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The Commercial Factor

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I always enjoy our annual look into the future issue. This year, I’m really looking forward to 2013 to see what this year will bring.

I’ve heard from quite a few of you that you like getting the update on my condition through my opening in the magazine. I’ll continue doing so until I hear otherwise.

As mentioned previously, on May 25th I had an accident which fractured T11 & T12 vertebrae in my back which left me as a paraplegic. During the injury, I was transferred on a backboard to the ambulance, which caused a wound to develop on my back that did not heal. I now have a wound VAC which is accelerating the healing of the wound, but limits my mobility.

Although it is not exact, the wound VAC should be on until mid January. Once it comes off, I will be able to actively engage in physical therapy. On a positive note, the muscles in my right leg above my knee are starting to come back. I’m looking forward to beginning PT to see how much better I can do.

We’ve been preparing for an extremely active 2013. First to come will be the release of the survey for our biennial Factoring Business Profile and Performance Report. This is the only survey of how factors around the world operate. If you are a factor, you should be receiving an invitation to participate and a hardcopy of the survey in the mail. You can also find the survey online at www.factoringsurvey.com For those Factors that participate, they will receive both a copy of the completed report as well as a personalized report indicating how your company compares to others in the industry.

Our annual conference looks to be the biggest and best ever. The 2013 event will be held April 24-27 at the Fontainebleau in Miami Beach, FL. With more speakers (over 50), more events and more people than ever, this is looking to be an amazing conference. Registration is now open and attendees can save by registering before January 31st. Conference information is at www.factoring-conference.com

We are just wrapping up the schedule for the 2013 training courses. This year will again offer a mix between new courses and the return of many of the popular events. Information will be posted on our website as soon as it is released.

Finally, we are excited to announce that Darla Auchenachie has joined the IFA. Darla has been involved with the factoring industry for over 20 years in various positions and has also done quite a bit of teaching for the IFA in the past. We are really excited to have her join us.

I’d again like to thank everyone for their thoughts, prayers and best wishes that I’ve received throughout the year. I’d like to wish all of you a happy and healthy New Year and I look forward to seeing you in Miami Beach.
PERSONNEL

Joseph Sammons Joins First Growth Capital
First Growth Capital, a division of First Capital, announced the hiring of Joseph Sammons as Vice President and Underwriter.

“Joe has the right experience and expertise to help First Growth Capital in our growth strategy,” said Jay Atkins, President of First Growth Capital. “His numerous years of work in different aspects of the financial industry will help in executing originations so our clients are able to get the funding they need to grow their business.”

Advance Business Capital Grows Full Service Factoring
Advance Business Capital, member of the Triumph Bancorp, Inc. group and provider of full service factoring to the transportation industry, announced the addition of seasoned veterans Adriana Lopez-Hammer and Kimberly Winters to its management team.

“Since our acquisition by Triumph earlier this year, ABC has become bigger, better and stronger,” said Steven Hausman, President of Advance Business Capital. “Adriana and Kimberly are both experienced professionals who will help Advance Business Capital continue growing ourselves as leaders in the transportation factoring industry.”

Smyth Announces Appointment of Chief Technology Officer
The Smyth Companies announces that Larissa Trofimov has been appointed Executive Vice President and Chief Technology Officer. Smyth - a leading provider of integrated credit risk, accounts receivable management, and outsourcing services. This includes the fast growing cloud industry credit interchange business that brings together firms from around the world who exchange information about their trade receivables in order to better evaluate payment risks associated with their trading partners.

Iain Michie Joins the Crestmark Team
Crestmark is pleased to welcome Iain Michie, Vice President, Debtor Credit Manager. Michie works out of the Troy, Michigan, office. With over 45 years in the financial industry, Michie has tackled a range of positions.

“Iain’s experience and knowledge are unparalleled and he will be a tremendous asset to our team,” said Jack R. Roper, Group President. “I enjoyed working with him in the past, and am glad to have him as a part of the Crestmark family.”

TAB Bank Chief Credit Officer Named to CFA Board of Directors
TAB Bank is pleased to announce that Chief Credit Officer, Gary Harding, has been named to serve on the Board of Directors for the Commercial Finance Association (CFA).

“I am very excited to serve on the CFA Board of Directors. The commercial finance industry plays a vital role in the economic health of our country. This industry stands ready and able to assist business owners and entrepreneurs with the necessary financing to grow and expand their businesses,” stated Harding.

Patricia E. Mooradian Named to Crestmark Board
Patricia E. Mooradian, president of The Henry Ford, has been named to the board of directors of Crestmark Bancorp, Inc., and Crestmark Bank, a nationally recognized provider of working capital solutions for small- to medium-sized businesses.

“Patricia’s strategic vision and multifaceted business acumen will bring a fresh and welcomed perspective to the board,” said W. David Tull, Crestmark Chairman. “We felt it was time for some new thinking, and her experience with such diverse activities as fundraising, museums, restaurants, and even a school should prove beneficial to Crestmark’s future growth plans. We are very pleased she is joining the board.”

Hana Financial Names Joseph Choe as FVP and Business Relationship Officer of Manhattan Office
Hana Financial Inc., a full service financial institution and one of the nation’s leaders in factoring, equipment leasing, home mortgage, and SBA lending, has named Joseph Choe as first vice president and business relationship officer of its New York branch. Mr. Choe will be creating and cultivating networks while improving current business relationships.

“With over 25 years in financing—including factoring, SBA, and commercial lending—Joseph brings both a breadth and depth of experience to Hana Financial that will be vital as we continue to strengthen our ties with New York businesses,” said Sunnie Kim, Hana Financial’s President and chief executive officer.

Gateway Trade Funding is Pleased to Announce Polinsky, Principal, Senior VP
Gateway Trade Funding is very pleased to announce that Mark Polinsky has joined Gateway as a Principal, Senior Vice President to help grow Gateway’s Purchase Order business. Mark will be based in Chicago, Illinois and brings twenty plus years of experience to Gateway building and running companies.

Thomas Novembrino, a founder and Principal at Gateway Trade Funding noted that he was “excited about Mark joining Gateway as Mark’s entrepreneurial spirit and passion for purchase order financing will significantly benefit Gateway’s business.”

Amerisource Names Market Manager for Midsouth Region
Amerisource Funding, one of the largest and fastest growing independent commercial finance companies in the country, announced that it added Ivan Cook as Regional Market Manager in the Midsouth.

As Market Manager, Mr. Cook is responsible for all business development efforts in Amerisource’s Midsouth region (Alabama, Arkansas, Kentucky, Mississippi and Tennessee) and is based in the Nashville, Tenn. area. His primary responsibilities include securing direct business and working with the company’s numerous referral partners.

Henry Allen Replaces Justin Brownhill as CEO of The Receivables Exchange
The Receivables Exchange, the online marketplace for selling accounts receivable, announced the appointment of Henry (Hank) Allen as the company’s new chief executive officer. Allen was also appointed to the Board of Directors of The Receivables Exchange.

Allen’s experience prior to joining Marsh & McLennan includes being a partner of the European operations of Geocapital, a U.S.-headquartered venture capital fund, and time at GE Capital where he held a number of senior leadership positions in Europe including European president and chief executive officer of GE Capital Commercial Finance.

Veritas Financial Partners Hires Christina Grenga
Veritas Financial Partners announces the hiring of Christina Grenga as Vice President, Business Development Officer.
Ms. Grenga is based out of the Boca Raton headquarters and is responsible for identifying new financing opportunities for Veritas on a national basis.

“Christina’s broad breadth of experience and national prominence in lending makes her a tremendous addition to our team,” said Mark Sunshine, Veritas’s Chief Executive Officer.

Crestmark Management Changes and Promotions
To continue to strengthen their support of businesses in need of working capital financing, Crestmark has made the following management changes:

Steven Tomasello was promoted to Group President to run the Midwest Regional office located in Troy, Michigan. Tomasello joined Crestmark in December of 2009, and was promoted First Vice President, Portfolio Manager in December 2010.

Jack R. Roper has relocated to lead the Crestmark Transportation Services division office, in Franklin, Tennessee. He is their new Group President. Roper joined Crestmark in January 2008 as Executive Vice President, Chief Credit Officer. In 2009, he transitioned to the role of Group President in charge of the Midwest Region.

