A LOOK AHEAD

ALSO INSIDE:

THE FUTURE OF TRANSPORTATION FACTORING

ECONOMY EXPANDING DESPITE DAMAGING PARTISAN POLITICS

COMMERCIAL FINANCE MERGER AND ACQUISITION ACTIVITY — WHAT TO EXPECT IN 2014
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from the executive director

“Our eyes are in front because it is better to look ahead than to look back. Don’t dwell on things on the past. Learn from them and keep moving forward.”

The Look Ahead issue is always one of my favorites. I find it interesting to read how some of the experts in the factoring industry view the future. In this issue, you will find some excellent articles from various professionals in the factoring industry.

Within the IFA, we are always looking for new products and services we can provide for our members. One of the repeating services that we offer is our Annual Conference.

This year’s conference is looking bigger and better than ever. Scheduled for April 9 – 12 at the iconic Westin St. Francis in San Francisco, we have organized more speakers and more networking time than ever before. New networking activities for this year will be a breakout lunch for transportation factors on Friday, as well as a networking breakfast for women in commercial finance.

I think our speakers are more relevant, educational, and entertaining than ever before. Our keynote speaker, Jeffrey Ma, was a member of the MIT blackjack team. The hit movie “21” was based on his exploits in Las Vegas. He will discuss how analytics can improve your business and decision making.

I’ve also received more positive feedback from our members about booking Dean Karnazes as a speaker than I’ve received for any previous speaker. Dean will be speaking about overcoming obstacles.

We will be continuing with our worldwide factoring track with various factoring and trade finance sessions. This year we’ve scheduled sessions on Reverse Factoring, Canadian Factoring, Factoring in China, Cross Border Factoring, and Fraud in Latin America.

I’m really excited about our entire line up this year. I think each session offers a learning opportunity by experts in their designated topic. You can view detailed conference information at www.factoringconference.com

If you haven’t looked into our Certification program, now is a good time to do so. This is the first professional certification of its kind that recognizes professionalism within the Factoring Industry. To learn more about the program or to apply, visit www.factoring.org/documents/IFA%20CFAE%20Application.pdf

For my update, I’ve been doing quite well. Although I’m not walking, I am doing pretty much everything I did before the accident. I’ve found that being paralyzed is not an end to anything, but rather provides me with an opportunity to learn new ways of dealing with life.

Thanks again for your support, and I look forward to seeing you in San Francisco. event!

Bert Goldberg
PERSONNEL

Chris Lehnes Joins Gibraltar Business Capital
Chris, a 20-year veteran of small business lending, will be developing new factoring and asset based lending relationships in the NE United States to help small businesses acquire cash flow to aid in growth or uncertainty.

Accord Financial Appoints John J. Swidler to its Board of Directors
John is a Senior Advisor with the Montréal office of Richter LLP, a firm of Chartered Professional Accountants. He was the Managing Partner of Richter from 1996 to January 1, 2007 and was Chairman of the firm’s Executive Committee from 1982 to 1996. John graduated from McGill University with a Bachelor of Commerce degree and also received a Bachelor of Civil Law from McGill. He obtained his designation as a Chartered Professional Accountant in 1967.

Bibby Financial Services Americas Names Jeffrey Morse Risk Director; Andy Oropeza Joins West Coast Sales Team
Jeffrey has served in high-level management roles at several companies, including Chase Commercial Corp., Fleet Credit Corp., Bank of America Business Credit, GE Capital, and Textron Financial Corp. His has extensive experience in small- and middle-market lending and a strong understanding of risk management and financial records. He will report to Leigh Lones, CEO Americas.

Andy brings more than 10 years of sales experience to his new role as VP Business Development at Bibby Financial Services, California. Most recently, he served as West Coast Business Development Officer for Summar Financial, a domestic and international factor. Prior to that, Oropeza worked with AgriCap Financial Corp., helping to coordinate the company’s first inventory financing program. Oropeza will report to Nick Hart, Managing Director of Bibby Financial Services, California.

INDUSTRY TRANSACTIONS

Gibraltar Business Capital Closes on almost $15 Million in New Lines of Credit
In the last two months, Gibraltar Business Capital closed on almost $15 million in new lines of credit. A 20-year-old Illinois-based distributor of custom kitchen and bath cabinetry was experiencing strong growth due to robust recovery in the Chicago-area housing market. Gibraltar provided a quick turnaround on a specialized factoring line of credit, giving the cabinetmaker key working capital to keep business moving forward. Gibraltar also closed four new asset based lines of credit.

RMP Trade Credit Provides Purchase Order Facilities
- $3,000,000 for an Importer of licensed and patented promotional products.
- $1,000,000 for an Importer of men’s and women’s fashion boots.
- $450,000 for an Importer of workout sports equipment.
- $30,000 for an Importer of telescopes.
- $170,000 for a closeout wholesaler of cosmetic closeouts.

TAB Bank’s Recent Deals
- $2 million revolving credit facility for a company that distributes off-road vehicles, motors, and generators.
- $3 million revolving credit facility for a chocolate manufacturing company.
- $2 million asset based lending facility for an aerospace machining company.

Utica Leaseco’s Recent Transactions
- $2,700,000 Sale/Leaseback for a production equipment and field services operation for the oil and gas industry.
- $950,000 combined Sale/Leaseback and...
Secured Loan for a transportation service provider.
$1,550,000 Sale/Leaseback funding for a tissue paper manufacturer.
$350,000 Sale/Leaseback funding for a multi-state building products and niche manufacturer.
$300,000 Sale/Leaseback for an existing oilfield customer.
$900,000 Secured Loan for a specialty touring operation.

**Tax Guard Resolves $1.1 Million Liability for Trucking Company; Abates $100K in Penalties for Staffing Company**
Tax Guard resolved a $1.1 million IRS liability through an Installment Agreement of $2,500 per month for a trucking company.
Tax Guard resolved a $400,000 IRS liability through an Installment Agreement of $4,900 per month for a staffing company.

**Loeb Term Solutions’ Recent Transactions**
Loeb Term Solutions provided a term loan on equipment valued at over $500,000 to a Full Service Marina/Dock Facility, and a term loan on equipment valued at over $1.5 Million to a leading die-casting company.

**Accord Financial Acquires Portfolio of Loans from Brome Capital**
Accord Financial Corp. acquired a portfolio of factoring and asset-based loans from Brome Capital through its subsidiary, Accord Financial Inc. After taking into account the acquisition, Accord’s portfolio of loans currently exceeds $120 million.

**Crestmark’s Recent Deals**
Crestmark secured a total of $1,600,000 in financial solutions for three new clients in first two weeks of November, $21,050,000 for six new clients in the second half of October, and $3,900,000 for three new clients in first two weeks of October.

**Bibby Financial Services’ Recent Transactions**
$500,000 facility for an electrical contractor.
$325,000 combined accounts receivable and purchase order financing facility for an apparel wholesale distributor.

**Bibby Financial Services Sponsors Two Headline Events in L.A. to Raise Funds for City of Hope, and Hosts L.A. Fashion Weekend After Party**
Bibby Financial Services sponsored two headline events in the Los Angeles area that raised money for City of Hope, a leader in cancer research and patient care.

**Crestmark Wins Three Certificates of Excellence**
Crestmark was honored during the 2013 American Graphic Design Awards with three Certificates of Excellence for printed materials and direct mailings. The work was created by Lisa Beattie, First Vice President, Crestmark Marketing/Communication Director.

