2017: A LOOK AHEAD

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Planning for the future is necessary, both in your business and personal life. In our annual “Looking Ahead” issue, we connect with experts to help us with this forecasting.

As the results of the US election have shown, even experts have a hard time predicting what may happen. That said, it is still better to operate with a plan than to simply “fly by the seat of your pants”. A prediction that everyone can agree on is the fact that technological innovation will continue to occur. Factors who do not evolve and keep pace with technology will find themselves unable to compete. When I first started working with Factors, many were still operating on manual ledger cards and fought the switch to computers. Those Factors are long gone.

The term Fintech refers to bringing new technology into the financial space. During the IFA’s recent Fintech course, we spent time discussing how Fintech affects the marketing and operational function of finance companies and Factors. Factors should always be looking for new technologies that can assist with efficiencies.

This year’s Factoring Conference will focus on Fintech and modernization. The conference will take place April 5th – 8th at the Omni Fort Worth in Fort Worth, Texas. The conference will feature over 60 speakers and moderators speaking about a variety of topics designed to help you increase the efficiency and productivity of your company.

Our keynote speaker is Dan Burrus. His session will focus on the topics of Using Hard Trends to Anticipate Disruptions, Problems and Opportunities, and Creating and Sustaining Competitive Advantage using Technology-Enabled Innovation.

Our other keynote speaker is Dr. Beck Weathers. If you saw the movie Everest or read Into Thin Air you remember Beck as the climber who was left for dead twice on the mountain.

We will again be featuring various roundtables. Designed to promote networking and interaction among those attendees with similar interests, each roundtable will be led by moderators familiar with the specific group. The roundtables we will be running for the conference are:

- Senior Executives
- Women in Commercial Finance
- Young Professionals
- Operational Issues
- Small Factors

Sessions designed specifically to assist you with planning are:

- What You Can Learn From the Fintech Disruption
- Blockchain – Is it the Future Currency of Trade?
- Monitoring Social Media for Fraud
- Recognizing Portfolio Warning Signals
- Cultivating a Culture of Success (Half Day Session included with Conference)
- Economic Projections

Additional sessions that are specific to the Factoring / ABL community are:

- Current Topics in Transportation Factoring
- Report from the Courts
- Solving Client Issues
- Legal Panel
- Fraud Panel

We also have sessions specifically designed for Factoring internationally. They include:

- Documenting Latin American Factoring Transactions
- How to Factor Chinese Receivables
- Using PO Finance to Facilitate International Trade
- What to do When Your Canadian Client Goes Bankrupt
- Canadian Legal Update

Additional courses that are being run in conjunction with the conference are:

- Factoring Essentials (Wednesday, April 5th)
- Face Reading Certification Workshop (April 4th & 5th)

Networking events will be:

Golf, Texas BBQ Food Tour, Bibby Welcome Reception, Lone Star Reception, Tax Guard Dessert Reception, Closing Event at Billy Bob’s, JFK History Tour, Spouse Tour at Fort Worth Museums, Breakout Small Factors Lunch, Breakout Transportation Factoring Lunch and Saturday’s Idea Exchange.

It’s no wonder that the IFA’s annual conference has become the must attend event of the year for the Factoring and Asset Based Lending community. You can find a detailed conference write-up on page 30 and read more on the conference website at www.factoringconference.com. See you in Fort Worth!
The International Factoring Association’s (IFA) goal is to assist the factoring community by providing information, training, purchasing power and a resource for factors. The IFA provides a way for commercial factors to get together and discuss a variety of issues and concerns about the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

The Commercial Factor is published bi-monthly by the International Factoring Association. To subscribe, please email info@factoring.org.

The Commercial Factor magazine invites the submission of articles and news of interest to the factoring industry. For more information on submitting articles or advertisements, email news@factoring.org, or call 805-773-0011.

The views expressed in the Commercial Factor are those of the authors and do not necessarily represent the views of, and should not be attributed to, the International Factoring Association.

INDUSTRY NEWS

New Research from Bibby Financial Services Finds Mostly Optimism for US Economy

Results of the inaugural Global Business Monitor by Bibby Financial Services found that US business decision makers are markedly more optimistic about the current state of the domestic economy than that of the global economy. 49 percent of respondents describe the US economy as performing positively, while only 12 percent said the same about the global economy. Interestingly, the negative global outlook was the same both before and after the recent Brexit decision. In addition to conclusions about 2016, the research also presents findings on the domestic economy, global outlook and key business challenges looking ahead to 2017. An infographic outlining key findings can be found at www.bibbyusa.com/blog.

NewStar Sells Equipment Finance Business To Radius Bank

NewStar Financial Inc. announced the sale of its equipment finance business and related assets to Boston-based Radius Bank, a federal savings association, for approximately $140 million in cash.

INDUSTRY TRANSACTIONS

DS-Concept Provides $5 Million Export Factoring Facility To Apparel Exporter In Hong Kong

DS-Concept, a global commercial finance company specializing in non-recourse factoring and trade finance, provided a Hong Kong based apparel exporter with a $5 million export factoring facility. The client, who exports to Europe and United States, was seeking a flexible, reliable and long-term financing partner to create liquidity and accelerate cash flow without increasing liabilities. With DS-Concept’s export facility and support, the client forecasts $18MM-$20MM in annual factored volume.

Utica Leaseco, LLC Completes Two Transactions Totaling $1,300,000 during the week of November 28, 2016

Utica Leaseco LLC completed the funding of a $600,000 equipment lease on brewing equipment for a new craft beer company in the Western US. Utica provided the needed capital by unlocking the equity in the current equipment and provide financing on the new equipment based solely on the equipment value.

Utica Leaseco LLC completed the funding of a $700,000 equipment lease on paper making equipment for the acquisition of a company in Wisconsin. Utica provided the needed capital by unlocking the equity in the current equipment based solely on the equipment value.
Wells Fargo Capital Finance Structures $185 Million Credit Facility for Heidtman Steel
Wells Fargo Capital Finance acted as lead arranger on a $185 million senior secured credit facility for Heidtman Steel Products, Inc. that will be used to support the company’s working capital needs.

Rosenthal Trade Capital Provides $4 Million Purchase Order Finance Facility to Solve Complex Supply Chain Requirements for New York-Based Consumer Products Holding Company
Rosenthal Trade Capital (RTC), a division of Rosenthal & Rosenthal, Inc., announced completion of a recent purchase order finance deal with a major New York-based investor and operator in the consumer products industry, specifically in the health, beauty and wellness categories. As part of the transaction, RTC will provide a $4 million production finance facility to assist with the component procurement, assembly and packaging of branded beauty and cosmetic products to fulfill a major order from a large retailer. Rosenthal will provide a combination of letters of credit and cash funding for the transaction.

TAB Bank Provides Trucking Company in Minnesota with a $1.5 Million Revolving Credit Facility
TAB Bank provided a $1.5 million revolving credit facility for a trucking company located in Minnesota. The new facility is extended through a multi-year agreement and will provide for the company’s ongoing working capital needs. In addition to the working capital facility, TAB Bank has also provided the company with $1.4 million in equipment financing.

Ares Commercial Finance Provides $18 Million Credit Facility to Hastings Manufacturing
Ares Commercial Finance provided an $18 million senior secured credit facility to Hastings Manufacturing Company, a Michigan-based manufacturer and distributor of piston rings used in gasoline and diesel engines. The credit facility consists of a working capital revolver and two term loans. Proceeds of the financing were used to refinance the company’s existing indebtedness, finance capital expenditures, and supplement ongoing working capital needs.

MidCap Business Credit Completes $3.5 Million ABL to Unified Logistics Holdings
MidCap Business Credit completed a $3.5 million asset-based line of credit to Unified Logistics Holdings, LLC. Headquartered in Bethesda, MD, Unified provides specialty hauling and trucking services in the Eastern portion of the United States through its multiple operating entities. The credit facility is comprised of advances against accounts receivable. The opportunity was sourced and closed out of MidCap’s headquarters in West Hartford, CT.

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Sallyport Commercial Finance, LLC Closes Three Apparel Deals in Two Days
Sallyport Commercial Finance, LLC, closed three apparel deals in two days in October, totaling $11.5 million. All three companies have their own unique brands and are located across the breadth of the USA from California, to Massachusetts and all the way to New York. The three companies cover wide ranging demographics including Design and Manufacturing for youths as well as Premium Denim for plus sizes, and Alma Mater pride for the “super fan”.

