transportation company in British Columbia, $200,000 to a transportation company in Arizona, $75,000 to a transportation company in Tennessee and $100,000 to a transportation company in Texas.

**INDUSTRY NEWS**

**PrimeRevenue Accelerates $10B in Early Payments in March**

PrimeRevenue, a supply chain finance provider, accelerated $10 billion in early payments to suppliers in March as companies worldwide sought access to cash to respond to the economic dislocations resulting from the global COVID-19 pandemic.

**Exitus Capital Acquires Majority Stake in CV Credit**

Exitus Capital, a financial institution in the Mexican market, acquired a majority stake in CV Credit. Exitus Capital provides factoring, revolving credit lines, leasing and real estate project financing to small- and medium-sized businesses. The company acquired 55% of CV Credit’s shares.

**ADVERTISE ON THE NEW COMMERCIAL FACTOR WEBSITE**

The Commercial Factor website publishes a variety of content including news and relevant magazine articles. One banner size ad provides maximum visibility and audience engagement across the entire website on both desktop and mobile.

To advertise, contact Laura Backe at laura.backe@nw-assoc.com
ACG: 62% of Private Capital-Backed Small Businesses Excluded from PPP
According to a survey from the Association for Corporate Growth, 62% of small and medium-sized businesses majority-owned by venture capital, private equity or other private capital providers were excluded from the Paycheck Protection Program. The survey was conducted between April 4 and April 6 and included 1,131 professionals involved in U.S. small- and medium-sized businesses. Among responders, 77% reported the PPP exclusion would impact the survival of their business, 92% stated the PPP exclusion would result in employees being laid off and more than 85% anticipated layoffs in the following month, including 61% who expected layoffs to occur within two weeks. The affected companies and respective layoffs were nationwide, with California, Texas, Florida and New York topping the ACG estimates that of the 45 million people employed in the middle market, 5 million were at risk due to the current exclusion from the PPP.

American Factoring Association Protests AICPA Proposal
The American Factoring Association, the sole body representing the factoring industry in Washington, wrote to Steven T. Mnuchin, U.S. Treasury secretary, and Jerome H. Powell, chairman of the Federal Reserve, to state its opposition to a proposal to create a federal program to purchase accounts receivables in the private sector. The AICPA, a CPA trade association, recently proposed the creation of such a program. The proposal read, in part, “AICPA recommends that the Federal Reserve, with approval from the Treasury Department, create a federally-backed short-term accounts receivable lending facility that would allow companies to pledge their future receivables in order to create immediate cash flow through a 90 to 180-day lending arrangement with the federal government.”

In the AFA letter to Mnuchin, Bert Goldberg, executive director of the IFA, also pointed out the misleading term “future receivables” used in the AICPA letter proposing the program. The AFA letter questions whether the AICPA proposal was intended to turn the federal government into a de facto MCA lender. “MCAs use this language in order to lend money at extremely high rates of interest,” Goldberg wrote.

SFNet Survey Finds Total Factoring Volume Fell 8% in 2018-2019 Period
According to the Secured Finance Network’s 2019 Secured Finance Market Sizing & Impact Study, the factoring industry experienced only minor changes in the 2018-2019 time period, except for a significant increase in credit losses, most likely attributable to the competitive environment through 2019. Long-term benign credit conditions and very liquid capital markets, combined with a slowdown in economic growth, set the stage for an increase in losses and decreased profitability. Although the survey’s comparison of factoring activity between 2018 and 2019 is valuable, ongoing impacts of the COVID-19 pandemic are likely to overshadow the significance of data the survey revealed.

No Fun Being an Account Debtor
**SCENARIO:** A factor has a perfected security interest on a client’s accounts. The client, being concerned about the creditworthiness of the account debtor, has the account debtor obtain a $500,000 standby letter of credit (the L/C) from its bank, naming the client as beneficiary and allowing the client to draw under the L/C by a signed statement that the amount of the drawing represents an obligation owed by the account debtor to the client (the drawing statement). The client factors a $100,000 account owing by the account debtor, and the factor sends a proper notice of assignment to the account debtor. The client files a Chapter 7 bankruptcy case and a trustee is appointed, whereupon the following happens in this order:

1. The factor gets relief from the automatic bankruptcy stay, thereby permitting it to enforce its rights against the account debtor.
2. The trustee, after discovering the L/C in the client’s file, makes a demand on the bank under the L/C by presenting the drawing statement.
3. The bank pays $100,000 to the trustee as it is required to do under the L/C.
4. The bank makes a demand for reimbursement from the account debtor as it is permitted to do under the account debtor’s reimbursement obligation set forth in its application for the L/C.
5. The factor makes demand on the account debtor under its notice of assignment.
6. The account debtor, seeking to avoid paying $100,000 to each the factor and the bank, interpleads the $100,000 into court.

**QUESTIONS:**

1. Who gets the $100,000? The factor or the bank, and why?
2. Despite the payment of the $100,000 to the trustee, can the account debtor be compelled to make the second payment to the factor?
3. Since one party will be negatively affected, what, if anything, did that party do wrong?
4. Does the beneficiary have a claim against either the trustee or the factor to recover one of the two $100,000 payments?
5. **Bonus Question:** (If anyone gets this right, they get to have lunch with either Ben or Bob at the fast food restaurant of their choice): Would your answer to the previous question be different if the letter of credit were not a standby, but rather a letter of credit which was issued under the sales contract relating to the account?
PANDEMIC PRESSURE: DECLINE IN CONSTRUCTION FACTORING CALLS FOR NEW STRATEGIES

Even though construction has generally been considered essential during the COVID-19 pandemic, there has still been a dramatic slowdown in the industry. Brent Chambers of CapitalPlus Construction Services provides an outline of how the construction factoring industry is faring and explains why focusing on developers is and will continue to be important.