INDUSTRY TRANSACTIONS

TAB Bank Provides InterMetro Communications with $3 Million Senior Credit Facility
TAB Bank has provided a $3 million senior credit facility through a multi-year agreement for InterMetro Communications, Inc. (Ticker: IMTO) of Simi Valley, CA.

“We were looking for a lending partner that could grow with us and TAB Bank is the type of partner we had in mind. We were very impressed with their team of commercial finance professionals. As a high-growth technology company, they really understood what we were looking for and they customized a solution that gives us the financial footing to achieve our forecasted growth plans,” commented Charles Rice, Chief Executive Officer of InterMetro Communications.

Amerisource Funding Announced the Closing and Funding of a $1M Working Capital Credit Facility
Amerisource Funding announced the closing and funding of a $1,000,000 working capital credit facility for a women’s apparel wholesaler in Louisiana, with proceeds of the facility used to refinance existing debt and to provide additional working capital to finance a large new customer.

news

Continued on page 25
A second term for President Obama means we now have some clarity on economic policy and the future for factors and business owners alike. In this article, Bibby Financial North America’s Leigh Lones makes a few educated guesses about how the current administration will affect commercial lending and the small business market.

BY LEIGH LONES

Looking Ahead: 2013 Trends

A second term for President Obama means we now have some clarity on economic policy and the future for factors and business owners alike. Although it’s difficult to make sweeping statements about where the country is headed with so many unknowns—the European debt crisis, trade concerns with China, the fiscal cliff, even natural disasters--we can generally assume the Affordable Care Act will not be repealed and the National Export Initiative will remain a government mainstay. And we can now make a few educated guesses about how the current administration will affect commercial lending and the small business market.

Banks Lending: Won’t Change Dramatically

For the foreseeable future, the small business market will be underserved by traditional lenders. It’s not news that traditional loans to small businesses have dried up since the housing bubble burst. According to DePaul University economist Rebel Cole, the decline in bank lending was far more severe for small businesses than for larger firms. Bank lending to small firms declined by 18 percent between 2008 and 2011 while bank lending to all firms declined by 9 percent during that same period. Cole also noted that the TARP bailout, which was supposed to increase lending for small businesses, failed in that goal. Banks that accepted TARP funds cut lending to small business more than banks that did not accept TARP funds. Although some banks have made improvements in providing access to capital for small businesses, this is not an issue that is going to be resolved over night.
In this lending environment, some might assume factors would be receiving a boost in new business from bank workouts. For 2013 we are predicting the opposite. Most banks have already cut the distressed businesses from their portfolios. With tighter credit criteria helping them avoid risky accounts, an influx of workout leads is not likely. Instead, banks will continue to loan to established low-risk businesses, while businesses without substantial assets and companies that are growing quickly or have hit a bump in the road will continue to find financing elsewhere.

Creative Financial Solutions Increasingly Popular

Since traditional loans are hard to come by, more creative ways of accessing capital are beginning to rise in popularity and the administration has a track record of supporting these less-traditional financing options. In 2011, with bipartisan approval, President Obama signed the Jumpstart Our Business Startups Act to help small businesses raise money, especially through online crowd-funding. It was a nod towards the tough traditional lending environment and proof that entrepreneurs will look beyond banks for access to capital. This creates a prime opportunity for accounts receivables financiers to reach out and educate companies about alternative financing options. Some factors are now tailoring their services or messaging, such as adding ABL to their product portfolio. Others are simply expanding their messaging to target companies outside of the typical factoring spectrum of transportation companies and staffing companies.

SINCE HEALTHCARE REFORM WILL NOT BE REPEALED, WE CAN EXPECT SOME REPERCUSSIONS FOR SMALL BUSINESSES. IN THE HIGHLY FACTORABLE TEMPORARY STAFFING INDUSTRY, HEALTHCARE REFORM—AS IT STANDS—IS A MAJOR CONCERN.

Temporary Staffing Tackles Healthcare Reform

Since healthcare reform will not be repealed, we can expect some repercussions for small businesses. In the highly factorable temporary staffing industry, healthcare reform—as it stands—is a major concern. Starting Jan. 1, employers with more than 50 full-time employees must either offer health insurance to full-time staff (defined as working 30 hours per week or more) or pay a penalty of $2,000 per full-time employee, except for the first 30 employees. According to Robert Balicki, research analyst at the Staffing Industry Analyst, the question for staffing companies is whether the cost of healthcare will be paid by the staffing company or passed off to the buyers of their services. In a recent survey, SI Analyst discovered that buyers of staffing services expect to take on only 15 percent of the additional cost while staffing firms expect buyers to pay 60 percent. If the staffing providers do take on the majority of this cost, it will affect their margins and ultimately their cash.
flow. This is important to consider for current and prospective clients alike as they must prepare for increasing costs.

**National Export Initiative in the Spotlight**

Under the current administration we can expect a continued emphasis on exporting. During his 2010 State of the Union address, the President announced the National Export Initiative would double U.S. exports by 2014. Whether or not the economic slowdowns in Europe and China cause the NEI to miss the mark, you can be sure the government will continue to encourage businesses to sell goods and services abroad. One of the cornerstones of the NEI is to help small and medium-sized companies start exporting or find more routes to export goods. This is an opportunity for factors who offer trade finance to help these companies take advantage of this government support by providing the financing they need to fund their export activities.

**Growth of Green Energy Industry**

The renewable energy industry will directly benefit from the Democratic victory. In his first term, Pres. Obama directed funds towards the green energy sector and he is in favor of extending the Production Tax Credit, which subsidizes production of wind energy. As a result, we’ll likely see factoring companies becoming more active in this sector.

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**THE RENEWABLE ENERGY INDUSTRY WILL DIRECTLY BENEFIT FROM THE DEMOCRATIC VICTORY.**

At Bibby Financial Services, we’re seeing an increase of inquiries from start-ups and small companies that represent an increasingly diverse range of industries. We, along with our competitors, will be best prepared to prosper in 2013 if we take these cues from the evolving small business marketplace. It’s time to ask ourselves what new products, services and education can we offer to help small businesses see the advantages factoring affords them.

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Leigh Lones is CEO Americas, Bibby Financial Services, North America. Leigh oversees eight offices that specialize in creating cash flow for small and medium-sized businesses in industries ranging from apparel to manufacturing to transportation. Leigh has played a significant role in positioning the company for future growth in the marketplace. Since joining BFS in 2006, she has refined its branding, helped launch the company’s export finance division, and managed the acquisition of FreightCheck, a subsidiary that serves the owner-operator trucking industry. Leigh has a business degree from the University of Tennessee and lives in Atlanta with her husband and two children. She can be reached at 678-385-9660 or llones@bibbyusa.com.

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**THE SPIRIT OF INNOVATION SOME OF US ARE JUST BORN WITH IT**

The Commercial Factor | November/December 2012

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Bayside Business Solutions, Inc.

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The Upcoming Funding Revolution: The 2012 JOBS Act

We are on the verge of what could be a real revolution in how commercial finance companies and factors obtain funding. The 2012 JOBS Act is the “change agent” which, when fully implemented, should enable commercial finance companies to find lenders and investors using TV, radio, newspaper and internet ads.

BY MARK SUNSHINE & TRAYTON M. DAVIS

We are on the verge of what could be a real revolution in how commercial finance companies and factors obtain funding. The 2012 JOBS Act is the “change agent” which, when fully implemented, should enable commercial finance companies to find lenders and investors using TV, radio, newspaper and internet ads.

For commercial finance companies, the JOBS Act is a good news/bad news piece of legislation. While competition for some loans will increase (since small business owners will also be permitted to advertise for investors), the legislation allows for new and exciting funding alternatives for commercial finance companies which should dramatically increase access to cost effective financing and reduce funding risk.

The JOBS act changes the funding game by eliminating some of the key existing restrictions on the process of seeking investors. Prior to the JOBS Act, the SEC had a say in who commercial finance companies could solicit for money and how the solicitation had to be structured. Post implementation of the JOBS Act, many of those restrictions will be gone.

For as long as anyone can remember there have been two key SEC rules that have limited debt and equity funding transactions for commercial finance companies. First, since the 1930s it has been illegal to offer unregistered securities to the public. Second, since the early 1980s the SEC has asserted that syndicated loans should in some circumstances be treated as “securities”. As a result of the legal ambiguity caused by this assertion, it has not been standard practice to syndicate business loans to large numbers of investors or by using mass solicitation without first being registered with the SEC – a process that is often costly, time consuming and sometimes even impossible for commercial finance companies.

