ALSO IN THIS ISSUE: REFINITIV RECAP AND AN INTERVIEW WITH HOLLAND & KNIGHT'S TEAM

THE SECURED Lender

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Putting Capital To Work

The 2024 Threats & Opportunities Issue

DESPITE ECONOMIC HEADWINDS AND HIGHER COSTS OF BORROWING, SECURED LENDERS ARE EXPECTING A PROFITABLE YEAR AHEAD.

A publication of: Secured Finance Network


Because things aren't always as they seem

TOUCHING BASE

NAVIGATING THE NEW YEAR

SFNet Sheds Light on Threats & Opportunities

As we look back at 2023 and plan for the year ahead, this issue of *The Secured Lender* sheds light on some of the threats and opportunities 2024 holds in store for the SFNet community. When the industry is confronted with threats, such as regulatory challenges or economic uncertainty, SFNet is here to provide a platform for collective problem-solving, enabling members to share insights and strategies for mitigating risks, whether it's through committees, task forces, in-person events, webinars, data or written content. This issue also contains information about emerging opportunities and market trends that can benefit readers, including the latest AI insights, which is often seen as posing both a threat and an opportunity. SFNet's commitment to promoting best practices and facilitating communication ensures that its members are well-equipped to navigate the complexities of the secured finance industry, enhancing their competitiveness and sustainability in a rapidly evolving financial landscape.

Here are just a few new offerings you can expect in the coming months:

- Launch of our latest Mentoring cohort on January 9.
- Continued work on state disclosure laws and interagency rulemaking that impact our community.
- Roll out of our new EDU Certification Program.
- Virtual forums in March focused on Legal Issues, Business Development and Credit & Operations
- New SFNet Technology & Innovation Subcommittee will address the best ways to further the technologies that will positively impact secured lending.
- Introducing new Awards Program in the spring

Despite economic headwinds and higher costs of borrowing, secured lenders are expecting a profitable year ahead. Be sure to read their predictions on page 16 in *Secured Finance Executives Predicting Modest Growth* in 2024 by Myra Thomas.

On page 20, *TSL's* editor-in-chief sits down with key members of Holland & Knight's ABL team to discuss H&K's strengthening of its finance practice, how they got their start in this specialty and the threats facing lenders in 2024.

On page 26, Refinitiv's Maria Dikeos provides an analysis of the 2023 capital markets.

The credit risk panel at SFNet's 79th Annual Convention focused on challenges such as consumer headwinds, the higher cost of capital, looming refinancing deadlines, and the prospect of more downgrades, bankruptcies and defaults. Overall, though, panelists were optimistic about credit appetite and the ability to negotiate risk through tighter deal structures and more in-depth borrower and sector analytics. Panelist Bill Mayer recounts the highlights on page 30.

RICHARD D. GUMBRECHT
SFNet Chief Executive Officer

Another compelling Annual Convention panel focused on the burgeoning role of AI in secured finance. As one of the panelists, Ryan Jaskiewicz, CEO of 12Five Capital, joined Deborah Reuben, CEO and founder, TomorrowZone; Eldon Richards, CTO, Solifi; Matt Noll, senior manager, EY; and Daniel Barsky, partner, Holland & Knight, in exploring both the immense potential and the multifaceted challenges AI presents to our industry. Read the highlights on page 41.

On page 36, in *Economic Insights: 2024 Threats to Manufacturing and Industrial Businesses – Lenders Beware*, Hilco's Steve Savoy discusses how reduced consumer spending and increased leverage cost could stress manufacturing & industrial companies in the year ahead.

In an increasingly paperless world, electronic bills of lading are garnering attention as an industry choice for cross-border commercial and shipping transactions. Attorneys from Thompson Coburn provide an overview of the legal framework prescribed by Articles 7 and 9 of the Uniform Commercial Code for a secured lender seeking to perfect its security interest in electronic bills of lading on page 38.

On page 45, in *Geopolitics and Business in 2024: Confusion, Competition and Conflict*, David Chmiel sheds light on the business effects of the highly volatile world economies and politics.

As we begin a new year, I reflect on our continued resilience, innovations and achievements in the face of so many challenges and look forward to working with you all toward an impactful and prosperous 2024!

THE SECURED Lender
A PUBLICATION OF SECURED FINANCE NETWORK

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Secured Finance Network

An association of professionals putting capital to work

The Secured Finance Network is the trade group for the asset-based lending arms of domestic and foreign commercial banks, small and large independent finance companies, floor plan financing organizations, factoring organizations and financing subsidiaries of major industrial corporations.