BY BRENT CHAMBERS
With nearly 20 years of experience factoring construction firms, you would think I had seen everything. Then came COVID-19 and the unimaginable became a new reality. With the onset of stay-at-home and shelter-in-place orders, layoffs began almost immediately in nearly every industry, especially in construction. Unemployment numbers quickly began rising at an alarming rate. According to the Bureau of Labor Statistics, a year ago, the overall unemployment rate in the construction industry was 4.7%. This year, it jumped from 6.9% in March to 16.6% in April and continues to climb, leaving economists to speculate how high it will go.

The pandemic has affected every construction firm in one way or another. These impacts vary, from immediate concerns about the health and welfare of employees and the construction material supply chain, to delayed starts due to a slowing permitting process and stop-work orders, which vary by state. Thankfully, in most states, construction was considered an essential service, especially on critical infrastructure.

CONSTRUCTION SLOWDOWNS

As a construction factor, CapitalPlus immediately felt COVID-19’s impact as new lead generations dropped 25% in the week following the release of government guidelines to slow the progress of the virus. Shortly after, Congress approved the Paycheck Protection Program (PPP) and SBA 7(a) federally backed loans. Prospect after prospect in our pipeline fell silent. Those who did return our calls said they were pausing their application while they applied for an SBA loan through the PPP. As I write this article in mid-May, lead flow has rebounded a bit, but it is nowhere near pre-COVID-19 levels.

A large portion of our pipeline, especially the quality leads, comes from our broker or referral network. We usually build or maintain our broker network by being active in various organizations like the IFA and attending conferences and events. With those now on hold for at least the foreseeable future, we had to turn inward. As a former businessman in an engineering and construction project management firm, I learned that it is easier to get more business from an existing client than it is to go find a new one. We made every effort to increase contact with previous and current clients as well as our broker network to let them know we are still open and ready to assist.

In addition, we took time during this slowdown to do the low-priority tasks that can often take a back seat to growing the business. We upgraded and cleaned up our CRM and other software programs with the goal of driving efficiency. We reassessed our processes and procedures, again looking for ways to improve on the quality and speed of business.

No one knows what the future holds. With the current unemployment crisis exceeding that of the Great Depression, uncertainty is the one consistent word you hear when speaking of the future. Will we all get back to work in the summer months as the virus fades and enjoy an economic rebound? Or will the virus rebound in the fall and bring business shutdown 2.0?

FOCUS ON DEVELOPERS

All any of us can do is focus on the things we can control, including how thoroughly we underwrite, who we fund and, post funding, how we manage our risk. In construction factoring, we want to understand our clients’ financial position, but equally, if not more importantly, we want to focus our due diligence on the debtor and their ability to pay. In these uncertain economic times, we have added a step to our underwriting and are looking upstream at the developer/owner, also known as the funding source. As we learned in the Great Recession, issues in the construction space largely started with developers/owners and their ability to finance projects. At first, payment on most projects slowed as the funding trickled down the chain. As
conditions worsened and funds dried up, projects came to a halt or shuttered in place indefinitely. And in many cases, the owners filed for bankruptcy, leaving everyone down chain to fend for themselves. As a result, we now look at the strength of the owner and their history of payment, at liens filed against them and for any signs of bankruptcy. Where there is concern or uncertainty, we either do not fund or we mitigate our risk by limiting the credit ceilings and lowering the advance rate while using the strongest estoppel language, or sometimes, all of the above. As our company has grown and evolved, the majority of our financing includes contract funding or long-term factoring facilities. When providing funding of progress invoices over the life of a project, operational performance and compliance with the contract by our customer is paramount to our success. Monitoring these parameters while continuing to fund requires a team effort. When you add the potential impacts caused by the pandemic, this becomes a big lift. To understand the impacts on our clients and their projects and to stay ahead of danger, we have increased communication with our clients and their debtors. It is no longer sufficient just to check in with the client when funding. We have doubled down on these communications, requiring both the assigned account manager and the account executives (business developers) to check in on the client on a biweekly basis. These conversations are captured in Salesforce so that anyone can look at the chain of communication to identify evolving issues and pinch points that need to be addressed.

While we hunker down in these uncertain and stormy times, we also recognize that history points to a silver lining. During shaky economic times, traditional lenders often tighten their belts and steer clear of risky or out of favor industries, including construction. At CapitalPlus, we have the experience and know-how to help construction companies navigate the potholes and find the working capital they need to help them through the challenges. •
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**Registration Information**

805-773-0011  www.factoring.org  info@factoring.org

International Factoring Association, PO. Box 39, Avila Beach, CA 93424-0039

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The IFA is registered with the National Association of State Boards of Accountancy (NASBA). A firm of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.
FACTORING SECTORS AND COVID-19

MAY/JUNE 2020

Retail Amid COVID-19: Factoring & Purchase Order Financing Are the Best Options

There is no denying that the COVID-19 pandemic has been devastating for the retail sector, which was already undergoing a drastic transformation before the virus hit. However, there is an opportunity for companies to transform and ultimately better position themselves for the “new retail paradigm.” Sydnee Breuer and Paul Schuldiner of Rosenthal & Rosenthal explain this new paradigm and how factoring and purchase order financing can help companies get to the other side.

