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It has been said that “Speed is the New Currency of Business.” I think that is apparent by everything you see in business transactions and in the world around you today, from internet searches, to instant movie downloads, to same day deliveries. Speed is now being used as a method to distinguish your company from your competitors.

The Fintech industry has greatly affected the factoring industry, both with their existing clients, as well as potential clients. I use the word “Fintech” to describe a variety of new lenders such as MCA’s, ACH lenders and online lenders. What I see as the advantage Fintech has over the current factoring industry is speed. On the other hand, Factors have the advantage of price, customer service, excellent working history and the ability to work closely with clients to help them become successful. Both the IFA and AFA have been working to support the factoring industry by making sure these big advantages are not overlooked and the factoring industry continues to thrive.

The IFA has multiple classes scheduled to address the Fintech issue directly. This will be a major topic of conversation at the Small Factors Meeting scheduled for October 20th-21st in Las Vegas. Given the size of the loans that Fintech companies are making, this is directly affecting the small factors. This roundtable discussion meeting will focus on what the future holds for small factors, overcoming challenges, tools to streamline your operation and much more. There will also be ample time for networking among your peers.

Also scheduled is our new course entitled “How to Successfully Compete Against the New World of Fintech”. Scheduled for October 27th-28th in Las Vegas, this course will directly address the issues that are most concerning to factors with regards to the Fintech industry. If you run a factoring operation, this is the one Fall meeting that you can’t afford to miss. We will be discussing methods you can put into place in order to protect your existing clients, as well as new methods to modernize your operation to compete more effectively.

The AFA has also been working to protect the factoring industry. We have established “Champions” in both the House and Senate in Washington DC that will help protect the factoring industry from becoming unintended consequences of possible legislation. You will find an excellent article by Allen Frederic, the AFA President, on page 26. If you are involved with the factoring industry, please support the AFA as it supports you.

The IFA also has various teleconferences and meetings planned on a variety of other topics to support the factoring industry. Information about our upcoming courses can be found at www.factoring.org.

Thank you for your support. We look forward to seeing you at a future IFA event.

By Bert Goldberg
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

Rosenthal & Rosenthal Launches Rosenthal Trade Capital Division
Rosenthal & Rosenthal, Inc. launched Rosenthal Trade Capital, a new division that provides alternative inventory financing solutions. Veteran financial executive Paul D Schuldiner has been named senior vice president of Rosenthal Trade Capital. Jennifer Draffkorn also has joined the new division and is responsible for portfolio management and underwriting.

Far West Capital Announced as Best Place to Work by Austin Business Journal
Far West Capital was included in Austin Business Journal’s (ABJ) list of Best Places to Work 2016, placing in the Small Companies with 25-49 employees category. The ABJ’s Best Places to Work list ranks companies in four categories using criteria by an independent rating agency.

Rankings for the awards were determined based on anonymous employee surveys, where at least 95 percent of employees needed to respond to qualify.

Accord Financial Announces New Division, Opens Chicago Office
Accord Financial announced the opening of a new division, Accord Business Finance (ABF). ABF will offer notification and non-notification factoring. Sue Duckett and Micaella Cosentino have joined Accord to expand its product suite and will operate from its new Chicago office.

Crestmark’s Marketing Department Recognized with Four Communicator Awards
Crestmark was honored by the 22nd Annual Communicator Awards with an Award of Excellence and three Awards of Distinction for print ads and direct-mail. In the Direct Mail category of Marketing/Promotion, the following entries were recognized: “Truck Driver,” “At Every Turn,” “A New Year,” and “Plaid to Pink Snaps.” “Truck Driver” received the Award of Excellence. For more information on the 22nd Annual Communicator Awards, go to www.communicatorawards.com.

INDUSTRY TRANSACTIONS

Transportation Company in New York Chooses TAB Bank for $2 Million Revolving Credit Facility
A transportation company in New York chose TAB Bank for a $2 million revolving credit facility. The new facility will pay off the company’s previous lender and will support the company’s ongoing working capital needs. The company is a freight brokerage that specializes in food and refrigerated services.

Bibby Financial Services Releases Data on 2016 Deals
Bibby Financial Services secured a total of more than $35.5 million in financial solutions for 96 new clients in the first half of 2016. Eight of the year’s most notable transactions include:

• $7 million factoring facility to a New York-based security staffing service

• $3 million revolving line of credit (ABL) to an Oklahoma City-based processor of quality-grade steaks and meats
$3 million revolving line of credit (ABL) to a Florida-based service provider in the petroleum industry

$2.5 million factoring facility to a California-based media service company

$1.75 million revolving line of credit (ABL) to a California-based manufacturer of coffee products

$1 million revolving line of credit (ABL) to a Florida-based merchandising services company

$900,000 factoring facility to an Ontario-based manufacturer of security equipment

$850,000 factoring facility to an Alberta-based distributor of chemicals to the oil and gas industry

GCBC Kicks Off Summer ’16 by Funding 40 New Deals

During May and June, Gulf Coast Business Credit funded 40 new Accounts Receivable Factoring and Asset Based Lending (ABL) relationships. Amongst the 40 new client relationships, there was a $150,000 working capital facility to a Texas-based transportation company, a $750,000 working capital facility to a Louisiana based oilfield service company, and a $500,000 working capital facility to a California based staffing company.

TAB Bank Provides Metal Processing Company in Arizona with a $6.5 Million Revolving Credit Facility

TAB Bank provided a $6.5 million asset-based revolving credit facility for a metal processing company located in Arizona. The new facility is extended through a multi-year agreement and will provide for the company’s ongoing working capital needs. In addition to the revolving credit facility, the company will also utilize TAB Bank’s full suite of Treasury Management Services to manage their cash flow and business expenses.

Allied Affiliated Funding Announces Recently Closed Transactions

• $1,500,000 accounts receivable facility plus a $200,000 term loan to a minority-owned staffing firm
• $350,000 accounts receivable facility to a company that distributes oil and gas drilling supplies to well sites and warehouses
• $100,000 accounts receivable start up-financing to a fiber optics and cable installation sub-contractor

Capital Business Credit Provides $3 Million Factoring Facility to Trugraphx

After spinning-off from its parent company, Trugraphx, a t-shirt wholesaler that sells to all major mid-tier retailers, was in search of a financing partner to provide working capital. After considering a variety of equity and debt options, Trugraphx selected Capital Business Credit (CBC) to provide a factoring facility, totaling approximately $3 million. The management at Trugraphx had worked with CBC in the past to finance other companies.

Crestmark Closes 12 Transactions Totaling Nearly $9 Million in the Second Half of June

Crestmark secured a total of $8,995,000 in financial solutions for 12 new clients in the second half of June.

Loeb Term Solutions Finances Over $8.5 Million Dollars’ Worth of Industrial Equipment in June

Providing Solutions for 3 More Manufacturers

Chicago-based lender, Loeb Term Solutions
Utica Leaseco, LLC Completes Three Transactions Totaling $3,500,000 during Last Week of June

Utica Leaseco, LLC announced the completion of three transactions totaling $3,500,000 during the last week of June. Total new financings in June totaled $4,500,000.

PERSONNEL

Darren Palestine Joins Commercial Finance Partners as Managing Partner

Commercial Finance Partners announced Darren Palestine has joined the company as Managing Partner. Darren’s focus will be to further develop Commercial Finance Partners’ direct lending efforts, while also managing various aspects of product development and underwriting.