The objectives of the Association are to provide, through discussion and publication, a forum for the consideration of inter- and intra-industry ideas and opportunities; to make available current information on legislation and court decisions relating to asset-based financial services; to improve legal and operational procedures employed by the industry; to furnish to the general public information on the function and significance of the industry in the credit structure of the country; to encourage the Association's members, and their personnel, in the performance of their social and community responsibilities; and to promote, through education, the sound development of asset-based financial services.

The Secured Lender, magazine of the asset-based financial services industry (ISSN 0888-255X), is published 6 times per year (Jan/Feb, March, June, July/Aug, Sept and Nov) $65 per year non-member rate, and $105 for two years non-member rate. SFNet members are complimentary.

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Access Capital, Inc. Announces Efrain Aguilar's Promotion to Credit Analyst

Efrain Aguilar has been promoted to credit analyst. Aguilar joined Access Capital in May 2020 as a senior collateral analyst and immediately distinguished himself with his knowledge, work ethic, team-first mentality, and growth mindset. Access Capital is looking forward to the additional contributions and input Efrain will provide in his new role supporting the Account Management team, led by team leader, David Hill.

Access Capital, Inc. Announces Natasha Vaughn's Promotion to Collateral Analyst

As part of a companywide initiative focused on the development of its teams to support growth and a continuing dedication to the prosperity of its clients, Access Capital is pleased to announce that **Natasha Vaughn** has been promoted to the position of collateral analyst.

Access Capital, Inc., Announces Justin Friebel Joining the Firm as Underwriter

As Access Capital continues to invest in its team as part of its strategic growth plan, **Justin Friebel** of Denver, CO joins the team as vice president, underwriter.

Prior to joining Access Capital, Justin held underwriting and analytical positions across multiple lines of business at Wells Fargo.

Accord Financial Hires Ryan Ray as Director, Business Development, U.S. Asset Based Finance

Accord Financial Corp. announced the hiring of **Ryan Ray**, an experienced asset-based lending (ABL) and equipment professional to the Accord Financial team. Ray's experience includes business development and management roles at Gordon Brothers Group and AccuVal Associates.

Experienced Bankruptcy & Restructuring Partner Joins Chicago Office

Blank Rome LLP is pleased to announce that **Stephanie K. Hor-Chen** has joined the firm's Chicago office in the Finance, Restructuring, and Bankruptcy group as a partner. Hor-Chen focuses her practice on insolvency and restructuring and has extensive transactional and bankruptcy court experience. She joins the firm from Katten Muchin Rosenman LLP.

BMO Announces Retirement of Dan Barclay, Names Alan Tannenbaum CEO, BMO Capital Markets

BMO Financial Group announced the upcoming retirement of its chief executive officer & group head, Capital Markets, Dan Barclay, and the appointment of **Alan Tannenbaum** to the role. After a 32-year investment banking career, Barclay will transition to a role as senior advisor to the CEO. Tannenbaum will also join the bank's Executive Committee. Both changes became effective November 1, 2023.

Tannenbaum will be succeeded in his current role by Brad Chapin who will serve as interim global head, Investment & Corporate Banking.

Cahill Announces Election of Seven New Partners & Four New Counsel

Cahill Gordon & Reindel LLP announced that **Andrew E. Lee**, **Tristan E. Manley**, **Juliana Obregon**, **Javier Ortiz**, **Matthew E. Rosenthal**, **Sean R. Tierney** and **Miles Wiley** have been elected to the partnership, effective January 1, 2024.

Andrew E. Lee focuses his practice on private credit, representing direct lending, mezzanine and alternative capital providers across the capital structure.

Juliana Obregon and Javier Ortiz represent financial institutions in asset-based lending and other loan transactions in a variety of contexts, including leveraged buyouts, other acquisition finance, as well as general working capital financings.

Tristan E. Manley, Matthew E. Rosenthal and Sean R. Tierney focus their practice in leveraged finance, representing financial institutions in connection with bank financings and public and private capital markets transactions, often in connection with leveraged buyouts and other acquisitions.

Miles Wiley is a litigator and was a member of the Cahill team that secured a victory for Credit Suisse after an eight-day jury trial in the Southern District of New York involving allegations of price fixing in 2022 the $5 trillion-per-day foreign exchange currency market.