BY SYDNEE BREUER AND PAUL SCHULDINER

COVID-19’s economic impact can be seen everywhere right now. Every industry, region and company — no matter their size or specialty — is feeling the effects of the pandemic. Some sectors have been harder hit than others, but retail has experienced what The New York Times recently called a “crushing blow.” With retail sales falling 16.4% in April — the largest monthly drop on record — total retail purchases (both in store and online) were the lowest since 2012. Sales across nearly every category dropped significantly, from restaurants and furniture to apparel and footwear.

Retail also is experiencing one of the fastest transformations of any sector right now. We’re seeing that play out every day with store closures, bankruptcies to lay off debt and companies scrambling to shift to solely e-commerce sales as many retail stores remain shuttered. The industry is only just beginning to experience the full force of these sweeping and fundamental changes.

Ultimately, the brands with the appetite, vision and resources to continue to adapt their businesses will be best positioned to weather this storm.

THE CURRENT STATE OF RETAIL

While retail sales were down across the board in April, the industry saw a burst in online shopping, as U.S. e-commerce sales jumped to 49% in the last month alone. The mandatory stay-at-home orders contributed significantly
to that spike, with online growth primarily fueled by essentials like groceries as well as household items, including electronics, books and toys. Although online sales were up overall, apparel prices saw the largest monthly drop in years, with retailers scrambling to offload seasonal inventory.

The shrinking retail footprint is not a new development, but the pandemic has certainly exposed the most vulnerable of the lot. Most shocking is how small the retail footprint has become and how quickly. For those brands selling into brick-and-mortar, e-commerce alone has been helpful during this period but still slow to grow. Up until now, e-commerce has yet to prove itself as a dominant channel on its own and it’s still unclear whether e-commerce alone will be enough to ensure the long-term profitability — or survival — of a company that isn’t digitally native.

Amid this crisis, there are countless examples of businesses smartly pivoting to direct-to-consumer and e-commerce channels to help fill the void while brick-and-mortar is constricted. We’ve seen denim brands making designer masks and alcohol distillers shifting production to make hand sanitizers. These new opportunities have created new and different funding and financing needs for manufacturers that need cash to quickly convert their production operations or import finished goods or raw materials from overseas. Many companies are doing this for the first time and are unfamiliar with the many hoops a company needs to jump through to produce these products. With more stringent FDA regulations in place and restrictive prepayment requirements from Chinese suppliers, it’s more important than ever that companies find a financial partner with expertise in these areas. An experienced purchase order funder is uniquely positioned to assist companies looking to seize on these new opportunities in the current climate.

While many companies are finding creative ways to generate sales through e-commerce channels or even modified production lines, there are still many others that are struggling to make that transition. There is already so much competition in the apparel sector, and not every company can quickly shift production to start making masks or other PPE or completely overhaul its e-commerce sales platform. Aside from a lack of funding, many companies also are struggling with significant inventory issues. Most retailers cancelled the majority of their orders for April and May and are only now considering reinstating orders for June. But even then, companies will have to deal with the inventory being mostly off season, outdated and deeply discounted.

**DOING BUSINESS IN THE NEW RETAIL PARADIGM**

Retail is slowly being revived as states and localities reopen around the country. But even as retailers open their doors, it’s clear that the in-person shopping experience will not look the way it did pre-pandemic. Not every state is reopening on the same timeline, which means companies will have to carefully manage inventory and sales as certain regions will see more activity than others. New considerations and accommodations for shoppers will become more common, including social distancing protocols designed to limit the number of customers in stores. All of these new measures likely will give rise to a more personalized shopping experience. We’ll likely see a growing trend of curbside pick-ups, appointment shopping and even advanced bookings for dressing rooms to minimize potential exposure. With less crowded stores and less browsing for non-essential items, retailers will have to find ways to make up for the lost brick-and-mortar sales that will inevitably follow. We’ll also likely see new fashion trends crop up based on the changing attitudes and desires regarding how and when people return to work. We’re bound to see much more demand for athleisure, tops and sneakers than we are for workwear, bottoms and dress shoes.

Forecasting this demand will be more difficult in the weeks and months ahead; managing and maintaining an appropriate mix of inventory will be key. Companies will need to keep a close eye on cash flow management and have the right cost controls in place to keep their budgets in check.

Diversification of supplier relationships outside of China will help to ensure that products and raw materials can be acquired, assembled or imported quickly, with fewer restrictions. Companies will be forced to step up their quality control measures and inspections, relying less on factories for those steps. A seasoned purchase order funder can help businesses navigate complex supplier relationships, issue letters of credit in place of risky prepayments to overseas suppliers, and help to fund direct labor costs and materials for domestic manufacturers as well.

Diversification will be especially important for companies as they develop plans to serve their

*Continued on page 28*
Two Sides: COVID-19 and the Impact on Medical Factoring

The COVID-19 pandemic has hurt many sections of the healthcare industry, while it has led to increased revenue for others. Ben Rutkevitz of Alleon Healthcare Capital explores this dichotomy as well government lending programs and what it all means for factors.

BY BEN RUTKEVITZ

The economic impacts of COVID-19 and shelter-in-place orders have been severe. As I write this article, the unemployment rate, which had been on a consistent decline since 2010 and reached its low of 3.5% in February 2020, jumped to 14.7% in April 2020, according to U.S. Bureau of Labor Statistics. Economists were predicting that by the end of May 2020, the unemployment rate would shoot past 20%, and some sectors like hospitality and retail will take years to make up the declines in revenue experienced during the crisis.

The healthcare sector, however, has experienced a 6.79% increase in revenue compared with Q1/19. This stat hides the binary effect COVID-19 is having on the healthcare industry. From Alleon Healthcare Capital’s perspective, there are subsections of the healthcare industry that are losing, while other subsections are winning.