Wells Fargo Capital Finance Names Torres to Lead Staffing Services, Cates for Special Services

Wells Fargo Capital Finance announced that their Commercial Services group has named Raphael Torres to lead the Staffing Services division and Pamela Cates will assume the National Portfolio Manager role for all the specialty teams that include Government Services, Staffing Services and Transportation Services. Raphael brings more than 13 years of banking experience. Pamela has 27 years of experience in the financial services industry.

BlueVine Hires Square’s Former Head of Sales as Chief Revenue Officer

BlueVine, an online lender providing factoring finance, has hired Eric Sager as Chief Revenue Officer. Eric was formerly head of sales for Square. Simultaneously, BlueVine has increased their max credit line to $500,000 for invoice factoring and $50,000 for “flex credit.” Eric will be tasked with scaling revenue growth for the BlueVine platform.

Christopher Soupal Promoted to Senior Vice President, National Sales Director, of Crestmark’s SBA Division

Steve Gross, executive vice president and SBA division head of Crestmark Bank, announced the promotion of Christopher Soupal to senior vice president, national sales director of the SBA Lending Division from first vice president, national sales director of the division. Based at Crestmark’s corporate office in Troy, Michigan, Christopher reports to Steven Gross. He has more than 20 years of experience in the finance industry.

Ivan Cook Joins Bibby Transportation Finance as Business Development Officer

Bibby Transportation Finance (BTF), a subsidiary of Bibby Financial Services, announced the addition of Ivan Cook as Business Development Officer. Ivan rejoins BTF to focus on providing freight factoring and asset-based lending solutions to customers as the company accelerates its North American growth strategy. He will support both the factoring and ABL product lines for Bibby Financial Services. Ivan has more than 15 years of experience in transportation finance.

HubTran Names David Cornwell Director of Business Development

HubTran announced the appointment of David Cornwell as Director of Business Development. David will be responsible for building HubTran’s profile in brokerage, factoring, and in time, commercial trucking. He brings more than six years of ground-up experience in logistics and logistics technology to his new post. David works from HubTran’s Chicago headquarters.

Bibby Financial Services Appoints Watson as CEO

Bibby Financial Services (BFS) announced the appointment of Ian Watson as Chief Executive Officer of its North America business. Ian joins the North America team after previously serving for more than six years as the CEO of Asia Pacific.

Elliott Smith Joins Amerisource as National Sales Manager

Elliott Smith has joined Amerisource as the National Sales Manager. Elliott brings both management and sales experience in the factoring / ABL industry. Elliott’s former experience includes being the National Sales Manager for Sallyport Commercial Finance, Vice President at Gulf Coast Business Credit, and Assistant Vice President / Relationship Manager at Chase Bank. Elliott will be based in Amerisource’s corporate headquarters in Houston, Texas and will be responsible for managing and growing the Company’s nationwide sales and marketing team.
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.
Financing Options for Medical Providers

In today’s healthcare environment, medical providers face tremendous challenges. The cost of operating a practice continues to rise, as does the time required to manage government regulations.

BY BEN RUTKEVITZ

THE NEED

In today’s healthcare environment, medical providers face tremendous challenges. The cost of operating a practice continues to rise, as does the time required to manage government regulations. Providers have to adjust to a new billing coding system called ICD-10, stay compliant in a digital age with HIPAA (Health Insurance Portability and Accountability Act) regulations, adjust to “meaningful use” requirements, maintain certifications, deal with rising malpractice insurance premiums, and stay on top of patient co-pays and deductibles, which have increased significantly since the ACA (Affordable Care Act) went into effect.

On the revenue side, medical providers are also confronting difficult issues. Claim denials and delays in payments from the insurance carriers have gone up considerably. This is causing a decrease in reimbursement and an increase in the amount of time it takes to get a claim paid. Additionally, the delays in payments lead to inconsistent cash flow which makes it more difficult to operate.

As you can tell, medical providers are being squeezed more than ever before and are looking for outside help with cash flow solutions. I have taken the liberty to outline the main medical funding options below:

FINANCING OPTIONS FOR MEDICAL PROVIDERS

Loan from conventional bank—the first place many providers turn to is their local bank. This is usually the most inexpensive option if a provider can qualify for the loan. The issue with this option is that banks are generally reluctant to give out business loans and have tight credit requirements. The following hurdles exist for medical providers looking for traditional bank financing:

- Banks normally do not understand medical accounts receivable and, therefore, will base the decision on a provider’s cash flow. The banks will want to see several
years of operational experience and positive earnings. This means that young practices, and those who recently faced financial challenges, will not qualify. • The owner of the practice cannot have credit blemishes, recent bankruptcies or tax liabilities.

• The amount of credit the bank makes available is usually based on the provider’s past performance and does not take into account future growth potential. This can leave a provider in a position where the loan is not high enough to meet its capital needs.

• The time it takes to underwrite and go through the bank process can take several months. In the case of a practice that has cash flow issues, this may be too long.

MCA (Merchant Cash Advance)—also known as ACH loans, daily debit loans and bank statement advance. Over the last several years, the proliferation of this finance product has increased dramatically. The main benefit of this product is the fast funding time, as most companies offering this product can fund a loan in under a week. This is great when a practice has an immediate need, such as making payroll. The downside of MCAs is twofold. First, MCAs are very expensive. The true cost of these advances range from a low of 30% to a high of 100%. Second, MCAs are typically paid back through a daily automatic debit from the provider’s bank account. So, a practice with cash flow issues now has the added burden of making daily payments even if there is a delay or decrease in revenue.

Medical Accounts Receivable Factoring—Accounts receivable (AR) is usually the biggest asset of a medical practice. Unfortunately, due to the inefficiencies in our healthcare system, a medical provider has to wait 15-150 days, and sometimes more, to monetize this asset. Medical factoring is a type of invoice factoring where a financial institution (factor) provides a medical provider with an advance payment based on the provider’s outstanding accounts receivable (invoice). The factor advances funds and waits for the invoice to be paid from third party insurance carriers. Medical factors will consider any provider that bills third party insurance carriers, e.g., doctors, doctor groups, DME, home healthcare companies, drug rehab centers, skilled nursing facilities, hospitals, pharmacies, medical transport, translation companies, imaging centers, labs,
urgent care centers, and many more. Here’s how it works:

- A medical provider establishes a relationship with a factor.
- A medical provider submits bills to the 3rd party insurance carrier.
- A medical provider submits a copy of the billings to the factor.
- The factor advances up to 80% of the net collectable value. This is important, since the advance is not based on gross billings, but rather on the expected net collectable value. Funds are wired or directly deposited into the provider’s bank account within 72 hours.
- The remaining 20% is a financing cushion or reserve in case some bills do not pay or are erroneous.
- Once the bill is paid by the 3rd party insurance carrier, the factor returns the financing cushion minus a factor fee of 1-2.5%/month.

There are a number of key benefits to medical factoring. Medical factoring is available to most providers who do not qualify for bank financing. A medical factor will usually be able to offer a provider more capital than a traditional bank that is only basing its loans on previous cash flow history. The cost of factoring is significantly cheaper than MCAs. Factoring facilities can accommodate growth; as the provider bills more invoices, the provider receives more advances. Factoring helps stabilize cash flows so a provider can plan for growth and be assured that its expenses will be covered by the factor’s advances. Last but not least, since medical factoring is a niche product, only factors who specialize in this space offer it to providers. This means that a medical factor will understand revenue cycle management and collection of medical claims. The factor will also have intimate knowledge of the denial and delay tactics of insurance carriers, and at times be able to consult providers on best practices to collect claims at higher rates and with less time.