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**Bibby Financial Services was the Official Financial Partner of L.A. Fashion Weekend at Sunset Gower Studios, Hollywood, CA, Oct. 18 to 20. The company made a donation for every hole-in-one at its putting green during pre-show festivities, and also recognized personal donations through the Bibby Financial Services’ Tree of Hope.**

**Bibby Financial Services hosted the L.A. Fashion Weekend Official After Parties each night at the W Hotel Hollywood.**

On Nov. 8, Bibby Financial Services also sponsored the Black and Blues Ball, hosted by City of Hope. •
The Future of Transportation Factoring

Core principles a transportation factoring company should practice are: know your customer, and the industry they work in. The factor will be better prepared by understanding the intricacies of the transportation industry.

BY TIM VALDEZ

Some of the most important core principles a transportation factoring company should practice are: know your customer, and the industry they work in. When considering the future challenges of your client, and the changes on the horizon, the factor will be better prepared to deal with the hurdles along the way by understanding the intricacies of the transportation industry.

Carrier Capacity

Government regulation, driver shortages, and higher financial barriers to entry have created a fairly stagnant marketplace for transportation factors. The positive side of restricted capacity is it typically creates higher demand for asset based carriers, which in turn creates higher rates per mile. For the factor, the higher rate per mile would drive our average purchase volume up and increase our factoring fee income without incurring additional overhead. I believe it will also create increased competition between the “Super Brokers” like CH Robinson (CHR), TQL, and Landstar for our client’s capacity. If that happens in 2014, I could see CHR open the doors to more approved factors to get access to the capacity. I have spoken with several factors attempting to get on the approved factor list without success, claiming that CHR is comfortable with the level of the current factors. The approved factor list has been effectively closed since the fall of 2011.

Competition 2014

Since the marketplace is stagnant or growing at a very slow pace, competition between factors for clients has been intense and will continue to be over the next couple years. Entrepreneurial factors have created unique ways to attract and maintain business. Advance rates have never been higher, with many recourse factors offering advance rates exceeding 95%. Since the advance rates are high, we can make the assumption that discount rates and reserves are also historically low. I can only assume that payment dilution is also below the historic average of 1% to
justify the low reserves. I have seen deal structures favoring flat or fixed discounts that work really well in a stable interest rate environment and it appears to be the standard for the near future. There has also been a high level of interest for third party logistics companies, equipment vendors, equipment finance companies, and fuel suppliers to enter the transportation factoring space. These are competitors with strong balance sheets looking to leverage existing client relationships and create loyalty by providing capital along with their core business. As these competitors enter the factoring space, they will create bundled products to enhance their existing offerings, making pricing, deal structuring, client acquisition, and migration more challenging to existing factors.

Technology, including electronic submission, payment, verification, and historically low borrowing cost have reduced the operating cost of the factor giving us the ability to be more aggressive with advances (reserves), and discounts to the client.

**Hours of Service (HOS)**

The HOS are simply the amount of time a driver can be “on duty” within the prescribed rules set by the government and enforced by the Federal Motor Carrier Safety Administration. The new HOS rules came into effect on July 1, 2013, and continue to limit the hours a driver can be behind the wheel. How does this affect factors currently, and what are the future challenges to consider? Currently, the enforcement of the HOS rules is just starting to ramp up, and we have noticed the frequency and the severity of the violations starting to impact our clients. If the factor is doing load advances, violations could significantly impact delivery time and inadvertently increase your load advance percentage due to late fees incurred by the client. Another impact on the client/factor to consider, is how the violations can pile up and negatively impact the client’s safety rating. Since insurance companies and shippers/brokers monitor the client’s rating, as the rating deteriorates, the client will have a difficult time renewing their liability insurance policy, or premiums will increase to offset the risk profile. Shippers/brokers create their own guidelines, and whenever the client exceeds that threshold, the shipper/broker will no longer load the carrier shifting client concentration. Many of our clients are small carriers and always run very close to the edge, if not over, to make enough income to pay expenses. Since clients have noticed a ramp up in enforcement action, they are applying for a second operating authority (shadow authority) to have the ability to move over if the primary authority is shut down. The primary authority can lie dormant for 6-9 months allowing the violations to drop off and can lie in wait until the client needs to jump back in the future. The factor can monitor the client’s safety rating and volume to predict the likelihood the client is filing for another authority, and can stay a step ahead if the client doesn’t communicate timely with the factor. If you would like to learn more about HOS, the FMCSA produces a document that can be accessed at: https://www.fmcsa.dot.gov/documents/hos/Interstate-Truck-Driver-Guide-to-HOS_508.pdf.

**Electronic On Board Recorder (EOBR)**

EOBR’s are the next layer of monitoring the FMCSA will have to enforce
The Future of Fuel

Fuel continues to be one of the largest expenses, next to payroll, our clients face daily. When fuel increases steadily, the carrier has to pay the increased expense immediately, and if they are fortunate enough to charge fuel surcharge, they can recoup the cost when the Department of Energy (DOE) re-prices the DOE average weekly. Many of our factoring clients working with brokers do not have the luxury of fuel surcharge and are quoted flat rates.

The retail diesel market changed dramatically when Pilot Travel Centers purchased Flying J out of bankruptcy in July of 2010. Although retail margins began to grow in the fall of 2008 during Flying J’s initial cash crunch, the merger created an environment for Pilot/FJ to increase margins dramatically. Since 2010, retail fuel margins that were historically $.22 - .23 per gallon steadily increased to hover between $.20 - $.25 per gallon and remain there today. These margins affect our typical factoring client and without some pressure to change either regulatory or competition, the margins are here to stay. Since most of our clients do not have purchasing power to negotiate retail minus or cost plus discounts with the fuel suppliers, most are paying full retail or a small retail minus discount through their fuel card supplier, association, or factor’s fuel card. For our clients to be competitive in the future and survive this high margin environment, transportation factors should consider creating a buying group and have the ability to aggregate gallons for the benefit of its clients. Since the fuel suppliers like the full margin gallons that a majority of our clients pay, this will be a difficult task to accomplish and may require the factors to consolidate and move volume to facilities willing to give the small carriers a discount. Without a focused effort by transportation factors to make a fuel program work, the profit differential between the small fleet and the medium to large fleet will widen and jeopardize the viability of our core client.

Load Advances

For a long time, I was against the concept of load advances since I viewed them as unsecured high risk loans. The concept that changed my thinking came in two unrelated areas. The first came as I watched the merchant cash advance business grow to a multi-billion dollar industry by advancing money on future credit card sales to restaurants and other retailers on the speculation the business will maintain a minimum credit card sales volume until the obligation gets paid. And secondly, I was getting tired of shippers and brokers taking up to 50% of my purchase volume away by offering fuel advances to my clients. We still had to do the same amount of work, but our discount/fees were getting hammered. I sat down and did the analysis and determined I could enhance my yield by creating a structure that would reduce the likelihood of a problem with a load in transit and offer a competitive alternative to my clients. Since doing the analysis and putting the advance into practice, we have been fortunate enough to make it work. Although I still consider it an unsecured loan, I have learned, like our colleagues in the merchant cash advance business, if you know your client, understand the risk profile, and get paid for the risk, the program can work well. The interesting positive side effect is that the clients we load advance rarely, if ever, talk about taking a quick pay from the broker.