The lack of a broadly syndicated small business loan market has forced most commercial borrowers, including commercial finance companies and factors, to obtain their necessary funding through loans and investments made by banks, large non-bank institutions, “friends and family” or through other small and restrictive private placements.

The current way of doing things hasn’t been good for commercial finance companies. Since the financial crisis of 2008/2009 many banks have been tough to deal with and much less reliable than they previously were. It’s
not their fault. All banks have to follow the FDIC requirements for safety and soundness. When the FDIC changes those requirements, all banks have to simultaneously change their lending standards and practices accordingly. The risk of this regulatory change is quite difficult to manage or predict. Non-bank alternatives haven’t really been any better. Since the capital markets crisis and the resulting virtual shutdown of the securitization industry, large wholesale sources of non-bank funding have mostly evaporated. Friends and family funding is usually too small to fund a scalable commercial finance business. And, private placements that conform to pre-JOBS Act law and regulation aren’t typically a practical solution for commercial finance companies because of the considerable placement process and resulting high fees that are paid to brokers and lawyers.

However, the JOBS Act could change everything. The JOBS Act seeks to change the game by eliminating some of the existing restrictions on the process of soliciting investors, thereby providing companies with potential funding from additional non-public sources. Specifically, it will allow commercial finance companies to use general advertisements to solicit individuals and investment funds for capital (of course fraudulent advertising/disclosure and other actions that were illegal before the JOBS Act are still off limits). And, if they invest, qualified individuals can take the place of banks and other sources of liquidity.

For example, once the JOBS Act is fully implemented, commercial finance companies and factors will be able to purchase TV, radio, newspaper or internet ads and solicit investors without breaking the law. Individual investors that are tired of earning very low interest on their CDs and in mutual funds will have the opportunity to invest and earn a better return.

The JOBS Act will take a large step towards leveling the playing field for capital investments between big companies and small companies and between banks and non-bank lenders. Before the JOBS Act, most of the time only big companies could afford the cost of publically offering their debt to investors and only banks and SEC-registered entities could get large amounts of funding from individuals. Post JOBS Act, anyone will be able to receive funding from qualified individuals and little companies will be able to use public means of solicitation that make sense.

After the JOBS Act is implemented, little companies will be at less of a structural disadvantage because they will in many cases be able to go directly to the capital market using the methods of marketing that are most cost effective for them.

This could be great news for small commercial finance companies and factors that feel like they are being held hostage by banks and other wholesale funding sources.

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Since the JOBS Act is like a silver lining, we cannot forget the cloud that it lines. There are open questions with respect to JOBS Act implementation, and there is fine print that needs to be read and understood. The JOBS Act imposes some important rules that need to be followed when using general advertisements to solicit investors. While some of the more important rules are set forth below, readers who want to take advantage of the JOBS Act are encouraged to retain experienced counsel. This article is designed to provide general information only and does not constitute formal legal advice.

But here is some of the fine print:

• The JOBS Act can’t be relied upon until the SEC finishes issuing rules. As of the date of writing this article, i.e., November 13, 2012, the SEC has not issued final rules and the new JOBS Act provisions relating to public solicitation for private securities offerings cannot be relied upon. The SEC was mandated by law to issue final rules by July 2012, a deadline that was missed. The draft rules issued in August provide some guidance and insight into the new regime, but remain in draft form, and there will likely be changes in the final rules. But, sooner or later, the final rules will come out and the JOBS Act will be ready to go.

• Not everyone can invest—only “accredited investors”, institutional investors and other similar entities can invest. The burden is on the issuer to make sure that the investors qualify. Generally, individual investors will qualify as being accredited if their family net worth is greater than $1 million, exclusive of the value of the primary residence, or their annual family income is greater than $300,000 for married couples and greater than $200,000 for single people.

• All anti-fraud rules continue to apply. The information provided to investors must be materially accurate and complete. Both Federal and state anti-fraud and securities anti-fraud laws continue to apply, and we expect the authorities to be vigilant in this area.

• A broker/dealer may be required to help with the offering. Depending upon the nature of the offering, a registered broker/dealer may be needed to facilitate the process of accepting investor money and executing the offering.
• **Size limits will apply on how big companies can become before they need to register with the SEC.** Borrowers that have $10 million or more in assets, and either 2000 shareholders of record or 500 shareholders of record who are not accredited investors, will be required to register with the SEC.

• **There are significant legal risks if the borrower defaults.** When borrowing from individual investors, borrowers need to be very careful not to borrow money that they cannot pay back. As a practical matter, the legal risks of default are very different when money is borrowed from individuals rather than from the bank. Judges and juries often have a harsh view of borrowers who don’t pay back “widows and orphans”.

• **All other securities, tax and state and local laws such still apply.** The JOBS Act didn’t repeal every law that might apply to a commercial finance company or factor. All other laws still apply.

Even so, the JOBS Act is game changing legislation. Once fully implemented, the JOBS Act should provide commercial finance companies and small factors access to diversified sources of funding at a reasonable price and with lower funding risk. The risk premium that many investors associate with providing funding to non-bank financial institutions should be significantly reduced by the JOBS Act.

The JOBS Act effect on the commercial lending industry will likely be profound and positive for those that make good use of the reforms. The future may not be so bright for those companies and executives that don’t change with the changing regulatory environment.

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Mark Sunshine is the Chairman and CEO of Veritas Financial Partners, Boca Raton, FL. He can be reached at 561-246-3855 or msunshine@vfpfinancial.com.

Trayton M. Davis is a senior finance partner at Milbank, Tweed, Hadley & McCloy LLP. He can be reached at TDavis@milbank.com.
What do you see the economy doing in 2013?

Frederic: In 2013 it’s going to depend on the interpretation of the election results and the resulting implementation of related policies by the Administration and Congress. As of now, the perception of the business community is that there will be more governmental influence thereby creating new obstacles for small business which include additional taxation and more regulatory oversight with associated costs of compliance. Businesses may continue the pattern of ‘wait and see’ for a period of time while they assess exactly how the Administration's and Congress’ efforts to address tax and entitlement issues play out. Because so much depends upon the political maneuvers of DC, it is extremely difficult to make a clear call as to the direction of the economy. The seriousness of the current situation should be an incentive for a reasonable and collegial approach to the revenue, taxation and entitlement issues that continue to cast a dark cloud over the ability to project what the economy will be like in 2013. On the other hand, should the climate of uncertainty persists due to yet another ‘temporary fix’ and lack of progress in addressing the growing deficit, the overall economic and business climate in the US will remain in the doldrums and could indeed slide back into recession. It is certainly hoped that the worst is behind us but to a large degree confidence is absolutely essential if businesses are to plan, invest and hire. That ‘confidence’ rests upon the perception that our leaders in the Executive Branch and Congress are acting responsibly for the economic and fiscal health of the country.

What changes do you foresee in the factoring space next year?

Frederic: In the last couple of years we’ve seen new entrants into the factoring space. We’ve seen folks with money and liquidity moving into the space because of the higher yields that are available. I suspect we’ll continue to see this. I also expect that we’ll see more financial institutions move a little bit downstream. By downstream, I mean we’ll see financial institutions move into the asset based lending and the factoring arenas. They’ve seen their peers prosper with the yields that are available. I also think that we will see continued aggressive lending from community banks. They have started making loan commitments for transactions that should appropriately be in the factoring space. As such, we are going to see more competition from community banks. Most community banks had portfolios with a lot of real estate. This was their primary lending product. When the housing bubble burst and crashed a lot of community banks were in trouble with losses, workouts, etc. These banks have been hammered by the banking regulators. Since their real estate lending sources have shriveled, where are they going to put their money? They are moving more and more into the commercial and industrial space, i.e., loans to small businesses.

We see that you added ABL to your product mix. Is this due to changes that you expect in 2013?

Frederic: It’s because of what we saw during 2011/12. A lot of the companies
that were being moved out of the banking sector had needs that exceeded accounts receivable. Many companies limped through the recession as their revenues plummeted. They needed something other than accounts receivables financing. It was something that we foresaw when we started Republic so our plan has been to broaden the product line one product at a time.