Cahill is also pleased to announce that the firm has elected **Alexa S. Kaminsky** and **Ivan Torres** as counsel in the New York office, and **Tom Luck** and **Mohan Rao** as counsel in the London office, effective January 1, 2024.

Cahill Gordon & Reindel LLP Announces Peter J. Rooney and James Z. Fang Joined the New York Office as M&A and Corporate Advisory Partners

Peter J. Rooney and **James Z. Fang** have joined the firm as partners in the M&A and Corporate Advisory practice. Rooney and Fang focus their practice on advising U.S. and multinational corporations and private equity firms in connection with mergers and acquisitions, divestitures, leveraged buyouts, joint ventures, investments, strategic collaborations and general aspects of corporate law and public company practice.

Cambridge Savings Bank Hires Michael Richardson as Vice President, Relationship Manager – Asset-Based Lending

Cambridge Savings Bank (CSB) announced the appointment of **Michael Richardson** to vice president, relationship manager, on the Asset-Based Lending (ABL) team. Richardson will be responsible for managing several of the bank's ABL relationships, while leveraging his vast network to identify and close on new lending opportunities.

First Citizens Names Nathan Pusey and John Tyson to Middle Market Banking Team in Boston

First Citizens Bank announced that its Middle Market Banking business has named **Nathan Pusey** as managing director and Northeast market executive and **John Tyson** as managing director and relationship manager. Both will be based in Boston to support the expansion of Middle Market Banking's capabilities and market coverage in the Northeast.

Matthew Tollenaer Named Atlanta Market Leader at First Citizens Middle Market Banking

First Citizens Bank announced that its Middle Market Banking business has named **Matthew Tollenaer** as a managing director and market leader dedicated to originating and cultivating business in Atlanta and the surrounding region.

Hilco Real Estate Continues Growth of its Real Estate Asset Management Division with the Strategic Appointment of Alan Shaw

Hilco Real Estate, LLC (HRE) is thrilled to welcome **Alan Shaw** as executive vice president of the organization and Co-CEO of its Real Estate Asset Management division.

eCapital Appoints David Gladu as President, Head of Factoring Group, North America

eCapital Corp. announced the appointment of **David Gladu** as president, head of Factoring Group, North America. In the new role, Gladu will lead the expansion and advancement of eCapital's substantial factoring portfolio and divisional initiatives.

Hilco Redevelopment Partners Announces Advisory Board

Hilco Redevelopment Partners (HRP) announced the appointment of four national leaders to the company's corporate advisory board: **Dr. Judith Rodin**, president Emerita of the University of Pennsylvania and former president of the Rockefeller Foundation; Lieutenant General Thomas P. Bostick (Ret.), former Commanding General of the U.S. Army Corps of Engineers; Ron DeGregorio, former CEO of NET Power and president of Exelon Power; and Michael K. Ohm, leading environmental attorney and former managing partner of Bryan Cave Leighton Paisner LLP.

Tony Montemurro Joins Mitsubishi HC Capital America as Vice President, Sales for Structured Finance

Mitsubishi HC Capital America announced that **Tony Montemurro** has joined the company's Structured Finance and Leasing team as vice president, sales.

Anne Mask Joins Oxford Commercial Finance (OCF) as VP, Business Development Officer

Anne Mask joins as vice president, business development officer. In this role she will oversee outbound sales, including helping entrepreneurs in alleviating cashflow challenges with financing facility to achieve short- and long-term goals.

TD Bank Welcomes Jill Gateman as Head of Middle Market Products & Services

Jill Gateman will lead TD's Commercial Bank Middle Market growth strategy, focusing on deepening market penetration in TD's existing markets while driving national expansion for customers with revenue of $100 million to $1 billion.

US Capital Global Appoints Steven J. Barton as Senior VP for New Minneapolis Office

US Capital Global announced the appointment of **Steven J. Barton** as senior vice president to lead its newly established office in Minneapolis, MN. With nearly three decades of experience across private equity, wealth management, commercial banking, and consulting, Barton brings a wealth of expertise to fortify the group's investment banking division in the Upper Midwestern region of the United States.

US Capital Global Drives Growth in Healthcare and Technology Financing with Appointment of Industry Veteran Colleen Gray

US Capital Global is pleased to announce that **Colleen Gray** has joined the group as senior vice president at the group's headquarters in San Francisco, CA. Gray has over 25 years of operations and financial management experience with emerging, high-growth companies in the healthcare and technology industries.