Conclusion

Although there have always been challenges in the transportation factoring business due to regulation, staying informed of changes to the industry’s rules and regulations will better prepare us to react when, or sometimes if, the regulations come to fruition.

Tim Valdez is the co-founder of Pavestone Capital LLC, a recourse factoring company that provides working capital to small and middle market transportation and commercial businesses nationwide. Tim began his exposure to the factoring industry in 1990 as a client of the Commercial Finance Group for his contract screen print and embroidery company. He sold his company in 1995 and began working for CFG. Tim was approached by TAB Bank in 1999 to start their commercial finance division, and from 2010 - 2012 was the Chief Lending Officer, overseeing origination and operations of the factoring, ABL, and equipment finance portfolios. Tim can be reached by phone at 855-621-3996 ext. 5066 or by email at timv@pavestonecapital.com.
It’s a Bad Scene In Twenty Fourteen

Predictions are always wrought with potential pitfalls. However, my prognostication for 2014 should easily be on target. The Stock Market is at an all time high. I wonder which way it’s likely to go from here. All you have to do is picture yourself at the top of a mountain. No matter which compass direction you choose, there’s only one altitudinal direction to go. The only real question at this point is: are we standing on a gentle slope or are we at the edge of a crevasse? So hold on tight. It will be an interesting ride for sure.

**Likely World Economic Direction**

One cannot peruse the world economy without first stopping at China. Their growth exceeded 10% per year in the early ’00s and has since cooled to around 7.5% annually since 2012. Some believe it will continue a slowdown to just under 6% annually by 2020. Others believe that China is due for a crash given the fragile banking and political structure. There are some optimists that see it bouncing back, but remaining well under 10%. So, at best, we should expect nothing, and at worst, well, let’s not go there.

In the rest of the BRIC (Brazil, Russia, India, and China, being the four largest emerging economies), Brazil continues to struggle with a growth rate barely above zero, while Russia has shown three straight years of declines from a high of 4.5% to 3.4% last year, with expectations of an even slower 2013 continuing right through 2014. India also has seen its growth rate practically cut in half from 9.3% in 2010 to 5% in 2012. Everyone believes that India has bottomed out, but predictions of a turnaround vary from 5.9% to 8% in 2014 and beyond. Nothing really to get excited about. In total, the BRIC is anything but “emerging”.

Then there’s Europe. YAY! The general consensus is that they will reverse two years of falling output. Go Euro! Growth in 2014 could reach a staggering 1%, and it might even last into the following year and beyond. I guess that’s good news, in that it’s not bad news. But reversing -1% to +1% isn’t going to be noticeable by anyone anywhere. And there are still some experts who believe things will actually get worse. I’m one of them. Well, not an expert, but a believer that it will get worse there before it gets better.

In Japan, yearly growth rates have bounced up and down between the negative and positive for the past six years following eight years in decline; the average the past six is a whopping zero. Like Europe, zero is good news. And they expect things to stay pretty much the same in the near term. Ouch.

And what about here in the good ole US of A? 2013 is sure to miss the 3.5% growth rate expected at the beginning of the year. Anything above 2.5% would be a pleasant surprise now. And next year? 2.5% is the **HIGH** side of most economists’ guess. So if you didn’t like this year, at least it prepped you for next! And with the Fed continuing to pump money onto their bond purchase program, there is no telling what the ultimate end of that will do. Except that they tried to cut back this year, and it didn’t work. So like most other countries around the globe, there’s a bigger chance that we will experience a decline than we will a bountiful increase in GDP.

"EVERYONE BELIEVES THAT INDIA HAS BOTTOMED OUT, BUT PREDICTIONS OF A TURNAROUND VARY FROM 5.9% TO 8% IN 2014 AND BEYOND. NOTHING REALLY TO GET EXCITED ABOUT. IN TOTAL, THE BRIC IS ANYTHING BUT ‘EMERGING’.”

Thomas G. Siska is Senior Vice President of North Mill Capital, LLC. Tom is a 24 year industry veteran who has built several factoring operations. He can be reached at 609-917-6228 or TSiska@NorthMillCapital.com.
In total, the International Monetary Fund predicts that the global economy will grow 2.9% this year and 3.6% next year. This anemic forecast also came with the warning that the underlying dynamics show that if they’re wrong, it will surely be because they aimed too high.

What this means for the Factoring Industry

On the whole, expect little to change from 2013. While some firms will have a better year next year, it will most likely come at the expense of their competitors. And this truth will not only apply to Factors, but to our clients as well. Therefore, industry sectors like transportation and staffing will again experience intense price pressure, driving some of them right out of business. Basic manufacturing’s malaise will persist as foreign alternatives maintain their need to make sales at any price. Housing has already started showing signs that their rally was short lived, so that went as fast as it came. And none of this takes into account what could happen with the Affordable Health Care Act. I’m purposefully omitting any comments, since the only certainty surrounding the Act is that it will not end up the way it started out (and we can all be thankful for that).

One sure bet is that the number of firms offering non-bank alternative commercial financing will grow, meaning that there will be more gluttons at the table trying to grab a slice of a pie that is already barely sufficient to feed the existing diners. And many of these new interlopers will be bringing along a monstrous appetite as a result of their excessive cash holdings. To make matters worse, they also have a less discerning palate when it comes to the appropriate risk adjusted returns necessary to balance their diet. So I anticipate that next year’s culinary experience will be less tasty and far less satisfying.

Conclusion

With a stagnant economy both here and abroad, continued high U.S. unemployment and a government that seemingly can’t get out of its own way, 2014 should look awfully similar to 2013. Which is why one has to wonder what is causing the stock market to reach all-time highs? It certainly isn’t the rosy future. Maybe it’s because with interest rates at an all-time low, the only place to invest and make (hopefully) a decent return is in the stock market. Which brings us to another inevitability: when something is at the bottom, there is only one way for it to go from there. When interest rates rise, and they have to someday, things will get ugly.

The last time we had all time highs in one area and near all time lows in another was under the Reagan administration. But things were reversed, in that interest rates were the highest ever, and the stock market was in the sewer. Things got better from there, much better in fact. We’re looking at the exact opposite situation today. One can only assume the exact opposite results. A bad scene indeed.
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Economy Expanding Despite Damaging Partisan Politics

It’s frustrating to realize that massive advances in our understanding of the inner workings of the economy remain so far removed from the political debates in Washington, D.C. **BY CHRISTOPHER THORNBEG, PHD**

‘WE HAVE MET THE ENEMY AND HE IS US’ -POGO.

On one level, it may be comforting that a half-century-old cartoon character’s remark can so accurately describe the current path of the U.S. economy. But at another level, it’s frustrating to realize that massive advances in our understanding of the inner workings of the economy remain so far removed from the political debates in Washington, D.C.

The U.S. economy is trying to get out of its own way, but our elected leaders seem to have other plans. The fiscal cliff negotiations during the last weeks of 2012 led to sharp cuts in Federal spending and a big jump in taxes—completely unnecessary shocks to the nation’s fragile recovery. Yes—the deficit has to be closed, but closing it should be done over a number of years, with the tax increases and spending cuts done logically and announced far ahead of time.