Loeb Term Solutions Provides Term Loan on Equipment Valued at over $8.25 Million to Southern Oilfield Service Company
Loeb Term Solutions provided an equipment term loan to a Texas-based contract packaging facility specializing in fluid management for oil and gas well drilling, production and servicing. The client was in need of additional working capital in order to restructure their debt and expand their operations. Loeb Term Solutions provided a term loan on the equipment valued at over $8.25 million.

Crestmark Closes 16 Transactions Totaling Nearly $20 Million in the First Half of November
Crestmark secured a total of $19,811,000 in financial solutions for 16 new clients in the first half of November.

PERSONNEL
Crestmark Promotes Three Employees at its Corporate Headquarters: Josh Beauvais, Heather Weir and Eric Ball
Mick Goik, president and chief operating officer of Crestmark Bank, announced the promotions of three employees at its corporate headquarters in Troy. Josh Beauvais was promoted to vice president, special assistant to Chief Credit Officer Mark Matheson; Heather Weir was promoted to assistant vice president, learning and development specialist; and Eric Ball was promoted to operations officer, senior client analyst, and team leader for the Midwest Region.

Mark Sheehan Joins Crestmark as National Account Executive for its Equipment Finance Division
Crestmark Equipment Finance (CEF), based in Bloomfield Hills, Michigan, welcomes Mark Sheehan, national account executive. Mark is based in Flower Mound, Texas, and represents the equipment finance division in the South. He will work with companies to maximize their equipment budgets with customized financing and leasing solutions. Mark reports to Chris Emge, regional vice president at CEF. Mark comes to Crestmark with more than 15 years of sales experience in the equipment finance and leasing industry.

Wells Fargo Capital Finance Strengthens Middle Market Team in Canada
Wells Fargo Capital Finance announced that Richard Zeni has joined its Loan Originations team in Canada as a business development officer. Based in Toronto, Richard is primarily responsible for sourcing and structuring flexible asset-based financings for companies with credit needs of $5 million and above. He will cover Ontario and Manitoba provinces. In addition, he will be responsible for sourcing financings for other specialty units within Wells Fargo Capital Finance, including retail, commercial finance, and technology. Richard will report to Steve Bishop, executive vice president of Wells Fargo Capital Loan Originations for Canada.

Bibby Financial Services Hires Jim Vargo as SVP, Business Development
Bibby Financial Services (BFS) announced the addition of Jim Vargo as Senior Vice President of Business Development. Jim will lead the Asset Based Lending (ABL) division of the company’s Midwest office in Lombard, working to build long-term relationships with stakeholders, referral sources and banks. He brings more than 20 years of experience in the financial services industry to BFS.

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DS-Concept Names René Pastor President, Global Commercial Operations & Peter Maerevoet CFO/CHRO
DS-Concept announced that René Pastor, Senior Executive Vice President, Global Business Development will be promoted, effective November 1, to President, Global Commercial Operations. He continues to report directly to Ansgar Hütten, CEO & Executive Director.
DS-Concept also announced that Peter Maerevoet will join the company as Chief Financial Officer (CFO) & Chief Human Resources Officer (CHRO), a newly created role. He will be responsible for leading all aspects of the global finance and HR functions, including controlling, reporting, recruitment, talent planning and organizational development.

CANADA CHAPTER EVENTS
Events to be announced.
Meetings Location:
Mississauga Living Arts Centre
Scotia McLeod Room
4141 Living Arts Drive
Mississauga ON L5B 4B8

For more information, contact Oscar Rombola at (905) 603-6284 or orombola@accutraccapital-itc.com. Visit IFA Canada’s website at www.FactoringAssociationCanada.com.

NORTHEAST CHAPTER EVENTS
February 9
Save the Date
Arno Ristorante, New York City
March 7
Luncheon Meeting in Conjunction with NYIC and IFA
Arno Ristorante, New York City
April 5
IFIA Annual Factoring Conference—Chapter Reception
Fort Worth, TX

For more information, contact Harvey Gross at (732) 672-8410 or hgross@comcast.net.

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The IFA offers CLE credits for the Factoring Conference. Information on approved states is available at info@factoring.org or contact the IFA at 805-773-0011.

This conference has been approved for CAEF credits. For information on approved programs and courses, please contact the IFA.
Transportation Factoring in 2017:
A Familiar Road

The road for transportation factors in 2017 looks much like the one traveled in 2016. This assessment is based on economic, industry, political and competitive considerations. Let’s look at what these collective components are telling us.

BY DAVID J. JENCKS

ECONOMIC CONSIDERATIONS
Gross Domestic Product (GDP), a major indicator of economic trends, measuring the total goods and services produced by a country in any one year, is predicted to remain tepid. 2015 GDP registered a 2.5% growth rate with 2016 GDP falling to 2.0%. 2017 is predicted to show a moderate increase to 3.0% which should produce a nominal increase in available freight shipments. However, longer term predictions of GDP show 2018 retreating from 2017 levels back to approximately 2.5%. The three-year range of 2.5% to 3.0% in GDP growth likely means a very similar freight volume, freight rate, and over capacity environment from 2015 into 2018.

POLITICAL CONSIDERATIONS
At the time of writing, John Mica, the former Florida Congressman who has served on the House’s
Transportation and Infrastructure Committee, is rumored to be a leading candidate for the next Secretary of Transportation. Mr. Mica’s previous focus and public statements have shown an interest in the Northeast rail corridor, privatizing Amtrak and dealing with nationwide infrastructure issues. His previous public statements show no repudiation, support or advocacy of issues that negatively affect motor carriers such as the Carrier Safety Accountability scheme, hours of service, or a nationwide driver database. However, Mr. Mica may not even be selected, only adding to the high level of uncertainty of what the transportation sector can expect from the new administration and its cabinet. It is reasonable and prudent to assume that no matter what position the new administration takes with respect to motor carrier regulation, it will take one year before we have a clear picture. Therefore, 2017 will likely yield no major positive or negative changes for motor carriers from political influences.

**INDUSTRY CONSIDERATIONS**

A telling metric regarding the stagnation of the transportation industry is Class 8 truck orders. Class 8 trucks involve the typical over the road semi-truck with which we are all familiar. Class 8 truck orders have dropped 38% compared to one year ago. The demand for additional trucks is in significant decline as an over capacity of for hire trucks remains the norm in 2016 and is expected to remain the case in the coming two years.

Freight volume, possibly the most telling metric of the state of the transportation industry, is stagnant and moving in a tight, year over year range. The Freight Transportation Services Index, a service of the Department of Transportation’s Bureau of Transportation Statistics, measures the amount of freight carried by for-hire carriers each month and measures month to month changes in freight transportation in tons and ton-miles which are combined into one index. The below table highlights the minimal changes in freight volume over a two-year period. And while freight volume remains strong on a historical basis, there is no evidence of an ascendant trend. Freight volume in 2017 is widely expected to remain within the range shown on the below Freight Transportation Services Index table with some predicted improvement later in the year.

Freight rates, another telling metric as to the state and direction of the transportation industry, fell as much as 15% from 2015 to 2016 year over year, and are widely expected to remain that way for part of 2017 before seeing improvement.

**FREIGHT TRANSPORTATION SERVICES INDEX**

<table>
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<th>MONTH</th>
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2017 will be a year of the formulation of regulation or deregulation of the motor carrier sector, but it is unlikely any regulation will be passed, adopted or repealed.

REGULATORY CONSIDERATIONS

After 8 years of active regulatory attempts in the name of improved safety, current regulatory actions directed at motor carriers are minimal. With no clear signal from the incoming administration regarding transportation and motor carrier priorities, it is virtually impossible to know or predict what regulatory activity, or efforts to roll back regulation, will occur in 2017. The electronic logging device (ELD) mandate will apparently occur in 2017. This mandate, which requires nearly all motor carriers to use electronic logging devices to track duty status, has been upheld in court, meaning the December 18, 2017, compliance date remains effective. The 7th Circuit Court of Appeals, the federal court hearing the case, ruled to keep the mandate in place, securing a victory for the Federal Motor Carrier Safety Administration and its ELD rule. Its decision was issued Oct. 31, 2016. The decision does not change the rule’s exemption for pre-2000 year model trucks, which are allowed to operate without an ELD. Based on the cost and role the ELD plays, the burden of ELD implementation will not serve as an operating or entry barrier for even the smallest carriers.