I have included the following case studies to highlight the benefits of medical factoring:

- The first case study is of a home healthcare company (Client) that was seeking a funding solution to help with its growth. The Client sends nurses and aides to the homes of patients who need assistance with daily tasks. This Client’s main payor was the state Medicaid system. Each time a new patient was added, Medicaid would take 60 days to onboard the patient and begin processing payments. The Client would need to pay out of pocket for the aide, sometimes 24/7 care, for 60 days before receiving reimbursements. This Client was growing organically, but very slowly, as the most it could afford was to take on 1-2 new patients per month. With the help of medical factoring, the client was able to take on many more new patients per month because the advances from the factor were helping the Client pay for the aide’s labor costs, even before Medicaid began its reimbursements.
- The second case study is of a pharmacy (Pharmacy) that provides medication to long term care facilities such as nursing homes and assisted living centers. The Pharmacy was averaging 30 days to get reimbursed from its payors, which is relatively good in today’s healthcare environment. The Pharmacy was offered a discount from its suppliers if it paid early. The discount from the Pharmacy’s suppliers often surpassed the cost of factoring the medical invoices so the Pharmacy used the advances from its medical factor to pay its suppliers early and benefit from this discount.

In conclusion, medical providers will continue to be challenged in the near future with increasing regulations and inconsistent health insurance reimbursements. To survive—let alone thrive—in this healthcare environment, a medical provider will benefit greatly from having a funding partner to help navigate these uncertain waters.
Intercreditor and Subordination Agreements: Business and Legal Perspectives—Part One

The last two journal articles focused on dealing with the effects of involuntary financings and junior liens. However, a significant amount of business in the ABL and factoring industries involve multiple parties financing the same debtor and obtaining security interests in the same collateral, with all parties knowing about and approving the other party’s interest in the common debtor.

Most people in this situation obtain some form of agreement. Many do not. However, it is fairly common that the parties who enter into agreements with each other regarding their common debtor and collateral have not properly thought through their deal with the other secured party. This two part series will discuss intercreditor and subordination agreements and address the issue first from a business and structuring perspective and then from a legal documentation perspective. The article will be geared primarily towards the incoming lender or factor that is providing the bulk of the financing for the common debtor.

Intercreditor agreements and subordination agreements are often used interchangeably. However, they are different, but highly related animals, with each often containing elements of the other. A subordination agreement is where a secured party who has a senior priority position on all or certain collateral, subordinates its security interest and lien, on all, or some of the collateral, to the security interest and lien of the incoming

Steven N. Kurtz, Esq. has represented factors, banks, and asset based lenders on a continuous basis since 1987, and he is the Co-general Counsel to the IFA. A founding partner of Levinson Arshonsky & Kurtz, with offices in California and Oklahoma, he practices in the areas of commercial law, insolvency, workouts, loan documentation and trade finance, in both transactions and litigation matters. He can be reached by phone at 818-382-3434 or by email at skurtz@laklawyers.com.
secured creditor. An intercreditor agreement is a contract between two creditors which addresses their rights and responsibilities to each other regarding their common debtor.

The first thing for the incoming creditor who wants to obtain the subordination, and possibly, intercreditor rights, is to ascertain the size of the deal, as this will dictate the form, complexity, and the tone of the agreement. I like to classify these types of agreements into three general categories. The first is “let’s make a deal”. This works in situations when the deal is small, you have few worries about liquidation issues and, perhaps, not much money is left owed to the senior creditor. The second mid-level agreement, which goes up a notch, is an agreement with a little more teeth than a “let’s make a deal”. This typically discusses issues such as marshaling, rights to revoke the agreement (mostly an issue with the senior creditor who is subordinating or giving up rights), permitted payments, waterfall provisions, stand stills and things of the like. The highest level of intercreditor and subordination agreements are the ones that I like to say “I own you”. These typically involve corporate governance issues, chapter 11 bankruptcy issues, voting rights in bankruptcy, power of attorney provisions, rights concerning guarantors and secondary collateral, in addition to requiring one creditor to completely stand still until the other creditor is paid in full. The more complicated the financing transaction and more dollars involved, the higher the level of protection one needs and the more these types of agreements will be negotiated. However, overkill in intercreditor and subordination agreements, while not necessarily bad, often results in unnecessary delay and fees, which outweigh the benefits to the parties, do not fit the deal, and ultimately, hurt the debtor. The key is to ascertain the scope of the deal upfront and work on getting the right document for the transaction.

A good example of a well thought out intercreditor agreement is the typical agreement between some inventory and purchase order finance companies and factors. This market group has structured easy, fair and workable agreements. Certain leasing companies, equipment lenders, and up market merchant advance companies/ACH lenders have also prepared agreements that work without any drama. As parties work together in different deals, they are often able to come to a good document.

It is also important to get an understanding of the mechanics of the transaction. In other words, what is the party financing? One should review the agreements and conduct a lien search to make sure that the secured party whose deal you are coming into has properly documented the transaction. People often make mistakes, so one should not assume that the creditor got it right. Therefore, you need to review the other party’s documents, in order to understand the structure of the deal you are coming into and know the party’s rights and remedies that it holds and will relinquish. In some situations, when there are too many secured creditors in the deal, which tends to happen frequently with debtors who seek multiple merchant cash advance/ACH loans, it may be advisable to structure the transaction as a takeover and assignment of the senior creditor’s rights, a subject in a prior IFA article.

In addition, it is also important to talk to the creditor in the deal. This does not mean simply discussing the fact that the party will subordinate, but get an understanding of the other creditor’s perspective of the transaction. If the other party is a fellow ABL company or factor, ask why the debtor or other lender wants you in the deal. One should also ask for the “lender or factor story”. Most lenders in this business are honest and when asked, will tell the true story. If you get the feeling that you are not getting the real story from the other secured party, then you probably don’t want to be in the deal. Talking to the other side first is especially important in the smaller deals, when the parties are using more simple forms without lawyers.

Perhaps some of the worst horror stories are when intercreditor and subordination agreements go bad. This can occur when the parties do not adequately anticipate or think through the issues. Also, there are horror stories connected with courts reviewing these kinds of agreements that don’t fit the deal or are poorly drafted. Unlike borrowers or guarantors, who often get help from, and are bailed out by courts, this almost never happens with intercreditor and subordination agreements. Courts generally do not feel sorry or sympathetic towards lenders in these agreements. Most of the litigation involving intercreditor and subordination agreements take place in bankruptcy courts because that’s where the debtor usually winds up when it’s in trouble and the parties are now sorting out their respective rights. When the documents have problems, judges are called upon to clean up the mess. Judges generally enforce these agreements to the letter and often with disastrous results. Courts typically view the competing creditors as sophisticated parties, who had the benefit of counsel, who have made their beds and now must lie in them.

For some reason, many parties have given little thought to intercreditor and subordination agreements. This may be because they often are addressed right before the deal is finalized, and everyone is focused upon closing the transaction. When intercreditor or subordinations are called upon, they don’t always provide what the parties needed or intended. Thus, it is important that you get it right at the outset. The first step is to understand the business aspects of the deal and think through what you want to accomplish. •
Oil & Gas Bankruptcies on the Rise, and Their Effect on Factors

Oil & gas (bankruptcy) is booming. Commercial bankruptcy filings in the US increased significantly over the last 12 months, attributable, in part, to the distressed energy sector. At least 67 oil and natural gas companies filed for bankruptcy in 2015, and another 26 through May 1, 2016. Many of these are filing in Houston.1 A third of shale producers face bankruptcy risks this year.2

BY JASON MEDLEY, ESQ.