Yet the economy managed to bounce back for 2 plus percent GDP growth in the second and third quarter of 2013. This mini-recovery came under threat again because of the recent Federal government shutdown and the potential hit from running into the debt ceiling. They did come up with another last minute compromise—but only until next February. In the meantime, businesses are wondering if they should bother investing under this ongoing cloud of budget uncertainty. The economy can grow, but only if our elected leaders start doing the things they should—and stop doing the things they shouldn’t.

Consumer spending has bounced back since the fiscal cliff’s $200 billion personal tax increase at the start of the year—with auto sales close to their long-term normal 16 million-unit annual sales in the third quarter of 2013. Retail sales have also been moving forward, with faster growth in recent months than earlier in the year. While some have worried about slower growth—any growth at all is positive, given the tax hikes.

The improving recovery in the labor markets is partly responsible for the bounce in consumer spending. The nation has added over 2 million jobs in the past year—with private sector employment up 2% from August 2012 to August 2013. The unemployment rate for those with a bachelor’s degree or higher is below 4%, leading incomes to rise at a faster pace. Unemployment for the lowest skilled workers has also fallen sharply. The number of long term unemployed is still too high, but finally started to fall two years ago.

Financially, the nation is doing better. The banking sector has almost returned to normal from a distress perspective, and businesses are making record profits. Corporate profits are now 25% higher than their pre-recession peak. It’s little wonder that the stock market has bounced back so nicely. Outside of residual issues from the housing collapse, consumer debt is seeing record low delinquency levels.

The housing market continues to recover despite the modest hike in interest rates over the past 6 months that slowed growth a bit—but only to a more sustainable level. By Beacon Economics’ calculations, for the first time in 7 years, there was an increase in the number of owner occupied housing units in the United States between 2012 and 2013.

And the Federal Reserve seems to be managing the money supply fine. They need to deal with unwinding quantitative easing, but there is little chance of inflation since most of the cash injected into the system is sitting in banks in the form of excess reserves. And with bank lending activity still weak, that money will stay there for a while. They have plenty of time to unwind these programs—and it looks like they’ll use it. Because most of the declines in rates occurred prior to the recession, Beacon Economics doesn’t expect rates to shoot back up when these programs end. With plenty of liquidity in the world markets and weak demand for capital, expect low interest rates for some time.

Europe, China, and Japan are all showing modestly positive signs, which bodes well for U.S. exports in 2014, given that the dollar is still 25% cheaper than it was a decade ago, making U.S. products extremely competitive in world markets. Overall, there are plenty of reasons to look for better times ahead.
Still, despite all the good news, consumers are still wary of borrowing, and their confidence is waning, business investment remains low despite growing profits, and housing construction is still close to rock bottom. Why? Those 435 people we collectively refer to as the U.S. Congress.

Public spending in the nation continues to contract. Combined, direct spending at the Federal, state, and local level is 5% lower today than when President Obama took office. Fans of small government may hear this as good news, but the time to pursue such policies is not during economic recessions and weak recoveries, but during periods of expansion when the economy can handle the negative impact of the contraction. The deficit has become Washington’s defining policy issue, and it has led to two major policy crises.

The fiscal cliff was averted, but still resulted in a $200 billion tax increase and automatic spending cuts—leading growth to weaken dramatically. And this happened at a time when the deficit had been closing on its own as stimulus-spending plans expired and revenues were rising with the growing economy. World lending markets were still willing to lend to the U.S. on a long-term basis at very low rates. Net national debt levels are still below 80% of GDP. There was no need for a painful solution to a problem that didn’t exist.

Still, the economy has pulled through with 2.5% growth in the second quarter of 2013— and the likelihood of 2% or more growth in the third quarter. The recent government shut down and continued looming debt ceiling issue make the fourth quarter uncertain. The issue this time is Obamacare—which some in D.C. feel is such a threat to the future of the U.S. economy that they are willing to push the economy back into a recession to try and delay or kill it.

This is a lightning rod issue, and the program has its flaws, but it is a logical first step (one of many) towards fixing massive problems in the system. It is certainly not worth playing fiscal chicken over, particularly when the economy is on shaky legs. A deal was ultimately reached before the standoff led to broad economic consequences, but not before the nation suffered real reputational damage in the eyes of the world and investors. Moreover, the uneasy specter of the next ideologically driven confrontation continues to loom.

And the problem is not only on one side of the aisle. While direct spending is trending down, indirect spending is up and likely to continue growing as boomers head into retirement. The major public social insurance programs are fine for now, but we’ll be heading into crisis territory in 10 to 25 years if nothing is done to curb that spending. This is where the true crisis is—and many leaders aren’t even broaching the issue.

Ultimately, any long-term deal that is struck should take pressure off the budget in the short run but restrict spending in the long run. Instead, our leaders are pursuing ideological agendas that threaten the fragile but real gains being made.

It’s enough to make you want to quit economics and draw cartoons for a living.

Christopher Thornberg is Founding Partner of Beacon Economics, LLC, and widely considered to be one of California’s leading economists. He is on record as being one of the earliest and most adamant forecasters of the 2007 sub-prime mortgage market collapse and of the global economic recession that followed. He has served on the advisory boards of Paulson & Co. Inc., one of Wall Street’s leading hedge funds, and as a chief economic advisor to the California State Controller’s Office. Dr. Thornberg earned his Ph.D from The Anderson School at UCLA. You can contact him by phone at 310-571-3399 or by email at Chris@BeaconEcon.com.
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The market for M&A activity in the factoring and asset based lending sectors has never been as robust as in other industries, like business services, media, telecom or technology. The commercial finance sector has, however, generally seen a handful of interesting transactions each year that either continue or start a trend that allows us to look to the future and predict what might happen in M&A in the coming months or years.

In 2013, acquisitions of companies and portfolios were somewhat scarce, with less than 10 transactions announced publicly in the combined asset based lending and factoring sectors involving the sale of a platform or portfolio of assets. But the deals that were completed, when analyzed in combination with the broader trends witnessed in the bank and non-bank lending sectors, leads me to believe that 2014 will see greater transaction activity in both the factoring and asset based lending sectors.

Banks are Increasingly Yield and Growth Starved

Regulated commercial banks have historically been a reliable acquirer of commercial finance businesses to help improve net interest margins, supplement loan growth, and exploit the substantial cost of funds synergy that exists for a bank buying a non-bank lender that borrows at a higher funding cost than that of a bank. But in 2013, the trend that manifested itself time and time again was that of banks starting up new commercial finance businesses from scratch.

The average bank with less than $10 billion in assets invested an average of 75% of its loan portfolio in some type of real estate loan, whether residential, commercial, multifamily, land or construction loan. In a lending market
emerged from the recession with significant capital backing from institutional investors, which enables them to proactively seek acquisition opportunities. Commercial lenders that provide factoring, including North Mill Capital, Gibraltar Business Capital, and Republic Business Credit, are backed by deep-pocketed investors who have stepped up with incremental capital investment to enable these platforms to make acquisitions over the last 2 years. In addition, there are more senior lenders to factoring and asset based lending companies today than even just a year ago, which allows the above-mentioned equity investors to leverage their equity capital to drive better equity returns in an acquisition.