Legislative and regulatory efforts to raise liability insurance limits on motor carriers, a potential major operating and entry barrier for small carriers, have stalled. Hours of Service regulations have been absorbed with no apparent effect on carrier capacity.

2017 will be a year of the formulation of regulation or deregulation of the motor carrier sector, but it is unlikely any regulation will be passed, adopted or repealed. Industry observers will be closely watching further revisions or dismantling of the Federal Motor Carrier Safety Administration’s Carrier Safety Accountability (CSA) safety and enforcement program after years long challenges and criticisms based on unfairness to small carriers.

COMPETITION CONSIDERATIONS

Transportation Factoring continues to be a crowded space. Brokers continue to test the segment with factoring divisions. Factors with a transportation focus continue to register with the International Factoring Association at approximately three each month.

Adding to the crowded space, many Merchant Cash Advance lenders will now lend in the transportation niche and can effectively compete with highly automated and fast acceptances with less oversight than the transportation factor requires.

Lastly, and perhaps as the biggest competitive force to enter the industry, is the concept of trade finance programs where brokers and shippers are now offering loads on an exclusive or priority basis to carriers who will participate in their payables finance programs where the financer handles the payables for the broker or shipper and also offers to purchase the invoice of the carrier at a discount in one seamless online transaction management portal. Citibank and Bank of America are offering such programs in the transportation sector and more such programs are coming from experienced transportation financiers. These programs put pressure on carriers to use the broker or shipper’s system or risk losing coveted loads. This pressure is increased because of the overcapacity truck environment.

CONCLUSION

Competitive forces, stagnant economic and industry dynamics, and a new and uncertain political environment will leave 2017 looking and feeling quite similar to 2016. The good news is that 2016 was a fair to good year for many transportation factors. The bad news is that the possibility of substantive year over year growth will be a significant challenge.

David J. Jencks is an attorney and consultant to factors and lenders in the transportation industry. He also represents brokers, carriers and forwarders. David is a member of Delta Nu Alpha, the professional fraternity involved in the education of transportation professionals. He can be reached at davidjencks@jenckslaw.com.

2 Business Travel News, Nov. 18, 2016. Rumors Hint at Trump’s Transportation Secretary Pick, Michael B. Baker
4 April 19, 2016, Here come the headwinds for Class 8 production, Sean Kilcarr, Fleetowner.com
5 Mar 10, 2016, Trucking Outlook: Better Days Ahead, Sean Kilcarr | Fleet Owner. Fleetowner.com
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Participation Agreements—A Brief Overview

Planning for one’s capital structure is paramount to the success of any finance company. You need money to make money. Capital planning becomes even more important in uncertain times. During economic downturns, factors and ABL lenders are poised to take on more deals, because the traditional bank lenders tighten up their credit standards which provides more funding opportunities for non-bank lenders. However, although there may be more business opportunities in an economic downturn, it’s also harder for factors and ABL lenders to find capital sources because many of the same lenders who are tightening up credit standards are the same lenders who finance the factoring and ABL industry. A viable way to plan and increase your capital structure is to have a dependable partner or two for participation deals.
A participation transaction is where two or more parties share in all aspects of a financing, including the fundings, fees and collateral. The parties to a participation are the lead and the participant. The lead is the person who originates and manages the deal, usually on the lead’s financing documents. The participant is, more or less, the passive person who provides a percentage of the funds for the transaction and shares in the revenue and assumes the risk, based upon the percentage that the participant puts into the deal. The lead provides information to the participant so that the participant can know how the deal is doing at all times, gives regular accountings and pays the participant its share of the revenue at designated intervals.

The first thing any person should do who is contemplating a participation deal is to know the other side and assess that person’s competence, honesty and financial strength. Often, participation deals come about during cocktail receptions and not enough scrutiny is given to the other player in the deal. Thus, there should be a level of underwriting that goes into a participation deal, both at the factor client/borrower level as well as to the participation partner. Throughout my practice, I have seen some very successful participation relationships, but I have also seen my share of unsuccessful deals that could have been averted with some due diligence. Once the parties to the participation have gotten past their due diligence stage, then there is potential for a good relationship and the parties have the ability to service larger deals which they normally would not transact and earn fees that otherwise would not be available.

Generally, there are two types of participation partners. One type of partner is a participant who is primarily a factor or ABL lender, and is looking to deploy capital and for more business opportunities. The second type of participant is one who is engaged in the business of funding participations, aka a professional participant. A participant who is a fellow factor or ABL lender typically requires less control and allows for a lower standard of care as to how the lead will manage the deal. The professional participant will require a greater say in the transaction and require a higher standard of care. The level of the standard of care is important because the participant assumes all risks of loss unless the lead’s management of the deal falls below the agreed upon standard of care. The tradeoff and business decision that a lead looking for a participant should make is balancing the more stringent requirements of the professional participant, coupled with a more dependable source of funds, versus having less stringent requirements, but a potentially less dependable partner.

From the participant’s standpoint, special attention should be paid to Article 9 compliance. As most of our readers know, factoring is structured as a sale of accounts and compliance with Article 9 of the UCC is required. Otherwise, if the deal goes bad and the factor is not secured on its accounts or its other collateral, it will lose its priority to a bankruptcy trustee or lien creditor. The same thing should apply for a sale of a participation interest. Participation deals are set up such that the participant is buying a share of the lead’s financing deal with its factor client/borrower, which is basically a sale of accounts from the lead to the participant. Surprisingly, most participation transactions are not set up where the participant is granted a security interest in the portion of the financing that it purchases. This puts the participant in danger of losing its investment in the event that the lead fails and could be considered an unsecured creditor of the lead. The better practice is for the lead to grant the participant a security interest in the financings that it purchases and for the participant to file a financing statement to perfect its lien. The participant should also have a form of a simple consent from the lead’s lender, which states to the effect, that the lead’s lender will honor the participant’s purchased interest in the transaction. This basic intercreditor agreement between the participant and the lead’s lender will also serve to protect the participant from the lead “double dipping” which would occur if the lead sells a participation interest to the participant and then turns around and includes the same transaction in its borrowing base with the rediscount lender, because the percentage of a deal where the lead sells a participation
interest is always excluded from a borrowing base.

An important item that must be addressed in any participation agreement is the lead’s standard of care in how it manages the deal. If the lead causes a loss by acting below the standard of care, it will incur liability to the participant. Business moves fast and it is necessary for the lead to be able to manage the day-to-day aspects of the transaction without the requirement to consult with the participant. This is the main reason why the parties have to know and trust each other before they jump into deals together. Because the lead will have the day-to-day responsibility and there is always a level of risk built into every financing transaction, the lead and participant must address the standard of care that the lead is held to in managing the deal. Generally, there are two levels of standard of care that are most common in the marketplace. One form is willful misconduct or fraud. This means that the lead is only responsible to the participant for a loss if it engages in fraud or commits a horrible act that amounts to willful misconduct. The second most common standard of care is the reasonable financier standard. This means that the lead is responsible to the participant if it acted below the level of a reasonable financier. The issue with the reasonable financier standard is that one can almost always assess some level of blame when a deal goes bad. The reasonable financier standard of care is a way to recourse the participant’s loss back to the lead, by claiming that it was negligent in handling the deal. This level of care is subjective because the reasonable financier can only be proven by expert testimony, thus, leading to either litigation or protracted negotiations if the participant asserts blame on the lead. Generally, the professional participant wants the reasonable financier standard of care, while ABL lenders and factors will live with a fraud and willful misconduct standard of care.

Setting aside the standard of care, special attention should also be given to what happens if the financing transaction goes bad. The participant, who had little to no say in the day-to-day operations, should now have the right to be involved in decision making. The participant should be required to share in the extraordinary expenses, like lawyers, appraisers, and other professionals that often are called upon where there is an event of default. The agreement should also address whether or not more advances will be made to the factor client/borrower who is now in default, and what will happen if one party does not want to make further advances. In addition to addressing what happens when the factor client/borrower goes bad, the parties should also address what happens if the lead or participant breaches. If the participant breaches, this usually means that the participant is not putting in its money, and the remedy is for the lead to basically take over the deal, and the participant is responsible for the damages that the lead will incur. When the lead breaches, it will usually be more complicated for the participant because its role in the transaction has likely been passive and is a stranger to the deal, meaning that the participant cannot typically step in and take over the deal. This is why the parties need to know and trust each other before they begin doing business together.