WHO’S HURTING?

Home health agencies that provide medical and personal services to patients in their homes are seeing revenue declines due to a decline in therapy visits, reduced referrals from hospitals that are not performing elective procedures, and staff calling out sick due to the virus. Furthermore, the higher cost of personal protective equipment is increasing agencies’ expenses.

Substance abuse facilities are seeing sharp declines in new business as patients are hesitant to check themselves into a residential center.

Behavioral health centers, such as early intervention programs for children with autism, have had their physical locations shut down due to the virus. Although some patients are utilizing telemedicine and in-home visits, we are seeing a reduction of up to 80% of revenue in this sector.
Hospitals are seeing a loss of revenue due to the freeze on elective surgeries and the general fear of hospital visits experienced by patients. Most hospitals are focusing on COVID-19 patients, but these procedures are not making up for the loss of other revenues.

Skilled nursing facilities have been the most vulnerable during this crisis, as their patient population is made up of the highest risk individuals: senior citizens. Facilities that are not at capacity are able to designate a wing to COVID-19 patients and separate these patients from the general population. Facilities that are full and have an infected patient may see the virus spread quickly, causing deaths and eventually low census.

WHO’S WINNING?
Pharmacies are experiencing an increase in revenue. As part of the Coronavirus Aid, Relief, and Economic Security Act, Medicare and commercial insurance carriers are relaxing their rules to allow patients to order up to 90 days of medication supply. This is a three-fold increase from the previous rule of 30 days. Additionally, pharmacies focusing on delivery and mail order are attracting patients who are wary of going into physical stores for their medication.

Laboratories are looking for good capital partners to accommodate the increase in demand. Laboratories testing for COVID-19 require funding to purchase re-agents, swabs and testing kits, as well as to hire additional staff to keep up with demand.

Medical supply companies are experiencing a significant growth in revenue. There is high demand for products like gloves, hand sanitizers, masks, eye gear and gowns. These companies’ customers include medical providers like hospitals, skilled nursing facilities and home health agencies as well as the public. Companies with experience in this space have been able to take advantage of the shortage of supply, especially at the onset of COVID-19. The biggest challenges have been working with qualified manufacturers and staying well capitalized as the size of these orders can be significant.

FUNDING AVENUES
Companies in all the subsections mentioned above have been able to utilize government funding programs, namely the Economic Injury Disaster Loan Program (EIDL), Paycheck Protection Program and Health Care Enhancement Act as well as the Advance Payment Program. These programs have provided much needed relief to medical providers across the board, especially those who have been hardest hit by the coronavirus pandemic, and created some additional issues/concerns for existing lenders.

The Advance Payment Program allowed some providers to receive in advance up to 100% of the Medicare payment amount that is typically received over a three to six-month period. The advance is repaid after 120 days as an offset from new claims. So, in essence, Medicare has stepped in and provided a loan to medical providers and taken a senior position ahead of existing lenders. The EIDL provided a low-cost loan based on revenue and will need to be repaid over a specific period, while the PPP, if managed properly, will be forgiven.

These programs are immensely helpful but need to be carefully considered from a healthcare lender’s perspective. Although some of them act like grants and help shore up borrowers’ balance sheets, they also lead to paydowns of existing loans. This can come as a welcome relief to a lender or disappointment in the form of loss of revenue from a good credit borrower. And let us not forget that a lender must be careful to adjust its borrowing base and set up necessary reserves for clients that participated in the loan programs. In terms of new originations, we are seeing many prospective clients take a wait and see approach due to the new or expected funding from these government programs. Extremely low interest rate government loans, forgivable loans and grants are difficult for a commercial finance company to compete against. It is our expectation that these government programs are temporary and meant to act as a Band-Aid while medical providers experiencing strong growth will continue to require working capital lines of credit.

Overall, the coronavirus pandemic’s economic impact on the healthcare space has been mixed. There are segments of the healthcare sector that are experiencing strong growth and continue to require additional capital to meet demand. However, other segments have been severely disrupted and are dealing with loss of morale and the trauma related to losing patients to this pandemic along with decreasing revenue. Hopefully we will begin to see a gradual reopening and some sort of normalcy within the sector.

AFA PLEADS CASE FOR INCLUSION OF FACTORS IN PPP

BY COLE HARMONSON, Co-Founder and CEO of Dare Capital

First of all, the language of the CARES Act does not prevent factors from accessing Paycheck Protection Program loans. For some reason, the U.S. Treasury decided to apply the rules governing normal Small Business Administration loans to PPP loans. There is a catch-all SBA regulation that prohibits certain kinds of businesses from accessing SBA loans. These are primarily businesses like strip clubs, but it also includes banks and other lenders. While factors purchase receivables and don’t make loans, the Treasury took the position that factors were lenders.

In light of this, many American Factoring Association and International Factoring Association members reached out to see if something could be done. Fortunately, thanks to years of relationship building in Washington by the AFA, we were able to go to the key players. Some of those we approached and who agreed to help include:

• Congressman Greg Meeks (D-NY), who chairs the House subcommittee with jurisdiction over financial service companies
• Congressman Blaine Luetkemeyer (R-MO), who is the ranking Republican on that subcommittee and has close ties to the Treasury and the White House
• Senator Tom Cotton (R-AR), who is a member of the Senate Banking Committee and has close ties to the White House
• Senator Pat Toomey (R-PA), who is a member of the Senate Banking Committee and the GOP appointee to the special congressional committee named to oversee the CARES Act
• Senator Richard Shelby (R-AL), who is the former chairman of the Senate Banking Committee and the most senior Republican on the committee
• Senator Cory Gardner (R-CO), who is on the Senate Banking Committee

All of these legislators agreed to help through telephone calls, letters and emails to the Treasury and the White House. For example, Congressman Luetkemeyer spoke with one of the top officials at the Treasury on Easter afternoon. In other words, we were able to get key figures to bring this to the attention of the Treasury immediately.