Beyond existing factoring and asset based lending companies, the publicly-traded business development company (“BDC”) sector emerged as a M&A player in this sector in 2013, with a handful of acquisitions that serve to simultaneously produce cash flow for dividends while also adding a complementary commercial loan product to their offerings. Solar Capital and its affiliate acquired both Crystal

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Financial and Gemino Healthcare Finance in 2013, while Fifth Street Finance acquired Healthcare Finance Group and an affiliate of Apollo Global Management acquired Midcap Financial. These BDCs offer commercial finance management teams the ability to expand their footprint, loan size, and product offering, with access to more capital, and sometimes, a cheaper cost of funds.

With access to capital and debt funding, there are plenty of non-bank finance companies and BDCs who are actively seeking acquisition opportunities, hoping to convince business owners to pull the trigger on a sale of a platform or portfolio. This dynamic may also drive further acquisition activity as we move into 2014.

**Improved Valuations May Twist the Arms of Sellers**

Not surprisingly, the valuations being ascribed to factoring and asset based lenders who have sold recently are significantly better than those paid during and shortly after the recession. Valuations, on average, have not returned to pre-recession levels when it was common to see a commercial finance company sell for over 10x earnings, 200% of shareholders’ equity, and 30-50% premiums on loans or net funds employed. That said, pricing for recent transactions that we’ve been involved with has continued to improve, coming close to these levels. Pricing should continue to be attractive, given the continued need for bank and non-bank buyers to find loan volume and growth.

Additionally, while there is certainly plenty of debate as to the health and direction of the U.S. economy, it is hard to debate the performance of the equity markets in 2013. While many buyers of factoring and asset based lending companies are not publicly traded, the improved equity markets have increased the price to earnings (P/E) multiples of many would-be buyers of finance companies, such as banks and other entities. A buyer with a higher P/E multiple can generally afford to pay more for a potential acquisition than its peer with a lower P/E multiple.

A publicly traded acquirer needs to be able to tell its shareholders that an acquisition will be accretive not only to earnings, but to its public market capitalization as well. With rising P/E multiples, potential buyers of finance companies can now afford to pay more in order to win an acquisition and still have the transaction be accretive. While a rising stock price is no guarantee of increased M&A activity, it surely helps nudge a buyer that might otherwise be worried about its shareholders’ reaction to a particular transaction.

**Conclusion**

The factoring and asset based lending sector will never be the most active M&A sector in the nation’s economy. But the combination of the factors and trends above should lead to more closed deals in 2014, particularly given the continued low interest rate environment and its impact on banks’ ability to improve margins and the non-bank sector’s inability to drive significant new business volume. As the most active advisor to the commercial finance sector, we are fortunate enough to have a unique view of the current M&A deal activity in the sector, and given our current pipeline of transactions, 2014 appears to be headed for more closed acquisitions than what we saw in both 2012 and 2013.
Tim Stute is a Managing Director in Houlihan Lokey’s Financial Institutions Group. He has 15 years of experience providing capital markets and M&A advisory services to the financial institutions sector, with a particular emphasis on the specialty finance industry, including equipment leasing companies, asset based lenders, accounts receivable factoring companies, and non-mortgage consumer lenders. Before joining Houlihan Lokey, he was a managing director and principal at Milestone Advisors, LLC (which was acquired by Houlihan Lokey), where he managed the No. 1 ranked M&A practice focused on the commercial finance sector (according to SNL Financial LC, 2004-2012). Tim can be reached by phone at 703-714-1728 or by email at tstute@hl.com.
Winter blues got you down? Start planning your spring trip to San Francisco, CA for the 2014 Factoring Conference at the luxurious Westin St. Francis Hotel, April 9-12! With over fifty top-notch speakers, an exhibit hall full of vendors, plenty of networking events and activities to choose from, there’s something to inspire everyone.

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Jeffrey Ma, President and CEO of TenXer, and a member of the infamous MIT blackjack team, Ma will discuss teamwork and innovative metrics in a way that will make you reevaluate how you assess talent, find undervalued assets, and measure the true worth of your business.

Dean Karnazes, speaker, author, athlete, and entrepreneur was named one of the “Top 100 Most Influential People in the World” by TIME magazine. Men’s Fitness hailed him as one of the fittest men on the planet. An acclaimed endurance athlete and NY Times bestselling author, Karnazes has pushed his body and mind to inconceivable limits.

Dr. Christopher Thornberg is founding partner of Beacon Economics, LLC and widely considered to be one of California’s leading economists. An expert in economic forecasting, regional economics, real estate analysis, labor markets, and economic policy, he was one of the earliest and most adamant predictors of the subprime mortgage market crash that began in 2007, and of the global economic recession that followed.

Patrick Renvoisé, President of SalesBrain, will discuss Neuromarketing and what you need to know about the brain of your customers to find their buy button. Neuromarketing merges Neuroscience with Marketing to help target the part of the brain that drives buying decisions: the reptilian brain. This new science will help you create messages your customers will notice, understand, remember, and value.

If your schedule allows, you might want to tack another day or two onto your trip. San Francisco’s restaurants, parks, piers, theaters, shopping centers, nightclubs, and museums deserve an extra day of unrushed exploration.

Need some fresh air in between panel sessions? One of the country’s top 30 urban parks, Yerba Buena Gardens, is located just six blocks from the hotel. Hop on a cable car right outside the front door. Want to stay a little closer to the conference? Union Square is as convenient as exiting the hotel and taking a seat at one of the outdoor cafes that line San Francisco’s largest shopping district.

Craving Italian? North Beach is only a mile away. San Francisco’s “Little Italy” is home to an impressive number of restaurants including Tommaso’s, which boasts the first wood-fired brick pizza oven on the west coast. Save room for hand-crafted gelato or sorbetto from Gelateria Naia.

Venture a little further and you’ll find yourself at Fisherman’s Wharf. Visit the famous sea lions of Pier 39, check out the world’s largest collection of historic ships by tonnage, located at Hyde Street Pier, and scan...
As of November 15, 2013

The October 9th, 2013 Wall Street Journal contained an article that caused great concern. J.P. Morgan announced it is scaling back lending to pawn shops, payday lenders, check cashers, and car dealerships. Why should this be a concern? The reason cited by J.P. Morgan is “heightened regulatory scrutiny.”

J.P. Morgan projects it will lose hundreds of millions of dollars in annual revenue from this “client culling.” While the article states that “it isn’t known if regulators played any role in urging J.P. Morgan to examine its relationships,” it is hard to imagine any bank giving up profitable business without being forced to do so.

J.P. Morgan isn’t the only bank under pressure from the government. The Wall Street Journal article also states that regulators are pressuring banks to “rein in relationships with companies that have questionable lending or other practices.” In addition, the Comptroller of the Currency has ordered banks to review their relationships with all short-term lenders. Phase one of this process began several months ago with pawn shops, payday lenders, check cashers, and buy-here-pay-here car dealerships being targeted first. Which industries are next is anyone’s guess.

As regulators and politicians force banks to drop companies they deem unacceptable, Washington continues its quest to increase regulation on everything and everyone. By expanding the list of “high-risk industries,” the federal government is effectively regulating industries where they have no regulatory authority. The government is now in the position of deciding who will prosper and who will fail.

Deeming some legal activities acceptable and other legal activities unacceptable is a huge regulatory power. Giving non-elected bureaucrats this much discretionary power over a “free economy” is not what the founding fathers had in mind. Under political and regulatory pressure, J.P. Morgan is also discussing whether they should keep lending to gun companies.

