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CONFERENCE ISSUE 2023

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FROM THE EXECUTIVE DIRECTOR

BY TANIA DANIEL

WE ARE SO EXCITED TO BE BACK IN NEW ORLEANS FOR THE INTERNATIONAL FACTORING ASSOCIATION'S 29TH ANNUAL FACTORING CONFERENCE.

This will be our fourth time in the Big Easy, the second time at The Roosevelt New Orleans and one of the largest annual factoring conferences to date!

As a long-time attendee of the IFA conference, one of my favorite things about the event is the connections and friendships that are formed. Careers blossom and businesses grow stronger when the factoring industry comes together, and the conference is planned to provide meaningful opportunities to do just that. There are also many challenges facing the factoring industry, from economic conditions to state disclosure laws and everything in between. This year's lineup of powerful speakers and timely discussions will address those head on. There will also be several personal growth opportunities and new business strategies during our educational sessions and roundtable discussions.

The conference festivities kick off on Wednesday with the Chapter and NEXGEN receptions, sponsored by Spencer Fane and REV Capital, respectively. The chapters are a great way to connect with other factors in your area and the NEXGEN is open not only to people below a certain age, but to anyone who wants to grow their network and support the up-and-comers of the factoring industry. TriumphPay will host the Wednesday Opening Reception, which always offers one of the best opportunities to mingle and connect. On Thursday, we will meet Republic Business Credit on the rooftop for a sunset and cocktails. Then come back to the hotel lobby at the end of the evening for the Tax Guard After Party featuring drinks, desserts and live music. On Friday morning, we'll commence the last day of the conference with a Rise and Shine Mimosa Bar courtesy of Haversine Funding. This year we have added a new session to the conference agenda dedicated to networking. Styled in a speed dating format, this will be a high energy hour where you will have fun meeting new people and growing your network. I encourage everyone to take advantage of these fun events!

While the opportunity to network is always impactful, the education and industry discussions that happen during the breakout sessions and keynote speeches are what help to move factoring forward. The goal of this conference is for everyone to leave with at least one thing that can help make their career or business better, and I am confident that the knowledge that will be shared in New Orleans will empower attendees to accomplish that. Our keynote speakers will influence new ideas in an engaging and entertaining way while leaving you with valuable insights to take back with you.

The support from vendors and sponsors for the conference has been outstanding. This is a testament to the strength of the factoring industry. I encourage everyone to visit the 54 exhibitors who will be at the conference with products and service that can help you rethink the way you use technology, streamline operations, provide greater risk management capabilities, increase originations and more.

The IFA has been hard at work over the past year staying up to date with current market trends and has implemented new committees like the Chapters and NEXGEN, has advocated for the factoring industry by providing market education, and worked hand in hand with the American Factoring Association to protect the factor's best interest on Capitol Hill. Join us on Thursday morning during the opening remarks to hear our most recent updates.

New Orleans is an exciting city full of amazing food, lively music and a vibrant culture. Whether this will be your first time in the city or you've been before, New Orleans and the 2023 Factoring Conference will leave you with inspiration, meaningful insights and lasting memories. We can't wait to see everyone there!

Cheers!

Tania

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NEWS

People

Republic Business Credit Adds Morgan as VP and Legal Manager

Republic Business Credit added Christy Morgan as vice president and legal manager, reporting directly to CEO Stewart Chesters. Prior to joining Republic, Morgan spent most of her career at Crestmark, a division of MetaBank, formerly Commercial Capital Lending.

Otterbourg Names Cretella Chairman of Finance Department

James Cretella was named chairman of Otterbourg's finance department. Cretella began his legal career at Otterbourg in 2004 and has risen steadily through the ranks. In 2021, he was named chair of the alternative and specialty finance practice group.

eCapital Appoints Zarin Chief Legal Officer

eCapital appointed Todd Zarin chief legal officer. As part of the executive leadership team, Zarin will oversee eCapital's in-house legal team and be responsible for all legal operations for the company.

The SoCal Chapter of IFA Welcomes New Board Members

The International Factoring Association's SoCal Chapter announced its newly appointed board members: Greg Salomon, president of Oxygen Funding, and Alexandra Scoggin, senior vice president of Sallyport Commercial Finance.

Best in Biz Awards Honors eCapital CEO with Bronze Award

Marius Silvasan, CEO of eCapital, was named a Best in Biz Awards bronze winner in the Executive of the Year – Medium Companies category. The Best in Biz Awards are an independent business awards program judged each year by editors and reporters from publications in North America.

Deadman Joins Triumph Financial Board of Directors

Triumph Financial elected Davis Deadman to its board of directors. Deadman has been a member of the board of directors of TBK Bank, a subsidiary of Triumph Financial, since 2014. He also served as TBK Bank's chief lending officer from 2012 to 2014.

Sallyport Commercial Finance Hires Adler as Underwriter

Sallyport Commercial Finance hired Brian Adler as an underwriter for its U.S. team. Adler has more than five years of experience, including more than three years with Amegy Bank, where he rose from credit analyst to assistant vice president of corporate banking.

COMMERCIAL
FACTOR

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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.

Commercial Factor 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 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.*

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Date	Event	Time/Location
MAY **24** WEBINAR:	Factoring Participations and Funding Options	11am - 12pm PDT
JUN **14** WEBINAR:	Factoring in Cannabis	11am - 12pm PDT
JUL **25-26**	The Law & Business of Factoring Hybrid Training Class	Bellagio Hotel, Las Vegas or Online
JUL **27-28**	Account Executive/Loan Officer Hybrid Training Class	Bellagio Hotel, Las Vegas or Online
SEP **18-20**	2023 Annual Transportation Factoring Meeting	Hilton Downtown, Nashville
OCT **17-18**	In-Depth Transportation Factoring Course: Everything You Were Afraid to Ask And a Detailed Review of Foundational Concepts	Bellagio Hotel, Las Vegas or Online
OCT **19-20**	Sales Leadership Summit	Bellagio Hotel, Las Vegas

REGISTRATION INFORMATION **805-773-0011** www.factoring.org info@factoring.org

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

Cancellation Policy: Due to the ongoing uncertainty regarding COVID-19, the IFA will not charge a cancellation fee if you decide to not attend an in-person event based on concerns around your health or travel. For information on policies with online events, please refer to specific program registration pages or contact the IFA with inquiries.

These training courses are approved for CAEF credits. For more information contact Terri Baker at 805-773-0011, ext. 303.

The IFA will assist with applications to receive continuing legal education. To receive CLE credits, participants will need to submit all documentation to their accrediting states for approval. For more information, please contact Heather Villa at info@factoring.org or 805-773-0011 ext 301.

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

NEWS

IFA CALENDAR OF EVENTS IN 2023

See IFA's full calendar on page 5.
Registration Information:
www.factoring.org

CANADA CHAPTER EVENTS IN 2023

May 16
Alternative Financing — PO/ABL/ Equipment/Loan

June 20
Social Gathering

September 12
Golf Day

October 10
Transport Update

November 14
Operations: Technology

December 12
End of the Year Celebration

RSVP to TCapobianco@jdfactors.com for registrations.

For more information, contact Oscar Rombolà at (905) 603-6284 or oscar.rombola@ecapital.com

Visit IFA Canada's website at www.FactoringAssociationCanada.com

OTHER CHAPTER EVENTS IN 2023

Visit www.factoring.org/chapterevents for updated Chapter events

Axiom Commercial Finance Hires Tegge as Senior Underwriter for ABL

Dallas-based Axiom Commercial Finance added Kurt Tegge to its team as senior underwriter for asset-based lending. Tegge has more than two decades of experience in underwriting asset-based loans and a background in credit risk analysis and portfolio management. He will be responsible for underwriting new loan opportunities.

Deals

Haversine Funding Provides $52.6MM in Recent Financing

Haversine Funding recently provided $52.6 million in financing, including a $3 million factoring participation for a seafood distributor on the West Coast.

First Business Bank Funds $5MM Factoring Facility for Business Lead Originator

The accounts receivable financing team at First Business Bank funded a $5 million accounts receivable factoring facility for a company that generates sales leads for other businesses.

nFusion Capital Adds $855K in New Monthly Commitments in February

nFusion Capital added $855,000 in new monthly commitments and 15 new carriers in February while also receiving 46 applications.

Alleon Healthcare Capital Provides $7MM Medical A/R Financing Facility to Therapy Provider

Alleon Healthcare Capital closed a $7 million medical accounts receivable financing facility with a behavioral therapy treatment center based in Florida.

MidCap Business Credit Closes $12MM Credit Facility for Mattress Manufacturer

MidCap Business Credit closed on a $12 million senior secured credit facility for a manufacturer and assembler of mattresses and foundations.

eCapital ABL North America Division Funds $95MM in Q4/22

eCapital issued $95 million in lines of credit during Q4/22 through its eCapital ABL North America division.

Tax Guard Resolves $1.5MM Liability for Medical Staffing Company

Tax Guard resolved an IRS liability of $1.5 million through an installment agreement of $2,700 per month for a medical staffing company.

White Oak Provides $3MM Factoring Facility to Temporary Staffing and Recruiting Services Company

White Oak Commercial Finance, an affiliate of White Oak Global Advisors, provided a $3 million factoring facility to a provider of temporary staffing and recruiting services with a more than 70-year history of family ownership.

Pinnacle Capital Finance Provides $4.5MM to California Wine and Spirits Company

Pinnacle Capital Finance issued a $4.5 million combination of an asset-based line of credit, purchase order financing and term loans to a California based winery. The loan is structured as a $3.9 million accounts receivable and inventory line of credit.

TradeCap Partners Extends $7MM Purchase Order Finance Facility to Equipment Importer

TradeCap Partners closed a $7 million purchase order funding facility for a supplier providing new and used equipment to big box retailers located throughout the United States and Canada. TradeCap was referred to the client by its bank, which had a borrowing base line of credit in place supported by receivables.

United Capital Funding Group Provides $17.56MM in Facilities, A/R Management in Q4/22

United Capital Funding Group completed 10 transactions totaling $17.56 million in accounts receivable financing in Q4/22.

United Capital Funding Group Provides $2.5MM DIP Facility to Sports Equipment Wholesaler

United Capital Funding Group provided a $2.5 million debtor-in-possession facility to a California-based sports equipment wholesaler. With this new flexible form of financing, the wholesaler can work through its post-petition plan of reorganization and maintain its long-standing relationship with its major retail customer.

Iron Horse Credit Provides $3.5MM Inventory Facility to Phone & Electronics Distributor

Iron Horse Credit closed a $3.5 million inventory facility to a cell phone and electronics distributor. The credit facility will provide the company with additional working capital to cover supplier payments and meet its growth projections.

Rosenthal & Rosenthal Closes International Factoring Deals Totaling $3.25MM

Rosenthal & Rosenthal completed a pair of factoring transactions, including a $1.75 million domestic and international non-recourse factoring deal for a manufacturer of antimicrobial products and a $1.5 million non-recourse factoring deal for a wholesale seafood distributor.

Versant Funds $4.5MM Non-Recourse Factoring Transaction for MedTech Company

Versant Funding funded a $4.5 million non-recourse factoring transaction for a medical technology company that provides services to major hospitals and pharmaceutical companies.

IFA INTERNATIONAL FACTORING ASSOCIATION

CFPB Leaves Factors Out of Rule to Implement Section 1071 in Major Victory for AFA and IFA Members

AT THE END OF MARCH, THE CONSUMER FINANCIAL PROTECTION BUREAU FINALIZED THE RULE TO IMPLEMENT CHANGES MADE BY SECTION 1071 OF THE DODD-FRANK ACT THAT REQUIRES LENDERS TO COLLECT AND REPORT INFORMATION ABOUT SMALL BUSINESS CREDIT APPLICATIONS. The final rule will not cover factors, marking a major win for International Factoring Association and American Factoring Association members.

The IFA and AFA have been heavily involved in ensuring the legislation would not be imposed on factors. During the leadup to the final regulation, including during the most recent comment period on the proposed rules, the AFA worked diligently to protect factors from these regulations. Throughout the years-long process, the AFA advocated for factors, educated lawmakers and continually monitored comments. The CFPB said it received more than 2,100 comments about the proposed rule before finalizing the rule at the end of March. The CFPB ultimately agreed with the AFA's assertion that Section 1071 does not apply to factors on the grounds that factors purchase receivables as opposed to extending credit.

"The elimination of this regulatory burden is a huge win for the factoring industry and our members," Cole Harmonson, president of the AFA and CEO of Dare Capital, said.

The final rule covers closed-end loans, lines of credit, business credit cards, online credit products and merchant cash advances by banks, credit unions and other lenders. Non-depository financial institutions will be required to collect and report data, including demographic information, as will banks, savings associations and credit unions.

U.S. Congress passed the Dodd-Frank Act in 2010, including Section 1071 and its amendments to the Equal Credit Opportunity Act. The CFPB first proposed a rule to issue the Congressional mandate to implement Section 1071 requirements in 2021 after being sued by the California Reinvestment Coalition for failing to implement said rulemaking.

The final rule covers lenders making more than 100 covered small business loans per year, which accounts for more than 95% of small business loans by banks and credit unions. Like with mortgages, lenders will submit data points required by Congress, as well as additional data points that are typically already included in lender files.

The final rule defines a small business as one with gross revenue under $5 million in its last fiscal year.