Additionally, a strong joint letter was sent to the Treasury by a number of the most important Republican members of the House Financial Services Committee.

We also have had contact with senior officials within the White House and with members of the president’s family.
Congressman Meeks endeavored to get House Democratic leadership to address the problem in House bills, which were passed and sent over to the Senate.

So far, unfortunately, typical governmental inertia has prevented the addressing of this problem. But without years of contact building in Washington, none of this would have been possible. This was an extraordinary time. Normally having the support we had would have made our efforts successful. We certainly had the right members of Congress in our corner.

On another front that illustrates why the AFA is needed, we have been working for a number of years with the CFPB on its implementation of Section 1071 of Dodd-Frank. This section directs the CFPB to collect race and gender data on small business applicants for credit. This will be quite burdensome to those the CFPB mandates must collect the data. We don’t believe factors should be covered since they purchase receivables and don’t make loans.

Congressman Luetkemeyer recommended we meet with the director of the CFPB, and, with his and the White House’s help, we obtained a meeting. Ultimately, the director will make the decision on who is required to collect the data, so this meeting was quite important. Hopefully the director will conclude we are correct and that factors are not lenders and should not be required to collect the data in question. If successful, factors will save countless hours and attendant costs. •

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. •
WHAT'S NEW AT IFA  MAY/JUNE 2020

Our Preferred Vendors have undergone a screening and evaluation process. When you contact the Preferred Vendors, you will need to indicate that you are an IFA member to receive your benefit.

If you offer a good or service to the Factoring Industry and are interested in applying for Preferred Vendor Status, please contact the IFA at 805-773-0011.

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- **FCI**
  www.fci.nl
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Matt Bernstein
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FACTORING SECTORS AND COVID-19
MAY/JUNE 2020

A Perfect Storm: COVID-19 Pandemic Doubles the Challenge for Energy Factors

The oil and gas industry was having a difficult time before COVID-19 created even more uncertainty. With the combined negative effects of a global pandemic and a pricing war, the energy sector is facing a bleak future and that will make life difficult for factors focused in this area. Mark Zitzewitz of TCI Business Capital looks at the current downturn and outlines three important steps factors must take to ensure they survive.

BY MARK ZITZEWITZ

Dan Dicker, noted author and commentator on the oil and gas industry, once wrote, “Oil is a lousy investment because it isn’t an investment. It’s just a bet — and it’s a bet with a ticking time bomb attached to it.”

Factors, and the service companies they finance in the oil and gas sector, heard a deafening boom this spring and have been busy ducking the shrapnel of an exploded industry. A historic plunge in oil prices coincided almost precisely with the worldwide coronavirus pandemic, and the combined impact has both near and far-term effects on factoring companies in the energy sector. Those that have weathered these events before, in this or other industries, need to fall back on the best practices — not just bets — that have allowed them to survive the storms and grow in sustainable ways on the other side.

TWO CRISSES

The initial crash of the oil industry preceded the coronavirus crisis in America. Throughout 2019, oil prices remained relatively steady, with forecasts of significant growth for the industry. But in late February, Saudi Arabia announced it would not curtail production, and instead launched a price war aimed at Russia, which also refused price-control measures. The result was swift — oil prices slid 42% between Feb. 20 and March 9. West Texas Intermediate (WTI) crude, the U.S. benchmark, slid from more than $53 per barrel to $31. At that price, most American wells became unprofitable, shaking the confidence of exploration and production companies.

Little did we know, the worst was yet to come.

Meanwhile, the coronavirus was spreading through Southeast Asia, the Middle East and Europe, and finally to the United States by late January. By mid-March, mere days after the collapse of the oil market, state and federal governments began limiting social interaction because of the pandemic, closing schools and businesses. By late-March, nearly all state governments had issued stay-at-home orders, essentially grinding the economy to a halt to fight the spread of the
The resulting drop in demand for oil for industrial and commercial purposes was a crushing blow to an already shaken energy sector.

In April, the combination of excess production from the Saudi/Russian price war and slashed demand from homebound consumers dealt a death blow. On April 20, WTI prices plunged to less than $17 per barrel, and WTI futures traded for negative prices. Oil had become worth so little that pulling it out of the ground was a losing proposition. American production companies raced to cut oil and gas production as storage facilities neared capacity. By the end of the month, the number of active oil and gas rigs fell to levels not seen since 1940. Exploration and production companies ceased operations, with some seeking shelter through the bankruptcy courts. The service companies that relied on producing rigs — from sand haulers to roustabouts, inspectors to welders — and the factoring companies that financed them are left staring at the wreckage and wondering how the bottom has fallen out of a huge market segment in only two short months.

A BLEAK OUTLOOK

For manufacturing and service companies in the energy sector, the short-term outlook is bleak. Developing and operating wells are labor-intensive exercises, requiring construction, delivery and handling of materials, skilled trades and unskilled labor. The process of fracking shale requires constant supplies of chemicals and water. All told, these activities require crude prices of more than roughly $40 per barrel for a well to be profitable. With prices significantly below that level and the indeterminate effects of the coronavirus on demand, exploration companies shelved plans and production companies ceased field operations. Continental Resources cut production estimates by 70% for May. EOG Resources is reducing production by 25% and canceling almost 40% of the development of new wells for 2020. Haliburton laid off more than 5,000 workers. Although energy sector workers have been mainly exempted from stay-at-home orders, oil and gas service work has dried up from West Texas to Pennsylvania.