Removing access to credit may be how the federal government begins regulation of the factoring industry. How much imagination does it take to see our industry added to the list? What would be the impact to your company should the government decide factoring is the same as payday loans. What happens when your bank is forced to not lend to factors? This would be devastating for the economy, our industry, and each of us.

Make sure your voice is heard in Washington by becoming involved with the AFA. If you have not already joined, please do so today. No regulation without representation. Your silence may be the last thing you get to say.

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.

AFA American Factorers Association

If you can’t regulate factoring, get the banks to do it for you
BY JEFF ROSE, CFO, NATIONAL BANKERS TRUST

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**FEBRUARY 13**

Due Diligence and Investigations Workshop with NYIC
Arno Ristorante, New York, NY

**MARCH 4**

Luncheon Meeting with NYIC
Arno Ristorante, New York, NY

**APRIL 9**

Portfolio Management Training Class
Westin St. Francis
San Francisco, CA

**APRIL 9-12**

2014 Factoring Conference
Westin St. Francis
San Francisco, CA

For details about IFA events, please visit www.factoring.org
Q&A with Stephen Troy, President, AeroFund Financial

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

Over the years, AeroFund has been involved in various charities and nonprofits. We have supported local schools and universities, the local chapters of the Cancer and Heart Associations, and homeless shelters. I have a longtime involvement in Junior Achievement. From the first day we opened our doors in 1987, we have been active with our time and our money. Between my wife and I, we have sat on over a dozen boards and committees and helped raise money and awareness for our favorite organizations. My involvement with Junior Achievement goes back to 1991 when I became a classroom volunteer and started teaching high school seniors entrepreneurship and workforce readiness, helping prepare them for the world ahead. I have been on the JA governing board since 1993. My wife, Leanne, who also works at AeroFund, has been very active with the American Cancer Society and has held committee posts for years on the cancer society’s local Grandview league’s Cattle Barons Ball and Kristy Yamaguchi’s Always Dream Foundation, the YWCA, and the Silicon Valley Charity League.

How did you become involved in the charity or charities?

Hope Rehabilitation, which helps the physically and mentally disabled with jobs and support, was a charity introduced to us through our bank. My involvement in Junior Achievement came from an article I read in the local newspaper. I have had a lifelong passion for business and business history, and JA gave me an opportunity to impart my knowledge of both to young people in our community. Being in the classroom has taught me valuable lessons in public speaking, how to adjust my presentation to my audience, and most of all, time management. Nothing makes your presentation better than knowing a bell will be ringing in 55 minutes, and 30 butts will be scurrying out the door. Finish early, and you stand there babbling like a fool. Run out of time, and you just wasted 55 minutes of talking without concluding your point.

Where do you see it making a difference?

One of AeroFund’s favorite events is shopping for toys during Christmas to donate to the local charities we support. Seeing a child’s face light up when they receive a gift for Christmas will melt even the hardest heart. The thank you notes we receive from these children are priceless. With Junior achievement, I enjoy being recognized and stopped on the street by someone I taught in class 10 years ago who wanted to thank me for inspiring them to go to college, which landed them a great job. It gives me pride to have volunteered for 20 years, knowing that, in a few lives, maybe I truly made a difference.

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

I couldn’t imagine not volunteering my time and money to better my community. I get a tremendous amount out of teaching in the classroom for Junior Achievement. Knowing I am helping shape the workforce of tomorrow or brightening someone’s difficult day is a tremendous reward. There is also a great deal gained by AeroFund. Referrals are a very important part of the factoring business. When you are competing with possibly dozens of competitors for a deal, the one with the best reputation, not the lowest price, tends to win. When one of our potential clients asks someone they trust who they would recommend, we are hopeful that our personal and business commitment to our community will help us stand out from the crowd. So, does getting involved help? Based on the success of AeroFund and the reputation we enjoy, I feel our time and money has been well spent.

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

The community we live in today is the community our kids will live in tomorrow and raise their families in. If you want a growing, vibrant, and safe community and society, you have to be a role model for your children and grandchildren. Giving back for the
What Does the Factoring Community Need to Know About the Brain?

It turns out, neuroscience has unveiled new discoveries about how the human brain processes messages which could help the factoring industry better explain the value it offers its clients. **By Patrick Renvoié**

Just imagine if you could get ALL of your customers and prospects to go from no to yes. Just imagine if you could Stop Confusing and Start Convincing! The good news: there is now a scientific process to do this, and it’s called Neuromarketing. You too can learn the brain-science based tools that will help you:

- Scientifically Capture
- Scientifically Convince
- Scientifically Close

more business!

My partner, Christophe Morin, and I have developed an easy to use model called the NeuroMap™ which teaches you in 4 simple steps how you can influence your customers’ brain. I am excited to present this award-winning, science-based model of persuasion during the 2014 Factoring Conference in San Francisco!

I believe that the key to influencing people lies deep inside the recesses of the brain. The model starts with the scientific observation that we don’t have one brain, but three brains, each of which plays a different role in the process of deciding:

- The neocortex (in blue on the map) processes the decision from a rational perspective. It is a brain that is smart, logical, and that processes data slowly, carefully, and methodically.
- The middle brain (in orange) processes the decision from an affective perspective, namely, how we feel about the decision emotionally.
- The reptilian brain (in yellow) processes the decision instinctively. It makes its decision subconsciously, very quickly, and as an automatic reflex function to maximize its chances of survival.

So we have three selves: the rational us, the emotional us, and the instinctual us….and the puzzling discovery is that even in the 21st century, where we think of ourselves as primarily rational people, neuroscientists have now demonstrated it is still our instincts
that drive our behavior: the real decision maker is the reptilian brain—a very primitive organ indeed!

My NeuroMap goes on to describe how there are only six stimuli that can trigger that reptilian brain: self-centered, contrast, tangible, beginning and end, visual, emotion. That is the Neuro part of NeuroMarketing.

The NeuroMap then teaches the 4 steps that you need to master if you want to scientifically impact the reptilian brain:
- Diagnose the PAIN.
- Differentiate your CLAIMS.
- Demonstrate the GAIN.
- Deliver to the REPTILIAN BRAIN.

1 Diagnose the PAIN
The act of convincing or selling is really not about selling; it is about Diagnosing. It is about helping your prospect better understand their PAIN. But remember, if you sell drills, your customers don’t want to own a drill, they want the holes; so you are in the hole enabling business. In fact, most likely, they don’t want more holes on their new walls, they want to hang pictures; you are in the picture hanging enabling business. So are you talking drills or are you talking holes, or better, picture hanging? Do you spend more time talking about the drill or do you use your expertise to diagnose their PAIN? And note that most of the time, they might not even be aware of their PAINS!

The reptilian brain is self-centered: make your discussion all about them, spend 80% of your time and energy diagnosing their PAIN.

2 Differentiate your CLAIMS
Are you stating: “We are one of the leading providers of…”? How much contrast is there with your competitors statement? Likely, they too present themselves as a “leading provider”. You need to differentiate your offering because if you’re not selling something unique, you are selling as much for your competitor as you’re selling for yourself. Your CLAIMS are the titles of the three chapters in the book titled: “Why You Should Buy From Us”.

The reptilian brain loves contrast. So what is unique about you? How can you differentiate your claims?