In terms of timing for implementation at the lender level, the final rule requires the largest lenders, which account for most of the small business lending market, to collect and report data earlier than smaller lenders. Specifically, lenders that originate at least 2,500 small business loans annually must collect data starting Oct. 1, 2024, while lenders that originate at least 500 loans annually must collect data starting April 1, 2025, and lenders that originate at least 100 loans annually must collect data starting Jan. 1, 2026.

The CFPB also noted that lenders originating fewer than 100 loans per year will still be required to adhere to fair lending laws. In addition, the CFPB intends to issue a supplementary proposal that would, if finalized, provide additional implementation time for small lenders that have demonstrated high levels of success in serving their local communities as measured by their performance under relevant frameworks like the Community Reinvestment Act and similar state laws.

NEWS

nFusion Capital Assists 22 New Carriers with More Than $1.7MM in Monthly Funding

nFusion Capital recently assisted 22 new carriers with more than $1.7 million in monthly funding commitments.

eCapital Healthcare Closes $172.6MM in 2022

eCapital delivered $172.6 million in newly originated credit facilities for businesses in the healthcare industry in 2022.

Mitsubishi HC Capital America Provides $10MM Debt Financing Facility to Gridium

Gridium, a decarbonization partner to real estate firms, received more than $14 million in funding from investors Navitas Capital, Lincoln Property Company and Tim Naughton, the current chairman and former CEO of AvalonBay. Gridium also entered an agreement for a revolving debt financing facility sized at $10 million with Mitsubishi HC Capital America.

Republic Business Credit Provides $1.5MM Factoring Facility to Women's Apparel Company

Republic Business Credit provided a distributor of women's apparel with a $1.5 million traditional factoring facility with credit protection and extended customer payment terms. The funding eliminated the distributor's cash flow gap between paying suppliers and receiving payments from retailers.

J D Factors Provides $2.42MM in Recent Factoring Facilities

J D Factors recently provided $2.42 million in factoring facilities, including a $250,000 factoring facility to a transportation company in California.

Aurous Financial Services Completes $30MM Revolving Trade Finance Facility for Electronics Seller

Aurous Financial Services completed a $30 million revolving trade finance facility for a Texas-based client selling electronics to a big box retailer in Mexico for 2023.

Sallyport Provides $2MM to Existing Oil & Gas Client to Further Acquisition

Sallyport Commercial Finance provided $2 million in accounts receivable financing to fund a recent acquisition by an existing client in the oil and gas services sector. The funds will enable the company to restructure the debt incurred in acquiring the company while growing its business.

Republic Business Credit Provides $6.5MM ABL to Food Manufacturing Company

Republic Business Credit extended a $6.5 million asset-based loan to a Gulf Cost-based, second-generation food manufacturing company that needed more support during seasonal growth periods.

TradeCap Partners Provides $1.5MM PO Facility to Beauty Products Company

TradeCap Partners closed a $1.5 million purchase order finance facility for a West Coast-based beauty products company. The facility will support the fulfillment of large retail orders for multiple SKUs.

Ocean Bank Closes $5MM Factoring Facility for Recycled Paper and Cardboard Distributor

Ocean Bank's factoring division closed and funded a $5 million factoring facility for a distributor of recycled paper and cardboard.

Sallyport Commercial Finance Provides $500K A/R Facility to Oil and Gas Services Business

Sallyport Commercial Finance provided $500,000 in accounts receivable financing to a new business in the oil and gas services industry. A banker referred the company to Sallyport Commercial Finance. The company expects that mid-market and large independent oil companies will utilize its services.

Sallyport Commercial Provides $1.5MM A/R Financing to Frozen Food Manufacturer

Sallyport Commercial provided $1.5 million in accounts receivable financing for a frozen food manufacturer. The financing will enable the client to prepay suppliers for dairy products.

Rosenthal Completes $70MM in ABL Transactions

Rosenthal & Rosenthal completed seven asset-based lending transactions totaling roughly $70 million, including a $40 million accounts receivable and inventory transaction for a New York-based jewelry manufacturer with more than $200 million in annual volume looking for an alternative to its current, more restrictive bank lending relationship.

Pinnacle Capital Finance Provides $5MM A/R Line of Credit to Semiconductor Company

Pinnacle Capital Finance issued a $5 million accounts receivable line of credit for a semiconductor design and manufacturing company that specializes in digital microwave technology. The loan is structured with the ability to deem eligible account debtor concentrations up to 75% as a result of large orders related to the company's military and aerospace customer base.

Amerisource Closes and Funds $4.5MM Bridge Term Loan for Recreational Property

Amerisource Business Capital closed and funded a $4.5 million bridge term loan for a Pennsylvania-based, family-operated recreational property. The property used the proceeds to support seasonal operations, ongoing growth and working capital needs.

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NEWS

Iron Horse Credit Provides $2MM Inventory Line of Credit to Hydroponic Systems Distributor

Iron Horse Credit closed a $2 million stand-alone inventory revolving line of credit for a hydroponic growth systems and nutrients distributor. Iron Horse was able to pay off the company's high-interest notes and provide the California-based entity with the working capital needed to support its growth.

Franklin Capital Provides $800K to Non-Profit Staffing Firm

Franklin Capital completed an $800,0000 factoring facility for a non-profit staffing firm. The non-profit staffing firm needed a short-term facility to help cover its payroll and expenses while it waited for a delayed payment from its primary payer.

Rosenthal Closes $5.5MM Deal for Specialty Foods Company, Gagel Joins Recourse Factoring Division

Rosenthal & Rosenthal completed a combined deal for a specialty foods company that includes a $3.5 million recourse factoring facility and a $2 million purchase order line. Rosenthal also named Brian Gagel recourse factoring portfolio manager based in its Atlanta office.

Industry News

Texas Legislature Introduces Bill Imposing Disclosure Requirements on Factoring Transactions

A bill has been introduced in the Texas State Legislature that would impose disclosure requirements on factoring transactions. S.B. 1918 was introduced in the Texas Senate by Senator Tan Parker and H.B. 4359 was introduced in the Texas House by Member Frederick Frazier.

New York DFS Issues Final Commercial Lending Disclosure Regulation

The New York Department of Financial Services (NYDFS) finalized the New York Commercial Finance Disclosure Law (NYCFDL) regulation. The NYCFDL disclosure rule (NY Disclosure Rule) is effective on Aug. 1.

Maryland Senate Passes Commercial Finance Disclosure Law

In an article that originally appeared at womblebonddickinson.com, Joel L. Perrell Jr., a partner at Womble Bond Dickinson, wrote: "The Maryland Senate unanimously approved amended Senate Bill 496, a measure proposed to curb perceived commercial lending abuses in Maryland by requiring additional financial disclosures when making loans to small businesses."

Solifi Releases ABL Software Enhancements

Solifi released the latest version of its asset-based lending (ABL) software, which includes several new and enhanced features designed to improve both the lender and borrower experience.

Bankruptcy Filings Increase Across All Chapters in March

According to data provided by Epiq Bankruptcy, new bankruptcy filings in March registered year-over-year increases across all U.S. major filing categories for the third month in a row. Year-over-year commercial filings were up 24% to 2,305 compared to 1,854 in March 2022. Commercial Chapter 11 filings (including Subchapter V) increased 79% to 548 versus the 306 filings registered in March 2022.

Small and Midsize Businesses Anticipate Recession in 2023

According to JPMorgan Chase's 2023 annual Business Leaders Outlook survey, the majority of small and midsize U.S. business leaders anticipate a recession in 2023, with 65% of midsize businesses and 61% of small businesses indicating as such.

Small Business Loan Approvals at Big Banks Slip to 14.2% in February

According to Biz2Credit's Small Business Lending Index, small business loan approval percentages at big banks slipped again in February, falling from 14.4% in January to 14.2%.

Former eCapital ABL CEO Palmer Creates New ABL Company

Jennifer Palmer, the current president of the Secured Finance Network and former CEO of eCapital Asset Based Lending and Gerber Finance, launched JPalmer Collective, a brand-new asset-based lending firm.

Rosenthal & Rosenthal Launches New Recourse Factoring Program

Rosenthal & Rosenthal launched a new recourse factoring program designed to meet the unique financing needs of growing service businesses and light manufacturing and assembly businesses.

Bankers Factoring Opens Honolulu Office Headed by Avelino

Bankers Factoring, an employee-owned receivable factoring company, opened an office in Honolulu headed by Daryl Avelino, vice president of business development.

SSG Advises Atlantic Carbon Group on Sale to White Oak Affiliate

SSG Capital Advisors served as investment banker to Atlantic Carbon Group in the sale of its equity interests to ACG Holdco, an affiliate of White Oak Global Advisors.

Sallyport Commercial Finance Opens New Division in Scotland

According to the *Scottish Financial News*, Sallyport Commercial Finance is opening a division in Scotland to be led by Andy Tait, a former veteran of Bibby Financial Services.

Federal Reserve Boosts Rates, Expects Banking Turbulence to Weigh on Inflation

The Federal Reserve raised the target

COMMERCIAL

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Our weekly Newsletter & E-Magazine are industry staples & provide the most direct ways to share news with key players in the factoring industry.

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NEWS

range for the federal funds rate to between 4.75% and 5% near the end of March, marking a quarter point increase and its second such move of 2023. In announcing the rate increase, the Fed also commented on "recent developments" in the U.S. banking system, which it said "are likely to result in tighter credit conditions for households and businesses and to weigh on economic activity, hiring and inflation" while admitting "the extent of these effects is uncertain."

nFusion Capital Wins Restructuring Deal of the Year Award

M&A Advisor selected nFusion Capital as a winner of the Restructuring Deal of the Year Award ($50 million to $100 million) for its role in the restructuring of an oil and gas equipment manufacturer.

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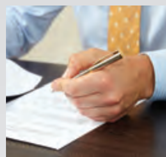

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Mitsubishi HC Capital Merges Companies to Form $7.5B Commercial Finance Firm

Mitsubishi HC Capital America and its subsidiary Mitsubishi HC Capital Canada, as well as Mitsubishi HC Capital (U.S.A.) and ENGS Commercial Finance, merged to create a North American non-bank, non-captive finance provider with more than $7.5 billion in owned and managed assets. Craig Weinewuth, former president and CEO of ENGS Commercial Finance, will be the president and CEO of the combined company.

Fintech Lenvi Launches to Serve Consumer and Commercial Lending Markets

Financial technology company Lenvi launched, bringing together EQ Credit Services, EQ RiskFactor and EQ KYC Solutions into a single entity under a new leadership team, with ambitions to deliver more powerful, relevant and responsible lending solutions for customers.

Monthly Expenditures at Small Businesses Fell by 5% at Height of Inflationary Period in 2022

Biz2Credit, an online funding provider to small businesses, reported the findings of its Small Business Inflation Study, which analyzed the revenues and expenditures of more than 140,000 U.S. small businesses from January 2019 to October 2022. During the period of highest inflation, the average monthly expenditure of small businesses fell by 5% from $11,401 in Q1/22 to $10,884 in Q3/22.

FDIC Establishes Signature Bridge Bank as Successor to Closed Signature Bank

The New York State Department of Financial Services recently closed Signature Bank and appointed the Federal Deposit Insurance Corporation as receiver. To protect depositors, the FDIC transferred all the deposits and substantially all of the assets of Signature Bank to Signature Bridge Bank, a bank that will be operated by the FDIC as it markets the institution to potential bidders. •