The effect on energy service companies is relatively apparent. Even if employees have been lucky enough to avoid infection, such as those working outdoors in isolated rural areas least hit by the virus, there is waning hope for near-term opportunity. As industry and commerce open slowly and world economic forecasts remain bleak, demand likely will continue to lag behind foreign production and domestic storage capacity. Few are projecting growth in exploration and production for the remainder of 2020, and those companies lucky enough to maintain work will see pricing and payment pressures from increased competition to survive.

THE IMPACT FOR FACTORS

For factors that provide financing to the industry, the challenge is three-fold. First, factors must face the inevitable loss of clients. As in many industries, energy clients are struggling to stay in business. Without prospects in the immediate future, many will either disappear or file for bankruptcy. Although they are usually secured creditors, factors find little joy when mired in client Chapter 7 bankruptcies. The lost volume puts immense pressure on factoring companies with heavy concentrations in energy, including pressure to appease lenders, maintain staff and morale, and diversify into crowded markets.

Second, factors must maintain credit discipline in a rapidly devolving market segment. Debtor bankruptcies spring up daily. Chesapeake Energy, teetering for months, is reportedly considering bankruptcy restructuring following the bankruptcies of Whiting Petroleum and Offshore Drilling. Highly leveraged mid-market players may have little choice but to seek refuge in restructuring. Factors holding significant accounts owed by these debtors, of course, may find themselves in long lines of unsecured creditors. Pulling the plug early risks clients, but pulling the plug late risks enormous losses.

Third, factors need to focus on their employees. These are unprecedented times. The pandemic alone is unnerving and poses frightening risks. The collapse of the oil and gas market has heaped on even more uncertainty. We sympathize with our clients’ struggles and stretch our patience to its limits. But the health and wellbeing of our employees is paramount to our long-term success. While we tighten our belts to weather this perfect storm, we must be mindful that our first obligation is to keep every employee safe. Developing systems, processes and discipline to work remotely and limit health risks is even more critical than protecting against credit and financial threats.

While the immediate outlook is dim, and the near future murky, there is reason to hold an optimistic view. Although these circumstances are unique, challenges to the oil and gas sector certainly are not. For factors that weathered the plunge of 2014 and 2015, we know the industry will come back. If we do things right today, we will be there to provide the financing necessary to rebuild the energy sector later.

Mark Zitzewitz is senior vice president and general counsel of TCI Business Capital.
All Hands on Deck: Steadying Your Credit Amid the COVID-19 Pandemic

Leighton Weston of Creditsafe provides a forecast for the factoring industry and explains why it is important for factors to understand their exposure and their customers’ credit risks to successfully navigate through the COVID-19 pandemic and its aftermath.

BY LEIGHTON WESTON

The COVID-19 pandemic has rocked the economy so severely that no one knows when the negative consequences will end. What is certain is that some businesses will close and never reopen, in part because of a cascade of defaults among their supply chains or clients.

My company, Creditsafe, recently found that 26% of U.S. businesses face a high risk of failure as they struggle to pay their suppliers. Companies are making payments 50 days beyond terms (DBT), which not only hurts their credit and relationships but also strains their suppliers’ cash flows and ability to stay open. Additionally, we have tracked a 35% increase in payment defaults between March and April, which coincides with a 46% increase in defaults year over year.

Unfortunately, it appears that the situation may only get worse. During the initial phase of the crisis, many businesses had enough cash to continue shipping in the short term. But as the pandemic stretches on, businesses are running out of money; in turn, suppliers cannot cover the costs of their essential needs. As the unemployment rate — which is already at historic levels — continues to rise, more consumers will stop buying nonessentials and further weaken the economy. We’ve already seen giants fall because of this, including J. Crew and Neiman Marcus, which recently filed for bankruptcy.

During the 2008 financial crisis, businesses scrambled to increase cash flow even as consumer spending dropped. Some companies closed, while others retooled the aspects of their businesses that had become irrelevant. Those that were willing to adapt made it through that crisis, and many of the companies that apply those same lessons will survive this crisis — provided they have the right perspective and path forward.
THE FACTORING FORECAST

One of the major differences between the 2008 and 2020 crises is that the economy collapsed during the former and caused people to lose everything. People are still spending today, although their priorities have shifted. Certain verticals are expanding and others are shutting down. The key to surviving at this moment is to seek opportunities within those expansions.

We’ve seen payments accelerating in certain sectors, such as the food industry, and the demand for food retail has made those payments even faster. Consumers are spending at their local stores and that cash is quickly distributed throughout the supply chain. Clients and suppliers are actually paying faster and more often because of the crisis.

What does this all mean for factoring companies? It depends on your exposure. Companies that deal with staffing clients and businesses involved in transporting goods and materials can expect continued heavy activity. Those that work with the retail sector may see a mixed situation. Industries like food retail will remain essential and profitable, but other retail areas could lag if the economy does not bounce back quickly.

As a result, factoring companies need to assess not only their standard credit risks with clients but also their clients’ risks in relation to the pandemic. For instance, small businesses will depend on credit and loans to continue paying staff members and maintaining inventory. Loans and credit are in shorter supply than they were pre-pandemic, however, which could cause small business clients to struggle. Meanwhile, companies that depend on suppliers in other countries could face production slowdowns that cause them to pay up to 90 days beyond their agreed-upon terms.