The chief reason for the spike in oil and gas bankruptcies is the decline in oil prices. Depressed markets lead to a lack of cash which directly affects an exploration and production (“E&P”) company’s ability to meet its obligations. Furthermore, big banks (who don’t have the same grit as factoring companies) have recently been leery of providing traditional financing to companies in the oil and gas sector. This presents both a risk and an opportunity for factoring companies who are not afraid of businesses on the brink of, or in, reorganization.

CURRENT TRENDS AND HOT BUTTON ISSUES

The liquidity crisis impacts not only the publicly traded E&P giants, but also the “mom and pop” and “wildcatter” producers. Once the cash for the E&P sector dries out, the midstream and downstream industries (well services, fracking, heavy haul transportation, hazardous waste removal, pipelines, equipment rental, refining, etc.) suffer as well.3

A recent bankruptcy court ruling in the Sabine Oil chapter 11 case sent shockwaves through the midstream oil and gas sector. The judge decided that Sabine Oil, an E&P company, could unilaterally terminate its contracts with a pipeline company. As a result, Sabine Oil will save, and the pipeline will lose, at least $35 million. This ruling flies in the face of laws that previously protected pipeline contracts, making them essentially “bankruptcy proof” if structured properly. During her interviews with both Natural Gas Intelligence and Reuters, Heidi Sorvino, a shareholder in LeClairRyan’s New York City office and chair of the firm’s oil and gas practice, noted the importance of the Sabine Oil decision, which will have a domino effect in the oil and gas industry and leave pipeline companies with little recourse to recover losses.4 This domino effect may send pipeline companies and other servicers in the $500 billion midstream sector into bankruptcies of their own.

BANKRUPTCY FILED, WHAT NOW?

The date on which the bankruptcy petition is filed affects the legal rights of a factor. Once the client files for bankruptcy protection,
it is paramount to freeze future business dealings with the now bankrupt client until court authority is obtained.

That does not mean you have to freeze collection efforts against the account debtors for the invoices already purchased. However, to avoid having to defend a claim that you violated the automatic stay, you should tread lightly. The best advice is to have your attorney contact the debtor-in-possession or trustee, as the case may be, and let them know what you are doing. Also, if your customer’s guarantors did not file bankruptcy, you are free to sue them, as there is no automatic stay in effect. If the debtor wants to have your factoring agreement approved as post-petition financing, make sure you have a bankruptcy attorney experienced in these matters assist you.

**FACToring AGREEMENT: TRUE SALE OR LOAN?**

A central issue in all of these cases is who owns the pre-bankruptcy receivables. This largely depends on the facts of the case and how factoring agreements are interpreted under the laws of the state where the bankruptcy is filed or the laws of the state that apply per the terms of the factoring agreement. These will determine whether the transaction was a loan or a purchase of receivables. On this point, the recourse language is often key.

Courts traditionally find that a factoring arrangement that completely shifts the risk of non-collection to a client is a disguised loan rather than a true sale, and therefore, pre-petition receivables are assets of the bankruptcy estate (and subject to, among other things, the automatic stay). In my home state of Texas (and next door, in Louisiana), recourse does not necessarily threaten true sale, where express laws protect full recourse factoring. Regardless, trustees and bankruptcy judges often try to re-characterize these agreements as disguised (and usurious) loans. Be sure to have your agreements reviewed for true sale compliance ahead of time by a lawyer who has defended such agreements in the bankruptcy arena.

**PESKY PREFERENCES**

A factor should anticipate that a client or account debtor in bankruptcy (or its trustee) may sue the factor to recover payments made to the factor within 90 days prior to the bankruptcy filing. The Bankruptcy Code presumes that such payments are “preferential” payments and can be avoided. This also subjects the factor to an
alternative fraudulent conveyance claim. If faced with this type of claim, seek an attorney who has defeated preference actions and who has a team of experts ready to analyze the payments in preparing a defense.

The presumption that a payment made within 90 days prior to bankruptcy is a preference is rebuttable and is subject to defenses. This article does not go into the various defenses to a preference claim. However, factors should, in response to a client or debtor facing financial trouble, attempt to collect money on the same terms as it has done in the prior course of dealing. In determining the “ordinary course of business,” courts look to the habitual and recurring payment terms between a factor and client or account debtor prior to the 90 day window to determine if the payments fall within those same terms and that the manner of collection is ordinary.

The preference rule also applies to a factor thatperfectsa lien within 90 days prior to bankruptcy. If the factoring agreement is reclassified as a disguised loan, and the factor files the financing statement within 90 days prior to the bankruptcy filing, the transaction is a transfer of the bankrupt entity’s interest and may, under certain circumstances, be a preference that can be avoided. In other words, you could lose your lien.

**INDEMNITY AGREEMENTS: HERE TO SAVE THE DAY?**

Clients commonly transfer factoring relationships from one factor to another. As part of the transfer of the relationship, the new factor generally provides the original factor with certain indemnities, including an agreement to indemnify the original factor for preference claims. Depending on timing, the original factor may find itself named in a preference action after the factoring relationship has ended.

The indemnification provision can be a helpful tool in making the new factor defend the claim and indemnify against any loss. Both sides of the table should consider potential exposure to preferences and indemnity liability when negotiating payoff agreements.

**PROTECT LIEN FROM PRIMING**

In most oil and gas reorganizations, as opposed to liquidations, the bankrupt company seeks financing to continue operations during the bankruptcy (known as “DIP financing”). This financing often receives favorable treatment such as higher interest rates, short maturity dates and, most importantly, “priming” liens on the bankrupt’s assets. Typically, a DIP lender will seek an order from the court declaring that it has a valid first blanket lien with priority over all existing liens. Although this type of relief is only granted after a motion, hearing and opportunity to object, DIP motions are usually filed at the onset of the case on short notice, so parties must be cognizant and respond quickly or their rights could be affected.

Factors can also become DIP financiers. This can help ensure that a factor’s pre-bankruptcy financing arrangements do not become subordinated to a third party, provide a new agreement on potentially more favorable terms, and help with the collection of pre-petition invoices. A factor must be prepared to defend the proposed DIP factoring facility. Creditors’ committees, judges and trustees often focus on the effective yield, which tends to be much higher than traditional factoring, and will want to know that the debtor has evaluated alternatives to your factoring agreement (i.e. from your competitors).

**CONCLUSION**

Be mindful of your current clients, accounts debtors, and prospects that are either directly involved with the energy sector or that are particularly dependent upon it. Monitor them closely. If a bankruptcy is filed, seek immediate counsel from an experienced commercial bankruptcy attorney and be prepared to manage the risks—and seize the opportunities—presented by the distressed energy market.

2 Swetha Gopinath and Joshua Schneyer, As U.S. Shale Drillers Suffer, Even the Bankrupt Keep Pumping Oil, REUTERS, April 1, 2016.
3 The oil and gas industry is divided into three segments: upstream, midstream and downstream. Upstream consists of the E&P sector, while midstream includes the transportation and storage of hydrocarbons. Finally, the downstream sector includes the refining and processing of hydrocarbons.
4 Natural Gas Intelligence, “&P Bankruptcies Could Spell Trouble for Midstream Sector.”
6 One of the more common defenses to a preference action is the “ordinary course” exception. The ordinary course exception provides that a preferential payment may not be avoided if the payment was made according to the ordinary course of business or financial affairs of the bankrupt and payee or was made according to ordinary business terms.
7 Often the client will be a party to the indemnification agreement and indemnify the original factor. Similar provisions in the factoring agreement usually expressly survive termination and payoff. In other words, if you are faced with a preference action, you can usually sue your client for indemnity, even post-termination.
Factoring for this industry can be difficult and requires extensive due diligence throughout the relationship. Although most subcontractors are experienced and knowledgeable of their trade, this doesn’t mean they necessarily have expertise in running a business. This can cause obstacles during the underwriting process and throughout the relationship if the factor doesn’t commit to meticulously monitoring and overseeing the account.