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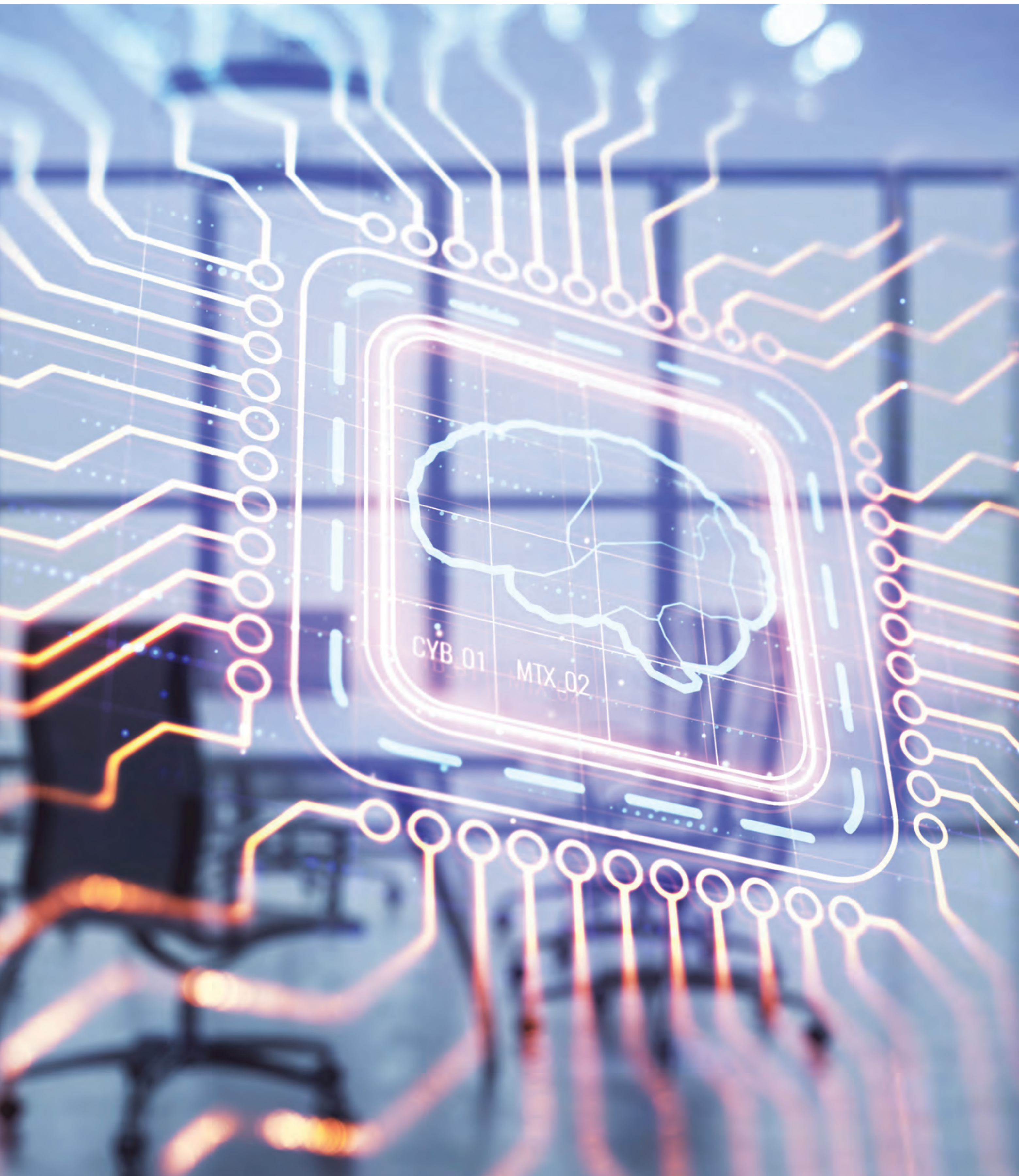
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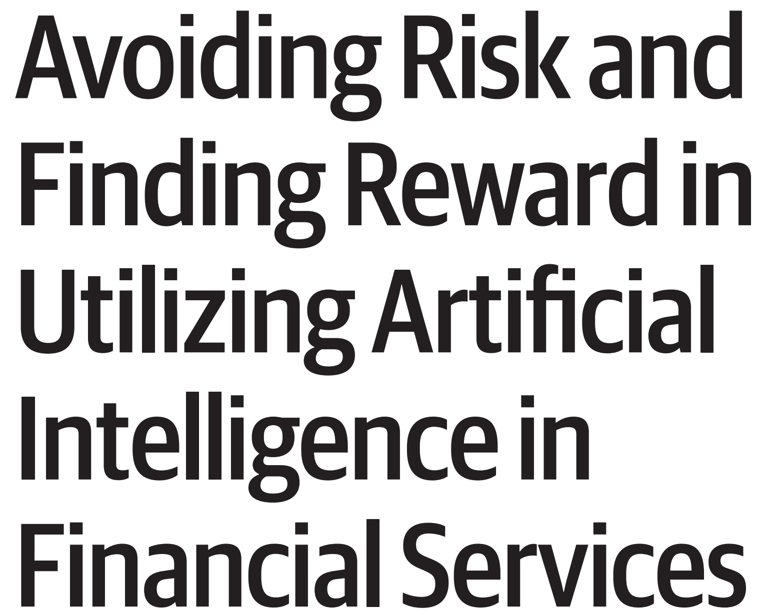

Avoiding Risk and Finding Reward in Utilizing Artificial Intelligence in Financial Services

Financial institutions can gain plenty by utilizing artificial intelligence, but those same tools can be used by external parties to generate cybersecurity hazards. Alex Koskey and Matt White of Baker Donelson explain how AI is improving the financial services industry while also creating new risks and considerations.

Alexander F. Koskey
Shareholder
Baker Donelson

Matthew G. White
Shareholder
Baker Donelson

Artificial intelligence is a modern-day double-edged sword. For all its benefits in risk management, fraud prevention and credit decisioning, it creates plenty of its own risks for financial intuitions, especially when used by external parties. Alex Koskey and Matt White, attorneys in Baker Donelson's data privacy and cybersecurity practice, discuss how AI can help financing companies operate more effectively while providing guidance on how to protect against threats created through tools such as deepfakes and AI-generated phishing attacks.

As technology progresses, processing power increases and the cost of implementation decreases, more companies have jumped on the bandwagon to utilize AI.

How can AI help financial services companies improve operations?

Artificial intelligence is increasingly being utilized in a variety of ways in the financial services industry. For example, on the customer-facing side, AI utilization in credit decisions can provide a faster and more accurate assessment of a potential borrower's creditworthiness. It's also used frequently to assist in trading decisions (i.e., algorithmic trading). An AI's ability to quickly and accurately predict optimal investment opportunities based on real time reviews of market conditions and stock performance explains the dramatic increase in the deployment and use of these tools over the past few years.

There are also many uses for AI that allow financial institutions to better handle back of the house operations, including risk management and fraud prevention. There are a variety of other operational processes in which the financial services industry may begin to utilize AI's capabilities. The ability to process enormous amounts of data, along with its ability to contextualize and digest that data, will likely be an invaluable valuable tool to augment human efforts to come up with solutions to vexing problems and time intensive requirements.

How can AI improve fraud detection and risk management?

Due to its enormous processing power, AI can analyze real-time conditions across various markets and environments to provide accurate identification and prediction of risks. Often, these risks are identified significantly more quickly and earlier in time than any human could do. Further increasing AI's effectiveness, both structured and unstructured data can be analyzed, which cannot be efficiently done by human reviewers.

Similarly, AI is increasingly being deployed in the context of fraud prevention. For several years, financial institutions have utilized AI to combat credit card fraud. An AI's ability to quickly analyze numerous variables, including spending habits, location and other behaviors, has assisted financial companies in quickly identifying fraudulent transactions. Some financial institutions are also deploying AI to combat money laundering. Because AI can analyze complex transactions to identify variables and patterns that can be updated in real time, it has proven effective in this context as well. Other examples of uses include customer service focused "AI chatbots" and targeted marketing/promotions/rewards based on users' purchase histories, and credit scores and utilization.

What has driven the recent increase in the use of these kinds of tools in the last few years?

While language-based AI applications have drawn much of the attention recently, AI tools have been being developed for years. As technology progresses, processing power increases and the cost of implementation decreases, more companies have jumped on the bandwagon to utilize AI. AI's ability to quickly and accurately analyze and contextualize huge volumes of data, as well as offerings such as machine learning, natural language processing and text/data mining, are providing companies with the opportunity to more efficiently operate and offer new and exciting services.

What are some of the leading AI implementations within the financial services industry? What are some advancements you expect to be made and incorporated in the near future?

One significant example of an opportunity AI presents for financial institutions is to increase the effectiveness of current KYC/AML programs that are, at best, having only a limited impact on preventing money laundering. In addition to allowing for more efficient operations, AI's ability to quickly and accurately analyze and contextualize huge volumes of data can assist

financial institutions in optimizing effective controls for customer due diligence, screening and transaction monitoring. However, such implementations would require not only the financial investment in AI tools, but also the updating of current risk management frameworks. Additional thought must be given to how financial institutions can protect the data privacy rights of their customers as well.

If a company is considering implementing some form of AI technology, what do they need to do to prepare themselves, whether that be updating risk management frameworks or back-office data or something else?

Obviously, considerations for preparing to use AI-based offerings are going to differ dramatically based on the specific implementation. However, one common thing that financial institutions need to monitor is regulatory developments and commentary concerning AI. Most of the major financial institution regulators have issued guidance on various aspects of AI, including regulatory obligations and risks. Financial institutions need to monitor these pronouncements to ensure compliant implementations of new products, services and/or tools.

What are some of the risks of utilizing AI in a financial services/ lending situation and how can lenders protect themselves?

An important risk associated with AI that cannot be overlooked is its impact on cybersecurity. While AI presents a host of new tools and abilities to combat cyber fraud, bad actors are also increasingly using AI to launch better, more sophisticated cyberattacks.

Some of the positive implementations of AI in this context include using advanced learning techniques to analyze volumes of potentially malicious data. Similarly, AI can detect and identify vulnerable patterns within company networks and can monitor for them in real time. Moreover, with AI, many threat detection activities can be automated without any human intervention required, thus increasing both effectiveness and efficiency of threat mitigation and detection efforts. However, for all the positives, threat actors are also leveraging the unique abilities of AI. For example, studies have shown that phishing attacks crafted by AI are more successful than those crafted by humans. Similarly, an AI can generate new malware or craft previously unknown malicious code that can be easily deployed by threat actors. We are also seeing more attacks utilizing deepfakes and language-based AI tools preparing spoofed voicemails. This is creating significant risks for companies and essentially an arms race for cyber warfare superiority.

An important risk associated with AI that cannot be overlooked is its impact on cybersecurity. While AI presents a host of new tools and abilities to combat cyber fraud, bad actors are also increasingly using AI to launch better, more sophisticated cyberattacks.

Do you think AI is the future of financial services, especially when it comes to credit decisioning and operations? Why or why not?

I suspect over the next few years we will see financial institutions adopt wide-spread usage of AI tools. As these tools become increasingly available and cost-efficient, we will see financial institutions adopt them for fraud monitoring, security, and to more efficiently process data driven efforts.

We will also see increased usage of AI for credit decisions. AI models can quickly incorporate internal data, information from credit bureaus, credit attributes, demographics, spending habits and more to give financial institutions a more accurate view of an individual's creditworthiness. Importantly, while it is theoretically possible for human efforts to produce similar results, such an endeavor would be incredibly time intensive, could not adapt and react to real-time changes, and would necessarily be driven by fewer data sources, leading to less effective credit decisions. AI's ability to provide this information more quickly, based on more data, and in many instances automatically, can lead to not only better and more accurate credit decisions, but also credit decisions for individuals who under traditional models don't qualify for a credit score. As a result, we'll likely see increased utilization of AI in credit decision-making to both provide better and more accurate credit decisions, but also to expand the ability to provide credit to segments of the population that currently struggle to access credit. •

Clarifying the Application of Article 9 of the UCC's Scope to Determining a Secured Party's Rights in Post-Petition DIP Factoring

In Chapter 11 bankruptcy case *In re: RWDY, Inc.*, the U.S. Bankruptcy Court in the Western District of Louisiana provided clarity about the application of Article 9's scope to issues under sections 363 and 364 of the U.S. Bankruptcy Code in respect to the rights of parties that have security interests in accounts, including buyers of accounts, and the effect of Article 9's scope in determining issues involving post-petition DIP factoring agreements, use and sale cash collateral and adequate protection issues.

BY JARED ULLMAN, ESQ.

Jared Ullman, Esq
Shareholder
Ullman & Ullman

In a recent precedent-setting decision by the U.S. Bankruptcy Court in the Western District of Louisiana, the court denied an objection to a Chapter 11 debtor's motion to enter into a post-petition debtor-in-possession factoring relationship with Seacoast Business Funding ("Seacoast"), in respect to which six merchant cash advance entities ("MCAs") claimed to have purchased prepetition the debtor's interest in any "future receivables," and by extension, argued that the debtor lacked the ability to sell accounts post-petition to Seacoast. The bankruptcy court's decision clarified the legal framework under the U.S. Bankruptcy Code to determine certain issues concerning post-petition DIP factoring and the use and sale of cash collateral by having held that Article 9 of the Uniform Commercial Code's scope governs the MCA entities' duties to establish the validity, extent and priority of

their interest in accounts. Let's dig into the details of this important case.

In Chapter 11 bankruptcy case *In re: RWDY, Inc*. filed in the Western District of Louisiana, U.S. Bankruptcy Judge John S. Hodge entered a final order granting debtor RWDY's motion to sell accounts, post-petition, to RWDY's prepetition factoring company, Seacoast, under a debtor-in-possession factoring agreement between RWDY and Seacoast. Six entities that are generically referred to as merchant cash advance companies filed a written objection to the DIP factoring motion. The MCAs contended that RWDY entered into one or more agreements prepetition with each of the MCAs and that pursuant to these agreements, the MCAs effectively purchased all of RWDY's interests in "future receivables," (i.e., accounts) and as a result, RWDY transferred all of its rights and interests in the accounts to the MCAs. The MCAs, by extension, argued that the bankruptcy court only had jurisdiction to authorize the sale of accounts first created post-petition but had no jurisdiction to grant RWDY the right to sell or otherwise give any rights to Seacoast in any of the accounts that were covered by the MCAs' prepetition agreements.

The court's decision in this case might send shockwaves that reverberate throughout the entire United States' commercial financing industry and not just the Western District of Louisiana's bankruptcy courts. According to the decision, as a matter of law, Article 9 of the UCC's scope precluded the MCAs from ignoring their duty to establish the validity, extent and priority of their interest in accounts in accordance with Article 9's provisions applicable to all secured lenders and buyers of accounts claiming an interest in property of the estate. As detailed later in the article, the court found that the MCAs failed to establish such requirements (although in the original interim order they were given certain adequate protection rights), and in the final order, the MCAs we not granted adequate protection for RWDY's use or sale to Seacoast of prepetition accounts (i.e., the MCAs were treated as unsecured creditors without any interests in cash collateral).[1]

The bankruptcy court's decision clarified the legal framework under the U.S. Bankruptcy code to determine certain issues concerning post-petition DIP factoring and the use and sale of cash collateral by having held that Article 9 of the Uniform Commercial Code's scope governs the MCA entities' duties to establish the validity, extent and priority of their interest in accounts.