**What do you think individual factors can do to assist the growth and future of the industry?**

**Frederic:** Factoring companies in the IFA membership are mostly entrepreneurs. They have prospered and succeeded because of their entrepreneurial spirit. These are small businesses that finance other small business. Regrettably, today the real threat is big government and big regulation. With the desire of some in Congress to regulate everything, there is a definitely a threat to the way we have historically done business as factors. The new Consumer Financial Protection Agency is an example of this. The biggest thing that factors can do is to support the American Factoring Association (AFA) and support our efforts in Washington. AFA is aimed at advocacy and education, in terms of letting lawmakers know what we do, how we help small businesses and how we both create and preserve jobs.

**How can members support the AFA and how can they best use their membership? And how can the IFA best support their members?**

**Frederic:** First of all, the AFA was founded to be the advocacy and educational arm of the IFA. The AFA was created to support IFA members. So we want every IFA member to join the AFA.

In terms of what the IFA can do, I would say continue to train and educate its members, provide a forum for networking so that the members can constructively work together to help small business. Further, IFA should remain a catalyst and facilitator that fosters members initiatives to network with capital providers, vendors and other strategic partners. This really helps us grow our businesses and improve them. And mostly, it helps us to better serve our clients by delivering innovative and appropriate financial products to their small businesses.

**What do you think are the concerns for 2013? And what are the opportunities?**

**Frederic:** I would say these are 4 primary concerns: 1) Over regulation

**Continued on page 27**

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Allen E. Frederic Jr. is CEO, Managing Member and co-founder of Republic Business Credit LLC, a commercial finance and factoring operation headquartered in New Orleans, Louisiana with offices in Houston, Chicago, and Birmingham. Previously, Frederic was CEO and founder of Gulf Coast Business Credit, the factoring division of New Orleans based Gulf Coast Bank & Trust Company where he served as CEO for 11 years. He has 38 years experience as both a commercial banker and factoring executive. He can be reached at (866)722-4987 or afrederic@republicbc.com.
I’m In Between on Twenty Thirteen

I was on the phone with a friend of mine (yes, I have one!) on the Monday before the election. He was lamenting about the decision he had before him. He felt he was being forced to choose between a candidate he hated and a candidate he knew he couldn’t trust. I unfortunately had to ask him which was which. He admitted he wasn’t sure. And so was the great election of 2012.

That’s kind of how I feel about what’s to come in 2013. I know I don’t like what’s ahead. Europe has managed to keep things together for several years with tape, string and glue. But that can’t last forever. The United States continues to kick its can down the road. That, too, will sooner or later reach an end. And no matter which way China goes, the net effect on us will be neutral at best. If China grows, that will help boost the world’s economy. Their growth, however, depends on them keeping their currency low to out-price Europe and the U.S. Letting their currency rise would make us more competitive and help our trade deficit, but cause a decline in world-wide demand. Then there’s the Middle East. That wick is getting shorter by the second...

Worse, I can’t trust what will happen either. Remember way back in 2001? The Dot Com bubble had just burst as the NASDAQ experienced record declines. Then 9/11. The double-whammy had triggered the natural market correction that follows a meteoric economic expansion. But instead of taking our medicine like men, our President and Mr. Greenspan decided that they’d save the day by dropping interest rates so we could avoid the hardship of a Recession. Thanks to them we enjoyed another seven years of economic bliss. However, all they really managed to do was put off the inevitable. And when the inevitable finally happens, it turns out to be way worse than what was avoided in the first place. Hello GREAT Recession, instead of a moderate one like we had in the early 1990s.

Now we’re playing the “delay the inevitable” game again. Everyone knows that Europe has to embrace (force) austerity. Everyone also knows that U.S. governments’ and unions’ “benefits for life programs” are no longer affordable (as if they ever were). And the Federal Government has to address its mushrooming deficit. Then China has so let its currency rise causing their economy to cool. Each will be painful. All at the same time will be really painful. But our genius leaders continue to try and avoid the inevitable. What’s worse than really painful?

So what will 2013 be like? It will either be OK, much like 2012, if we don’t face reality. And what happens if we do what needs to be done, what we should do, what we have to do? It will be bad, possibly really bad. But that will still be better than continuing to ignore reality. I sadly can’t trust our leaders to do the right thing.

What Does This Mean for the Factoring Industry

Given our choices, I say expect OK but plan for worse. Remain conservative so if we do slip back into another recession, you’re more prepared this time than you were back in 2008. It was nice to get a chance to catch our breath. Most of the write-offs should have already been taken. Policies & Procedures should be tightened by now. Expectations are surely muted. Everyone is battle tested and ready for the next wave.

Competitive pressures will probably intensify. Most factors have seen the community banks re-enter the small business commercial lending market in a BIG way. The banks need to book Commercial and Industrial (C&I) non-real estate loans to offset the ton of bad consumer mortgages on their balance sheets. This forces the banks to do everything possible to close small and middle-market business loans. And with the economy relatively flat, there aren’t a lot of up and coming businesses to choose from. Therefore credit quality gets loosened in order to justify approvals. Factors and ABLs will continue to multiply as excess capital searches for a decent return. Alternative lenders (mezzanine, second lien, etc.) will also encroach in our space as they too struggle against the aggressive banks.

From an industry perspective, transportation continues its struggles. There’s certainly nothing on the horizon to suggest that things will get much better any time soon. But at least things haven’t gotten worse. The Temporary Staffing industry has fared better, adding over 750,000 jobs in the three years since the end of the Great Recession. Of course, they lost 1,200,000 during the recession, so they still have a couple of years to go just to get back to 2008 levels. But overall, especially with the possibility of higher employee costs with Obama Care, the temporary staffing industry stands to do better than most in the turbulent times ahead. The auto industry, and heavy manufacturing in general, has probably seen the bottom. While a full recovery is still a long way off, at least there’s not much room on the downside to shock anybody. Retail goes as consumer incomes go. And these, unfortunately, aren’t going anywhere. Finally, technology has been
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Your Belief Determines Your Success

Factoring and ABL are no longer the feared lenders of last resort but rather a time-proven, alternative asset class that produces superior returns in any economic environment. There is only one thing that affects our success and that is our belief in our business and the team running it. BY COLE HARMONSON

I remember attending an IFA event in 2008 in Las Vegas called “Surviving and Thriving.” I think Bert could have called it “Holy smokes... are we going to live?” The mood was dour to say the least; we went around the room and everyone, for the most part, was pretty negative about the economy and our industry. As it turned out, most of us did somehow manage to survive the recession and the past couple of years have been transformative for our nation and extremely positive for our industry. Factoring and asset based lending are no longer the feared lender of last resort but rather a time-proven, alternative asset class that produces superior returns in any economic environment and is run by professionals who care deeply about all of their stakeholders. There were voices then that bemoaned the poor environment that turned out to be wrong and there are voices now crying out that this administration, too much competition, regulation or some other outside force is going to hurt our industry. My response is there is only one thing that affects your success and that is your belief in your business and the team running it. So, whatever it is you choose, you will be correct.

Trends

1. The bankers will not be getting back to “fat cat” status anytime soon.
   Our biggest referral sources, commercial and small business banks, are one of the “Last of the Mohicans.” The banking industry is working hard to defend against the ravages of the last recession and the regulatory onslaught of the last couple of years. I’m positive you have seen a pickup in “aggressive” C&I lending in the last year and this trend will continue in 2013, however, banks are still finding it very difficult to get on their front foot.
Regulatory risk will remain the number one risk for bankers in 2013. Many say 2013 will actually be more difficult for banks because examinations are shifting from credit, asset quality, safety and soundness to compliance. We have heard many complaints from bankers regarding compliance because of the lack of uniformity in enforcement, which just leaves bankers guessing. A side note, keeping overbearing regulations out of your life is the mission of the American Factoring Association and if you haven’t donated, consider doing so and buying an insurance policy against initials like CFPB and legislative acts like Dodd Frank. We went to the Risk Management Association’s national conference and they actually had a panel session on “Developing a Risk Appetite.” Can you imagine such a session at an IFA event?