Given these concerns, leaders in the factoring industry should use the following steps to develop a strategy for whatever lies ahead:

1. Understand your exposure. Analyze your entire book of business and identify potential negative outcomes for your company. Run different scenarios and consider how they might affect your operations going forward, including if there are further downturns due to the pandemic.

2. Benchmark customers’ credit risks. Once you’ve assessed your company’s risk, turn your attention to your clients. What is their normal credit exposure versus their pandemic exposure? Analyze their industries, size of business, operation locations and historical credit data.

Recall that certain verticals are flourishing while others are struggling. You need to know how many of your clients fit into each category to anticipate where you may see payment delays or defaults — and where you can expect faster payments than usual, too.

3. Prioritize clients by risk. Now is the time to take stock of your clients and decide which relationships you want to maintain. If one of your clients is a dance studio in Manhattan and another is a medical supply company in Los Angeles, you’re going to look at them very differently. The dance studio is going to have a higher chance of late payment and default, so you will want to direct more resources toward the medical supply business.

Factoring companies need to assess not only their standard credit risks with clients but also their clients’ risks in relation to the pandemic.

If a client is high-risk at the best of times, you may want to let that relationship go in favor of those that are more stable; these considerations are even more important during these challenging times. Once you’ve made those decisions, outline a plan for what your prioritization will look like as well as what procedures you’re going to put in place for dealing with different clients.

What matters most is constantly monitoring the clients and industries you serve. Restaurants were struggling early in the pandemic, but they may pick up steam as stay-at-home orders are lifted. Different industries will recover at different rates, depending on where in the country (or the world) each client is located. Ongoing analysis will be the key to assessing risk accurately and deciding which clients you want to continue to serve.

Leighton Weston is the global account director with Creditsafe, which offers comprehensive and accurate financial information on more than 330 million businesses worldwide.
A Short Window: The Timely Opportunity of Small Business Chapter 11 Financing

The Small Business Reorganization Act has made several important changes to the Bankruptcy Code, although many will only be available until March of 2021. Steven N. Kurtz outlines the most important changes and how they can benefit small businesses that may file for Chapter 11, particularly due to the continued economic disruption of the COVID-19 pandemic.

As of writing, many of us are working from home and adjusting to the “new normal.” The screeching halt of our economy caused by the COVID-19 pandemic is obviously having repercussions. In an effort to lessen the pain, on March 27, President Donald Trump signed the CARES Act. This piece of legislation contains a number of stimulus packages and includes a critical amendment to the Bankruptcy Code, which increased the debt ceiling for a debtor to file a Chapter 11 case under the Small Business Reorganization Act of 2019 from $2,725,625 to $7.5 million. This critical amendment to the Bankruptcy Code, coupled with the streamlined procedures inherent in the SBRA, presents some very good business opportunities for the factoring and asset-based lending industry. Factoring and asset-based lending have always been the lenders of choice for debtor-in-possession financing, and this
new law should further solidify this symbiotic relationship.

THE SBRA

The SBRA was enacted in 2019 and became effective on Feb. 19, 2020. It simplifies the Chapter 11 process for small businesses and makes it economically viable. Before the SBRA was enacted, Chapter 11 was not a cost-effective way for a small business to reorganize its debt which caused many small businesses simply to fail.

The multiple benefits of filing a Chapter 11 case under the SBRA are as follows. There is generally no creditor’s committee, creditors cannot file competing reorganization plans, a separate disclosure statement is not required as part of the reorganization process, there are no quarterly payments to the United States Trustee’s Office, the “new value” requirement for the equity owners to contribute funds to the plan when not paying creditors 100% of claims is waived and debtors no longer must pay all administrative claims in full on the effective date of a Chapter 11 plan. Another important change in the SBRA is a small business trustee is appointed to the case to monitor the debtor and facilitate and distribute bankruptcy plan payments after the Chapter 11 plan is confirmed.

These changes to the Bankruptcy Code are long overdue for small businesses. The increase in the debt ceiling likely will help many small businesses reorganize their affairs and recover from the COVID-19 crisis. The increase in the debt ceiling applies to cases filed on or after March 27, 2020 and will expire on March 27, 2021. This means that there will be a short window of opportunity to take advantage of this new law.

Although I don’t have actual statistics, most DIP financing deals involve factoring or asset-based lending. The obvious reason for this is if a debtor has a viable business, good-paying customers and/or other viable collateral, balance sheet tests are irrelevant and the DIP financier has a nice deal which has been blessed by the court. The challenges for many DIP financing deals are the strict rules governing a Chapter 11 plan confirmation, the high costs associated with a Chapter 11 case and the litigation process unique to the bankruptcy system.

An additional roadblock to a successful DIP financing deal can often be the creditors’ committee and U.S. trustee. The creditors’ committee is composed of unsecured trade creditors, who act as a governing party, hiring lawyers and other professionals for whom debtors pay. Unfortunately, in practice, this is sometimes nothing more than an added layer of expense and parties look to the DIP financier for a carve-out from collateral to pay attorney fees.

TRADING TRUSTEES

The U.S. trustee is the branch of the Justice Department tasked with overseeing the Bankruptcy Code. In theory, for Chapter 11 cases, the U.S. trustee oversees the integrity of the bankruptcy process, but their track record for success is not nationally uniform. In certain jurisdictions, such as Delaware and the Southern District of New York, the U.S. trustee has used its role to facilitate a number of successful reorganizations. In others, when the U.S. trustee may not be as creative, debtors can work with him/her to achieve a successful reorganization. Unfortunately, there are many jurisdictions in which the U.S. trustee is actually a hindrance to making a case work because the office is highly bureaucratic and not business friendly.