Key Factual Issues

Prior to the filing of RWDY's Chapter 11 bankruptcy case, Seacoast and RWDY entered into and operated under a purchase agreement which entitled Seacoast to, among other things, purchase accounts arising from RWDY's sales of goods and/or services provided to its customers. Seacoast perfected a first priority ownership interest in the accounts purchased by Seacoast and a first priority security interest in all other collateral, including all non-purchased accounts, by having properly filed an initial UCC-1 financing statement naming RWDY as the debtor.

On Dec. 21, 2022, RWDY commenced a Chapter 11 bankruptcy case by filing a voluntary bankruptcy petition. RWDY also filed an emergency motion seeking bankruptcy court authorization to maintain and continue to operate, post-petition, under its prepetition factoring relationship with Seacoast. Then the six MCAs in this case each claimed to have entered into various agreements with RDWY (and various entities affiliated with RWDY) and to have purchased approximately $10 million of RWDY's 'future receivables.' The MCAS then filed a joint objection to RWDY's DIP factoring motion, asserting that prior to the filing of RWDY's bankruptcy case, RWDY sold, assigned and transferred to each of the MCAs its interests in any "future receivables" (i.e., the accounts), and that pursuant to the various agreements between each MCA and RWDY (and RWDY's affiliates), RWDY retained "no legal or equitable interest" in accounts the MCAs purchased.

The MCAs argued that purchasing the accounts before the filing of the petition removed the accounts as property of the estate and that the bankruptcy court had no jurisdiction to interfere with the MCAs' presumptive rights as owner of the accounts. By extension, the MCAs contended that Section 363 of the bankruptcy code is clear that a bankruptcy court may only authorize a debtor's use or sale of property that qualifies as property of the estate, and the only way in which RWDY could possibly obtain authorization from the court to sell accounts to Seacoast was if the court were to first determine that the agreements between RWDY and the MCAs may be recharacterized as disguised financing transactions rather than

The bankruptcy court's final order granting the DIP factoring motion should have a positive effect on the factoring industry by providing clarity as to the legal framework that other bankruptcy courts throughout the entire United States may adopt for purposes of determining the application of Article 9's scope to similar issues that arise in other bankruptcy cases.

qualifying as "true sale" of accounts agreements.

In response to the MCAs' written objection to the DIP factoring motion, Seacoast argued that the drafters of Article 9 and the legislative bodies of each state that enacted Article 9 wished to ensure that transactions that create a security interest in accounts and sales of accounts to buyers were controlled and governed by the same Article 9 rules in respect to attachment, perfection and priority (i.e., those of secured parties who seek to ensure that their rights are duly protected by doing UCC lien searches and that they are either first in priority or need to consider subordination agreements to attain that status). In effect, Seacoast contended that buyers of accounts and lenders that hold a security interest in accounts are governed by the same Article 9 requirements for purposes of establishing attachment, perfection of security interests in collateral and the effect of perfection of security interests (i.e., priority). By extension, any distinction that the MCAs sought by arguing that they qualified as purchasers of RWDY's interests in 'future receivables' would not excuse them from satisfying Article 9's requirements in order to establish the validity, extent and priority of the MCAs' rights in the accounts under the bankruptcy code.

THE DECISION

The bankruptcy court conducted an evidentiary hearing on the DIP factoring motion and on Feb. 6, 2023, entered an order containing the following salient findings of fact and law:

- Section 9-109 of the UCC provides that Article 9 applies to a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract and a sale of accounts.
- Section 9-102 of the UCC defines the term "security interest" to mean "an interest in personal property ... which secures payment or performance of an obligation." Security interest includes any interest of a buyer of accounts.
- Pursuant to Article 9 of the UCC, a buyer of accounts, identical to a secured party, is subject to the same Article 9 rules applicable to attachment, perfection and priorities of security interests in collateral.
- Any dispute between a buyer and either (i) another buyer of accounts, (ii) secured parties, (iii) a bankruptcy trustee or (iv) a debtor-in-possession requires that the buyer of accounts satisfy the requirements under Article 9 (i.e., attachment, perfection and priority) in order to establish the validity, extent and priority of rights in the property of the estate.
- Section 9-203 of the UCC requires a buyer of accounts to establish an enforceable security interest (i.e., attachment) by showing that (1) value has been given, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party and (3) the debtor has authenticated a security agreement that provides a description of the collateral.
- In order for a buyer's security interest to qualify as perfected, it must prove attachment plus all of the applicable requirements for perfection under Sections 9-310 through 9-316 of the UCC, which provides that a security interest in accounts is perfected when it attaches and a financing statement is properly filed to perfect such security interests.

Based on these facts, the court found that the MCAs had failed to carry their burden to establish factually each of the legal requirements under the bankruptcy code and Article 9, with the court holding that the MCAs were not entitled to receive (and RWDY was not required to provide) any form of adequate protection as a result of RWDY's use or sale of cash collateral (i.e., accounts). In addition, the court ruled that as a matter of law, the MCAs were unable to legitimately argue that the bankruptcy court did not have jurisdiction over the dispute merely due to the MCAs claiming ownership interests in the prepetition accounts.

There are at least three significant legal and practical takeaways from Judge Hodge's decision in the RWDY bankruptcy case.

KEY TAKEAWAYS

Firstly, the court's final order granting RWDY's DIP factoring motion establishes a clear legal framework that other bankruptcy courts around the country may adopt when determining certain issues in respect to the application of Article 9 to bankruptcy code provisions that govern a debtor's sale or use of property of the estate and adequate protection issues.

Secondly, based on the court's holding that Article 9's scope governs both buyers of accounts and transactions that create a security interest in property, the decision dictates that bankruptcy courts are not beholden to determine whether an agreement between a debtor and an MCA entity constitutes a true sale arrangement under applicable substantive non-bankruptcy laws as a condition to establishing the bankruptcy court's jurisdiction.

Thirdly, pursuant to Bankruptcy Code § 363(p), the entity claiming an interest in cash collateral has the burden of proof to establish the validity, extent and priority of its interest in order to establish rights to receive adequate protection. Accordingly, MCA entities, identical to any other secured party, have the burden of proof under the bankruptcy code to establish that their "buyer" interests in accounts satisfy Article 9's requirements applicable to attachment, perfection and priorities of security interests in collateral.

As a practical matter, the bankruptcy court's final order granting the DIP factoring motion should have a positive effect on the factoring industry by providing clarity as to the legal framework that other bankruptcy courts throughout the entire United States may adopt for purposes of determining the application of Article 9's scope to similar issues that arise in other bankruptcy cases. •

[1] 11 U.S.C. § 363(a) defines "cash collateral" to mean "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds…of property." Accordingly, accounts including the proceeds of accounts constitute "cash collateral" as defined in 11 U.S.C. § 363(a).

Ullman & Ullman represented Seacoast Business Funding in the RWDY bankruptcy case. Jared A. Ullman, Esq., shareholder of the firm, argued the DIP factoring motion on behalf of Seacoast. Ullman & Ullman also serves as co-counsel to the International Factoring Association. Jared Ullman thanks co-shareholder Michael Ullman, who was instrumental in assisting with formulating Seacoast's legal argument in this matter.

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Uncertainty Rises, Opportunity Knocks: Evaluating the Factoring Landscape for 2023

In a wide-ranging roundtable discussion, Robyn Barrett of FSW Funding (a division of Oxford Commercial Finance), Sue Duckett of Franklin Capital Network and Robert Meyers of Republic Business Credit discuss interest rate hikes, rising inflation, the collapse of Silicon Valley Bank, a pending recession and more.

Robyn Stone Barrett, CPA
SVP, Managing Director
FSW Funding, a Division of Oxford Commercial Finance

Sue Duckett
Chief Operating Officer
Franklin Capital Network

Robert Meyers
President
Republic Business Credit

How has the factoring industry performed through the first few months of the year?

ROBYN BARRETT, FSW FUNDING, A DIVISION OF OXFORD COMMERCIAL FINANCE: Various industries have performed in different manners. Transportation factoring grew tremendously during COVID-19, but is now trending down. General factoring is still seeing a good pipeline.

SUE DUCKETT, FRANKLIN CAPITAL NETWORK: For us, it was a quieter January than I would want, and then prospective client activity picked up dramatically in February and March. But, honestly, there was not much difference from previous years.

ROBERT MEYERS, REPUBLIC BUSINESS CREDIT: Busy — and thankfully so far, a good busy. Our new business originations are up more than 50% this year versus the same period last year. We have twice as many inquiries, twice as many letters of intent issued and twice as many deals in underwriting. As you would expect, we have seen significant growth in our portfolios as a result and expect that to continue at least during the first half of the year based on current activity levels. Overall, I think our industry is seeing

a significant uptick in activity as a result of credit tightening by the banking industry starting back in Q3/22.

How has the factoring community weathered the storm of rising inflation and interest rate hikes?

BARRETT: It is a yes and no kind of answer. Factors charge a fee, which should allow them to weather the storm in terms of revenue. The issue is the cost of capital (interest expense) to factors, which has increased up to three times for some. The interest rate increases will greatly squeeze factor's margins and could lead to some factors selling to larger companies or banks.

DUCKETT: It really will depend on the pricing structure of the factor. If they are still hanging onto a single administration price with no link to interest, then this will of course affect their return on funds employed and will have a major impact; however, most of us learned this lesson back in the day of increasing rates and many now link the two equations into pricing.

MEYERS: This falls into an "it depends" category. Republic provides nearly all of its working capital products on floating/variable rate structures that adjust as Prime increases or decreases. In transportation, you often have a lot of fixed invoice-based fee pricing that is tied to the increasing cost of bank borrowing the factoring company will experience. It is a timing mismatch at a minimum between your clients and your bank funding, or a runaway freight train if you have been doing extremely cheap fixed-rate fee pricing where your cost of funds could exceed what you are charging your clients. I am sure most of our members have already solved this, but if not, I would chat with the many great lawyers across the factoring community.

Historically we have seen banks pull back during recessions, giving independent factors the ability to jump in and grow their book ... In this environment, the ability of small businesses to obtain loans will be reduced, giving us a larger pond to fish in.

~ SUE DUCKETT

How do you think an impending recession will impact the industry?

BARRETT: Factors will greatly benefit from the recession, as banks typically pull back credit in a recessionary environment. Factors can provide much more liquidity to companies, as we are underwriting the credit quality of debtors, not their historical cash flow performance. Thus, factors will be a safe haven for many companies that will be kicked out of their bank due to covenant or industry issues.

DUCKETT: Positively. Historically we have seen banks pull back during recessions, giving independent factors the ability to jump in and grow their book. I do not anticipate this time being any different. In this environment, the ability of small businesses to obtain loans will be reduced, giving us a larger pond to fish in.

MEYERS: As we have already seen, the economic forecast has increased activity on the new business front while heightening risk profile depending on the industry, niche or segment of the market you tend to service. As many will remember from 2008 and 2009, often the first companies that seek capital can be in the worst shape for our industry to help. During periods of cheap debt and inflated asset values, clients often try to obtain as much as possible. With rising interest rates meeting a recession, I expect the amount of debt-to-refinance will often exceed the eligible receivables of the factoring customer. This would be your classic over-advanced or undercollateralized situation — the difference being, they will also have more debt to service from the rising interest rates. Overall, as our COO Matt Begley often quotes, a robust pipeline can be the best solution to credit discipline, and we should focus on supporting businesses that fit our policies and procedures.

How will your company try to find success and opportunity during a recession?

BARRETT: I sold FSW Funding to Oxford Commercial Finance (OCF) in April 2022 and the timing was perfect. Over the last year, OCF has invested in people and technology. We are primed and ready to grow OCF exponentially.

DUCKETT: We will continue to provide facilities to those small businesses that do not fit bank risk criteria or cannot secure adequate amounts of working capital from banks. We are augmenting our product mix so that we can provide a broader spectrum of financing solutions for our clients.

MEYERS: Republic has focused on diversifying our referral base and channel partners since 2017, including our focus on the turnaround management community. So, our mission is to educate our partners on our client successes, reinforce our suite of ABL and factoring solutions, and execute

quickly when the opportunities present. A recession should increase the number of opportunities we receive, but it is our challenge to stay disciplined, decisive and be a strong partner for their referrals.

Commercial bankruptcies have been on the rise early on in 2023. How is this trend affecting the factoring world, if at all?

BARRETT: Debtor-in-possession lending is a perfect niche for factors. Factors can provide liquidity based on the credit quality of the debtors, which allows companies in bankruptcy to exit successfully. Factors also play a vital role in providing liquidity when companies emerge from bankruptcy and are not bankable.

DUCKETT: We are seeing more debtor-in-possession funding requests; these are opportunities for us. We rarely have a client in our portfolio file for bankruptcy, for numerous reasons, and therefore, only see positive aspects of these statistics.

MEYERS: So far we have really only seen a handful of debtor-in-possession opportunities, given the increased costs of bankruptcy and Subchapter V's debt limit of $7.5 million. I don't expect it to be a large part of our new business strategy, unfortunately. We did a lot of DIP deals following 2008 and 2009, so hopefully I am wrong about my expectation. On the portfolio side, it is why client visits and regular communication are so important, no matter the economic environment.