Although under this pressure, banks are aggressively going after loan growth and looking to expand their niche offerings, such as ABL and factoring. We have seen several new entrants and you will see banks purchasing platforms from which to enter this business. In sum, this is not going to be a fun year for bankers going through their regulatory process reviews and fighting their irrational competitors, all the while fighting for their reputations, which continue to be denigrated by Washington. All of this adds up as a net positive for the flexible, fast and free spirited style of entrepreneurial factors.

2. The economy will continue to get better and will continue to produce opportunities for factors.

After spending billions, the election came and went and the American people chose the status quo. This means some issues that Romney supported – Frankly problems for factors such as China (think a trade war that would hurt imports) and The Fed (think a hawkish new Fed Chair that raises rates) – are problems that were avoided by an Obama win. You super wealthy types out there (think incomes over $250,000) will be paying more taxes. But hey, you guys always seem to figure out how to get richer, so this is just one more little obstacle.

Corporate confidence and investment are strongly reflecting worries about the fiscal cliff and rightly so as this cocktail of status quo has not exactly inspired confidence in getting things done. If the fiscal cliff is resolved, and we believe it will be as Obama’s new motivation is to secure his legacy versus getting re-elected, corporate spending will be a huge beneficiary of the pent up demand.

Corporate America is in excellent shape; account debtor credit issues are relatively non-existent and will continue to improve given record-free cash flows and low leverage. The NFIB small business survey the last two months showed companies were more concerned about taxation than a shortage in demand for the first time in four years. We know you see this in your clients as well, but interestingly, their equal greatest concern was “red tape.” If we see a deal, even if it is a “kicking the can down the road” short-term type deal, it will lead to resurgence in productivity, enhancing US corporate spending.

Investors may dislike The Fed’s monetary policy, but they now know it is unlikely to be reversed at least until 2014, thus keeping low rates for factors. One of the features of a Romney administration was his suggestion that he would find a more hawkish replacement to Bernanke, who is up for re-election in January 2014. Under Obama, the Fed is set to remain a lot more dovish. We would think about a hedging strategy for your portfolio while rates are low because as history has shown us, when they do rise, they will do so rapidly.

The same certainty applies to healthcare reform. Waiting for Obamacare to be clarified by the Congress or the Supreme Court in political protest will no longer be an option as businesses will have to adapt to the new costs and regulations and get on with the business of making decisions that make financial sense whether they agree or not. Knowing what the deal is will allow businesses to make a decision and move on. Uncertainty being removed is net positive for the economy and the banks and factors that finance it.

The Obama win is less bullish for factors on at least one aspect of the “fiscal cliff” front, given that Obama plans to let “the rich” take a tax hit and rich people buy most of the assets, cars, houses, equities, small businesses, etc… These are our clients who will have less of their investable funds to use to refuel the economy.

Overall, the banks will continue to be on their back foot, although aggressively looking for a way to step up and start playing offense, this is good for our trade as aggressiveness on credits will not yet be in vogue in 2013 and will play to the strength of entrepreneurial factors. The political certainty and the pent up demand of corporate investments will lead to a better year for the economy and factors if we don’t fall off the fiscal cliff. The long term history of “government is the answer” has led to budget and debt problems that can cause serious long term issues (think Eurozone) and it seems the American people have chosen a “I want my stuff and I want somebody else to pay for it” type mentality, which will lead to some interesting times. So, in the face of this, we will think of ways to become old, not bold and as we know you will, proceed with caution when envisioning what you want and 2013 will bring much success.

Cole Harmonson is co-founder, president and CEO of Far West Capital, an independent asset based lending and factoring company based in Central Texas. Prior to Far West Capital, Cole was the founder and senior vice president of State Bank’s Working Capital Finance Group (WCFG). Cole is a current board member of the Commercial Finance Association, American Factoring Association, and Entrepreneurs’ Organization. Cole is also a member of the Independent Banker’s Association of Texas, Texas Banker’s Association, International Factoring Association, and the Association for Corporate Growth. Cole holds a Bachelor of Business Administration in Finance from Texas Tech University. He can be reached at 512-527-1111 or Cole@farwestcap.com.
Miami Beach & The Fountainebleau Resort: Stimulate Your Senses

BY MELANIE GREENBERG, THE COMMERCIAL FACTOR

With turquoise water set and white sand as its backdrop, Miami Beach, Florida, offers the opportunity to stimulate the glamorous, intellectual, artistic and adventurous senses, making the city the perfect destination for the 2013 International Factoring Association Spring Conference.

The 19th annual conference will be held April 24-27 at the luxurious Fountainebleau Resort, bringing together professionals from every facet of the industry. With year-round mild temperatures and an eclectic array of activities to explore, attendees are invited to step into a world where the bronzed goddesses and surfers of South Beach share the city with the hipsters in cafes, the all-night clubbers, artists and film makers, shopaholics scouting for the next big designer and food lovers looking for a decadent meal by the ocean.

The renowned Fountainebleau Resort invites guests to spend their “perfect day” in whatever way they choose. Take a splash in the free-form “walls of water” pool or sit by the ocean and take in the sun. The Lapis Spa offers an array of luxurious options including massages (deep tissue, Swedish, ocean sensory, and hot stones), bodywraps, facials and detoxes, as well as hair and nail services. With Miami being crowned as the healthiest city in the nation, visit the gym, fashioned with advanced equipment and superior technology to strengthen and trim the body. Whether you want to walk the treadmill, meet one-on-one with a certified trainer, or participate in a yoga or total-body training class, the Atlantic Ocean will always remain in sight. If you work up an appetite, the resort offers three signature dining restaurants, as well as six casual dining options. Fountainebleau also houses two nightclubs and three different bars to attend when the work is over and it is time to play.

Stepping out of the resort, there are many off-site attractions to indulge in. If you’re an animal lover, the Zoo Miami is quickly becoming one of the best zoos in the nation. Entirely cage-less exhibits make Zoo Miami one of the first free-range zoos in the nation and the climate allows it to keep a wide variety of animals from Asia, Australia and Africa like no other zoo in the country. The Seaquarium and Zoo Miami are both located in the middle of the tourist area, on the causeway between downtown Miami and Key Biscayne.

For the nature-lovers and eco-friendly, The Everglades are a must-see. With 1.5 million acres of swamp, sub-prairie and sub-tropical jungle, The Everglades is home to 14 endangered species, including the American Crocodile, the Florida Panther and the West Indian Manatee. The Everglades National Park is open seven days a week and although it is a 45 mile hike from downtown Miami, this ‘river of grass’ is a unique wonder of the natural world, filled with history and beauty.

South Beach, Miami’s most well-known destination, draws in the rich, famous and trendy. SoBe remains the place to see-and-be-seen so making reservations at restaurants is crucial. Below, we will list a number of dining experiences recommended for the adventurous, elegant, and casual diners. Virginia Key Beach is a unique beach off the Rickenbacker Causeway (near to the Seaquarium) and can be crowded with tourists but areas of seclusion can be found with a bit of
exploration. Halvour Beach is the only legal “clothing optional” nude beach in Miami but areas for traditional sunbathers are separated to accommodate those uncomfortable with shedding their suits. Halvour Beach is known to be an excellent spot for surfers. Homestead Bayfront Park and Marina is the destination to head to avoid the bustle of tourists.

For the foodies, Joe’s Stone Crab is known most for its legendary Key Lime pie. The attire is classy, the bar is full and the history of this family business dates back to 1913. If you’re looking to go to Joe’s, prepare to wait. The downside of this local treasure is their no-reservation dinner. Indomania is based on traditional Indonesian cuisine but infused with Dutch influence. It is a small, nuanced restaurant perfect for those who are looking for something off the beaten path. Bolivar Restaurant & Lounge is the place to go if you’re looking for some South American cuisine. The Colombian-Purvian-Venezuelan gastronomical fusion will bring new flavor to your life! With reasonable prices in wine and food, this lounge-y experience is for those searching for a less formal foray and great service.

Design, architecture, art and fashion lovers should check out the Design District and Lincoln Road Mall. Both offer designer shopping experiences, art galleries and sidewalk cafes but LRM, a pedestrian-only promenade in SoBe is known to be the perfect people watching area and the Design District is the place to visit when your home is in need of a facelift. The Art Deco on Ocean Drive, Little Havana and Vizcaya Museum and Gardens are other must-sees.