Clay Hale joins the Corporate & Investment Bank as Co-head of Equity Capital Markets at Wells Fargo & Company

Wells Fargo & Company announced that **Clay Hale** has joined the Corporate & Investment Bank (CIB) as co-head of Equity Capital Markets (ECM) within the Banking division.

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
A U.S. Chartered Bank, Lender	Bank	**$58.7M**	MariMed Inc., a leading multi-state cannabis operator	Cannabis	Secured Credit Facility
Access Capital, Lender	Non-bank	**$15.0M**	Phaxis, a leading recruitment and staffing agency, New York	Staffing	Credit Facility
Accord Financial, Lender	Non-bank	**$40.0M**	Leading pet supply manufacturer and distributor	Manufacturing	Equipment Lease Line
Affiliate of The PNC Financial Services Group, Inc., Nord/LB., Coordinating Lead Arranger	Bank	**$300.0M**	Primergy Solar LLC, a developer, owner, and operator focused on both distributed and utility-scale solar PV and battery storage projects across the US	Energy	Debt Finance and Tax Equity Investment
Alleon Healthcare Capital, Lender	Non-bank	**$8.0M**	Virginia-based healthcare innovation services firm	Healthcare	Accounts Receivable Financing Facility
Altriarch Specialty Finance Fund, LP, Lender	Non-bank	**$2.5M**	Government staffing company located in the Northeast	Staffing	Participate in an Existing Factoring Facility
Altriarch Specialty Finance Fund, LP, Lender	Non-bank	**$1.0M**	Financial services firm on the West Coast that provides capital solutions to the debt settlement industry	Finance	Mezzanine Credit Facility
Altriarch Specialty Finance Fund, LP, Lender	Non-bank	**$5.0M**	Factor based in the Southeast	Finance	Line that included an accordion to increase to $5 million if certain thresholds are met
Altriarch Specialty Finance Fund, LP, Lender	Non-bank	**$11.0M**	Temporary and permanent recruiting and staffing firm located in the Southwest	Staffing	Financing Commitment
Altriarch Specialty Finance Fund, LP, Lender	Non-bank	**$15.0M**	Company located in the Southeast that specializes in providing financial solutions to the construction industry via factoring	Finance	Senior Secured Line of Credit
An affiliate of OrbiMed, Administrative Agent, Lender	Non-bank	**$90.0M**	AVITA Medical, Inc., a clinical and commercial company developing and marketing a range of respiratory and regenerative products	Medical Supplies	Five-year Senior Secured Credit Facility
Apterra Infrastructure Capital, Lender; Barclays, Joint Lead Arranger; HSBC, Joint Lead Arranger; Allied Irish Banks, Lender; Barclays Bank, Lender; Coöperatieve Rabobank (trading as Rabobank Dublin), Lender; Danske Bank, Lender	Non-bank, Bank	**$600.0M**	Longroad Energy Holdings, LLC, focused on renewable energy project development, operating assets, and services	Energy	Credit Facility Composed of a $275 Million Term Loan, a $175 Million Revolving Credit Facility, and a $150 Million Letter of Credit Facility
ATLAS SP Partners, Lender	Non-bank	**$200.0M**	Above Lending, a leading national provider of consumer installment loans	Finance	Warehouse Facility
Austin Financial Services, Inc. (AFS), Lender	Non-bank	**$4.5M**	Manufacturer of prepared salads and spreads	Manufacturing	ABL facility, consisting of an AR & Inventory revolver
Austin Financial Services, Inc. (AFS), Lender	Non-bank	**$8.0M**	Manufacturer of metal door and hallway systems for the self-storage industry	Manufacturing	ABL facility