What is the greatest challenge your company is facing this year and where do you see your greatest opportunity?

BARRETT: Our biggest challenge will be finding high quality team members to keep up with our growth. Our greatest opportunity is to help companies that are cash flow challenged due to growth, inflation and rising interest.

DUCKETT: A huge concern is state disclosure legislation, which continues to be promulgated throughout the country. Until uniform national disclosure legislation is enacted, we shall continue to spend a lot of time and effort ensuring that we adhere to the rules and regulations that are state specific.

MEYERS: As I said earlier, I think the greatest challenge will be having enough liquidity and availability. With so much cheap debt, I worry companies tend to take more than their working capital assets might support. Our greatest opportunity continues to be our partnership with private equity, as more than 40% of our clients are now owned by private equity sponsors.

What is your outlook for the industry for the rest of the year?

BARRETT: I think factors will be a vitally important as the Federal Reserve continues to raise rates and inflation remains high. Companies that leveraged up with debt during the period of low interest rates will have problems meeting bank debt service coverage covenants. Factoring will be able to offer facilities that are account-receivable-based and not cash flow, which will help over-leveraged companies work through issues and right the ship. Also, the failure of Silicon Valley Bank will cause companies to consider factoring as a safe haven until other bank fallout concerns are tempered.

DUCKETT: I am very optimistic. From my conversations with other factors, we are all getting busier, seeing larger deals and, in some cases, deals that we previously considered bankable.

Many small businesses faced existential risk during the 2008 collapse of the banking system; many small business owners have not forgotten. While it has taken a long time for small business owners to start trusting the banking world, the failure of Signature Bank and SVB likely will rekindle small business owners' concerns about access to working capital. It is for this reason that we have retained some clients that are bankable. Recent events may impact clients' decisions to stay on board with independents, improving attrition rates for us and the industry.

MEYERS: I am very bullish for the first half of the year for the factoring and asset-based lending industries, but it's too early to see if this momentum is a Q1 surge or an entire year. Compared to last year at this same time, I feel more confident in the outlook but am always cautiously optimistic, as there is a lot going on in the world that could significantly impact performance in a variety of ways.

As a wholly-owned subsidiary of Renasant Bank, we are excited to provide more small and medium-sized businesses across the United States with access to working capital facilities. The transition has gone incredibly well, better than I would have ever expected, and we are excited to see what we can do together with our new partners at Renasant Bank. •

As a thank you to the entire factoring community for its unwavering support since it was founded in 2011, Republic Business Credit will be sponsoring a rooftop happy hour from 5 p.m. to 6:30 p.m. CDT at the IFA's Annual Conference. The event is open to all conference attendees with a name badge and guests who have purchased a spouse ticket may attend with a registered attendee. Drinks and light appetizers will be provided.

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Lost in Translation: The Importance of Accurate Spelling in UCC Filings

Sometimes a typo can be more than a benign mistake. Jocelyne A. Macelloni and Matthew Akiba of Barakat + Bossa PLLC explain how misspelling a company's name can have serious consequences when filing a UCC financing statement in Florida and other jurisdictions.

BY JOCELYNE A. MACELLONI, ESQ., AND MATTHEW AKIBA, ESQ.

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Florida filers beware! Recent developments in the state's case law may impact the priority and enforcement of your security interest in your customer's collateral.

Article 9 of the Uniform Commercial Code, which is enacted in Florida in Florida Statutes Chapter 679, governs the creation and enforcement of security interests, which are consensual liens on personal property. Article 9 defines a "secured party" as, *inter alia*, "[a] person to whom accounts, chattel paper, payment intangibles, or promissory notes have been sold."[1] It follows, therefore, that factors, upon the purchase and assignment of accounts, are "secured parties" under Article 9.

In a typical factoring agreement, to secure the payment on accounts sold to the factor, factors will take a security interest in the customer's "collateral," which is "the property subject to a security interest or agricultural lien. The term includes, *inter alia*: [a]ccounts, chattel paper, payment intangibles and promissory notes that have been sold . . . ."[2]. Article 9 provides that for a factor (or any other secured party) to have a security interest in collateral, the security interest must be

"attached" to the collateral and be "perfected." Absent attachment and perfection, the factor is limited in remedies following a default under the factoring agreement. Having a signed factoring agreement with your customer satisfies the attachment requirement, and in Florida, filing a UCC-1 financing statement with the Florida Secretary of State's Secured Transaction Registry will satisfy the perfection requirement for most collateral[3].

A UCC-1 financing statement is a single page document that must include (1) the name of the debtor, (2) name of the secured party and (3) identification of the collateral which the secured party has an interest in.[4] Filing a UCC-1 financing statement effectively gives notice to other potential creditors of a secured party's/creditor's security interest in the collateral. Inevitably, mistakes can occur when completing a financing statement, such as misspelling the debtor's name.

Sunshine State Statutes

Florida Statute § 679.5061(3), which was adopted verbatim from Section 9-506 of the UCC, creates a safe harbor provision for financing statements that contain some type of errors.[5] Typically, a mistake in the debtor's name that is 'seriously misleading' will limit the effectiveness of the security interest in the collateral[6] unless a search on the state's secured transaction registry using the debtor's correct name would nonetheless disclose the financing statement.[7] The question of what constitutes a 'seriously misleading' identification of the debtor on the UCC-1 financing statement and the degree of error sufficient to rise to the level of such a mistake or omission to 'seriously misleading' is an often litigated issue. Thankfully, Article 9 provides some guidance as a starting point in Florida Statute § 679.5061[8], which provides that:

> (1) A financing statement substantially complying with the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.
>
> (2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) is seriously misleading.
>
> (3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031 (1), the name provided does not make the financing statement seriously misleading.

The Florida Secured Transaction Registry is the "centralized database in which all financing statements, amendments, assignments and other statements of change" are filed in Florida.[9] The registry is quite simple to use, and financing statements can be filed under the debtor's name or the document number. Moreover, prior to a search, the Florida UCC website provides instructive guidance and illustrative examples on how and when to search for actual or compact name inquires.[10] When searching for a financing statement under a debtor's name, the initial search page produces 20 entries with an exact or nearest match at the top of the search results.[11] The results do not end there; at the top of the registry website, the page prompts you to use the previous and next buttons to display *additional search results* beyond the 20 entries on the initial search page. The additional results

The 'reasonable diligent searcher' standard, which Florida courts apply on a case-by-case basis, has created extensive litigation and produced contradictory decisions. To clear up the pitfalls of the standard, the revised language in section 9-506 has significantly shifted.

are then displayed alphabetically, with different variations of the root name, beginning with the names closest to the key entered. This function of the registry's website ensures that even if you are unsure of the exact spelling, a diligent searcher will still be able to find the UCC filing by scrolling through.[12]

However, the 'reasonable diligent searcher' standard, which Florida courts apply on a case-by-case basis, has created extensive litigation and produced contradictory decisions.[13] To clear up the pitfalls of the standard, the revised language in section 9-506 has significantly shifted and now applies "a clearer standard based on the computerized search logic of the filing office."[14] The revised language also says, "the purpose of the revisions was to shift the responsibility to the filer by requiring the not-too-heavy burden of using the legal name of the debtor, thereby relieving the searcher from conducting numerous searches using every conceivable name variation of the debtor."[15]

Case Law

In the case of *In re John's Bean Farm of Homestead, Inc.*, the U.S. Bankruptcy Court for the Southern District of Florida was tasked with determining the degree of error necessary to render a UCC-1 financing statement "seriously misleading."[16] The creditor filed a UCC-1 financing statement with the secured transaction registry; however, the debtor was named as '*John Bean Farms, Inc.*' rather than its incorporated name, '*John's Bean Farm of Homestead, Inc.*'[17] The court noted that Florida's standard search logic leads to one page (the initial single page result), as the registry's information page does not mention the use of the "previous" and "next" buttons in connection with the search criteria.[18] Considering this, the court held there is a reasonable limit to the search when accessing the registry and that it should not deviate from more than one page "previous" or "next" from the initial search result page.[19] Regardless of the financing statement having been found on the registry, it was listed 60 pages prior to the initial page result and not one page away. Therefore, the court found that the error in the name of the debtor was seriously misleading and the creditor did not hold a secured or priority claim over the $152,000 loan due from the debtor.[20]

Though the court in *John's Bean* correctly asserts that the registry's information page fails to mention the "previous" and "next" buttons, the search results page does "[u]se the previous and next buttons to display additional search results."[21] However, *John's Bean* fails to recognize the "additional search results" pages as results of Florida's standard search logic.

More recently, in *1944 Beach Blvd, LLC. v. Live Oak Banking Co.*[22], the Florida Supreme Court explained that the term "standard search logic" acknowledges that "[w]ithin the industry … is reasonably accepted to mean a procedure that 'identif[ies] the set (which might be empty) of financing statements on file that constitute hits for the search,' or stated differently, that produces an '[u]nambiguous identification of hits.'"[23] In that case, Live Oak filed the UCC-1 financing statement by improperly naming the debtor as '1944 Beach *Blvd*' instead of '1944 Beach *Boulevard*.' The court went on to note that Florida's standard search logic does not produce a bounded, finite list of hits, but instead returns 20 entries that start with the name or closely match the name searched, allowing navigation through all the names in the registry.[24]

The court in *1944 Beach Blvd*, relying on the secured transaction industry's definition of "standard search logic" and applying the language in Florida Statute. § 679.5061(3) of "using the filing office's standard search logic, *if any,*" held that the registry fails to employ a "standard search logic," which precludes a triggering of the safe harbor provision under the statute.[25] Therefore, the Florida Supreme Court found that without a safe harbor provision, any financing statement that fails to correctly name the debtor is seriously misleading and therefore ineffective.[26]

Considering current prevalent case law, factoring companies should be on high alert and use necessary caution when filing a UCC-1 financing statement in Florida. Florida Statute § 679.5031(1)(a) provides that the debtor's name should be "the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction."[27] Check it twice! This is applicable to not only future filings, but already filed financing statements, which should be amended to reflect the debtor's correct name.

Consistently exercising due diligence with regards to your filed financing statements is imperative in mitigating the risk of your claim being left unsecured. •

[1]UCC § 9-102(a)(73).

[2]UCC § 9-102(a)(12).

[3]The Florida Secured Transaction Registry is found at floridaucc.com/uccweb/SearchDisclaimer.aspx?.

[4]Fla Stat. § 679.5021(1); see also *In Re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385 (Bankr. S.D. Fla. 2007).

[5]Fla. Stat. § 679.5061(3); UCC § 9-506.

[6]Fla. Stat. § 679.5071.

[7]Fla. Stat. § 679.5061(3); see also *In Re John's Bean Farm of Homestead, Inc.*, 378 B.R. at 390.

[8]Fla. Stat. § 679.5061.

[9]Fla. Stat. § 697.527; see also UCC Search, FLORIDA SECURED TRANSACTION REGISTRY floridaucc.com/uccweb/ucc.aspx (last visited Feb. 28, 2023).

[10]*UCC Search, supra* note 8.

[11]*Id.*; see also *In Re John's Bean Farm of Homestead, Inc.*, 378 B.R. at 388.

[12]*UCC Search, supra* note 8.

[13]*In Re John's Bean Farm of Homestead, Inc.*, 378 B.R. at 389.

[14]*Id.* at 389.

[15]*Id.* at 390.

[16]*Id.* at 385.

[17]*Id.* at 386.

[18]*Id.* at 395.

[19]*Id.* at 386.

[20]*Id.*

[21]*UCC Search, supra* note 8 (upon entering the debtor's name, the initial results page lists the use of the previous and next buttons as providing additional searches).

[22]*1944 Beach Blvd, LLC. v. Live Oak Banking Co.*, 346 So.3d 587 (Fla. 2022).

[23]*Id.* at 592.

[24]*Id.*

[25]*Id.* at 593; see also Fla. Stat. § 679.5061(3).

[26]Fla. Stat. § 679.5031(1).

[27]Fla. Stat. § 679.5031(1)(a).

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Modernize and Automate: The Technology Solutions Factors Need to Succeed

Is your technology as up to date as it can be? Rosanne Doyle, product manager ABL/factoring at Solifi, and Mark Watkins, a director at Lenvi, explain the importance of having a modernized and automated technology stack to capitalize on opportunities in the marketplace in 2023.

Rosanne Doyle
Product Manager
ABL/Factoring
Solifi

Mark Watkins
Director
Lenvi

What are some of the primary technology trends you are seeing now or expecting to see for the factoring industry over the next few years?

ROSANNE DOYLE, SOLIFI: We've seen an increase in factors needing configurable, flexible cloud solutions that support the quickest and most efficient way for data to transfer between internal and external disparate systems. With so much data available, the use of APIs is a common request, as software-as-a-service technology allows different applications to share data, connect software programs, talk to each other in real time and gather meaningful insights. These APIs are the functionality happening behind the scenes to ensure applications work and create a seamless end-to-end digital customer journey across an entire enterprise. Other items to highlight include mobile apps to enable access anywhere and the use of analytics tools to make more informed decisions and identify customer behavior trends.

MARK WATKINS, LENVI: Right now, accounting data extraction is a prominent theme. This means

directly extracting data from a client or prospective client's accounting packages, driving toward real-time data analysis and speed of decision for clients' and prospective clients' funding requirements.