Between all the fun SoBe has to offer, there will be plenty of unforgettable speakers and special guests to entertain and teach. With over 25 years of exploring computer security, special guest and international ex –hacker, Kevin Mitnick, will grace the stage with his explosive personality. After years of developing his self-taught skills, Mitnick will speak on The Art of Deception, and Are you in Danger of Being Conned?

Newsweek and Daily Beast writer, Daniel Gross, will be reporting on How the Economy Will Affect Factors, and Rise of a New Economy. Attendees will also hear from Warren McDonald, a mountain climber who lost both limbs in the spring of 2007, Mr. Gross wrote the “Economic View” column in the New York Times, was a contributing writer to New York, and contributed regularly to magazines such as Fortune and Wired. From 1998-2007, Gross served as the editor of STERNBusiness, a semi-annual academic magazine on economics and management.

How did you get your start in the financial world and economics? Was it always of interest to you?

I first got into journalism because of an interest in writing and politics. I was a reporter and editor at my college newspaper, the Cornell Daily Sun, and my first job was at The New Republic, a political magazine in Washington.

I then went to study American history in graduate school at Harvard for a couple of years, and developed an interest in economic and business history. It’s really impossible to understand what happened in the U.S. from the 1880s through the 1930s without understanding business and economic history. When I left grad school for New York in 1992, most of the writing jobs available were at business publications.

Over time, I developed a niche in writing—books, magazine articles, newspaper columns—about business and economic history, and about the links between politics and policy, and Washington and Wall Street. And over the past decade, at the New York Times, Slate, Yahoo! Finance, and Newsweek/Daily Beast, I’ve expanded that to a more global perspective. The story of what is happening in the world today is best understood as a business and economic story. Finance, economics, and business are great lenses through which to view the changing world. Over the past several years, I’ve reported from 25 countries.

What is the most popular question you are asked on the US economy?

Given what I write about, it’s usually a variation of: “Is the U.S. in decline?” “How are we going to dig out from the problems of 2008-2009?” “Will incomes ever grow?”

In your newest book, Better, Stronger, Faster you write about American businesses post-recession becoming adaptable, pragmatic and ingenious “to engage with the world and restructure for success”. How does the factoring industry fit into this?

We have very resilient and adaptable systems in this country, including our financial system. And what we’ve learned in the last few years is that when one form of financing dries up, people look for—and often find—other sources. There was this sense in 2007-2008 that money came basically from banks and mortgage lenders. And once they disappeared from the scene, there was widespread pessimism about where money would come from to help business work. But we’ve seen so much innovation and people turning to other sources. It’s debtor-in-possessession financing for bankrupt companies; crowdsourced venture capital like Kickstarter; peer-to-peer lending groups and organizations; non-profit home lenders, people financing new capital expenditures from the savings they will produce (popular with solar installations, for example). Factoring is one of these other alternative, non-bank sources of financing that may have been overlooked during the credit boom years but that comes to the fore in difficult times.

What affects does the upcoming Presidential election have on the economy?

I actually think that the election itself won’t have much effect on the economy either way. In general, I think people put way too much weight on the short-term influence (good or bad) of any president, especially at a time when the economy seems to be entrenched on its current
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**Presidents and Senior Executives Meeting**  
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**MARCH 5, 2013**

**Luncheon Meeting with NYIC**  
**New York, NY**

**APRIL 24-27, 2013**

**2013 Factoring Conference**  
**Fontainebleau, Miami Beach, FL**

**FOR DETAILS ABOUT IFA EVENTS, PLEASE VISIT WWW.FACTORING.ORG**

Annual Conference

Continued from page 21

at mid-thigh in a climbing accident. McDonald has not allowed his handicap to limit his adventurous spirit and he became the first ever double, above-knee amputee to climb Mt. Kilimanjaro. Now an author and filmmaker, he will discuss the Challenge of Change, and Finding Opportunity in Adversity.

IFA veteran and premier attorney Bob Zadek will present, Report from the Courts, Lessons to be Learned from this Year’s Court Decisions and another session on Legal 101. David Jencks will lead Current Topics in Transportation Factoring. This session is a must for members that are transportation factoring specialists and factors with transportation portfolios. Marc Marin (Gateway Commercial Finance) will give us a sneak peek into the future with Predictions from the Future from Industry Experts. With over 30 speakers presenting and leading discussions, there is something for everyone in the factoring industry, including new international tracks to learn about factoring beyond our borders.

There will be IFA activities attendees can also partake in over the course of the conference. The golf tournament will take place at the Miami Beach Golf Club while the RMP Capital Welcome Reception, Bibby Social and Tax Guard Dessert Reception will all take place at the Fontainebleau. A 5K Charity Walk will be held; this is a great way to network with other professionals in the industry and give to a great cause. The Closing Event will be held at the award-winning LIV nightclub at the Fontainebleau.
President Barack Obama has been re-elected for a second term. During the campaign, Obama vowed to tailor a second term to the needs of small business owners. This includes promises to improve access to capital, limit small business tax burden and alleviate regulatory headaches to encourage job creation and business expansion.

What is the reality of a second Obama term on the factoring industry? Which of Obama’s policies are set to be winners and losers for factoring? The following are some areas of concern for factoring under a second term.

**Consumer Financial Protection Bureau (CFPB)**

Not only will the CFPB live on, it may have a stronger bite now that elections are over. Expect deeper investigations into the financial services industry. This could include factoring coming under the spotlight of the CFPB, leading to potential regulation.

**Obamacare**

The President’s win guarantees Obamacare is the law of the land. While regulators must still determine how to implement the law, it will take full effect during the second term. Small businesses still have to wait to find out how much it will eat into their profits.

**Individual Tax Rates**

Obama has refused to extend the Bush-era tax cuts for high income earners. This change will probably increase the tax burden for about 700,000 small businesses, many of them our clients.

**Corporate Tax Rates**

While the corporate rate will not fall as much as it would have under Romney, Obama has proposed lowering the rate from 35 percent to 28 percent. However, he wants to raise rates on income derived from investments.

**Regulations**

While Obama has issued an executive order requiring agencies to review all regulations and filter out the ones impeding job growth, there is some doubt as to its effectiveness. The implementation of the Dodd-Frank financial reform law will continue to move forward. Hundreds of rules remain to be written by the Obama administration. In addition, banks will probably begin feeling the effects of several of the law’s biggest provisions next year, including enhanced capital requirements that force them to keep more money on hand. Romney had pledged to begin the process of repealing Dodd-Frank in his first year of office.

The AFA has worked diligently over the last four years to ensure our industry remained unregulated. While we all must face the uncertainty of the next four years, the AFA stands poised to make your voice heard in Washington. •

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

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**2012 MEMBERS & DONATIONS**

As of November 28, 2012

**Diamond Member ($10,000+)**
- Advance Business Capital
- Apex Capital LP
- Bibby Financial Services, Inc.
- Crestmark Bank
- D & S Factors
- First Capital Corp.
- Gulf Coast Business Credit
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- J D Factors
- National Bankers Trust
- Pacific Financial Association, Inc.
- Pay4Freight.com
- TBS Factoring Service, LLC

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- PFI Financial LLC
- Power Funding, Ltd.
- QC Capital Solutions
- Saint John Capital Corporation
- Stoneridge Financial Services, Inc.
- The Interface Financial Group

**Other (Under $500)**
- Commercial Finance Consultants
- Cross Key Capital LLC
- Downtown Capital Partners
- Fuller Business Funding
- RMJ Capital
Crestmark Closes Four Transactions Totaling $3.4 Million in the First Two Weeks of November

A total of $3,400,000 in financial solutions was secured for four new Crestmark clients during the first two weeks of November.

• A North Carolina leather upholstery company was provided a $1,250,000 Traditional Factoring facility on November 7.

• A $500,000 Ledgered Line of Credit facility was funded November 8 for an Arizona staffing company that provides engineers for equipment and systems testing. Funding will be used for working capital.

• Crestmark was provided a $750,000 Traditional Factoring facility for an importer and wholesaler of moderate to high-priced footwear.

• Crestmark funded a $900,000 Accounts Receivable Purchase facility November 9 for a California trucking company that hauls general freight and produce. Funding will be used for working capital.

Bibby Financial Services Launches Non-Notification Factoring Product

Bibby Financial Services is pleased to announce it is now offering non-notification factoring. This service allows companies to improve their cash flow while keeping their source of funding and collections confidential.