While there are some complexities in a participation, much of which is not covered in this short overview, participations can and do serve an important purpose in the market. It will allow the parties to expand their business, take on larger deals, and earn fees that otherwise would not have been earned. Since it’s not readily apparent where the economy is heading, it is important to secure financing partners because when the economy heads south, many of the lenders providing financing to factors and ABL lenders will exit the market, thus tightening up the pricing for those who stay in the market. A viable participation partner will be helpful when the credit markets tighten. •

Steven N. Kurtz, Esq. has represented factors, banks, and asset based lenders on a continuous basis since 1987, and he is the Co-general Counsel to the IFA. A founding partner of Levinson Arshonsky & Kurtz, with offices in California and Oklahoma, he practices in the areas of commercial law, insolvency, workouts, loan documentation and trade finance, in both transactions and litigation matters. He can be reached by phone at 818-382-3434 or by email at skurtz@laklawyers.com.
The Future of PO Finance: Where Have We Been and Where Are We Going?
To truly understand what’s in store for the future of PO Finance, one must go back to the very beginning.

BY PAUL SCHULDINER

PO Finance’s origins date back as far as the early 17th Century. The Dutch East India Company, the first multinational corporation in the world, established a complex trade system among Asian companies to ultimately finance the thriving spice trade market in Europe. It was a revolutionary solution to a difficult problem at the time and paved the way over the next several hundred years for the development of more sophisticated channels and methods that encouraged trade around the world.

Modern PO Finance as we know it today didn’t really enter the picture until the late 1980s and early 1990s. It came about because factoring companies were struggling with moving out of their comfort zone of funding domestic production of consumer products and reacting to the seismic shift of imports from China. Letters of credit ("LCs"), as a method of funding imports from overseas, were not well understood by factors and resulted in a conservative view by reserving 100% of a borrower’s availability when issuing LCs. Over the years, as big box stores like Wal-Mart became more significant players in the retail space, many businesses were faced with new obstacles that inhibited their potential growth and the stability of how they managed cash flow. From large bulk orders that seemed almost impossible to fulfill, to seasonal cash flow challenges that exposed business owners to added risk, to a growing market for lower-cost Chinese imports, these new and exciting opportunities also brought new difficulties.

Chinese manufacturers were able to finance their production when they received LCs from US-based importers. These LCs were pre-export finance tools for Chinese manufacturers and really were PO Financing in reverse on their end of the production cycle, as Chinese banks were aggressive in their support. Turning back to the US, this created an opportunity for a select group of specialty finance companies that emerged with a solution for fixing the financing deficiency in the market. This cadre of problem solving companies ultimately evolved into the stand-alone PO Finance companies we know today.

Over the past three decades, the market for PO Finance has grown almost exponentially. PO Financing has become a more sophisticated and intuitive funding method and has transformed into a reliable tool to complement existing factoring solutions. With a PO Finance company funding the purchase of pre-sold inventory and a factoring company providing a “takeout” once accounts receivable are generated, it essentially can be the perfect marriage.

One of the other interesting developments over the years has been the relative acceptance of the intercreditor used between the factoring company and the PO Finance provider. This area used to be a major stumbling block when trying to conclude a PO Financing arrangement for a borrower. As the intercreditor agreement developed and was refined over time, the concerns over lien priority and what is considered an acceptable “takeout” have been worked through. Examples of this are what happens if there is dilution on accounts receivable resulting from PO Finance, what happens if the PO Finance transaction has gone sideways and alternative forms of repayment need to be addressed, or if the borrower is failing and a wind down is required. Essentially, the intercreditor agreement between the factor and the PO Finance company has become tried and tested.

While the PO Finance product is clearly needed, for prospective borrowers it can be a psychological struggle to justify what is perceived to be a high cost of capital. Many of these prospective borrowers like PO Financing because it’s a viable alternative to raising equity and giving up control. The cost of using short term transactional equity (which is what PO Financing is) will almost always be less expensive than raising permanent capital at a much higher cost in the long run. This is something we see
business owners and entrepreneurs struggling with all the time on the popular Shark Tank reality television program when they are looking for capital to fill what amounts to an influx of sales orders. The prospective borrower must always be brought back to this point when discussing the cost of capital for PO Finance. Raising equity to fill sales orders or a backlog is a mismatch of capital to the required need.

The other area of PO Finance that has been used somewhat gingerly in the market has been production or work in process finance. When it comes to production finance, it’s something more risky for PO Financing sources and not for the faint of heart. It requires the ability to analyze and assist in managing the borrower’s cash flow, as these are ultimately project finance transactions. Lenders don’t typically want, nor should they want, to run their borrower’s business. In terms of production finance, a PO Financing source needs to be ready to do so if the transaction falters and overall cash flow of the business is tight. It is a skill set that goes beyond simply managing collateral. At times, it resembles more of an art than science.

So what does the market for PO Finance look like today and what can we expect to see more of in 2017? For starters, the new administration has claimed it will loosen regulations such as Dodd-Frank that may make the banks more aggressive in the credit markets. This could mean we see more banks partnering with FinTech providers, which many have already started to do as a means to lend more efficiently to the small and lower middle market. This will definitely bear watching as it could directly impact the factoring and trade finance world.

Banking and funding in China is also becoming much tighter and more restrictive than ever before. Pre-export loans (i.e., Packing Credits) are becoming more difficult—and more expensive—to obtain for Chinese manufacturers. Many domestic importers are continuing to provide deposits to their Chinese suppliers, something that is very disturbing as it’s essentially unsecured lending and not a customary or particularly desirable funding mechanism for typical PO Financiers. Prospects are sometimes being forced to put up their own cash to Chinese suppliers and PO Financing funds the balance upon shipment of the product from overseas. In some cases, the PO Finance company may consider reimbursing their client for the deposit they provided to the Chinese supplier but only after the product has been inspected and shipped by the supplier.

We’re also seeing more and more diversification of sourcing across the board and suspect that will continue into 2017. US importers are simply
become more relevant in 2017, especially if on-shoring increases in the currently unpredictable political and economic climate. This may not affect companies that produce consumer products, but it’s possible we will see an increase in production financing for growth in industrial products. As a general rule, PO Financing companies are still far more nimble than waiting for EXIM providers to react to an immediate need or opportunity that really requires non-bank financing.

A relatively new development, some PO Financing providers are beginning to offer back office functionalities and monitoring (“private label”)—and some allow factoring companies to fund PO Financing transactions using the knowledge of the PO Finance company to manage the transactions. In these scenarios,

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2017: A LOOK AHEAD

NOVEMBER/DECEMBER 2016

Farmers Talk About the Weather; Factors Talk About Fintech

2017 and Beyond: For many factors, Fintech is an all too real threat, and their very survival is at stake. With Donald Trump in the White House, the situation could become tougher for factors outside the Fintech space. The current trends in regulation involving closer monitoring of bank and non-bank finance providers, including Fintech, will likely be reversed.

By Tony Smith

Fintech companies are rapidly gaining market share with enhanced technology for finding, qualifying, and landing business. With the pending changes in Washington, that process will likely accelerate. Fintech is here to stay and it only makes sense for providers in that space to begin seeking larger pieces of business, thereby expanding the threat to larger, traditional factors.

Here is what Ben Van Zee, president of Commonwealth Capital, has to say: “In the same way that Barnes and Noble’s business was completely disrupted by Amazon, factors need to think of how technology, being applied to commercial finance, is going to change our business. It is not enough to take our paper applications and turn them into PDF’s.”

WHAT CAN YOU DO ABOUT IT?

As Fintech continues to change the dynamics of the market, factors have a choice of what actions (or lack thereof) they can take. The choices you make now can—and will—affect how successfully your business can deal with the evolving market. So what are your options?