How might newer technology tools help factors as they traverse a rising rate environment and prepare for an impending recession?

DOYLE: Mitigating fraud risk. Like all financial products, factoring is exposed to the same risks triggered by fraudulent activity. With potential for a recession, factors must remain vigilant and quickly identify threats which could minimize their profits and increase risk. Customers may not always make the right decisions under financial stress. A proven software solution can significantly reduce risk and improve the factor's ability to track customer behavior by analyzing and providing real-time insights to help determine whether a particular instance or behavior is a concerning trend or just a poorly made decision. Automation and data analysis can detect new suspicious activity in account receivables in real time, enabling factors to act upon fraudulent invoices, verification discrepancies and payment fraud.

WATKINS: Lenders need to be flexible, agile and act fast to support and manage a client's or even a prospective client's working capital needs. Technology is the key to helping a lender automate and integrate various data sources to provide a single view of a customer and enable the lender and its staff to make data-led decisions for supporting the borrower quickly and efficiently. It's time to remove the paper driven, manual spreadsheet monitoring approach and utilize the various technology that is out there. Technology will support the risk management requirements for protecting a lender's net funds employed and also enhance a lender's operational efficiencies and processes, which will free up time to be client centric and manage relationships, particularly where signs of distress — given the economic conditions facing businesses — need investigating for fraudulent behavior and/or possible business failure.

> Technology is the key to helping a lender automate and integrate various data sources to provide a single view of a customer and enable the lender and its staff to make data-led decisions for supporting the borrower quickly and efficiently.
>
> ~ MARK WATKINS

With the onset of newer disclosure laws in many states, how can newer technologies help with compliance for factors?

DOYLE: As the volume, along with the varied interpretation of these laws between states increases, not to mention companies doing business across state lines, countries and continents, manual tracking has been rendered virtually impossible as a solution for compliance assurance. Factoring software provides factors the ability to easily generate reports that can be submitted to regulatory governance agencies. Customers' technology should have record level audit trails to identify areas of non-compliance. Another feature is role-based security functionality, which allows granular access and permission within the system to ensure data is protected and confidential while enabling oversight and accountability.

How can factors ensure their data is safe when using cloud-based software and other solutions?

DOYLE: Cloud-based technology is very secure because solution providers deploy a combination of encryption and authentication methods to ensure this. Service providers should put controls in place to ensure they continuously meet SOC guidelines and that data is encrypted in both transit and at rest. Additionally, they should ensure the most secure environments by partnering with Amazon Web Services to host solutions. Modern factoring solutions help mitigate risk by maintaining full control of the data supplied and stored in addition to frequent data back-ups, access controls (including password protection), two-factor authentication and role-based controls.

WATKINS: Cloud-based technology allows back-end services to be delivered on an as-used basis but don't trip up on governance. Look for industry standard certifications and accreditations in the partners you use. Penetration testing of environments is essential to give comfort to a lender and, ultimately, a borrower, so ensure the solutions you utilize can confirm they have undertaken this exercise.

What are some areas within the factoring space that need modernization?

DOYLE: I see this in two areas. One is the opportunity to improve the overall customer experience and the second is to manage risk effectively through automation. From a customer experience standpoint, historically and still now, the process is often paper-based or on spreadsheets – both of which are cumbersome for all parties. Providers should offer

streamlined processes, such as online onboarding, real-time access to data, customer portals with 24/7 access and mobile friendly access.

Another component critical to a factor's success is the ability to maintain acceptable levels of risk. Using modern factoring software, factors can establish various criteria and leverage the system to automatically calculate and approve or reject transactions automatically, ensuring their overall factor risk is within acceptable levels.

WATKINS: I have lost count of the number of lenders that still use spreadsheets to track covenants and monitor something as simple as dilution and debt turn trends! So, there needs to be automation of manual and time-consuming processes and monitoring, including risk and operational processes to ensure a risk-based approach is embedded in a lender's mantra. It is important that staff members have tools that automatically analyze various financial and collateral data and highlight where a client/relationship manager needs to investigate movement 'away from the norm' with that client or debtor being highlighted.

Lenders also need to widen their technology ecosystem and modernize their tech stacks to enable them to utilize technology that helps them understand the data available and, most importantly, be agile in the products and support they provide to a borrower.

Why is it important for the factoring industry to adopt automation?

DOYLE: Automation removes risky manual processes which are prone to errors. It enables factors to optimize their business processes by automating time-consuming tasks through smart workflows, giving you more time to focus on your other projects, not to mention reducing the burden on already limited resources. In addition, software automation standardizes processes, helping your team to meet quality and service standards. Other valuable benefits include cost reduction, competitive advantages and a better customer experience with faster processing times and access to data and self-service capabilities.

WATKINS: Automation drives efficiencies, speeds up decisions, improves accuracy and data transparency, and, most importantly, frees up staff to do what they are good at: managing customer relationships. Automation will also help lenders be able to grow their portfolios without the need for corresponding growth in staff numbers. Let the technology remove that manual and time-consuming work required.

What will be the next big trend in factoring technology?

DOYLE: Artificial intelligence. While it's been talked about for the last few years as the next trend, it will continue to show promise and opportunity in helping factors identify and manage their portfolio risk. Technology providers and customers are working through business use cases and real-world applications, making AI a reality in daily operating processes.

WATKINS: Machine learning. Whilst not to confuse machine learning with AI, lenders are looking to automate credit decisions, drive down costs and speed up the flow of working capital to their client base while gaining a competitive edge in the market. Machine learning will be essential — particularly with the uncertain times we are experiencing — to model patterns of expected behavior and help lenders' risk management strategies, policies and ongoing monitoring requirements to be agile and flexible in a data driven and controlled way.

Open banking is another. Whilst the concept has been around for a while, lenders are beginning to see the benefit of enabling specialist technology providers access to various banking transactions and other bank data to further enhance a 360-degree view of a client's need for working capital and, more importantly, the right product to provide, such as factoring.

What's your overall outlook for the factoring industry in 2023?

DOYLE: I think the outlook is extremely positive. The factoring finance market is estimated to grow by $1.7 billion by 2027, with a CAGR of 7.54%, so there is no doubt that this sector represents a solid rock within the wider wholesale finance industry. With the upcoming fears of recession and potential negative financial implications across the ecosystem, where other sectors face challenges during taxing economic downturns, factoring allows companies to seize the opportunities which market instability can offer. When banks are less likely or willing to take on risky accounts, this opens the door for other businesses, like factors, to help businesses leverage outstanding invoices and accounts receivables to access the working capital they need. There is plenty of opportunity for factors in 2023.

WATKINS: We always say that in times of recession and economic uncertainty, the factoring industry has opportunities for growth. [This year] should not be any different, but it still feels a little different. The last few years should teach us one thing: expect the unexpected. Businesses are under significant pressure with what has hit them over the last few years, including rising interest rates, increasing inflation, ongoing supply chain impacts and delayed payments, making for an ideal time for the factoring industry to support the market with a dynamic working capital solution.•

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Continuing to Make the Case for Factoring

BY COLE HARMONSON
President, American Factoring Association; CEO, Dare Capital

Not long after American Express acquired Kabbage in August of 2020, small businesses who used the startup's online platform for cash flow learned a hard lesson: big firms and those flush with venture capital want to help them, but they don't know how. While the Kabbage fallout and the plight of its clients made headlines, we have to ask: Did those who run and regulate our financial sector learn the right lessons?

One lesson might be this: Good intentions (even those swollen with big venture capital) don't automatically translate to prudent consideration for all stakeholders.

Another lesson would be something we at the American Factoring Association already know: Independent factors operating with trust, relationships, flexibility and their own underwriting are far more equipped to lend to other small businesses than merchant cash advance lenders with a ticker symbol.

We know, of course, that factoring means getting new companies the cash they need without interference. But recent legislation in, you guessed it, California, and now, as I stand here aghast, even my home state of Texas, reminds us that financial regulators, like large financial institutions, are more inclined to interfere with something than to step back and understand it.

Over the last few years, largely due to the COVID-19 pandemic, regulators loosened the screws on bank lending. With that stretched rubber band finally snapping back, the Federal Reserve has raised interest rates and banks have moved swiftly to clear the small, risky loans off their books.

When banks decline or flat out refuse to see struggling businesses as their problem, small independent factors pick up the slack. That's just what we've seen recently, as factors, who look at a client's existing, valid accounts receivable and do their own underwriting, have stepped up to the plate, just like they have for thousands of years. America's robust, entrepreneurial ecosystem is still the envy of the world, and it's buttressed by small businesses (like us) loaning to other small businesses. However, all ecosystems are fragile, and those who meddle with marketplaces under the veneer of good intentions can do irreparable harm.

Before the pandemic, venture capital was pouring into companies like Kabbage. Without caring about some of their primary stakeholders, (i.e., the folks they were lending to), MCAs raised tons of money, made loans and amassed giant portfolios, believing that higher default rates were acceptable, despite the fact that behind every default lies a dead business.

Of course, those looking to disrupt small business lending by offering loans with 300% or 400% interest rates arrived to crash the party. In response to complaints, California's

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Department of Financial Protection and Innovation passed SB 1235, a notorious disclosure law that places alternative lenders and MCAs in the same category. In doing so, California's regulators showed their hand. They don't know what factoring is or that disclosure requirements created for the clients of MCAs can't be fitted to all alternative lenders. So far, the effects of this overregulation, which has already rippled out to New York and other states, have been sad and obvious; far fewer factors will be lending to businesses in California, meaning far fewer new companies will find the liquidity they need to grow.

The AFA exists because of small businesses; in fact, we're mostly made up of small businesses ourselves. When overreactions to predatory lending threaten our ability to finance other small businesses, the only thing we can do is advocate for ourselves, loudly and without apology. Being on our own side means educating legislators and reminding them of what we actually do. Until recently, our efforts to equip small businesses with working capital have been uninterrupted, but not anymore.

By supporting the AFA and our efforts to educate lawmakers, you help us protect the freedom to do business and the factoring industry's entrepreneurial spirit. We don't need to see legislators and businesses deciding against factoring because we've been lumped in with those who don't understand small businesses or their needs. Now, more than ever , we thank you for your support. •

The goal of the AFA is to increase membership and financial support from every IFA member. We urge every IFA member to contribute to the AFA, as we are in the midst of our annual membership fund drive. Currently, we have Bronze Members, who have contributed as little as $500, up to Diamond Members, who have contributed in excess of $10,000. This is a very inexpensive insurance policy to help protect our industry from needless regulation which will be both costly and prohibitive. Please consider supporting the American Factoring Association.

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Stonebridge Financial Services, Inc.
TradeGate Finance, Inc.

WHAT'S NEW AT IFA CONFERENCE ISSUE 2023

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

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

ASSOCIATIONS

The following trade associations offer member pricing for events attended by IFA members:

Commercial Factoring Expertise Committee of China (CFEC)
http://cfec.org.cn

FCI
www.fci.nl

World of Open Account (WOA)
https://woa.community/

BROKER

Rainstar Capital Group

Rainstar Capital Group is a multi-strategy private equity firm that makes direct investments and provides advisory debt capital. Rainstar partners with factoring firms who have clients seeking debt capital products separate from the factoring solution for growth needs. Through its multiple lending platforms with over 250 registered lenders, Rainstar provides factoring firm's clients debt financing product lines for commercial real estate, corporate finance, small business and equipment needs. Deal sizes from $10k to $300M and all credit boxes covered!
Kurt Nederveld • Kurt@rainstarcapitalgroup.com
616-953-6036 • www.rainstarcapitalgroup.com

IFA Member Benefit: RAINSTAR CAPITAL GROUP WILL PAY IFA MEMBERSHIP DUES. (SEE IFA WEBSITE FOR FULL MEMBER BENEFITS DETAILS)

COLLECTIONS

The Collection Law Group

(TCLG) is a group of lawyers who collect past due commercial accounts receivables from businesses across the US. We provide commercial contingency collections services for finance and factors including: collection work and litigation work to collect monies due from finance and factor clients, guarantors and account debtors.
Brad Magill • brmagill@tclginc.com
888-304-4347 • www.tclginc.com

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800-433-4903 x1162
Chris Dawson • chris.dawson@vericore.com
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972-722-3700 • www.factorhelp.com

IFA Member Benefit: RECEIVE 10% OFF ON CONSULTING FEES & 5% OFF ON ALL FACTORHELP PRODUCTS IN THE IFA STORE.

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855-ANSONIA • 855-267-6642
www.ansoniacreditdata.com

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Factors Network

FactorsNetwork provides an online platform where Factors share trade experiences with each other. Members are able to pull unlimited Credit Reports as well as monitor and analyze their portfolio. Transportation Factors benefit from our CarrierMonitoring and ChameleonCatcher programs and their clients profit from our LoadBoard. We even offer a Sales Tool to help you find new clients.
435-659-4612 • www.factorsnetwork.com

IFA Member Benefit: 50% COST SAVINGS FOR THE MONTHLY MEMBERSHIP FEE.