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Banco Nacional de Desenvolvimento Econômico e Social, Lender; Lumina Capital Management, Lender; BTG Asset Management, Lender	Bank, Non-bank	**$575.0M**	New Fortress Energy Inc., a global energy infrastructure company founded to address energy poverty and accelerate the world's transition to reliable, affordable, and clean energy	Energy	Asset-Based Financing
Barclays Bank Ireland PLC, Lender	Bank	**$90.0M**	Vantiva Technologies SA, a global technology leader in designing, developing and supplying innovative products and solutions that connect consumers	Technology	Term Facility
BBVA Spark, Lender	Bank	**$53.0M**	Twinco Capital, Madrid, Spain	Finance	Credit Facility
Bladex, Lender	Bank	**$368.0M**	AES Corp., a leading global energy company	Energy	A/B Loan Facility
Briar Capital Real Estate Fund, Lender	Non-bank	**$13.8M**	Foreign owned, start-up company in the green energy space	Energy	Real Estate Acquisition Loan
Briar Capital Real Estate Fund, Lender	Non-bank	**$10.0M**	Chemical manufacturer, Houston, TX	Manufacturing	Debtor-in-Possession (DIP) loan
Bridge Bank, Lender	Bank	**$3.5M**	Gooten, a leading technology and fulfillment company, New York	Technology	Venture Debt Term Loan
Castlelake, L.P., Lender	Non-bank	**$200.0M**	Oportun, a mission-driven fintech that puts its 2 million members' financial goals within reach	FinTech	Private Structured Financing Solution
Celtic Capital Corporation, Lender	Non-bank	**$2.5M**	Oregon-based Provider of Fully-managed, Cloud-based Services	Technology	Accounts Receivable Line of Credit
Celtic Capital Corporation, Lender	Non-bank	**$636.0K**	Construction logistics and material transportation provider, California	Transportation	Equipment Loan
Comvest Credit Partners, Lender	Non-bank	**$11.5M**	Pollo Tropical, a fast-casual restaurant chain, Miami, FL	Hospitality	Senior Secured Credit Facility
Credit Suisse AG London Branch, Lender	Bank	**$608.0M**	Pantheon International plc, a large British publicly traded private equity fund of funds investment trust	Finance	Multi-Tranche, Multi-Currency Revolving Credit Facility Agreement
Culain Capital Funding, Factor	Non-bank	**$5.0M**	Texas-based warehousing/fulfillment business	Advertising	Accounts Receivable Factoring Facility
Desjardins Capital Markets, Bookrunner, Sole Lead Arranger; National Bank of Canada, Lender; The Bank of Nova Scotia, Lender; Business Development Bank of Canada, Lender	Non-bank, Bank	**$328.0M**	TerraVest Industries Inc., a diversified industrial company	Industrial	Credit Facility
Deutsche Bank AG, New York Branch, Administrative Agent, Lender, Syndication Agent; Crédit Agricole Corporate and Investment Bank, Documentation Agent; Landesbank Hessen-Thüringen Girozentrale, Documentation Agent, Lender; Societe Generale, Lender	Bank	**$450.0M**	Amergin Rail, a portfolio company of certain funds managed by AAM	Finance	Credit Facility

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Deutsche Bank, Lender; Goldman Sachs, Lender; Värde Partners, Lender	Bank, Non-bank	**$300.0M**	MPOWER Financing, a mission-driven fintech company and the leading provider of global education loans, Washington, D.C.	FinTech	Financing Capacity Increase
Deutsche Bank, Structuring Agent	Bank	**$100.0M**	Aquila Air Capital, a specialty finance platform focused on providing aviation asset financing, as well as purchasing and leasing aircraft and engines	Finance	Financing
Dwight Funding, Lender	Non-bank	**$1.0M**	Frozen food manufacturer	Manufacturing	Line of Credit
Dwight Funding, Lender	Non-bank	**$2.5M**	Color cosmetics brand	Health & Beauty	Credit Facility
Dwight Funding, Lender	Bank	**$5.0M**	OTC medicine and supplements brand	Healthcare	Asset-Based Loan Secured by A/R and Finished Goods Inventory
Eclipse Business Capital LLC, Lender	Non-bank	**$40.0M**	Canadian media company	Media & Entertainment	Senior Secured ABL Credit Facility
Eclipse Business Capital LLC, Lender	Non-bank	**$100.0M**	Specialty chemical manufacturer	Manufacturing	Senior Secured ABL Credit Facility
Eiffel Investment Group, Lender	Non-bank	**$64.0M**	Fives, an international leader in industrial engineering	Industrial	Financing
Fifth Third Bank, National Association, Lender; Wexford Capital LP, Lender	Bank, Non-bank	**$75.0M**	Mammoth Energy Services, Inc., an integrated, growth-oriented energy services company focused on the providing products and services to enable the exploration and development of North American onshore unconventional oil and natural gas reserves	Oil & Gas	Revolving Credit Facility Agreement and a New Term Loan Agreement
First Business Bank, Factor	Bank	**$1.0M**	Software development company	Other	Factoring Facility
First Business Bank, Lender	Bank	**$4.0M**	IT consulting firm	Technology	Factoring Facility
First Citizens Bank, Lender	Bank	**$75.0M**	Turning Point Brands Inc., a manufacturer, marketer and distributor of branded consumer products including alternative smoking accessories and consumables, Louisville, KY	Manufacturing	Financing
First Citizens Bank & Trust Company, Lender; Nomura Securities International, Inc., Lender; National Bank of Canada, Lender; MUFG Bank, LTD., Lender; U.S. Bancorp Impact Finance	Bank	**$550.0M**	Aypa Power ("Aypa"), a Blackstone portfolio company and a leading independent power producer (IPP) specializing in the development, construction and operations of utility-scale energy storage and hybrid renewable energy projects	Energy	Portfolio Debt and Tax Equity Financing
First Citizens Bank, Lender	Bank	**$99.3M**	Joint ventures managed by Kayne Anderson Real Estate and Remedy Medical Properties	Real Estate	Consisting of a $75 Million in Loan Proceeds for the Acquisition of a Surgical Hospital, Baylor Scott & White Medical Center, Frisco, TX and $24.3 Million in Loan Proceeds for the Refinancing of two Medical Office Buildings in Mississippi