The virtual elimination of the creditors’ committee and the U.S. trustee, coupled with the other major changes to the Bankruptcy Code in the SBRA, creates a perfect storm of opportunity for DIP financing. A SBRA trustee will replace the U.S. trustee and possibly the creditors’ committee.

In most cases, the SBRA trustee will be an experienced bankruptcy professional from a particular district’s existing pool of bankruptcy trustees. Every jurisdiction has a standing panel of Chapter 7 trustees. For the most part, Chapter 7 trustees, who often serve as Chapter 11 trustees, are usually lawyers, accountants or business people. Bankruptcy trustees typically are compensated by the size of the estate that they handle. While bankruptcy trustees often have the ability to initiate litigation for preferences, in most instances, the business realities of being a bankruptcy trustee require the person to start with nothing in the estate, and he or she has to find assets or money. The system is such that bankruptcy trustees must make business deals because they are managing a shrinking ice cube. Based upon the business realities, it is reasonable to presume that a SBRA trustee will understand the need for DIP financing and will work to achieve a deal. If done right, the SBRA can be a friend and advocate for terms in an agreement before the Bankruptcy Court.

DIP financing is usually, but not always, done at the beginning of the case. Typically, a Chapter 11 debtor files what are known as first day motions, which address a number of issues early in the case and usually involve seeking permission to use a lender’s cash collateral, pay employee wages, address utility deposits and pay certain critical vendors. Many first day motions also seek to approve the terms of a DIP financing transaction. The DIP financing transaction requires notice to all parties, a court hearing and disclosure of all relevant terms.
LEGAL FACTOR  
MAY/JUNE 2020

A debtor’s counsel will want to approve and review all pleadings, including the DIP financing order, before those papers are filed with the court and served on all the parties. Once the court approves the transaction, a debtor will be afforded a number of protections and then it is full steam ahead for the DIP financing deal.

As mentioned previously, the window for the increase in the debt ceiling is set to expire on March 27, 2021. Hopefully, the debt ceiling will be made permanent or extended for an additional period. The SBRA is long overdue and will be beneficial to many parties. The increase in the debt ceiling means more small businesses will utilize this process. Hopefully the SBRA will be a good source of business as our industry helps other businesses recover from the effects of the COVID-19 crisis.

RETAIL AMID COVID-19  
Continued from page 15

customers in different parts of the country and different countries around the world, which have all been affected differently by COVID-19. As regions reopen and inevitably tighten up again, it’s important that companies plan accordingly to get products to the places where they can easily be sold and willingly bought.

The challenges surrounding COVID-19 also present an opportunity for companies to rethink their brick-and-mortar footprints and close non-performing locations. Long-term or restrictive leases may make that more difficult for some, and only brands that are consistently investing heavily in building out e-commerce platforms will be able to do so successfully.

Assessing the creditworthiness of retailers will be one of the biggest hurdles for brands to overcome. In fact, any brand without credit protection coverage heading into the remainder of 2020 and looking ahead to 2021 should be concerned. Factoring is a valuable tool for any brand operating in this environment and selling into retail channels. Not only does factoring help businesses simplify operations and reduce overhead for things like collections and receivables management, but an experienced factor in this environment can help brands avoid bad debt, especially when selling to retailers who aren’t Target, Costco or Walmart.

PLANNING FOR THE FUTURE

While companies continue to feel the effects of this pandemic, factoring and purchase order financing are once again among some of the most essential tools available. Brands simply cannot afford to get caught with inventory or be exposed to bad debt from a retailer. In this environment, one bad season or a brush with a retailer with bad credit spells doom for a brand.

But companies should be selective about which partners they select and only work with those who know the retailers well. However, the continued move toward omnichannel distribution requires a lending source that can also support the e-commerce inventory funding requirements of a business. Experience helping brands operate in challenging environments is also paramount, as is expertise with international trade, navigating complex supplier relationships and negotiating contracts.

The future of retail is still very uncertain. While no one has a crystal ball, it’s becoming clearer that brands must make difficult decisions and adapt if they are to survive this pandemic. The brands that will ultimately thrive in this climate will be the ones that remain flexible, embrace creativity, stay on top of shifting styles and trends, and take steps to understand their customers’ shifting needs and desires — all at a price point based on 30 million or more Americans being out of a job this year.

ANSWERS FROM PAGE 9

1. The factor gets the $100,000 since it is a payment on the assigned account. Under UCC §9-406, after receiving the notice of assignment, the only way for the account debtor to discharge its obligation on the assigned account is by paying the assignee (the factor).

2. Yes, the account debtor must pay the bank. The account debtor’s obligation to the bank arises under its application for the L/C and is not a payment of the assigned account.

3. The account debtor could have made the factor the beneficiary under the L/C.

4. No.

5. Under UCC §2-325(2), “[t]he delivery to seller of a proper letter of credit suspends the buyer’s obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from [them].” If the L/C stated that it is issued to secure a specific purchase order or contract or sale, and the L/C was issued before the factor delivered its notice of assignment, the account debtor would have no duty to pay the factor until the L/C expires or is drawn upon. If, however, the L/C was issued after the factor delivered its notice of assignment, it is unclear how UCC §2-325(2) would interact with UCC §9-406. It could be that the issuance of the L/C was a payment to the client after the account debtor’s receipt of the notice of assignment and, as a result, the issuance of the L/C did not discharge the obligation of the account debtor to the client.

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