Knowing there are unavoidable risks involved with construction clients, we must learn to manage those risks in order to have a successful relationship. If we know what to look for, we can try and avoid mistakes along the way. There are three unique challenges that can cause difficulty when factoring to this niche market:

**EXECUTORY RISK**

This is where additional due diligence, to ensure your client is healthy and has the ability to perform their contractual obligations, becomes paramount. What happens if the job laid out in a contract that you’ve funded isn’t performed properly, the client fails to execute a project appropriately, or a job isn’t finished on time?

If your client doesn’t execute and provide the services discussed due to timing, or a bad product, what’s the likelihood they are going to get paid for this work? If the client doesn’t have enough money to complete the project they committed to, you’ll have to come up with the money to protect your interest. The client’s ability to execute on what they say they can do is crucial when entering a relationship. Thus, underwriting the client is about far more than examining their contracts, receivables and payables. You have to understand their profitability, but even more important, you need to understand their ability to handle a problem.

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**Finding Opportunity in Construction Factoring: It’s All About the People**

Construction is booming. Entering 2016, Wells Fargo measured optimism among industry leaders at a record high; the first quarter of 2016 saw 24.4% growth in non-residential construction projects, and employment is up 4.7% over the same period in 2015. Yet pessimism persists both among investors and banks; banks, in particular, are hesitant to lend to subcontractors, and not all factors are up for the challenges the industry brings. The slowdown in China, combined with a drop in United States GDP from 1.4% in 2015 to .05% in the first quarter of 2016, has contributed to the general pessimism felt by many investors. We still strongly feel that there is opportunity in this market, but it comes with major risk.

**BY COLE HARMONSON**
Regardless of a subcontractor’s knowledge or years of experience in the industry, some clients don’t fully understand each state’s standard practices that protect their rights to payment. Lien laws are continuously changing. Many clients don’t have the internal processes in place to ensure they are meeting the strict deadlines that protect their rights to payment. Many times, a client is hesitant to enforce their rights. We recently had a client who was very resistant to our insistence that he file his lien in time. Much to his chagrin, we filed on his behalf, and sure enough, if we hadn’t pushed the matter and gotten his lien filed in time, it would have cost him $600,000. This is key to financing construction operators, but it requires adroit relationship skills.

At times, a client agrees to terms in a contract that they don’t fully understand. If a contractor unknowingly agrees to terms they can’t execute, the risk may lie with you. In particular, we see this happen when clients agree to terms that limit them to getting paid in a certain time, have unrealistic reporting requirements, or many other items they may not even be aware of. This is where overseeing each project meticulously and ensuring your client fully understands the conditions of a contract is vital. Otherwise, they may end up agreeing to terms they aren’t capable of completing. Review, review, and review again; it’s worth the painful conversations to ensure you’re both on the same page.

Since it’s impossible to fully avoid these risks, factors have to find ways to mitigate any issues by closely managing these relationships. This process starts with the initial evaluation of the client’s business and capabilities and extends throughout the lifetime of the relationship. A greater level of attention is needed.
when considering a client for construction financing.

Given all of these complexities, it's difficult to impossible to know every single detail. Even when all the boxes are ticked and all the background checks are completed, even when collateral is present and their books are updated, clients are human. Broken promises and intransigent clients are going to happen; you may miss a tiny red flag that becomes a bigger problem later.

On our end, we find it useful to flip the usual underwriting process and start by evaluating the entrepreneur themselves: their character, their background, and how we can help them achieve their goals in life. We bet on people first, and then we check their credit, evaluate their collateral, and ensure their books are in order; if we can successfully evaluate character, everything else usually falls into place. When we can’t understand those things, or aren’t getting good answers, we walk. If you start with a good operator and a clear goal for the relationship, combined with meticulous underwriting and portfolio management, then construction financing should be fun and rewarding.

With the growth in this industry, it’s easy to find those clients, but harder and harder to successfully evaluate risk. Without that evaluation process, without knowing the character of the operator and the nature and challenges of their business, you’ll end up spending some dollars on bad deals. If you can create the process and listen to the gut feeling that leads you to great deals, though, this is an industry worth financing, with relationships worth having.

Cole Harmonson is the CEO and co-founder of Far West Capital. After his employer sold their banking business in 2007, Cole took the leap into entrepreneurship and started Far West Capital. Growing up in Texas with an entrepreneur father taught Cole valuable lessons about business, family, and taking care of people. These core values drive the mission of Far West Capital to unleash the potential inside of every business. Just nine years later, Far West Capital has provided more than $3 billion in financing to growing companies across the country, and its Far Reaching campaign donates over $100,000 to charity annually. Cole can be reached by phone at 512-527-1111 or by email at cole@farwestcapital.com.

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Best Practices and Innovation in Back Office Operations

The back office is the unseen production line that keeps a factoring company running smoothly; and just like in a manufacturing production line, leading companies follow a few critical best practices: Start with the customer in mind; Design a simple, repeatable process; Track performance; and Deploy technology smartly.

THE CHALLENGE

The challenges are well known. Factor back offices deal with a high level of variety and complexity in both inputs and the outputs. The inputs are documents, which vary based on the underlying transaction (trucking, staffing, manufacturing, etc.), type (bill of lading, lumper receipt, rate confirmation, etc.) and quality (handwritten notes, cell phone photos, emails, etc.).

The outputs are client fundings, which vary by type (advance vs. full funding), timing (from two hours to next day) and funding method (wire, direct deposit, money code, fuel card, etc.).

Yet the daily urgency to turn around the paperwork, fund clients, and bill debtors is unyielding. With transaction volume running at hundreds or thousands of invoices per day, there's no room for error or delay. And in the competitive world of factoring, there's certainly no room for excess cost.

START WITH THE CUSTOMER

Companies often forget that decisions about which customers you serve, and how you serve them, always impact operations. There are real trade-offs in complexity versus growth that factors need to evaluate when deciding to enter a new segment. Client size is another variable, with larger clients offering easier, more consistent processing, but with a corresponding demand for efficiency and lower cost.

Determining what requirements you put on your clients can also have a big impact on operations. Some factors simplify their operations by requiring clients to use online portals to enter data and upload and tag documents. Other factors don't allow clients to submit fragmentary documents and insist on full package submissions. Of course, these requirements can also make it tougher to attract and retain clients.

While there's no formula for determining the right customer mix and service offering, good factoring companies make these decisions explicit and then build their back office processes from there.
SIMPLE, REPEATABLE PROCESS

Establishing simple, repeatable processes is vital. Most factors create two workflows, Data Entry and Portfolio Management, each with distinct teams, management and metrics:

• Data entry focuses on 1) receiving the client documents, 2) ensuring that the paperwork is complete and ordered, 3) entering the critical data elements, and 4) verifying that the data and paperwork match up and satisfy debtor requirements.

• Portfolio management then 4) reviews the data and documents for each transaction, 5) manages any needed follow ups with the client and/or debtor, 6) determines buy/no-buy, and 7) triggers the ensuing debtor billing and client funding actions.