Non-notification factoring is similar to receivables funding, but it has the added benefit of a hassle-free interaction with the client’s customers. Checks, verification and notifications all remain in the client’s name. Clients using non-notification factoring will receive funding generally within 24 hours, have online account access with full reporting as well as a dedicated account team.

Cole Taylor Plans $100M Stock Sale to Fund Expansion

The owner of Cole Taylor plans to use some of the proceeds from a $100 million preferred stock sale to expand national lending operations, its Chicago business banking unit, and possibly to add branches and make bank acquisitions.

Taylor Capital has earned $35 million in the first nine months of 2012, coming back from annual losses from 2008 to 2010.

Bayside Business Solutions Announced the Release of Version 2.15.7 of its Flagship Product CADENCE

Bayside Business Solutions announced the release of Version 2.15.7 of its flagship product CADENCE, the complete commercial portfolio management system.

With the release of 2.15.7 of CADENCE, Bayside begins offering reports that use SQL Reporting Services, which provides better functionality and compatibility with the CADENCE infrastructure.

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

Platinum Credit Management LP
Carnegie Hall Tower, 152 West 57th Street 54th Floor, New York, NY 10019
Tel: (212) 634.5276 Fax: (212) 581.0002
Email: alpha@platinumlp.com
Federal Assignment of Claims Act
Separating the Myths and Confusion from the Facts

The Federal Assignment of Claims Act is one of the most misunderstood and misconstrued legal doctrines in the commercial finance business. The Act, found at 41 U.S.C. § 15, applies to all obligations owing by the federal government or any agency or department of the federal government. It is supplemented by the Federal Acquisition Regulations (“FAR”) found in Title 48 of the Code of Federal Regulations.

Key Provisions of the Act:

- The government will not honor assignments if the aggregate amount owing on the contract is less than $1,000.
- The government contract may prohibit any assignments.
- Except as expressly permitted in the government contract, the assignment must cover all amounts owing under the contract and cannot be assigned to more than one party.
- The Act specifies the form of the assignment document that must be executed and of the Notice of Assignment.
- You must submit an original and three copies of the Notice of Assignment and a copy of the assignment document to (i) the contracting officer or the agency head, (ii) the surety on any bond applicable to the contract, and (iii) the disbursing officer designated in the contract to make payment.
- The Notice of Assignment should be acknowledged by the government and returned to the lender.

There may be additional, special requirements applicable to assignments of amounts owing by certain departments or agencies. The provisions of the Code of Federal Regulations for the applicable department or agency should be reviewed in each instance.

Another common question is whether a Notice of Assignment can cover future purchase orders or whether a separate Notice must be given for each purchase order. There is nothing in the Act or FAR contemplating a blanket notice and no cases addressing this issue. Even if an agency is willing to accept a blanket notice, it may not be enforceable.

Form of Assignment and Notice of Assignment

There are forms of Assignment and Notices of Assignment for use under the Act in wide circulation and even in some form books which do not comply with the Act and create other issues.

Priority of Surety on Government Contract

The Miller Act applies to federal construction contracts and requires the execution of performance bonds and payment bonds in connection with such contracts. The Miller Act also allows certain classes of labor and materialmen to recover under the payment bond. An assignee of a government contract is imputed with knowledge of the Miller Act’s payment and performance bond requirements and such requirements may take priority over an assignee of the contract.

Timing and Use of Loaned Funds

It should be noted that some courts have held that the Act requires that the financing institution must show that it loaned money or at least made money available for the performance of the government contract. See Manufacturers Hanover Trust Co. v. United States, 590 F.2d 893 (Ct. Cl. 1978); Applied Companies v. United States, 37 Fed. Cl. 749 (Fed. Cl. 1997). In other words, the loan or advance
of funds which is secured by the assignment must be made prior to performance of the contract by the borrower. The rationale behind these cases is that one of the purposes of the Act is “to make it easier for contractors to finance performance of their contracts to the government.” Applied Companies, 37 Fed. Cl. at 762. While the holdings of these cases are questionable and not supported by the Act, advances made under a factoring agreement are not generally made until after the account debtor has performed and therefore the loaned funds were not available to the account debtor for the performance of the government contract. The notice of assignment could be challenged on this basis. There have not been any instructive cases on this in the last 25 years, leaving a cloud over the issue.

**The Solution**

There continue to be practical problems with accounts owing by government agencies. Notwithstanding that the Act has been in effect for decades, agencies continue to refuse to acknowledge assignments or cooperate. If the agency violates the notice and fails to pay the factor, the remedy is to sue the agency—which can be protracted and expensive.

Factoring accounts owing by a federal agency without compliance with the Act is basically factoring on a non-notification basis. If that is acceptable, the Act can be ignored (other than Miller Act and use of loaned funds issues). For most factors, this is the best solution. Compliance with the act is too cumbersome and cooperating lacking.

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**Entrepreneurial Spirit**

*Continued from page 15*

and how that affects various industries, coal and energy industries for example. 2) The effects of the global economic slowdown, including problems in the Eurozone. 3) The mounting deficit. 4) What is going to happen to small businesses related to taxes and implementation of the Affordable Care Act which could be disincentives for growth?

On the other side of the coin are the opportunities. 1) We have a tremendous amount of money sitting on the sidelines. Private equity companies, hedge funds, venture capital funds...all want to put money to work. There is a big opportunity for increased investment. 2) While the Eurozone is having difficulties, there are opportunities in other parts of this global economy. Opportunities today exist to our north in Canada and to our south in South America and Latin America. 3) We see tremendous opportunity in the energy sector—both onshore and offshore.

**In what specific sectors do you see growth opportunities?**

Frederic: The transportation industry is always the bellwether of the economy. It’s the area that always picks up first when an economy is on the rebound. Looking forward to an improving economy, you look first to determine if the transportation industry is on the incline. I also see tremendous growth opportunities in the energy, oil and gas sectors. It is encouraging that after steep declines during the recession that growth opportunities are finally surfacing in Rust Belt manufacturing industries. These are the areas where I see growth opportunities in the next year, all of which have been depressed for the last couple of years. However, every one of these opportunities depend upon political winds in Washington, the regulatory environment, tax policy and a positive perception from small business with respect to the business climate and attitude in Washington and abroad.

**So are you optimistic about next year?**

Frederic: I am cautiously optimistic. I’m always optimistic but I’m cautious. By and large, we’ve seen the bottom of the economy. The ride up, however, might not be as smooth nor as speedy as we’d like but it appears that there is a reasonable likelihood that it is turning in the right direction due once again to the indomitable and innovative spirit of entrepreneurs engaged in private enterprise.

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**Annual Conference Speaker**

*Continued from page 21*

As I write (early November), the economy has been expanding for 39 months. Employment is growing. Virtually every indicator is flashing positive. Housing, an incredibly important force, is finally contributing again. The trends that are pushing growth/employment in the right direction have been brewing for a long time and have a great deal of momentum behind them.

Now, there will be some impact of the so-called fiscal cliff—if nothing is done, come January 1, taxes will rise and government spending will begin to fall. But my sense is that, regardless of who is elected, some form of evasive action will be taken, either before the cliff appears or after we go over it.

**How do you see changes in the economy affecting the factoring industry?**

In general, I’m in the camp that things are getting better. Also, I think going forward, there is likely to be more competition. Banks have spent the last several years cleaning up their balance sheets, are very profitable, and are seeing delinquencies of all types improving. The tide of foreclosures and mortgage problems is receding. And it’s difficult for banks to make money simply by buying Treasury bonds. At some point in the near future, if they want to keep growing earnings, they will have to lend more, including to new types of customers. So if demand continues to rise, I would expect to see more competition from banks.

There’s another international dimension to this question. Trade—exports, imports, the movement of supplies—has been growing significantly and trade finance is extremely important for businesses of all sizes. But I think we’re moving into a period where there is more risk associated with factoring: people engaged in imports and exports. China is slowing down, and its financial system is under stress. In general, trade is growing at a slower clip this year than it has been in the past few years.
Louis J. Cappelli
Chairman & CEO, Sterling Bancorp

Community Bank CEO Lends a Hand to Many Causes

What charities are you involved with? What causes are nearest to your heart?