DO NOTHING

You could stick your head in the sand and hope for the best. You might be OK, but your company will probably not live long and prosper (thanks, Mr. Spock). The fundamental question is likely to be: will it be a quick and relatively painless death or a long, painful slog to the end?

RAMP UP YOUR MARKETING

Factors can also keep doing business in basically the same way and broadcast their service to a wider audience. This might help relieve the pain for a while, but as Fintech’s market share grows, you will be chasing a smaller portion of the market. Additionally, you probably will see less credit-worthy prospects. With the right pricing and risk management, that could work, however, it is a risky and dangerous game to play.

EVOLVE

The only real choice for factors today is to make significant product and process changes. If you are managing your business the same way you did five or even ten years ago, you have not evolved. With the way the market continues to change so rapidly, the same may also be true if you are managing your business in
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What changes should you be making?

**NEW PRODUCTS**

Factors need to consider offering new products. This may be purchase order, inventory, or supply chain finance, to name a few. The products should be something that requires the expertise and resources unique to your business, something the Fintech finance providers cannot offer.

In every case, bringing new products into your business requires an investment. This includes analysis of the potential market and development of a strategy. Your management team will also need to invest in people and systems to support the new initiatives.

**CUSTOMER EXPERIENCE**

According to W. Edwards Deming:

“The customer’s definition of quality is the only one that matters.”

The customer begins judging the quality of your operation before they become a customer. How easy is it to get a “Yes” from them? Fintech providers start with slick onboarding tools. The prospect fills out a form online and they are off to the races. At times, the money is in the client’s bank account within 24 hours.

**WHAT DO YOUR PROSPECTS EXPERIENCE?**

The North American CEO for a multi-national factoring company described the following scenario. The potential client completes a form online requesting a factoring line because they are looking at an eminent cash crunch. Then the factor asks for a list of documents and other information. The prospect may take several days to pull together the required items. In the meantime, the prospect gets paid by a couple of their customers. The cash demand has evaporated (for now) and the process of completing the application stops. If the factor makes the process easier, the onboarding time is compressed.
The money is out the door; both the client and the factor are happy.

The key elements for factors to stay competitive is to strike a balance between speed, an easy-to-use customer interface and security. All of this can be done while still controlling risk from the beginning and not doing anything stupid. It requires a laser focus on speed and the right technology. Your onboarding tool needs to include interfaces with credit rating agencies and databases of legal records (UCC and court filings). On top of all that, electronic access to the clients’ accounting system is key. The client should only have to click a link that allows the factor to download historical data directly from the prospect’s accounting system. That data should include invoices, customers, payables, and vendors. With this information in hand, the factor can quickly:

• Assess the business and its owner.
• Create a winning proposal.
• Sign on a—hopefully long standing—new client.
• Provide funding.

When done right, the new process should include digital signatures on standard contracts. Also, the data captured during the onboarding process should feed directly into the software the factor uses to monitor the arrangement going forward.

As a result, the factor has compressed the length of time it takes to bring in new business, provided a quality experience for the new client from the start, and controlled the risk, while becoming more efficient.

As an aside, the factor is not wasting time on unacceptable prospects.

Going forward, the factor must continue to meet the customer’s definition of quality. That means remaining customer-focused and easy to do business with. This strategy should include:

• Continuing to extract invoicing information directly out of the client’s accounting system.
• Providing the client with online access to their position with the ability to run reports, request funds, and upload data.
• Systems that are compatible with mobile devices, including smart phones and tablets.
• Providing lightening quick funding. Responding to client questions and requests as fast as humanly possible.
• All the while, they should be continuously monitoring the credit rating agencies and legal databases.

**HOW DO YOU DO IT?**

Having the vision is the easy part.

At this point, the problem written large has been acknowledged. Now you need to have a clear strategy and plan in place to implement these changes—complete with a way to measure success.

Communication is a major component of the change process. Everyone in the company needs to know that change is the ‘new normal’. They need to know—and understand—why the changes are being made and that those at the very top of the organization are behind them. Remember, you are probably asking people to get out of their comfort zones and drop old habits while learning new ones. This includes accounting, business development, operations, risk management, and relationship management. No one is immune. Ownership needs to want to invest in the company. They have to realize that the survival of the business is at stake. The investment can come in many forms, including:

• New employees.
• Training.
• Technology.
• Changing their own mindset.

In many cases, it is worth bringing in consultants to help develop the strategy and coordinate the implementation. These people know how to make changes. They should be trained in process improvement.

Another positive step is seeking out opportunities to network with others who are facing the same challenge. Consider attending industry events, such as the IFA Annual Conference, and training programs that provide ideas and the chance to learn from others.

Staying current on trends in your industry is extremely important. As Sun Tzu said in his book, The Art of War:

“If you know the enemy and know yourself, you need not fear the result of a hundred battles.”

Fintech companies are investing hundreds of millions of dollars in their business. What are you investing in yours?

**SUMMARY**

As a factor, you have choices. To prosper in this new competitive environment, you need to invest in people, technology and the overall customer experience. This is not thinking outside the box. The old box has been recycled. There is a new box. Come on in.

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**Tony Smith** is the CEO Americas for HPD Software, having joined the company in 2008. Prior to his employment with HPD, Tony worked as a service provider in the ABL industry. He holds a degree in accounting from Saint John’s University in Collegeville and is CPA certified. He worked 5 years as a public accountant and 20 years in various accounting positions including CFO responsibilities. Tony can be reached by phone at 805-544-5821 Ext. 17 or by email at Tony.Smith@hpdsoftware.com.
Credit Insurance Technology for an Uncertain World

Lending internationally is often seen as a risky endeavor because of complex regulations, fluctuating currencies, and lack of transparency. The current economic uncertainty facing the entire world has only made cross border lending even more challenging. Today’s instability has made it problematic to predict what the global landscape will look like in a year or even six months from now.

BY TESSA PAYNE
On the domestic front, many US businesses have seen their margins tighten and revenues decline as certain commodity prices dropped significantly this year. Since November 2015, there has been a rise in past due reporting, causing banks to scrutinize their borrowers’ customers very closely. While consumers may have been saving at the pump, there are signs the economy may be weakening as retailers such as Macy’s recently announced closures of over 100 stores. Further uncertainty is brought about by the presidential election, as nobody is sure how that could affect existing or new monetary or trade policies.

The international economic waters are proving to be even choppier. Highlighted by the recent Brexit vote for the UK to leave the European Union, lending across borders seems riskier than ever. The departure leaves the E.U. economically weaker than before, and other countries such as Belgium and France are expressing their interest to follow suit. Outside of the E.U., plenty of countries are experiencing political and economic crises. Brazil, for example, is in the midst of political turmoil; investors are pulling out, which will only serve to worsen the downward spiral. Countries once thought safe to operate in, such as Argentina or Turkey, are now considered too risky by most lenders.

So, all of this considered, how can one feel comfortable about lending globally?

All of this uncertainty has caused lenders to look for additional ways to protect themselves against non-payment. Many lenders are now looking to credit insurance as a risk mitigation tool to allow them to lend safely abroad. Though widely used throughout Europe for some time, it is a newer practice for US lenders and it is gaining in popularity.

Highlighted by the recent Brexit vote for the UK to leave the European Union, lending across borders seems riskier than ever. The departure leaves the E.U. economically weaker than before, and other countries such as Belgium and France are expressing their interest to follow suit.

**SO WHY IS CREDIT INSURANCE ON THE RISE?**

Credit insurance is proving to be a more cost-effective, safe, and efficient way to protect receivables. It is easy to provide global coverage because of the way credit insurance policies are structured. It can even help protect against political and economic risks, in addition to the more common situations such as bankruptcies or slow payments. Additionally, it is possible to maintain several different policies tailored specifically for different clients.

That said, credit insurance is not 100% guaranteed unless it is monitored correctly and the borrower is in compliance with the policy at all times. This is where the use of credit insurance can get complex and why many companies and lenders have had bad past experiences. Effectively tracking a large number of policies from multiple carriers manually is practically impossible, and credit insurance that is not properly managed will not protect the policy owner.

This is where EDI (Electronic Data Interchange) technology comes in. This technology, which includes services such as FGI T.R.U.S.T. and HighRadius, is standardizing and automating the management of credit insurance, making it far more effective and easy for international lenders.