This division of work not only ensures appropriate checks and balances but enables each department to design their workflow for maximum efficiency and performance.

One common best practice is to require the client to fill out a Funding Form, which may itemize and total the invoices and amounts and specify funding methods and timing for each set of submitted invoices.

In addition to providing better legal protection, this form also helps Data Entry identify which documents or data may be missing. In effect, this form serves like a bank deposit slip.

Even with a Funding Form, factors deal with the reality of client error, as well as the risk of intentional fraud. Against this backdrop, each factor must determine their triggers for supplementary validations, as well as their buy/no-buy criteria to ensure that debtor receivables are valid and collectible without delay or re-work. While individual companies establish different criteria based on their customer and transaction profiles, all factors must build an efficient, accurate validation process. A typical best practice sets out clear Audit Flags for Data Entry, which enables the team to work efficiently, pass along alerts to Portfolio Management, and not get bogged down by validation.

A frequent pitfall is that factors establish good processes, but then fail to document them in the form of standard operating procedures. The absence of clear, documented SOPs complicates training and on-boarding new employees and can also lead to unforeseen problems in which team members unintentionally put the company at risk.

TRACK PERFORMANCE

Even with solid workflows, leading factors establish metrics to track performance. Metrics or KPIs help companies ensure that their processes are both “under control” and continuously improving. Under control means that a process is repeatable and consistent from day to day, even with the sharp volume fluctuations that factors regularly encounter. If, for example, error rate or cycle time varies significantly, that process is not in control and management needs to understand the causes of that variability. Once a process is stable, the team can then work on driving improvement.

Again, every factor will set up metrics that are tailored to their individual operations and business goals. But once these metrics are in place, it’s critical to track the data in an automated way, as manual data collection efforts are inevitably costly, inaccurate, and short-lived.

Modern back office systems digitize these work-steps, create audit trails and provide a robust data set for performance tracking.

TECHNOLOGY

The promise of modern business technology encompasses not only better data, but greater automation, visibility and accuracy, combined with lower cost.

For example, the traditional Data Entry process requires significant manual work: organizing incoming emails and faxes, scanning hard copy documents, grouping submissions by client, manipulating PDFs, keying data (e.g., invoice number, invoice amount, debtor, client, PO number), checking for required documents, tagging and uploading those documents, and contacting clients when documents are missing or illegible.

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Automating this work is challenging due to the fragmented nature of the industries factors serve. For example, in transportation, there are millions of shippers, hundreds of thousands of truckers, and over 10,000 brokers, all of whom contribute documents to a transaction; and, of course, this doesn’t factor in other documents like lumper receipts or gate passes. Clearly, there is no such thing as a standard “invoice packet,” and to make matters worse, clients often submit paperwork at different times, forcing Data Entry to keep track of and match up disparate documents.

Modern back-office systems now enable intelligent automation for much of this work by leveraging two key capabilities:

• Document management capabilities to image, store, retrieve, and share documents.
• Workflow automation for validation, data entry, document matching, and exception resolution—work that traditionally has been highly manual.

As background, workflow automation relies on Optical Character Recognition (OCR) to extract text and Artificial Intelligence to make sense of that text. While it may seem futuristic, in reality, we all use systems like this every day. For example, companies like Facebook have developed photo-reading systems that identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos. Using interconnected machines that approximate the web of neurons in the human brain, Facebook learns to identify faces and objects in photos.

Well run back-office operations are boringly similar—and efficient—but back offices that utilize work-arounds and shortcuts are costly, error prone, and constrain growth.

Wrap up

As Tolstoy wrote in Anna Karenina, “All happy families are alike; each unhappy family is unhappy in its own way.” Likewise, well run back-office operations are boringly similar—and efficient—but back offices that utilize work-arounds and shortcuts are costly, error prone, and constrain growth. These companies often find it difficult to find the right people because processing invoices is highly repetitive but, at the same time, requires remarkable memory for all the special procedures.

Surprisingly, many factors don’t realize how “unhappy” their back offices really are and are rightfully proud of their teams and the procedures they’ve implemented. These work-arounds and shortcuts do, in fact, create efficiencies—within an incredibly inefficient environment. By contrast, best practice factors do the hard work up front. These companies start with the customer in mind, design a simple, repeatable process, track performance, and deploy technology smartly.
2016

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

10/6 Credit Benchmarks: Steps to Improve Cash Generation
Webinar, 10am - 11am 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

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2017
INTRODUCTION/BACKGROUND
Factoring has been relatively free from government interference. Nonetheless, factors could soon be subject to significant regulation under new statutes and regulations currently being discussed in Washington.

Many politicians and bureaucrats in Washington love laws and regulations. They are becoming more complex, confusing, and indecipherable.

RECENT DEVELOPMENTS
After the financial crisis of 2008, Congress passed Dodd-Frank which established the Consumer Financial Protection Bureau (CFPB). Dodd-Frank was supposed to protect consumers against predatory lending practices of the big banks.

From 1990 to 2008, there were 2,000 new bank charters. Between 2008 and 2012, after the passage of Dodd-Frank, there were only 7 new bank charters, according to the FDIC Community Bank study of 2012. Hence, the question: did Dodd-Frank really protect the consumer or simply limit competition, helping the biggest banks at the expense of smaller banks? Over the last 25 years, community banks have gone from a 38% market share to only 14%, and there the number of banks declined from 17,901 to 7,357, according to the FDIC study.

During this 25 year period, factoring companies flourished, as they had the flexibility to serve small business clients that the big banks were not servicing.

Over the past 10 years, fintech marketplace lenders, commonly called merchant cash advance companies, entered the marketplace of small business lending. According to Business Wire Investments, fintech lending totaled $12 billion in 2014 versus $3 billion in 2013. As a result, there are many questions being asked about fintech and online lending.

On May 9, 2016, an article in the New York Times appeared regarding Lending Tree and possible improprieties in its lending process. This led to a 34% decline in its stock price in one day. Thereafter, various articles were published concerning the potential regulatory impact this might have with respect to online lenders.

On May 13, 2016, the American Banker carried an article stating
that a number of fintech companies might seek bank charters as a cheap source of funding, since, in the wake of the Lending Tree revelations, funding from other investor classes had leveled off.

All of this has led to a good bit of discussion about imposing regulation on the online lending industry. On June 1, 2016, the American Banker reported that the Independent Community Bankers of America, a trade group which represents 6,000 community banks, expressed dismay that marketplace lenders have a regulatory advantage, suggesting regulation of them was needed.

On June 2, 2016, the Weekly Standard published an article on payday lending, describing the new 1,334-page CFPB rule. The rule would require payday lenders to do a lengthy analysis of a borrower’s ability to pay. This rule would tremendously increase the cost of making a loan when most payday loans are $500 or less. The larger players in the industry had less reason to oppose this new rule since their size, infrastructure and fintech capabilities would allow them to more easily compete with the smaller mom and pops which currently make up the majority of payday lenders. What will be the end result? Despite negative preconceptions that one may have related to payday loans, new CFPB regulatory rules will ensure that only the large and the strong will survive, thereby wiping out lesser competition.

**THREATS**

For the most part, the factoring industry is made up of mom and

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As of July 27, 2016

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Phone: 866-364-9696 • www.agilityrecovery.com
Email: andre.selvyn@agilityrecovery.com
IFA Member Benefits: 5% discount to each respective client’s monthly ReadySuite membership fee.