I try not just to write checks to organizations—but to give my time, my effort and my skills. On a personal level, one of the causes I’m most active with is the Meals on Wheels program run in coordination with Lawrence Hospital in Bronxville, NY. We deliver food to needy people in lower Westchester County on Saturdays and Sundays. We’ve even made “midnight runs” into New York City neighborhoods to serve meals. I’m involved in many great organizations, but there is nothing like the personal contact and the feeling you get from seeing how appreciative people are of what we’re doing.

I’m also very involved in Catholic Charities and serve on their Board of Directors. This organization supports some 90 separate charitable groups, dealing with a range of needs from sheltering the homeless, to providing food and clothing to those in need, to aiding people with immigration issues, to services for children and families.

One of the organizations that I have supported, under Catholic Charities, is the Catholic Youth Organization. CYO enables young people to become involved in team sports, and in the process it promotes values such as sportsmanship, character and team spirit. It builds confidence, by teaching young people that they can do anything they set their hearts and minds to. And, CYO changes lives – through friendships, fairness and faith that last a lifetime. I played CYO basketball as a boy, and so did my sons and grandson. So I have a strong personal connection with the organization and it has had a positive impact on my life.

More recently, I’ve become involved with the Catholic Guardian Society and Home Bureau. They have an operation called the Rosalie Hall Maternity Services Program, which provides mothers with all the practical resources they need to give their babies a strong start in life. The program provides over 600 mothers-to-be, mothers and newborns with access to pre- and post-natal care, free counseling, parenting classes, safe new cribs, emergency assistance and a full-service domestic and international adoption program. It is one of several Catholic Guardian Society and Home Bureau programs designed to help families, children, and individuals with special needs. The amazing thing is that the Catholic
Guardian Society was founded in 1899, and its mission now is the same as it was then—to help mothers raise their children in a supportive atmosphere. It’s overwhelming to think that the problems still exist after more than 100 years.

In the late 1990s, I was part of a mission to Kosovo with AmeriCares. It was just after the ceasefire, and we were delivering medicine, tents, blankets and other critical supplies. Our group flew in on an old C-47 transport plane lent by the Belgian air force. There wasn’t anyone to meet us at the deserted airport in Pristina, until a British team came and helped us unload the plane and gave us instructions on where to go to deliver the supplies. It was an extraordinary experience.

I also have been a long-time supporter of the UJA-Federation of New York, which funds nearly 100 agencies that care for a wide range of needs in our community. Through its network of agencies, UJA-Federation helps people of many faiths, across the economic spectrum, with assistance in areas such as health and well-being, senior services, food and shelter, education and recreational opportunities.

How did you become involved in the charity?

What motivated me to get involved in these activities is that I come from humble surroundings. My parents were immigrants and had no formal schooling. I remember so clearly what it was like to live in constrained conditions. When I began to move along in my career, I thought it would be worthwhile to give something back.

Where do you see it making a difference?

The organizations I work with clearly touch people in many different ways, from feeding someone who’s hungry, to helping a mother care for her child. A great example is: a few years ago, I went on a mission to Honduras with the Knights of Malta. We were visiting a program that provides schooling for street children. The poverty conditions were the worst I’ve ever seen, but this group was taking children off the streets and educating them through high school.

How has volunteering affected you? Has it influenced or had an effect on your business?

It’s given me a great sense of personal fulfillment. And I can tell you that throughout all of my life’s experiences, everything has some relevance for what I do in business. Volunteering gives people a fresh perspective, builds leadership, and teaches us to channel our passions into something meaningful.

Why is giving back and helping these organizations important to you?

As I’ve said, my family background and the environment in which I grew up have made me want to support these terrific causes and do whatever I can to help.

Does Sterling Bancorp have any corporate-wide program on volunteering/ charitable giving?

I’ve been instrumental in further encouraging the Company to support charitable works—and not just financially, but with employees volunteering to help. We’ve gone out as a team and

Continued on page 31
Life Goes On

In the last issue I posed the question, “Why Can’t All Clients Be Like My Dog?” My dog, Maggie, throughout her 17 years has been loyal, honest, appreciative, and unlike many clients, and never denied doing something wrong. In that article, I asked why all clients couldn’t be as forthright as my pooch, and the answer was, of course, because clients are people, not dogs. But if all clients were more like my dog, my life as a factor would be much easier.

Shortly after that article was written, Maggie went downhill quickly. Sadly, she died just a few days after the article was published and to say her loss broke my heart would be a huge understatement. The next several days were eerily quiet and I felt nothing but emptiness. I often wanted to reach down to pat her head as I always did, but she wasn’t there. Life was different. I missed my best friend terribly.

But I still needed to get up the next work day and run my business. Clients needed advances and despite my loss, everything else went on as usual. Having undergone some difficult business frauds this year, I saw a parallel to the loss of my dog with losses we experience in our factoring companies. When we lose funds to fraud or non-collection, or a good client leaves, our business life changes a bit. Things aren’t quite like they were before. A business loss can be not just a financial setback, but an emotional one as well. We may feel like we’ve been sucker punched when a once-dependable client defrauds us. The psychological hurt is real and palpable. It shades our perspective on business and people.

Once the initial shock wears off, we take the event in stride, figure out what to do next, and carry on. Getting mad, while quite natural and understandable, doesn’t accomplish anything. We realize we need to obtain new clients to make up for the loss of revenue when a good client leaves, or to make up for the financial loss from a fraud. We just keep going. We assess all aspects of our position, conclude what needs to be done, and do it.

While the first few weeks after a loss require some adjustment, time does heal all wounds and we realize we will continue. We may redouble our efforts to bring in new business, and perhaps make some adjustments to our due diligence practices and budget. Life goes on and so do we. That’s the way the world is.

In the case of the loss of my four-legged best friend, there is a happy ending. A few days after Maggie passed, I spoke with the owner of a local dog rescue group who asked if I’d like to meet Opal, a beautiful little mini Aussie in her care. I said yes, met Opal the next day… and brought her home!

She’s only been with us for a week and we’re still learning each other’s ways and personalities, but we are a great match. She is sweet, loving, full of wiggles (no tail!) and very happy to be in a good forever home. She has settled right in and is the perfect new addition to our lives. Though Maggie’s forever gone, Opal is helping me heal and I already love her dearly.

Life goes on.

Jeff Callender is President of Dash Point Financial (DashPointFinancial.com) which buys receivables of very small businesses. He has written many books and ebooks about factoring which can be obtained from DashPointPublishing.com, the IFA website’s Store, and Amazon. He is also President of FactorFox Software, a cloud-based program used by factors of all sizes to track their receivables. You can reach him at 866-432-2408 and Jeff@DashPointFinancial.com or Jeff@FactorFox.com.
hit particularly hard, as both consumers and businesses refuse to pay anymore for marginal improvements or features. That being said, new and useful offerings can still do very well, as can major leaps in existing technological capabilities.

**Conclusion**

Things should get worse before they get better, but they probably won’t (and this is a bad thing). In fitness circles, it is accepted that “no pain” results in “no gain”. The same is true when it comes to economies in transition. President Reagan and his advisors understood this premise. As the United States slid into recession back in the early 1980s, rather than act to avoid (really, delay) pain, Reagan actually raised interest rates to unprecedented highs in order to immediately take the full brunt of what was to come. He believed that the sooner we dealt with reality, the sooner we’d get back onto the path to recovery. The result was a surprisingly short, albeit painful, recession followed by a very quick rebound.

I don’t want to see another recession, but I really don’t want to face the consequences of delaying the inevitable. Like cancer, the best outcomes are a result of early detection and treatment. The world and U.S. economies are sick (still). We need to treat the patient, now, while we still can. But we probably won’t. So expect 2013 to be OK, regretfully. •

**Making a Difference**

Helped to paint schools, for example. I find that our people love doing this work as much as I do. They get a real sense of personal fulfillment.

How can we learn more about the charities you are involved with?

- **Lawrence Hospital Center—Meals on Wheels**
  www.mowaa.org
- **Catholic Charities—Archdiocese of New York**
  www.catholiccharitiesny.org
- **Catholic Guardian Society and Home Bureau**
  www.cgshb.org
- **UJA-Federation of New York**
  www.ujafedny.org

Louis can be reached at 212-757-8050 or lcappelli@snb.com. •

**Vendor Locator Service**

Offered by the IFA

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.

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