When credit insurance is managed properly, it alleviates most risks that come with cross-border lending, and acts as a safe backstop in the case of a critical failure such as bankruptcy, political turmoil, regulatory changes, or foreign currency fluctuation. It also gives you the ability to oversee all exposures on an ongoing basis, allowing you to maneuver from a top-down view to more granular detail in real-time.

These technologies have enabled the efficient centralization of policies, greatly reducing the risk of human error or discrepancies.

**THE BOTTOM LINE?**

EDI technology has been the driving force behind the rising popularity of credit insurance in cross-border deals. It brings an increased level of transparency to credit insurance management, making it easy and efficient to oversee multiple policies from multiple carriers across a portfolio of borrowers, all in real-time. When credit insurance is monitored properly, coverage is maximized, premiums are optimized, and most importantly, claims get paid.

Tessa Payne
serves as Managing Director of Business Development at FGI, a global leader in commercial finance. She is responsible for overseeing business development initiatives across multiple FGI verticals throughout North America. She is also responsible for spearheading business strategy planning, implementation of new product offerings, partnership programs and content development. Tessa can be reached by phone at 312-474-6011 or by email at tpayne@fgiww.com.
As you all are aware, the AFA has spent a lot of time developing relationships on the Hill in Washington, on both sides of the aisle. This is crucial in that we will need friends who understand our industry and the positive contributions we make in helping businesses gain access to the capital they need in order to grow.

The election last month has vindicated that strategy. In an election in which virtually no one saw the outcome, the best that anyone can say is, “All bets are off.” But we are glad we can say that the AFA has emerged with many, if not all, of its friends intact on both sides of the aisle, and we are going to spend 2017 looking for new friends on the Hill and in the new Administration. In that regard, it is important to get a feel for the various Congressional committees of relevance to factoring in terms of their leadership, as well as the chance for meaningful reform of Dodd-Frank and the CFPB. This debate could be of tremendous importance to factoring.

In the Senate, as a result of term limitations on Senate Republican chairmen, Senator Richard Shelby (R-AL) will be stepping down as the Chairman of the Senate Banking Committee. He will remain on that committee, but he will have increasing importance as the next Chairman of Senate Appropriations in two years. Senator Shelby understands our industry and has been a strong advocate for us.

In his place, Senator Mike Crapo (R-ID) is slated to be the next Chairman of the Senate Banking Committee. Senator Crapo has very similar views and philosophies on the role of government in regulating the financial services and is a very capable legislator. He will lead a very pragmatic group of senators on the Republican side of the Committee.

On the Democratic side of the Senate Banking Committee, there are several Senators that also have strong reputations for being pragmatic legislators. Those Democratic Senators are Senator Heidi Heitkamp (D-ND), who has extensive experience in the banking industry; Senator Jon Tester (D-MT), who the AFA has met with several times and who understands our industry well, and Senator Joe Donnelly (D-IN), who is a former businessman.

While it is too early to make any predictions as to what legislation may emerge from the Senate Banking Committee, the makeup of the Committee may lend itself to some bipartisan reforms to the current Dodd-Frank regulatory framework.

In the House of Representatives, there has been less turnover, and Chairman Jeb Hensarling (R-TX) will remain the chairman of the House Financial Services Committee. Chairman Hensarling has a good working relationship with the new Administration and a strong
background in financial services. It is expected that Chairman Hensarling will quickly revive the CHOICE Act, which he sponsored and which passed the House Financial Services Committee this summer. While it passed along party lines without any amendments offered by the Democrats on the Committee, it may be reasonable to assume that the advent of a new Administration will encourage greater involvement on the part of the Democrats on the Committee. If you would like to read more about the CHOICE Act, you can read the bill and a summary at http://www.financialservices.house.gov/choice/.

Regarding the Consumer Financial Protection Bureau, you will recall that the AFA and our friends on the Hill, led by Senator Shelby and others, fought to make the single director makeup of the CFPB into a board of governance. Our argument was that a single person with unilateral authority to make regulations and unchecked ability to penalize parties was too much power in the hands of one person. In that regard, 2016 was a very consequential year, and, as a result, 2017 may spell the end of the current structure of the CFPB. At the very least, significant changes to the CFPB are quite possible.

In 2016, the PHH Corporation sued the CFPB over the imposition of an enhanced penalty by Director Richard Cordray of $109 million retroactively applied against PHH. The United States Federal Court of Appeals for the D.C. Circuit rejected the penalty and, in a landmark decision, ruled that the CFPB was

Continued on page 35

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As of December 8, 2016

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Bay View Funding
Commercial Finance Consultants
(DB Dains, Owner)
DB Squared, Inc.
Debra Wilson—President, Vertex
Financial Ltd.
Durham Commercial Capital
FSW Funding
Great Plains Transportation Services, Inc.
Jencks & Jencks, PC (David Jencks, Esq.)
Lenders Funding, LLC
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(Tim Valdez, President)
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(Vincent Galano, President)
PRN Funding (Phil Cohen, President)
Prosperity Funding, Inc.
Saint John Capital Corp.
SevenOaks Capital Associates, LLC
Sky Business Credit
(Gail Reints, President)
SouthStar Capital, LLC
United Capital Funding Corp.
(Ivan Baker, Managing Partner)
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Platinum ($5,000—$10,000)
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Allied Affiliated Funding

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Amerisource Funding, Inc.

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ACS Factors
Advantage Business Capital
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As of December 8, 2016

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Email: ryan@12five.com

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IFA CALENDAR EVENTS AND WEBINARS

January 18
Factoring, Accountants and Bookkeepers Webinar
1pm-2pm PST

January 25-27
2017 Presidents & Senior Executives Meeting
Casa de Campo, La Romana
Dominican Republic

March 7
Luncheon Meeting with NYIC
& IFA Northeast Chapter
Arno Ristorante
New York, NY

April 4-5
Face Reading Workshop
Omni Fort Worth
Fort Worth, TX

April 5
Factoring Essentials Training
Omni Fort Worth
Fort Worth, TX

April 5-8
2017 Annual Factoring Conference
Omni Fort Worth
Fort Worth, TX

The Commercial Factor | November/December 2016 29
Everything’s Bigger in Texas—Including the 2017 IFA Factoring Conference

On April 5-8, 2017, the largest gathering of commercial finance professionals in the world will take place in Fort Worth, Texas. With over 800 commercial finance professionals anticipated, over 55 exhibitors showcasing products to the commercial finance industry, and over 60 world class speakers, the 2017 Factoring Conference is shaping up to become the biggest and finest event for the Factoring industry ever. What better place to have this grand event than in the state where everything is bigger….Texas!

BY HEATHER VILLA

The City of Cowboys and Culture will host the 23rd Annual Factoring Conference at the Omni Fort Worth Hotel. Conveniently located in the heart of Fort Worth’s exciting downtown, the hotel is walking distance from the city’s cultural center, restaurants and nightlife. The Omni Fort Worth Hotel represents progressive luxury and its casual yet sophisticated style showcases a personality that’s as gracious and dynamic as Fort Worth itself.

As the 16th-largest city in the US, “Cowtown” Fort Worth embraces and celebrates its western heritage without being entirely defined by it. Fort Worth’s premier museums and arts, walkable downtown, diverse dining options, and major sports events offer numerous itineraries for every taste and budget.

Masterpieces abound in the museums of the Fort Worth Cultural District, located a few miles west of downtown. Known as the “Museum Capital of the Southwest,” in Fort Worth you can explore a variety of galleries that are world-famous for the architecture and quality of their collections—The Kimbell Art Museum, Modern Art Museum, Log Cabin Village, National Cowgirl Museum and the Texas Cowboy Hall of Fame, just to name a few.
If Texas heritage is what you come to see, join in the Fort Worth Herd. Each morning in the Historic Stockyards, 15 Texas longhorn cattle are rounded up from their corral and driven by cowhands in authentic dress down Exchange Avenue to the delight of tourists and locals alike. Visitors are drawn to the Old West feel of the Historic Stockyards District’s brick streets and restored buildings which boast rodeos, western events, restaurants, retail outlets, and much more. Make sure to see where infamous outlaws, Bonnie and Clyde, used the Stockyard Hotel as one of their hideouts!