MARKETING

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

RECRUITMENT AGENCY

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

SOFTWARE

FactorFox
FactorFox Cirrus is a cloud application for factors, their clients, brokers, lenders, and others who enter or access data. Entries can be made and reports accessed from any internet-connected computer, tablet, or smart phone. As a web-native program, there is no extra cost for setting up your account or to access your data; further, you receive three hours of free training online. FactorFox’s various versions make it suitable for nearly any size factor.
Phone: 866-432-2409 • www.factorfox.com
In addition to the one-month free trial for everyone, IFA Members receive an additional month to try the complete program.

ProfitStars®
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®.
Phone: 205-972-8900 • www.profitstars.com
IFA members will receive 10% off new ProfitStars lending solutions product purchase.

For IFA members who are currently ProfitStars customers: Free one day CADENCE refresher course, per year, at ProfitStar’s training facility in Birmingham, AL.

TAX COMPLIANCE

Tax Guard
Tax Guard fills a critical gap in a commercial lender’s credit risk management toolset with efficient, real-time and actionable insight into the true, non-public IRS tax compliance status of their prospects and clients. Our due diligence reports, tax compliance monitoring and resolution solutions support commercial lenders throughout every stage of the funding life-cycle.
Phone: 303-953-6308 • www.tax-guard.com
Contact Heather Love
IFA Members will receive a 20% discount on the same-day due diligence order.

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

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

First Corporate Solutions
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Phone: 800-406-1577 • www.ficoso.com
Email: info@ficoso.com
IFA members will receive a 10% discount off the retail rates of their signature state and county account monitoring product.
There’s Nothing “Old-Line” About Factoring Today

Financial technology, also known as FinTech, is an industry with the objective of achieving success by disrupting incumbent financial systems that rely less on software. These new companies include peer-to-peer lending, crowdfunding, e-invoicing, and payments. Most disruptive FinTech businesses were only imagined as recently as five years ago. And, this is just the beginning, as there are ten thousand graduate students trying to figure out how to upend your business model.

The implications for the traditional Factoring Industry represent opportunity, as well as existential risk, as factoring is not immune to the forces that have shaken up so many other industries in the last few years. The question is not “if” but “how soon” and will the disruption come from inside or from outside?

Unless current players quickly adopt and invest in new technologies and approaches to the business, it will come from outside.

Large factoring companies (like large companies in any industry) are often burdened with home-grown or monolithic technologies in which they have invested millions of dollars over many years, systems that make change difficult, impractically expensive, and slow to modify. On the other hand, smaller factors often use inexpensive third party software over which they have no control and which may not be scalable as they grow.

We are convinced that disruptive

business models will arrive in factoring before the end of the decade and that solutions that may be unimaginable to us today will be practical sooner than we think. As an industry, we can build the map to the future or ignore it at our peril. A logical beginning might include enhancing present systems by further automation that is possible today and learning lessons and adapting solutions from other industries where appropriate. In this article, we will discuss some of the transformative technologies implemented in other industries.

The Core assets of factoring companies include (i) hard to duplicate experience managing and pricing risk at low margins, (ii) bringing a total working capital management solution to clients including inventory finance and a (iii) deep understanding of the dynamics of client economics and that of its core industries (retail, transportation, medical, etc.). This solid basis is a firewall of sorts and could be a springboard to transformation.

Non-core support functions—that which are performed to support the core mission but which are more a cost of doing business rather than a profit producer—include processing and updating customer credit requests, cash application and payment processing, the management of collections and receivables, the interaction with clients and their customers on issues related to collections, just to name a few.

Support functions represent an opportunity for both expense reduction (less overhead, fewer people, more margins!) and client service enhancements, including faster response, that are market differentiators (more revenues!).

We believe there is significant


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opportunity for "bolt-on" technology solutions that work with even legacy systems to bring a higher level of efficiency to operations, while creating a "defensible" model, with back-room operations so transparent, streamlined and efficient that there is less to "disrupt". These bolt-ons (and there are a lot of choices), especially if shared as a common standard across an industry, can be affordable and sustainable. Offense is the best defense, in this case.

Here are just a couple of immediately available technology solutions which are applicable to the factoring industry, as they significantly automate "non-core" processes and improve financial results.

1. Make Faster Credit Decisions—New Credit Approvals

There is a 10-12% annual churn in US businesses, so there will never be a shortage of new customers asking for credit, and the work and time involved in verifying them can be substantially reduced, which is important for client satisfaction. You can save days or weeks and eliminate most of the labor using a custom online credit application that integrates with your systems and the data you need for credit approvals and includes approval management workflow and credit controls.

What is becoming more valuable in garnering information is a seamless electronic application (which includes guaranties, terms of sale, and electronic signatures) filled out by the applicant and which automatically handles the references, incorporates peer trade, credit bureau data, and scoring results to produce a "decision-ready" electronic file. This system could include the client (for non-factor risk sharing) with work flow controlling which party sees and acts on the information; in either case, very positive for differentiating your factoring services from competitors.

Data Integration? Data-as-a-service should be integrated with this kind of powerful internet app, which includes credit bureau data, scoring, and industry trade payment metrics, including feeds from massive trade data utilities which take in large volumes of factor experiences. The technology barriers that made data integration into client systems cumbersome have been mostly eliminated.

This "Software as a Service" type of solution is available today and used by an ever-increasing number of large enterprises.

2. Automatic Access to Chain Store and Carrier Web Systems

Those that deal with chain store retail have a unique situation. A small number of chain operators account for 80%+ of the revenue

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The IFA's Vendor Locator Service lists vendors of interest to the Receivable Finance & Factoring industries, including attorneys, UCC search firms, funding sources, and many more.

In addition to providing a list of qualified Vendors, you will also see IFA Preferred Vendors. These Vendors offer discounts or superior services to IFA members.

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and transaction throughput for many clients. The Top 100 US retailers account for $2 Trillion of revenues. We are talking 500 million to one billion invoices issued annually, with tens of millions of payment submissions (i.e., checks or their electronic counterpart). Clearly, this calls for more automation.

While these giant chain retailers demand that business be done their way, more are providing web system access for the vendor, and many vendors and factors are forced to copy and download data from these systems to support accounts receivable operations. For most clients, this remains a largely manual, tiresome process which is very rarely integrated in their receivables systems.

Doing this work requires a large amount of wasted manpower used in logging into customer websites to access Debit Memos, Proof of Delivery, and EDI documents and, once retrieved, they need to be printed or translated and emailed throughout their organization.

This chart is an example of data and document retrieval that can be automated today, based on rules, schedule, or conditions, and then automatically inserted into system workflow.

1. **EDI 820** Translate, convert codes, and auto apply against the AR.

2. **EDI 812** Translate, convert codes on your own forms, insert in your AR system workflow.

3. **Pre-deduction notices** Download, match, insert into resolution workflow and solve before it’s too late.

4. **Debit memo copies** Download, match against the AR and insert in workflow.

5. **Skipped Invoices** Identify and have system send out invoices with PODs and insert in workflow.

6. **Forecast cash** Based on the invoices, these are queued for payment in the AP system.

7. **Proofs of Delivery** If an invoice is X days past due, system goes to carrier, downloads POD, emails to customer with invoice copy.

### 3. Promote ACH Payments for Smaller Payers

Online payments, including ACH and Credit Card, save time and eliminate overhead. The time has come for broad expansion of Electronic Invoice Presentment and Payment (EIPP).

There are a number of third party EIPP platforms available for companies dealing with large numbers of small customers, which make the payment process easy for the payers, including Billtrust, PayPal and the Intuit Payment Network (i.e., QuickBooks).