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
First Citizens Bank, Lender	Bank	**$170.0M**	esVolta, a leading developer, owner and operator of utility-scale battery energy storage projects in North America	Energy	Credit Facility
First Citizens Bank, Lender	Bank	**$44.0M**	Greek Real Estate Partners ('GREP') — a leading New Jersey-based, vertically-integrated real estate firm focused on industrial development	Real Estate	Construction Financing
First Citizens Bank, Lender	Bank	**$60.0M**	Gore Street Energy Storage Fund plc for the development of a 200-megawatt battery storage project located in Imperial County, California	Energy	Credit Facility
Flatbay Capital, Lender	Non-bank	**$2.5M**	Family-owned fabricator and supplier of HVAC ductwork	Advertising	Owner-Occupied Commercial Real Estate Bridge Loan
Fulton Bank, N.A. and PNC Bank, N.A., Lender	Non-bank	**$92.0M**	Burnham Holdings, Inc., the parent company of multiple subsidiaries that are leading domestic manufacturers of boilers and related HVAC products and accessories	Manufacturing	Revolving Credit Facility
Garrington Capital, Lender	Non-bank	**$21.0M**	Best in class provider of integrated services and specialty fabrication solutions	Other	Senior Credit Facility
Gateway Stretch Finance, Lender	Non-bank	**$150.0K**	US importer of apparel products to pay off an existing lender, which allowed a new factor to fund against the receivables	Apparel	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$200.0K**	US importer of cell phone accessories and electronics to fund working capital and inventory	Electronics	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$60.0K**	US manufacturer of vitamins and other supplements to fund working capital	Manufacturing	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$750.0K**	Working capital and inventory for a US eCommerce apparel company	Apparel	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$75.0K**	US promotional company to fund the acquisition of another business	Other	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$250.0K**	US importer of footwear selling to US retailers to fund inventory	Other	Working Credit Facility
Gateway Stretch Finance, Lender	Non-bank	**$50.0K**	Canadian importer of LED lighting to fund inventory	Advertising	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$40.0K**	US provider of virtual tutoring services to fund working capital	Other	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$80.0K**	Canadian manufacturer of store shelves to fund raw material purchases and working capital	Advertising	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$350.0K**	Canadian developer of apps to fund working capital	Technology	Working Capital Facility
Gateway Stretch Finance, Lender	Non-bank	**$50.0K**	Canadian provider of aluminum structures for the entertainment industry to fund inventory	Advertising	Working Capital Facility