Patrick Renvoisé headed Global Business Development efforts first at Silicon Graphics, then as Executive Director of Business Development at LinuxCare. In the course of closing over $3B of business transactions and selling multi-million-dollar super-computers to NASA, Boeing, Shell, Canon, BMW, Airbus and more, he met with some of the smartest people on earth and he became fascinated by the human mind. Pushed by a strong desire to seek the truth about Sales & Marketing, Patrick discovered the buy button inside the brain. To access this button, he spent 2 years researching and formalizing a science-based MAP. This NeuroMAP™ has helped over 6,000 companies worldwide. Patrick received a Masters in Computer Science from the National Institute of Applied Sciences (Lyon, France). He is Chief Neuromarketing Officer and Co-Founder of SalesBrain. Patrick can be reached by phone at 415-869-8774 ext. 701 or by email at patrick@salesbrain.com.
3 Demonstrate the GAIN
Are you talking about your value proposition, or are you demonstrating it? Are you communicating proof—beyond a reasonable doubt—that your value exceeds the cost of your solution? How quickly and clearly can your audience see that the balance is tilted towards the value?

Your value can be segmented into three sources: financial, strategic, and personal. Do you maximize each of those dimensions of your value when you communicate to your prospects?

Now, if you hear yourself saying: “Trust me, we offer the best solution to…”, do you maximize the chances your prospects will believe you? The NeuroMap will teach you that there are four ways to prove the value. The reptilian brain loves tangible, so don’t talk about your value: demonstrate it!

4 Deliver to the REPTILIAN BRAIN
Does your audience truly understand you? Will they remember your message in one hour, one day or one month? There is a science to being understood and remembered. The reptilian brain can be triggered by six stimuli: use all of them!

right reasons teaches children that we all must work together to better our planet. Doing good can pay dividends in so many ways.

Does AeroFund have any corporate-wide program on volunteering/charitable giving?
We are a small company, and it’s difficult to have a company-wide program. We encourage our employees to volunteer. Most of the volunteering by our employees happens at the school level. As a company, we are always there to help our employees succeed in their efforts to improve their school by doing some type of sponsorship. Employees know they can count on AeroFund’s support for baseball leagues, soccer tournaments, bowling fundraisers, charity walks, buying wrapping paper, cookies, and candy bars. If one of our team members’ children sells it, or needs it, we step up to the plate to help.

How can we learn more about the charities you are involved with?
We don’t publicize in any one place who we have helped. There have been so many over the years that it would seem like boasting and a little ingenuous to list the names. The only way to truly know how we have helped is to compete with us. It’s there you will hear of our reputation and long standing commitment to our community.

Stephen Troy is an accomplished business executive, lecturer, author, and founder/CEO of AeroFund Financial, Inc. Stephen established AeroFund as a prominent national finance company, which provides secured loans to small and medium-sized businesses. He is also the founder and chairman of Aerobank.com. Stephen is a regular guest lecturer at the business school at Santa Clara University and sits on the university’s advisory board for entrepreneurship. He serves on the governing board of Junior Achievement of Northern California and is the past chairman of Junior Achievement of Silicon Valley Monterey Bay and the Northern California chapter of the Commercial Finance Association. Stephen can be reached by phone at 408-224-7080 or by email at STroy@aerofund.com.
Verification Plus: How To Turn Your Routine Inquiries Into An Enforceable Quasi Estoppel Letter

First of all, I would like to thank John Beckstead for all of his hard work and dedication to the IFA. It’s not easy to balance the demands of running a busy law practice, all other competing obligations, and still turn out an interesting and engaging column for years on end. But John did it, and for that we all owe him a debt of gratitude. John is going to be a hard act to follow, but I’ll give it my best shot. This column, much like when John ran it, will endeavor to provide cutting edge free legal advice on topics which are germane to our industry. Occasionally, we may bring in a guest columnist who has a particular expertise. We also welcome all editorial comments and suggestions. I’m pretty thick skinned, so bring it on.

In a perfect world, before you put your capital at risk, it would be nice to be able to get a letter from an account debtor who tells you that everything is fine and you will be paid what you’re owed on time. That’s what’s known as an estoppel letter. However, these are hard to get for a number of reasons. First, estoppel letters are pretty formal, and the account debtor may feel compelled to bring in its lawyer; and who wants to pay that kind of expense on top of a promise to pay? Also, the person may not have had a full and complete opportunity to determine that everything is fine with the account you are about to purchase. Often, the person who is binding the company to an estoppel letter does not have the authority to make that kind of deal. In addition, some industry segments, such as staffing and transportation, do not lend themselves to executing estoppel letters.

Generally, without the existence of an estoppel letter, if the account debtor fails to pay, and they usually don’t pay when things go wrong, the factor typically has claims against the account for breach of contract or collection related claims. If you do your notification correctly and all of the steps required if your account debtor questions the notification, the account debtor will be required to pay the factor on the purchased account. However, proper notification merely means that the account debtor, if it pays, is obligated to pay the factor and not the factor client. Account debtors are still entitled to raise available defenses, which always seem to crop up when things go bad. Because most of your deals are underwriting on the strength of the account debtors and not your factor client, things will go south quickly if the account debtor suddenly asserts a dispute.

When an account debtor raises a defense which relates directly to the quality of the contract, it’s known as a recoupment claim. If the account debtor raises a defense to payment that relates to other business dealings or other contracts between the account debtor and the factor client, that is known as a setoff claim, both of which are covered in UCC Sec. 9-404. Once the account debtor has received the notice of assignment from the factor, setoff claims which arise in the future are barred. That means, as time goes on, the factor will generally be dealing with recoupment claims only, which relate to quality of the goods or services you financed. Setoff and recoupment claims can be waived from the outset between the account debtor and the factor client, but, according to UCC Sec. 9-903, you will need to show a standard similar to a holder in due course for negotiable instruments, which, as between the factor and account debtor, requires that the factor take the assignment in good faith, without notice of conflicting claims to the property assigned (the purchased account) or of any defenses to payment on the account. This is a somewhat difficult standard to prove and usually won’t work through boilerplate language buried within or on the back of an invoice. A well drafted estoppel letter will get around this problem, but, as mentioned, they are hard to get.

Estoppel is a legal concept based in what is known as equity. Equity is when you really don’t have a legal remedy such as a contract, but there was a wrong committed and the person who was wronged is entitled to redress. This is somewhat of a touchy feely area of the law, where a judge and not a jury decides the matter. Estoppel generally arises when one party takes a position and that party knows, or should know, that the other party will rely upon that position, and is thereafter precluded from taking a different position. Estoppel’s sister is known as reliance, and both estoppel and reliance are good friends with negligent misrepresentation. All of which will be your theories of recovery in your claim against the account debtor, over and above a contract claim, if you can show that the account debtor took a position, and you relied upon that position by funding the account.

Before we discuss how to achieve this quasi estoppel, it is important to briefly discuss the levels of verification. The lowest level of verification is none at all. Next is a simple email or phone call. The next level is a simple follow-up to the email or phone call. The next highest level is a collaborative process between the factor and the account debtor. Finally, there’s the estoppel letter. The quasi estoppel letter, or email, is designed to take the low level phone or email verifications and add some teeth through the follow-up.