If you expect small payers to use a payment portal, there are a few essential features to consider, with the key being simplicity of use and integration with client receivables data and documents, and with payers’ standard processes.

- Integration via APIs (Application Protocol Interface) with the several major SME accounting systems is essential because few payers will do key entry twice. The best solutions integrate the invoice/payment into the payer’s accounting system.
- ACH is the preferred way to receive funds, but credit cards should also be considered as a fallback. Although factoring margins preclude absorbing credit card fees, and clients may not absorb the cost either, for convenience, the payers may choose credit cards during cash flow shortages, so the service should be offered with the payer given the option of paying a service charge more or less equal to the credit card fee.
- Designing for Mobile Payments is essential because today many (perhaps up to 50%) small business people do business on their mobile phones.
- Industry Standard Portal. A business usually does business with more than one factor, and in order to get widespread adoption, an industry-wide portal should be considered, whereby the customer can access and pay multiple factors on one site. Obviously, security is important and each factor can only see their own data.

- The payers using this type of payment portal self-register are able to review or print invoice copies, make payments, dispute invoices and communicate with the credit department or sales.

### SUMMARY

Factoring is an industry that has profound institutional knowhow and expertise, and which is critical to the success of many sectors of our economy. In other industries, the technology landscape has changed remarkably in the last few years and we believe taking the offense with respect to technology enhancements will best assure factoring success going forward. Those best positioned will be the ones on the forefront of technology transformation. This “transformation” can start with optimizing current operations and client services. It will end with more rapid and fundamental changes which we cannot specifically predict except to predict “it will happen, ready or not”.

In conclusion, change is coming, and industry players must choose to be proactive change-agents, or hope they can hitch a ride in time. We vote for “proactive” as a strategy.

We are proud to have served the top factoring companies for close to thirty years now, and know the industry well. If you would like any more information on any of these or other technologies related to business credit and accounts receivable, contact Shyarsh Desai, CEO, Credit2B LLC at sdesai@credit2b.com and Bonnie Gerrity, Chief Credit Officer & VP Client Solutions at bgerrity@credit2b.com.
As a result, our inboxes are full of emails and our phones are pinging nonstop—all because people we met at networking events are bombarding us with messages to see how we can "align our strategies in a mutually beneficial relationship" (A.K.A. "promise to give each other referrals"). It's a transparent, sales-based approach—and often, it doesn’t work. Think about it: How many times have you responded to those types of messages?

Here's why it doesn't work: We don't have real relationships with those people. These days, we place so much value on networking that real relationships have taken a backseat. When you receive those “one last time” emails right around Memorial Day, that becomes abundantly clear.

“CONTACTS” AREN’T REALLY CONTACTS

My company used to venture out to every networking event imaginable. You name it; we were there: chambers of commerce events, association chapter meetings, startup meet and greets, and a whole gambit of others. It kept us busy and looked great on the surface. At the end...
isn’t possible to take step two with every person we have a business card for because we just have too many. To mitigate this challenge, here’s the strategy that works for my company; I call it the Bucket Strategy.

THE BUCKET STRATEGY

My company is a pure invoice factoring firm that only accepts transactions with B2B companies. As a result, some of our best contacts are with bankers, brokers, tax accountants and attorneys: professionals who have clients in a B2B industry. These contacts are highly valuable to us; their cards go in Bucket A. Bucket A contacts are people we want to get to know better. We want to learn more about what they do and how they can help our clients. As we build that relationship, we are able to find out how good they are at what they do; if we feel they are a high quality service provider, then we refer our clients to them. It doesn’t happen overnight.

Of course, the Bucket Strategy includes a Bucket B. When we come across networking contacts that deal directly with consumers—say, home repair contractors or mortgage companies—we know to refer them to a colleague in our field who is better suited to handle their B2C financing needs. They go in Bucket B. There’s no point in expending our valuable time on building relationships with networking contacts that will not be mutually beneficial.

By acknowledging that networking contacts are not truly contacts until you build a relationship—and then, by using the bucket strategy to whittle down your list and determine who you want to pursue relationships with—you can provide your clients with high quality referrals. In my experience, that is the best way to achieve a truly mutually beneficial relationship. •
AFA UPDATE
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pops and small factoring shops. Over 68% of factors have net funds employed of less than $25 million and 83.3% have less than $50 million, according to the 2015 IFA survey.

Threats to our industry include:

**The Justice Department’s “Operation Chokepoint”** The vagueness of this directive was misinterpreted by both regulators and some banks, resulting in a denial of credit and depository services to some of our IFA Members.

**Possible regulations from Consumer Financial Protection Bureau (CFPB)** According to two of our members, the CFPB has already notified them that the CFPB has received complaints from small business clients. The CFPB has asked these members to submit to CFPB authority. CFPB regulations already contain a provision specifying it can ask any business lender to submit information regarding lending to small business clients. Accordingly, the tentacles of the CFPB could indeed extend to factors.

**Regulations imposed by Treasury**

The Treasury report addressing opportunities and challenges in the online marketplace lending arena dated May 10, 2016, mentions that small business borrowers will likely require enhanced safeguards in the future. The Treasury report goes on to state that regulatory clarity can benefit the marketplace and that small business borrowers in the online marketplace should have the same protection as consumer borrowers. It stated that a 2015 survey showed that only 15% of borrowers were satisfied with their experience in the online lending market space, and that 70% complained of high interest rates, 51% noted unfavorable payment terms, and 32% cited a lack of transparency. This contrasted to the 75% satisfaction score from small business customers borrowing from community banks. The paper goes on to discuss transparency and suggests standardized documents with standardized representations and warranties with consistent market driven pricing.

**Laws by Congress**

Already, both the Senate Banking Committee and House Financial Services Committee are discussing fintech, online lending, and are reacting to the Treasury report in May.

**POSSIBLE UNINTENDED CONSEQUENCES**

Thus, online lending is definitely in the crosshairs of a number of significant players in Washington, including talk that Congress might consider legislation. What then would be the possible intended or unintended consequences in terms of the factoring industry? Are factors online with lenders? Who knows? It could depend on how that term might be statutorily defined. Perhaps we can be designated as an online lender if we have our applications online or we advertise online with banner ads for example. We could simply be designated an online lender because we have a website that can be viewed online. Imagine if we had to use standard documents with standard representations and warranties written by bureaucrats in Washington. How about consistent market-driven prices designed by bureaucrats who know nothing of the marketplace or how we determine risk or the amount of notification/verification, etc., and the administrative burden and costs to manage a relationship.

**INSURANCE**

The American Factoring Association’s mission is to educate lawmakers and regulators regarding our industry and how we positively assist small businesses. This is the education and advocacy arm of the International Factoring Association.

Membership in the AFA is value added insurance from the threats and unintended consequences of unfavorable legislation or regulation negatively impacting the factoring industry.

**CONCLUSION**

It would be foolish to assume that there won’t be legislation or regulation in the future that will have a negative impact on the factoring industry. While we may not be an intended target, the unintended consequence of legislation or regulation may have the consequence of increasing our costs and greatly adding to our administrative burdens and even threatening our existence.

The AFA, through its continued advocacy and educational efforts aimed at lawmakers and regulatory agencies, continues to represent the members of the International Factoring Association against such threats and unintended consequences. Please do your part and consider membership in the American Factoring Association by contributing to our cause. This cheap insurance policy may ensure your survival and the survival of our industry. For more information, please go to the American Factoring Association website, www.americanfactoring.org.

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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