PROCESSING

Clarus Merchant Services

Clarus Merchant Services offers a custom program developed specifically for how the Factoring Industry processes credit card transactions. Our program provides detailed reporting that allows tracking of each invoice and fee transaction for easy account reconciliation with their customers and clients. We work with each member to ensure all processing costs are covered and that they are doing so within the guidelines of MasterCard / Visa. In addition we provide IFA members direct access to their account manager for immediate response and support.
David Powers • dave.powers@clarusdc.com
540-222-3925 • www.clarusdc.com

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Haversine Funding

Haversine Funding helps commercial lenders fill funding gaps through participation programs, lender finance and growth capital funding. Our clients are factors, ABLs, inventory, purchase order and other commercial finance companies. Offer lines up to $5MM for individual transactions and up to $25MM for portfolio participations.
Gen Merritt: gmerritt@haversinefunding.com
469-360-9712 • www.haversinefunding.com

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Garrington Group of Companies

Garrington Group of Companies is designed around the idea that when loan origination, underwriting and access to capital are holistically integrated, vast potential can be unlocked to support agile growth. With $4 Billion deployed across North America since inception, combined active loans totaling over $400 million and 300 financing facilities in 39 states and provinces, we're one of North America's fastest growing business support providers.
www.garringtongroupco.com

• Acquisition of A/R portfolios from Factors exiting the industry. *IFA Member Benefit: TRAILER FEES FOR THE LIFE OF THE ACQUIRED ACCOUNTS.*

• Soliciting Factors to join the Liquid Capital network to gain access to additional capital, a robust range of working capital and trade finance products, extensive marketing and back office support. *IFA Member Benefit: PAID IFA MEMBERSHIP OR ANNUAL CONFERENCE REGISTRATION FEE FOR THE NEXT YEAR.*

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50 Words LLC

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610-631-5702 • www.50wordsmarketing.com

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Method Q

Method Q is a marketing consulting company that combines strategy, research and execution helping B2B companies generate demand and capture more in-market buyers. Notable industry expertise in factoring, SCF, AR and payments. Method Q's methodology incorporates Noteworthy, Quality and Heartfelt delivery.
470-485-176 • www.themethodq.com
Natalie Hogg • natalie@themethodq.com

IFA Member Benefit: IFA MEMBERS RECEIVE AN ADDITIONAL 60 DAYS ADDED TO THE GUARANTEE ON ALL PLACEMENTS.

RECRUITMENT

Commercial Finance Consultants

Commercial Finance Consultants was established in 2002, and is the premier provider of human talent to the factoring industry. CFC's goal is to provide their clients with the best available human capital and the most current industry information to assist in accomplishing their growth potential.
469-402-4000 • www.searchcf.com
crains@searchcf.com

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Artis Trade Systems

Artis Trade Systems offers ArtisPay, the revolutionary Supply Chain Finance (SCF) app that allows banks and lenders to provide buyers and suppliers with a flexible, customizable, easy-to-use enterprise-grade software. ArtisPay is a fully cloud-based software-as-a-service (SaaS) that can connect to any ERP/GL/TMS. Offer ArtisPay today to monetize accounts payable and/or to manage offset risk (easily track your clients Accounts Payable)
Jamie Clemons • 480-250-8186
www.artistrade.net

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Decipher

Decipher is the leading provider of front and middle office automation technology for factoring companies. Our Factoring Origination System streamlines client application, onboarding, underwriting, closing, and document management. The platform includes 20+ APIs integrating credit bureaus, bank account verification, accounting system connections, UCC search and file, tax monitoring, and electronic signature, and offers automatic financial spreading, bank account analysis and monitoring as well as risk evaluation and auto approval with your criteria. Clients streamline the entire process from application to closing and provide a better customer experience with less risk.
301-710-5447 • www.deciphercredit.com
info@deciphercredit.com

IFA Member Benefit: 10% NEW CLIENT DISCOUNT AND 5% EXISTING CLIENT DISCOUNT OFF ANNUAL SUBSCRIPTION FEE.

FactorCloud

FactorCloud is a complete invoice factoring platform allowing growing factors to increase efficiencies, scale operations, and lower risk. Highly configurable and permissions-based, FactorCloud allows factors to meet the changing needs of the market while improving portfolio performance. New: transportation factors can easily verify loads with our TruckerCloud integration.
888-888-0694 • www.factorcloud.com
hello@factorcloud.com

IFA Member Benefit: 10% DISCOUNT ON SUBSCRIPTION FEE.

FactorFox

FactorFox provides factoring software to small, medium, and large companies for over 15 years. It is beautifully designed, user friendly, and powerful. With every line of code written, we challenge the status quo. We are continually finding ways to mitigate risk to give our factors a competitive advantage in the factoring industry.
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FactorView

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Mike Youngberg • mike@factorview.com
888-909-9384 • www.factorview.com

IFA Member Benefit: COMPLIMENTARY IMPORT OF CLIENTS, DEBTORS AND OPEN INVOICES FOR ALL NEW ACCOUNTS.

Jack Henry™

Jack Henry™ is a trusted technology provider of portfolio management systems for commercial finance, and offers a common framework for factoring, asset-based lending, inventory finance, and lines of credit. FactorSoft®, the industry standard in factoring software, offers a highly configurable design and comprehensive accounting capability, empowering you to execute your unique business model at scale. This enterprise platform monitors collateral across the credit spectrum to improve efficiency, manage risk, and support diverse portfolios. www.jackhenry.com
Rob Thompson • 704-357-0298
RThompson@jackhenry.com
Haley Little • 704-641-6442
HLittle@jackhenry.com

IFA Member Benefit: 10% OFF NEW JACK HENRY LENDING SOLUTIONS PRODUCT PURCHASE.

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Lenvi Riskfactor is the leading provider of risk management and fraud analytics software for the global commercial finance industry. We have provided risk and fraud management solutions globally for over 20 years. Lenvi Riskfactor gathers daily transactional data from client's operational systems and provides daily risk metrics so that risk managers can constantly monitor client risk and instantly detect deteriorating profiles.
Aaron Hughes • aaron.hughes@equiniti.com
Melissa Havers • melissa.havers@equiniti.com
www.equinitiriskfactor.com
+44 1903 698600

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TriumphPay is the only platform that connects brokers, factors, shippers, and carriers, through forward-thinking, frictionless payment solutions. The platform provides each party with the tools needed to increase automation, mitigate fraud, and boost back-office productivity and efficiency. TriumphPay improves the payment experience at every stage, so stakeholders can focus on driving growth and building trusting relationships.
Melissa Forman • mforman@triumphpay.com
214-217-4540

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Mike Kingham • mike@winfactor.com
863-291-4268 • www.winfactor.com

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TAX COMPLIANCE

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UCC SEARCH

CSC®

CSC® is an expert in UCC search, filing, and monitoring for expirations and continuations, serving thousands of financial institutions, including many of the world's largest lenders - commercial banks, capital finance companies, and factoring organizations that specialize in secured transactions. We are a global company capable of doing business wherever our clients are.
www.cscglobal.com • 866-403-5272
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How Factors Can Grow Originations by Partnering with Debt Advisory Firms

Factoring firms have to find new clients to grow. Kurt Nederveld of Rainstar Capital Group explains how partnering with debt advisory firms can help factors not only increase origination volume, but origination quality.

BY KURT NEDERVELD

In today's competitive environment, many factoring firms are looking for innovative ways to access the clientele they already serve. However, factors are always facing the battle of scaling their business with not just new clients but, more importantly, the right clients. Creating that target client profile, knowing how to get your product line in front of them and converting the relationship into a sale consistently is what separates the top originating firms from those that may struggle.

Kurt Nederveld
CEO
Rainstar
Capital Group

While there are myriad strategies to expanding a factor's client base, using third-party strategic partners like commercial loan brokers and debt advisory firms can be an effective strategy to access the right clientele to grow a factor's business. So, what steps must a factoring firm take to create a successful strategic partner channel with debt advisory firms?

Step One: Understand the Options

The first step is to understand the three profiles of debt advisory firms out there, which include individual debt advisors, small firms and large firms.

Individual debt advisors are often former bankers, sales representatives for direct lenders or financial advisors who have broken into the loan brokerage space. These individuals started their own firms with the desire to be an entrepreneur while staying in the capital markets.

Small debt advisory firms are those with fewer than 10 employees with the ambition to grow. Many times, the founder of a company will begin to realize they can't do it all alone, so they'll begin growing their team, and thus, the business.

Large debt advisory firms usually have somewhere between 10 and

100 employees in addition to a strong leadership team, C-level executives, directors of sales, multiple sales teams and back office capabilities. These firms have the proper staff, technology and marketing to support a company doing business at an expanded scale.

Step Two: Accessing Candidates

Once a factoring firm understands the landscape of the debt advisory firm marketplace, they must understand the keys to vetting their options to find the right partner. After all, while a large debt advisory firm might be right for one factor, a smaller firm or an individual advisor may be right for another.

To get things started, a factor should understand the debt advisory firm's industry clientele profile. The factor should ask the debt advisory firm about its track record in the industries, niche or otherwise, that the factor serves. The factoring firm also should probe how the finance broker firm is accessing clientele in these industries, whether it be through referral, online lead generation or offline networking strategies.

The factoring firm also must ascertain if the debt advisory firm is playing within the right revenue profile of the industries the factor serves. For example, some factoring firms will not deal with companies doing below $20 million in total top-line revenue, while others will. Getting detailed about top-line revenue, EBITDA, monthly accounts receivables averages and types of receivables a firm's clients have will be key.

A key distinction a factoring firm must make when choosing a debt advisory firm is the level of credit training and underwriting capacity the firm and its team has. Is its team made up of sales people hawking financial products for commissions or are they former bankers with years of credit training? The latter group will better understand the value of receivables-based financing and how it assists clients in their growth or turnaround plans.

Step Three: Finding the Right Partner

Once a factoring firm determines the type of debt advisory firm with which to partner, they must start building relationships. There are a few key ways to connect with the right partners:

The first is to use national associations to seek out firms with which to work. Some great ones to start with include the National Association of Commercial Loan Brokers, the American Association of Commercial Finance Brokers, the Association for Corporate Growth, the Turnaround Management Association and Alliance of Merger & Acquisition Advisors.

Banker referrals can also be a useful strategy when looking to connect with debt advisory firms. Ask the existing bankers that refer factoring opportunities to you if they know of any local finance brokers in their geographic market. Sometimes bankers can be excellent referral sources to existing relationships and can provide positive or negative feedback on a firm or individual.

A simple internet search can be another effective geographic approach to build out a factoring firm's partner channel, especially when you're trying to seek and reach out to finance broker firms.

Lastly, speaking with CFO advisors, turnaround management consultants and growth advisors can be another great way to get referred to debt advisory firms, especially since you can convert these parties into additional third-party channels for deal sourcing.

Step Four: Match Priorities

Finally, after understanding the three profiles of debt advisory firms, the general landscape and where to find debt advisory firms to partner with, it's important to understand what debt advisory firms desire of relationships with factoring firms. It starts with compensation. The more revenue you offer compared to what the firm gets currently from other factoring firms will go a long way to getting high-quality deal flow. You should also consider creating incentives and perks and that will motivate the debt advisory firm.

Money can only go so far, though. To create an effective partnership, a debt advisory firm will want to know that the factoring firm has a training platform to keep its team up to speed on product updates, process changes and lead generation strategies. In addition, building in-person relationships with the debt advisory team is key. Lunch and learns, sporting events and other corporate events are a great way to grow the relationship, both on a personal and professional level.

Due to the economic challenges of 2023, there is a huge opportunity for factoring firms to grow their businesses this year. With banks pulling back, craziness in the capital markets and clients needing capital for growth, factoring firms that strategically utilize the debt advisory channel will win. •

Kurt Nederveld *is the founder and CEO of Rainstar Capital Group, Rainstar Development Capital, Rainstar Project Capital and Rainstar Capital Holdings. He is a serial entrepreneur, investor, debt adviser and highly sought after consultant in the debt capital markets, with his companies having completed more than $1 billion in transactions. He can be reached at kurt@rainstarcapitalgroup.com or by phone at 616-821-6535.*

Lean Into the Scary: Assessing the Funding Source Market for Factors in 2023

Jeff Whaley, CFO of Haversine Funding, spoke with *Commercial Factor* to outline how factors can shore up their funding sources to compete in an increasingly chaotic landscape.

While we often focus on how factors can provide financing to their clients, factors themselves need funding. In 2023, with the overall economic environment in a state of flux, costs and availability are a moving target. Jeff Whaley, CFO of Haversine Funding, spoke with *Commercial Factor* to outline how factors can shore up their funding sources to compete in an increasingly chaotic landscape.

How has a rising rate environment affected the cost and availability of funds for factors in 2023?

JEFF WHALEY: The rising rate environment has certainly constrained the availability of funds for factors and made the funding that is available more expensive. This new and evolving environment, combined with the recent round of bank failures, has made banks increasingly hesitant to invest in this space and will likely continue to do so over the remainder of the year. Base rates (SOFR and Prime) have increased dramatically over the last nine months, and the spread required above those base rates has widened as banks and other funding sources perceive an environment of increased risk. In some cases, the cost of capital to factors has almost doubled over the course of the last year through these rate increases, combined with having to identify new, higher cost sources of financing to further support senior credit lines where banks have tightened credit.

Jeff Whaley
CFO
Haversine Funding

Do you expect costs to increase or decrease this year? Why?

WHALEY: There are a couple of ways to look at this question. With regard to funding costs, yes, they will more than likely continue to increase this year, as the Federal Reserve has indicated increased hawkishness to head off continued inflation. The recent round of bank failures will probably temper the rate at which the Fed raises rates, but rates are still looking to head up this year.