Business is fast paced and is only getting faster. People are expected to do more with less and generally are

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preoccupied with other things and not really focused on collection calls or verification emails from the factor. When you make the simple collection call or send the verification email, you will generally get a response, which, although will operate to assure you that the account is real and may give other assurances, a verbal verification will generally not get you an estoppel claim. The key is to follow-up with a more precise, but plain language writing which does not contain legalese. Your follow-up email should look something like this: “Dear John: This will confirm that your firm has received the shipment of goods on November 15, 2013, from XYZ Company, that everything is in good order, and that the payment will be processed on December 15, 2013. Based upon our discussion, we will fund our client for the amount of the shipment and look forward to receipt of the payment.” There are also variants to this letter. You may get information on deductions and set out the deductions in the email too.

The key to writing the quasi estoppel letter is to simply state that you are relying upon what the account debtor is telling you by funding your client. If the account debtor is sharp, he or she will get back to you and let you know that there is a problem, which is something that you still need to know. However, more often than not, the person may not respond, or give a simple response that does not refute your email and go about their day. Now, a simple email like this probably does not operate to take away all of the account debtor’s defenses. However, it might. But more importantly, if a problem later arises and you are in a position where you have to collect out from the account debtor, you now have more ammunition and can raise claims beyond contract and collection on an open account. In addition to contract and collection type claims, you will be able to say that you relied upon the account debtor’s statement, you would not have funded but for his statement, and the person should not have made this statement if it was not true.

Generally, estoppel, reliance, and negligent misrepresentation claims are fact specific and are not the type of claims that can be thrown out by the court before a trial. That alone adds settlement value to what would otherwise be a simple contract or collection claim. In addition, these additional claims are not dependent upon your factor client’s cooperation, because these claims don’t necessarily relate to the quality of your factor client’s goods or services. The story will now relate directly to the circumstances surrounding the verification, the sending of the email, and what may or may not have happened thereafter. This value added to the claim, coupled with the fact that this is a case that has to go to trial, may result in a higher settlement, a lower loss on the deal, or maybe even a win at trial.

The key is taking the mundane verification contact and turning it into a simple email verification. If done correctly, you will learn about the existence of a problem, or hopefully put yourself in a better position if you find yourself in the unfortunate position of having to collect out of a deal.
So much has happened over the last year that makes us feel both optimistic and slightly apprehensive when we look ahead to 2014. Leading economic indicators continue to move in the right direction with the Dow Jones Industrials and S&P 500 near or passing their historical all time highs. The housing market continues to rebound from the mortgage meltdown of 2008. New home sales hit their highest level since May 2008 in June, fewer homeowners are underwater, and home prices in the country’s twenty largest cities were up 12.1 percent in June from a year earlier.

Despite all of this positive economic news, our current political climate seems to work as a counterforce, trying to sabotage any green shoots trying to germinate through some harsh seasons. No matter which side of the political aisle you reside on, there is enough blame to satisfy anyone and everyone. Whether it was the debacle of shutting down the government for sixteen days or averting the debt ceiling crisis to which Warren Buffet referred to as a “Political Weapon of Mass Destruction”, it seems that our elected officials are doing a lot more damage than good.

So how does all of this shake out in the factoring industry? For any factoring company that has been around since the Great Recession, we all know how the economic climate affects our business. When banks tighten credit, there is a strong need for working capital in the business community. As great as this is for asset based lenders, our position has always been to fund clients that are experiencing a growth phase in their business. Experience has taught us that small to midsize companies looking to tap into factoring as a life-line rarely make it out of the doldrums. The last few years have been very difficult for businesses across the board, and the sudden decline in revenues was just too much for many to bear, with or without invoice factoring.

Using all of this as a backdrop, let’s look ahead to 2014. We have never been more bullish in our industry. Besides funding business invoices, we advise many new companies entering the asset based lending industry. Without question, we have seen more new companies entering this space than ever before. We usually get the same questions about how to raise capital, where to find clients, and how to perform the proper due diligence on new deals. No matter what the question, I find this a great indicator of how this industry is getting more mainstream every year. Just the other day, I was listening to a national sports radio talk show while driving to work and heard a radio spot about the benefits of invoice factoring.

But why is our industry so popular now? There are several answers to this question, but it basically comes down to qualifying for the capital. Banks make decisions based on business financial history, cash flow, and collateral. Factoring decisions are largely based on the creditworthiness of the client’s customer. However, factors do perform extensive due diligence on the client as well. Many of our clients fit into the category of small to mid-sized businesses that are in a growth mode but do not qualify for a traditional bank loan. Usually, the client has been in business for an insufficient amount of time, or they do not have enough collateral to secure a loan. In other cases, some factoring clients will qualify for a loan; however, the amount is not sufficient to meet their cash flow needs. We feel that if we can help our clients grow to the point where they can raise additional capital, then we have filled a void.

Another reason why factoring is so popular is the added value that invoice factoring companies provide to their clients, besides the traditional funding of invoices. Mostly all factoring companies utilize some type of specialized factoring software that allows their clients to track the aging of their outstanding invoices, accrued fees, receipts, and so forth. Also, most factoring software packages allow the client to run a myriad of accounting and financial reports to complement their accounting practices. By creating a transparent environment between the client and factor, it allows both parties to be on the same page and proactive with account debtors.

Don D’Ambrosio is the president of Oxygen Funding, Inc., an invoice factoring company located in Lake Forest, California. Don has over 25 years experience working in the commercial and residential finance industries. He previously served as Controller of a commercial insurance agency and as Chief Financial Officer of a publicly traded mortgage company. He can be reached by phone at 949-305-9300 or by email at don.dambrosio@oxygenfunding.com.
Also, invoice factoring relies heavily on credit evaluations on both the client and customer. Once the client has passed the appropriate credit checks, they should also be informed about the creditworthiness of their customers. Before, we begin factoring any of our clients’ customers we always perform a thorough credit analysis. If one of our client’s customers has been declined for our factoring services, our client usually follows our lead and will not do business with them. Think about that benefit. As a client, you are receiving a full credit analysis from an underwriting team that is helping you to make important decisions about potential customers. Partnering with the right factoring company can provide huge added benefits for any business looking to get to the next level.

What makes the factoring industry unique is that every factoring company has its own set of policy and procedures for funding new prospects. What may be overkill for one factor may be acceptable for another, depending on the situation. One of the main reasons why I truly enjoy working in this industry is the camaraderie among factoring companies.

As bullish as we are in the factoring industry, we are constantly reminded of the risk associated with this business. So often, we hear about companies we knew well that are no longer around because they took a hit on a bad deal. With any factoring company, one the biggest challenges is to scale the company for growth while keeping the proper safeguards in place. Whether it’s proper notification or having an ironclad factoring agreement, you should always have a consistent set of due diligence procedures that adequately protects your company in every factoring transaction. With any new deal, there will regularly be nuances that are unique and test the funder. In many cases, getting past these roadblocks can make or break a deal.

We feel that this industry is perfectly positioned to help many new and existing businesses in need of working capital in the upcoming year. Whether you are funding in the ever expanding energy sector, brokering in the historic apparel industry, or just looking for a way to get involved in the asset based lending community, there has never been a better time to participate. Remember to proceed cautiously, keep a positive attitude, and make your mark.
Robust Due Diligence System
with Lien Searching, UCC Filing and Post-Filing Support for Factors

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Prepare and submit UCC filings nationwide with free lapse date tracking and eFiling technology.

Monitor
Manage all monitoring activity, from target creations to reviewing and sorting Alerts.

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