When the sun goes down, Fort Worth really comes alive. Hotspots such as nightclubs, restaurants, movies, and live theaters flourish in the downtown area. Sundance Square buzzes with a high-energy ambience as this 35-block district is filled with shops, restaurants and a variety of entertainment options.

**CONFERENCE AT A GLANCE**

The 2017 Factoring Conference will provide two full days of educational instruction from some of the greatest minds in the industry. Learn from industry experts and your peers as you gain insight into current industry trends that will allow you to grow your business. The educational spotlight this year will focus on the disruptions within the commercial finance industry and how to position your company for the future.

- **Miracle on Everest**—Inspiration for the Major Motion Picture, Everest, Dr. Beck Weathers will take you back to the fateful day on Everest, reflecting on his harrowing tale of survival, the lessons he learned, and his supreme appreciation for getting a second chance at life, encouraging others to cherish every moment. (Dr. Beck Weathers, Survivor of the 1996 Mount Everest Tragedy)

- **Anticipate Disruptions, Problems and Opportunities**—Learn how to accelerate growth by using hard trends to anticipate disruptions, problems and opportunities within our industry. Gain insight into how a technology-enabled innovation approach can create and sustain the competitive advantage you need to succeed. (Dan Burrus, Author, Business Strategist and Technology Futurist)

- **Monitoring Social Media for Fraud**—Social media investigations are now an accepted investigative and fraud analysis tool when used properly. Fraudulent behavior, illegal intentions, asset reallocations and the characteristics of associates are all widely available for smart fraud examiners who can decipher the social network to build their case. Discover free and fee-based resources available to fraud examiners for monitoring social media as well as open sources for detecting fraudulent behavior and obtaining alerts on potential incidents. (Cynthia Hetherington, CFE, Hetherington Group)

- **Economic Forecast**—Hear how the economy will affect Factors by a senior economist and economic advisor in the economic research department at the Federal Reserve Bank of Chicago. (William Strauss, Federal Reserve Bank of Chicago)

- **Blockchain**—Blockchain is the ledger that records bitcoin transactions. This technology has the potential to drastically change the way monetary transactions are conducted and recorded. Blockchain technology is set to revolutionize the mechanism in which international payments are made. Learn what it is all about and the global implications, how it will affect finance and trade and if it is the currency of the future. (Jamie Smith, The Bitfury Group)

- **Transportation Factoring**—Receive an update on the transportation industry as well as time for discussion on key topics related to Transportation Factors. (David Jencks, Esq., Jencks & Jencks, P.C.)

- **Factoring 101**—Learn the nuts and bolts of Factoring for beginners or those wishing to enhance their previous knowledge. Topics include: What is Factoring?, Factoring Terms, The UCC Code, Finding the Right Client, Five C’s of Credit, Resources to Assist You. (Brian Center, Far West Capital)

- **Legal 101**—Whether you are new to factoring or looking for a legal update, this session will cover how factors operate in regard to the law. We will be discussing topics such as notification, UCC, and your legal documents. (Jim Cretella, Esq., Otterbourg Nemer)

- **Solving Client Issues**—Every day issues that arise may force a factor to consider whether it should continue or should cease purchasing accounts from a client. This session will explore extraordinarily creative measures that may be considered or taken to preserve a client relationship when the vast majority of factors may, in a knee-jerk reaction, consider it necessary and elect to terminate a relationship which may prove costly and a loss of valuable revenue. (Michael Ullman, Esq. & Jared Ullman, Esq., Ullman & Ullman, P.A., Jay Atkins, Seacoast Business Funding)

- **Cultivating a Culture of Success**—(Half day training session included)—Organizations are often burdened with mediocre or poorly performing employees—costing billions of dollars a year. This poor performance is often attributed to an employee’s individual qualities or attributes, such as personality, motivation and/or skillsets. However, within the field of psychology, we know that context is a better predictor and controller of behavior than individual attributes—and inside an organization,
this “context” is what we also refer to as “corporate culture.” Culture trumps everything. In a participant-driven program, attendees will leave with actionable information regarding: understanding the profit paradox, classic capitalism vs. social capitalism and their implications; a clear definition of organizational culture; examples of the successes and failures created by organizational culture; and Steps for Creating a Culture of Success: Identifying the four factors which predict success in organizations. (Dr. Gustavo Grodnitzky, Consultant)

PANEL SESSIONS:

• **The Fintech Disruption**—Whether they are called Fintech, MCA’s or ACH Lenders, these companies are a disruptor to the factoring model. Although much more expensive, they have been able to deliver funding to the small business community more quickly than the typical factor. Learn how these companies operate and if there are any of their operating efficiencies that factors can emulate.

• **Portfolio Warning Signs**—Problems may exist in your current portfolio. This panel will be discussing indicators that could reveal these issues. Knowing how to spot these red flags will give you advance warning of any potential problems.

• **PO Funding**—Purchase Order Funding can be used to facilitate international transactions. Our panel of experts will be discussing how PO funders work with Factors to facilitate transactions. Some of the topics covered will be: How has the market changed in the PO funding space over the past few years, what are some of the risks of PO funding or factors working with PO funders, what are some of the challenges PO funders face, how do Letters of Credit work with PO funders, and will PO funding work with domestic suppliers.

• **Legal Fintech Issues**—This diverse panel of legal experts will address the key legal issues pertaining to the commercial finance sector. Panelists will cover a wide range of legal matters and keep attendees up to date on the latest industry developments. Some of the topics they plan to address are: How to deal with Fintech companies when they fund behind you, dealing with UCC issues in relation to Fintech companies, notification issues in relation to Fintech companies, Torturous Interface from Fintech companies, and perfection requirements in non-US jurisdictions.

• **Fraud**—Our panel of experts will be discussing actual fraud cases against Factors. They will focus on spotting the warning signs that go beyond the obvious red flags and how many small details add up to a big clear picture.

INTERNATIONAL SESSIONS:

• **Factoring in Latin America**—These panelists will discuss the documents that are necessary to successfully factor receivables from Latin America.

• **How to Factor Chinese Invoices**—China has seen unprecedented growth in the factoring industry. This presents many opportunities for factors around the world to partner with factors in China. We will discuss various methods for working with Chinese based factors.

• **Canadian Legal Update**—Canadian legal experts will review case rulings from various Canadian jurisdictions over the past year and discuss their practical implications for Factors and Asset Based Lenders operating in the Canadian marketplace.

• **Dealing with Bankruptcies in Canada**—This panel will be discussing the intricacies of dealing with the bankruptcy laws in Canada; discussing specific steps that need to be taken to secure your collateral rights.

ROUNDTABLE SESSIONS:

• **Women in Commercial Finance**—Women in Commercial Finance shouldn’t miss this opportunity to openly exchange ideas and experiences with other women on various topics relevant to the commercial finance industry. Three prominent industry professionals will lead the discussion which is open to women at all stages of their career.

• **Senior Executives**—This high-level gathering provides a platform for Senior Executives to share best practices and discuss the challenges that often come with being top decision makers. Senior Executives will discuss several key issues and topics while expanding their networking circle.

• **Young Professionals**—This valuable networking opportunity will provide a forum for young professionals under 40 years of age who are early in their careers to discuss valuable ways to learn and share from others in similar positions. Young professionals face unique challenges on the road to success and this gathering provides an ideal atmosphere to discuss and exchange experiences.

*Continued on page 35*
A Look Ahead To 2017

I’m not sure if anyone in any business circle can speculate about the new year without discussing the recent presidential election. As of the writing of this article, the country has a new president elect by the name of Donald J. Trump.

For the last eighteen months or so, all of us had to endure one of the nastiest presidential campaigns in recent history. No matter what side of the political aisle you reside on, it was just ugly. Whether it was the string of shouting matches under the guise of political debates, accusations of criminal behavior, sexual misconduct or leaked emails, this was one campaign that had something for everyone. There wasn’t much middle ground when it came to choosing the presidential candidate that earned your vote.

The real question now is, “What effect will a Trump presidency have on small businesses”?