With regard to operating costs, I expect that labor and operating costs will also continue to increase but could potentially moderate somewhat near the end of the year as the increased interest rates inevitably start to slow down economic activity. In order to reduce costs, factors should look to identify lower cost solutions to maintain their margins. Those solutions could be outsourcing or automating labor-intensive processes. Further, smaller factors will need to leverage employee flexibility to cover multiple roles.

Similarly, how do you expect availability to trend through 2023? Why?

WHALEY: I expect that availability will become more constrained, as increasing yields will create more competing uses for funds. Additionally, banks curtailing risk will likely result in constraint of availability throughout 2023.

For factors concerned about an impending recession, how can they work with their funding sources to ensure they have consistent access to capital to fund their businesses?

WHALEY: The first key for any factor concerned about ensuring consistent access to capital is communication. Factors must be aggressive in communicating with funding sources about potential growth or challenges in their respective businesses. This communication should be direct and as precise as possible regarding potential needs for funding. Additionally, factors should be willing to "cast a wide net" with regards to obtaining funding, educating themselves on the various types of financing available in addition to their structures, timing and funding requirements. These options could be to replace their bank lines but could more plausibly be used to bolster those credit lines for growth or to offset more restricted eligibility requirements. Banks are not likely to be as reliable a source of funding over the next 12 to 24 months since they likely will be operating with increased scrutiny of their respective liquidity positions.

What has the competitive environment been like for funding sources this year?

WHALEY: The competitive environment has been intense as interest rates have increased. Over the past few years, alternative lending and factoring offered a yield that far exceeded the yields available with more conventional debt products. As market yields have increased, alternative lending yields have exceeded those of more conventional debt securities by an increasingly slim margin. Given that set of circumstances, competition for funding sources has become much more acute. We have seen new entrants focused on non-bank lender finance as a result of these constraints. Haversine was formed to fill a gap in the market dedicated to helping the small to mid-sized factors grow. We've continued to increase our client base, expanding to working with larger finance platforms. Additionally, we are seeing a few bank lenders that still want to carve out a niche for themselves in lender finance, but in those cases, they are doing so within a tighter framework, creating needs for subordinated debt and other junior capital products.

How would you describe deal activity in 2023 and do you expect it to improve or get worse the rest of the year? Why?

WHALEY: Deal activity began to pick up in the fourth quarter of 2022, and that increased rate of activity has persisted into 2023. With that said, between credit quality and conservative underwriting, there is a lot more deal flow but not as many closed and funded transactions. We expect the volume of deals to only improve through the end of the year as more businesses increasingly look to non-bank sources for financing.

Has there been any change over the last few years in how or from who factors seek funding? If so, what is behind this trend?

WHALEY: Yes. Historically factors would primarily receive financing from regional banks or a bank lender finance group combined with equity and capital support from their personal finances, fundraising or even large subordinated (mezzanine) debt tranches with minimums of at least $10 million (but likely larger as a minimum requirement). In that environment, there was a gap in funding sources providing capital that falls between equity and senior debt in the capital stack. If you were a startup or small shop, it would take you longer to build your platform, as you needed to raise money, give up equity or find participation partners to meet your growing funding needs. To respond to this gap in funding sources, new groups have come to market with unitranche solutions at a higher cost of capital, or, like with us, offering both senior and subordinated debt starting at $1 million and going up to $25 million.

What is your overall outlook for the factoring industry in 2023?

WHALEY: Is chaos an acceptable answer? The outlook for 2023 is very difficult to predict because the data we are seeing in the overall economy and, more specifically, within the alternative finance industry, seems to point in disparate directions. On one hand, we see a lot of volatility in the market, which would indicate real headwinds for factors and their clients. Generally, though, it seems collections are still on solid footing and unemployment remains remarkably low.

If history is any guide, times of volatility generally point towards consolidation, as volatility will inevitably lead some players to exit the market. By the same token, we expect new players will enter the factoring industry seeking opportunities as banks become more restrained in their lending to small and medium-sized companies. Cases could be made equally convincingly that 2023 could either be the start of a process of consolidation within the factoring industry or a genesis of new non-bank players entering the spaces vacated by banks.

A lot of how you perceive the next 12 months may depend on where you sit in the factoring industry. Does your company have a solid and diverse set of capital sources? What industry concentrations does your portfolio have? What is your firm's appetite for risk? A firm's answer to these questions will probably dictate how they fare over 2023 in unpredictable ways.

It's probably wise to steal a phrase from our president at Haversine, Gen Merrit-Parikh: "Lean into the scary." •

Win Some, Lose Some: A Look at Two Recent Court Decisions with Implications for Factors

Steven N. Kurtz, Esq., of Levinson Arshonsky Kurtz & Komsky breaks down two recent legal decisions, one of which will limit the bankruptcy options of "innocent" debtors in cases involving fraud, while another seemingly expanded debtor protections in California usury laws.

As I have mentioned in prior articles, inspiration for this column comes from many places. My inspiration for this article came from a break I took whilst conducting research and outlining what I originally planned to write.

During said break, I took some time to catch up on my pile of legal journals and stumbled upon two interesting cases that impact your business, assuming you're a factor. The first case, *Bartonwerfor v Buckley*, (the "Buckley case"), caught my attention because the U.S.

Steven N. Kurtz, Esq. has represented factors, banks and asset-based lenders on a continuous basis since 1987. He is the co-general counsel to the IFA and a founding partner of Levinson Arshonsky Kurtz & Komsky, which has 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@lakklawyers.com.

Supreme Court was unanimous in its ruling, which shows that at least in bankruptcy cases, there are no politics. The Buckley case changed the game in favor of creditors when objecting to the discharge of a debt incurred by fraud, with the plaintiff faced with the "I'm not the one who did it" defense. The second case, *G Companies Management v. LREP Arizona*, (the "G Companies case"), is a California appellate court decision on California's clear as mud usury laws, which is the first appellate decision in a while that refused to enforce a forum selection clause because it would contravene a California policy of not allowing usurious loans. Here's a quick summary of these two interesting cases.

Buckley Case

The facts of the Buckley case are straightforward. Two real estate investors, let's call them Kate and David, purchased a spec home in San Francisco with a plan to make some improvements and sell the property at a profit. David oversaw all aspects of the "venture," while Kate was a passive "investor." Kate and David then sold the home with typical real estate contracts and disclosures in practice for residential real estate deals in San Francisco. For anyone who has bought or sold residential property in California (and likely most states), standard forms are used that contain boilerplate representations. The buyer later discovered numerous code and construction defects not disclosed by the seller, which was allegedly fraudulently concealed by David. The buyer then sued Kate and David in state court and prevailed on their claim. Kate and David then filed for Chapter 7 bankruptcy and the buyer sued Kate and David under Section 523 of the U.S. Bankruptcy Code which, in part, precludes the discharge of a debt to a particular creditor if the debt was incurred by fraud.

The bankruptcy court held in favor of the buyer against both Kate and David, despite Kate taking the position that she had nothing to do with the fraud and had no knowledge thereof. Kate and David appealed to the Bankruptcy Appellate Panel for the 9th Circuit (the BAP), which upheld the objection to discharge against David but reversed as to Kate and sent the case back to the bankruptcy court with instructions that Kate's liability turned on either participation in or knowledge of the fraud. The bankruptcy court found in favor of Kate because she did not participate in or have knowledge of David's fraud. The buyer appealed to the BAP, which upheld the bankruptcy court. The buyer then appealed to the 9th Circuit Court of Appeals, which reversed the BAP and held that since there was fraud committed by David, and that Kate and David had a joint venture to sell the property, the debt was incurred by fraud and Kate's innocence is not relevant, as she is liable for the act committed within the scope of the venture by her venture partner. Kate appealed to the U.S. Supreme Court, which took the case to resolve a split among the circuit courts in interpreting Section 523(a) of the U.S. Bankruptcy Code.

Justice Amy Coney Barrett wrote the 9-0 decision, with Justice Sonia Sotomayor writing a special concurrence (she tends to write many of the bankruptcy decisions). The Supreme Court analyzed the text of Section 523(a) of the U.S. Bankruptcy Code which excepts a debt from discharge if incurred by false pretenses, false representations or actual fraud. The issue at hands was whether or not the plain language of the statute requires that the debtor actually participate in or have knowledge of the fraud. The Supreme Court did a deep dive into statutory interpretation and held that if the debt was incurred by fraud and the "innocent" debtor was in a venture with another person who committed the fraud, the innocent debtor cannot discharge the debt if the fraud was incurred within the scope of the venture. This decision clarifies and now limits the bankruptcy options of the "innocent" debtor.

It's very common for a business to have several owners who each guarantee a debt. Sometimes the bad actor guarantor is the active fraudster and the non-fraudster guarantor will not have actual knowledge of the fraud as it happened, especially if the guarantor is a passive guarantor or a spouse. If a debt was incurred under false pretenses, misrepresentation or actual fraud, the innocent person can't claim innocence and discharge the debt in bankruptcy. The focus would instead be on whether or not there is fraud and if it occurred within the scope of the venture. Justice Sotomayor emphasized in her short concurrence that there should be some kind of venture between a third person and the debtor seeking to discharge the debt to determine whether or not the fraud occurred within the scope of the venture. This case resolves a conflict among the circuits and is good for creditors.

G Companies Case

The G Companies Case changes the playing field in California usury cases in favor of the debtor. The facts of the G Companies Case are simple. The borrower took out a $4 million loan from LREP, a Texas corporation which is headquartered in Arizona. The loan was secured by two parcels of California real estate, the debtor was a California-based business and the loan called for 36% annual interest. The usury limit in California for loans and any forbearance is 10% interest, unless one of many exceptions is met, including use of the California Finance Lenders License, which is a safe harbor to charge much more than 10% interest.

The loan in this case went into

default and the parties restructured the debt and executed a forbearance agreement secured via a complaint to be filed in the U.S. District Court in Arizona with a stipulated judgment. The forbearance agreement was executed by the borrower and all guarantors. The debtor and creditor each had counsel negotiate and advise on the documents. The decision, unfortunately, is not clear if there was a release in the forbearance. The debtor defaulted on the forbearance agreement and the creditor then caused the judgment to be entered by the U.S. District Court in Arizona.

After the Arizona judgment was entered, the debtor sued the lender in a state court in California and alleged that the lender violated California's usury law. The state court ordered the case stayed to allow the Arizona judgment case to move forward. The debtor appealed and, in a reversal of prior policy, the California Appellate Court ruled in favor of the debtor and allowed the California case to move forward. Before the G Companies decision, most courts in California would have dismissed the case if the debtor was a business entity that freely entered into a deal with a lender not based in California, chose the lender's state laws and bargained for jurisdiction and venue in the lender's home state.

The court in the G Companies case began the decision by citing California's state constitution, which sets the maximum rate of interest at 10% per annum. Because California's maximum interest rate is in the state constitution, the G Companies court treated this interest rate cap as a quasi-fundamental right. California is unique in that its state constitution provides for a cap on interest rates, and this dates back to the 1800s. The G Companies court distinguished prior decisions made about enforcing forum selection clauses, which essentially stated that since California has so many exceptions to the usury law, the usury limitations are not that important, so if a business chooses to enter into a deal with an out of state lender at rates which exceed California's interest rate cap, the court should let the lender get what it bargained for and enforce its deal. The G Companies court went in a different direction than most of the prior reported California decisions and characterized California's vast exception to the usury rate cap as highly detailed legislation which shows that California law makers put a lot of thought into this intricate scheme. The G Companies court then addressed the fact that California's usury laws are designed to protect vulnerable borrowers from unscrupulous lenders and characterized the borrower in this case as someone who the usury laws were designed to protect because the borrower was "desperate" and likely to default. The G Companies court treated the borrower, who took out a $4 million loan, more like an individual consumer than a business.

The score card after these two cases is one good case for the financial community and one not-so-good case. But the law and business climate are always changing, as we work in a fast-paced business and have to learn to adapt as things change.

As of press time, it's not clear what will happen. The lender in this case can seek review by the California Supreme Court, who in the case *Wishnev v. Northwestern Mutual Life Insurance Company* characterized the California usury laws as "not a model of clarity." (See, "California Usuary Laws: Still Clear as Mud," *Legal Factor*, December 2019).

Since there are published decisions that contradict the G Companies decision in different California appellate courts, it makes sense for the California Supreme Court to clarify this issue. The simple solution is to have a California Finance Lenders License, which is an automatic safe harbor and takes one out California's usury rate limits. For those who are factoring in California without a license, it's best to structure your deals as a true sale, non-recourse transaction in which you assume the economic risk of the account debtor's financial inability to pay. Under California law, a true non-recourse factoring deal is considered a sale of accounts instead of a loan. Even with this true sale fix, it is not advisable to do any financing activity in California without a California Finance Lenders License. The G Companies decision will also be looked at closely by the California Department of Financial Protection and Innovation, which is the agency that enforces usury laws and oversees the regulation and licensing of the commercial finance industry in the state. If you are caught in a situation like the lender in G Companies, it's best to remove the case to federal court if you can, as such courts are more likely to boot a case.

The score card after these two cases is one good case for the financial community and one not-so-good case. But the law and business climate are always changing, as we work in a fast-paced business and have to learn to adapt as things change. Next up, since the article was partially outlined until I changed course, will be at look at the "Dreaded Son of Debtor." •

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