Since president-elect Trump has spent his entire life in business it’s obvious that his policies and appointments will be in favor of less government regulations, lower corporate taxes, strict immigration policies, and changes to the North American Free Trade Agreement (NAFTA). The new administration has also indicated they will take a pro energy policy, favoring the expansion by unleashing America’s $50 trillion in untapped shale oil, natural gas reserves, plus hundreds of years in clean oil reserves. The goal is to become independent from OPEC and any countries that are hostile to the United States interests. It was back in 2010 where many asset-based lenders and factoring companies benefitted greatly during the shale oil boom in the Bakken Oil region in North Dakota. However, as OPEC countries such as Saudi Arabia are continuing to increase their oil output along with the newly found reserves in North America, the price of oil has fallen below $50 a barrel. Because of this glut, many US oil companies have chosen to suspend operations until price levels reach a point where it is profitable for them to commence drilling.

While on the campaign trail, candidate Trump has stated that he is deeply in favor of lowering corporate taxes to 15% and decreasing tax rates for top earners to 33% from the current rate of 39.6%. Many republicans and democrats believe this could be a good thing for the economy if it can eliminate lobbyists seeking loopholes in the current tax code. Opponents of lowering corporate taxes frequently refer to the “trickle-down theory” which claims that benefits provided to upper income level earners will help society. In theory, their extra wealth will be spent into the economy, providing wealth for lower income earners and creating jobs. The biggest point of contention is that the benefits are rarely trickled down to the lower and working classes.

Another hot topic on the campaign trail was healthcare reform. The president elect has repeatedly stated that one of his first orders of business will be to repeal the Affordable Care Act, frequently referred to as Obamacare. The new administration prefers letting individual states deal with healthcare policy for their residents. This includes modifying the existing law that inhibits the sale of health insurance across state lines, tax deductions for monthly premiums and removing barriers of entry for drug providers. One of the biggest issues for small businesses is the cost of the Affordable Care Act. According to an online survey produced by LevelFunded Health, a national health insurance agency “with a hyper-focus on Affordable Care Act ‘alternative’ employee benefit programs for the small employer market segment,” 87

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 at 949-305-9300 or don.dambrosio@oxygenfunding.com.
percent of those small businesses who offer “group health care” saw health insurance premiums rise by 25 percent since 2014, with 12 percent seeing premium increases of 50 percent or higher. The survey also found that 56% of the businesses polled stated quality candidates are leaving because of the costs associated with Obamacare. It is important to remember that there are roughly over 11 million participants in Obamacare and any change to the act would have an effect on a large segment of the US population.

Interestingly, in a recent interview on 60 Minutes, president elect Trump looks like he has softened his stance on some parts of the current healthcare policy. Although he made it clear that he still will be in favor of repealing the plan, there are several parts of it he would like to stay in place. For one, he stated that participants with pre-existing conditions should be allowed coverage and younger participants living with their parents should be able to keep their coverage for an extended period. This is a complicated issue that will require much negotiation from both parties requiring compromise from both the house and senate.

I can go on to discuss many of the issues facing the new administration and speculate how each one is going to be handled as it relates to small business. Whether it’s how to tackle the economy, trade, infrastructure or foreign policy, we just don’t know how all of this will shake out for the country. Time will tell how effectively the Trump team can deliver on their campaign promises. Vice President-elect Mike Pence has already told his former colleagues in the house to buckle up for an ambitious opening to the new administration. I think an entire nation, along with the rest of the world, has already fastened their seatbelts.

THE FUTURE OF PO FINANCE
Continued from page 19

the PO Financing company’s funding risk decreases (especially if they have a high cost of capital or insufficient capital), but yield and upside go down as well.

Inventory financing is also expected to see an uptick in activity in 2017. With a growing focus on e-commerce-based business models, the ability to fund inventory (with both B2B and B2C elements) combined with PO Financing may represent an opportunity for the lender with requisite skills in both segments. Improved technology and need to increase speed in the supply chain continues be a driver and this is especially so in consumer goods.

The net for PO Financing is that it has steadily become a legitimate and worthwhile solution. The new frontier may be having to deal with a borrower’s desire for a “one stop shop” to their supply chain finance requirements. A funding source that combines the best of both the factoring and PO Finance worlds so that the entire supply chain can be efficiently financed will become more commonplace. This will result in offering a more competitively priced product, while more effectively controlling risk. That means that the potential scalability of PO Financing is significant.

The business of PO Financing has witnessed great change over the past several years and will no doubt continue to evolve in response to the changing marketplace. With capital markets now more unpredictable than ever, selecting the wrong PO Financing partner can be detrimental to everyone involved. It’s become absolutely critical for borrowers, lenders and intermediaries alike to partner with a well-capitalized, well-rounded and experienced provider in the supply chain finance world.
unconstitutional in its makeup. What the Court essentially said was that the single director setup of the CFPB, without any “critical check” by the President or “substitute check” by a board of governance, was a threat to individual liberty from arbitrary use of the director’s unfettered power. As a result, the Director of the CFPB now serves at the will of the President. If you would like to read more about the case, you can find the details at https://www.cfpbmonitor.com/2016/10/11/breaking-news-in-phh-v-cfpb-d-c-circuit-holds-that-cfpb-structure-is-unconstitutional/.

This decision is being appealed, but it is unclear whether President Trump will pursue that appeal. Further, it is unclear whether President Trump will keep Director Cordray in place in 2017. Several distinguished legal academicians have opined that President Trump would have the right to immediately dismiss Cordray without awaiting further judicial review. Thus, it is very likely that the CFPB will become more accountable to the Executive and Legislative Branches of the Government.

Predicting the future of Dodd-Frank and the CFPB is difficult, if not impossible, at this point, other than to say that the Congress and President Trump appear open to act on both Dodd-Frank and the CFPB and make some substantial changes. How extensive those changes may be will be determined by how much support the legislation gets in Congress because many of the potential changes may require 60 votes in the Senate to clear any filibusters. However, the AFA will be there to protect the interests of our industry in this time of major change. We will continue to build relationships and to educate those in Washington on the crucial role that factoring plays in our economy.

And as always we want to thank you for your generous contributions as members of the AFA. However, our work is not done and we need your continued support! •

2017 FACTORING CONFERENCE
Continued from page 32

• Operational Issues—This is an open forum for operations personnel to discuss relevant commercial finance issues.

• Small Factors—Factoring companies who fund clients with low sales volumes operate in a unique manner. This roundtable discussion is designed to give this important segment of our industry a forum to discuss their challenges and learn from their peers.

• Idea Exchange—Saturday morning’s Idea Exchange is also included in your conference registration. From 9am—12pm, this event brings together small groups who have a common interest in a particular issue. Over the course of the morning, attendees explore continuing and emerging opportunities and issues in a roundtable environment that provides enormous opportunities for sharing ideas.

ADDITIONAL WORKSHOPS AND TRAINING

Back by popular demand, Mac Fulfur (President, Amazing Face Reading) will provide an in-depth and interactive workshop aimed at teaching you how to connect with and understand others. This two-day Face Reading Certification Workshop, to be held April 4-5 before the conference begins, will assist you in interviews, client interactions, and in your personal life, as well.

Also before the conference starts, we will be offering our Factoring Essentials Training Course with George Thorson (Executive Vice President, Triumph Business Capital) and Gen Merritt-Parikh (President, Allied Affiliated Funding). If you are a new Factor, an individual new to factoring, or just wish to enhance your knowledge, this course will provide you with the background you need to become a successful Factor.

NETWORKING OPPORTUNITIES

You won’t want to miss all of the socials, activities and other networking opportunities that are available to you throughout the week. Not only is one of the best ways to learn about the industry through the experience of others, but expanding your networking circle allows you to gain resources for future business. As one attendee from last year’s conference said, “The networking opportunities alone are well worth the price of admission!” Some of the events we have planned this year include:

• Bibby Welcome Reception
• Golf Tournament
• Lone Star Reception
• Texas BBQ Food Tour
• Guest Museum Tour
• Breakout Small Factor Lunch
• Breakout Transportation Factor Lunch
• Tax Guard Dessert Reception
• Closing Event at Billy Bob’s
• JFK History Tour

Come see for yourself why the 23rd Annual Factoring Conference will be the biggest event of the year for the Factoring industry! The compelling speakers and invaluable networking opportunities makes this the must-attend event for anyone involved in the Commercial Finance Industry. In the “most typically Texas of all Texas cities”, Fort Worth is where Texas’ storied history meets its busy present. Join your peers deep in the heart of Texas! •

For more information and to register, go to factoringconference.com.
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