DEPARTMENT
INDUSTRY DEALS

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Gateway Stretch Finance, Lender	Non-bank	**$60.0K**	US heating and air conditioning company to fund working capital	Advertising	Working Capital Facility
Gateway Trade Funding, Factor	Non-bank	**$1.0M**	Vitamin supplement company	Health & Beauty	Purchase Order Facility
Gateway Trade Funding, Lender	Non-bank	**$2.3M**	Company selling outdoor and lifestyle products	Advertising	PO facility
Gibraltar Business Capital (GBC), Lender	Non-bank	**$20.0M**	Revolution Foods, a preparer and deliverer of nutritious, fresh meal solutions for schools and communities addressing food insecurity and childhood nutrition	Food & Beverage	Senior Secured Credit Facility
Gibraltar Business Capital, Lender	Non-bank	**$7.5M**	Midwest-based transportation broker that specializes in drayage	Transportation	Account Receivable Line of Credit
Gibraltar Business Capital, Lender	Bank	**$27.5M**	Memphis-area-based Whitmor, a designer, importer, and distributor of home storage and organizational products with a global reach	Distribution	Senior Secured Revolving Credit Facility
Golub Capital, Lender	Non-bank	**$490.0M**	Colibri Group, an online learning management platform for licensing, continuing education, test preparation and professional development	Technology	Incremental First Lien Term Loan
Great Rock Capital, Lender	Non-bank	**$40.0M**	Fisher Dynamics, a vertically integrated supplier of engineered seating structures and safety mechanisms to major OEMs and Tier 1 automotive suppliers worldwide	Automotive	Term Loan Facility
Horizon Technology Finance, Lender	Non-bank	**$35.0M**	Mirantis, Inc., a company that specializes in building and managing open cloud software infrastructure	Advertising	Venture Loan Facility
HSBC, Lender	Bank	**$20.0M**	Click Therapeutics, Inc., which develops, validates, and commercializes software as prescription medical treatments for people with unmet medical needs	Other	Term Loan
ING Capital LLC, Joint Lead Arranger; Wells Fargo Bank, N.A., Joint Lead Arranger; MUFG Bank, Ltd., Joint Lead Arranger; Societe Generale, Joint Lead Arranger; HSBC Bank USA NA, Participant; Coöperative Rabobank U.A., Participant; Natixis, New York Branch, Participant; Credit Agricole Corporate and Investment Bank, Participant; GarantiBank International N.V., Participant; Valley National Bank, Participant	Bank	**$700.0M**	Six One Commodities LLC (“61C”), a global merchant of physical energy commodities and provides physical supply services and structures	Energy	One-Year Revolving Borrowing Base Credit Facility
InterNex Capital, Lender	Non-bank	**$1.5M**	Company that specializing in selling and installing HVAC systems for residential communities	Industrial	Revolving Line of Credit
J D Factors, Factor	Non-bank	**$1.0M**	Security company in Quebec	Other	Factoring Facility
J D Factors, Factor	Non-bank	**$1.5M**	Transportation company, Illinois	Transportation	Factoring Facility

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
J D Factors, Factor	Non-bank	**$500.0K**	Food distribution company, Quebec.	Food & Beverage	Factoring Facility
J D Factors, Factor	Non-bank	**$350.0K**	Staffing company, Ontario	Staffing	Factoring Facility
J D Factors, Factor	Non-bank	**$1.0M**	Transportation company, Illinois	Transportation	Factoring Facility
J D Factors, Factor	Non-bank	**$100.0K**	Staffing company, Texas	Staffing	Factoring Facility
J D Factors, Factor	Non-bank	**$500.0K**	Transportation company, California	Transportation	Factoring Facility
Jefferies Finance LLC, Administrative Agent, Collateral Agent	Bank	**$55.0M**	Xerox Corp.	Technology	Credit Facility
K2 HealthVentures, Lender	Non-bank	**$50.0M**	Acumen Pharmaceuticals, Inc., a clinical-stage biopharmaceutical company developing a novel therapeutic that targets toxic soluble amyloid beta oligomers (AOs) for the treatment of Alzheimer's disease (AD), Charlottesville, VA	Pharmaceutical	Credit Facility
Khosla Ventures, with participation from Tippet Ventures, Lender	Non-bank	**$10.0M**	Creditly Corp., dba Credit Genie, a leading digital personal finance platform that has served more than one million Americans	Finance	Financing
King Trade Capital ("KTC"), Lender	Non-bank	**$3.0M**	Aircraft parts company, Texas	Aerospace	Purchase Order Finance Facility
Loeb, Lender	Non-bank	**$2.5M**	Company to refinance an existing loan and extract working capital	Advertising	Equipment Term Loan
Loeb, Lender	Non-bank	**$3.6M**	Waste transportation company to invest in growth	Advertising	Equipment Term Loan
Loeb, Lender	Non-bank	**$6.0M**	Metalworking company to expand their business	Advertising	Equipment Term Loan
LSQ, Lender	Non-bank	**$1.5M**	Manufacturer of custom glass and insulated glass units	Manufacturing	Credit Facility
MidCap Business Credit LLC, Lender	Bank	**$23.7M**	Manufacturing company, Cleveland, OH	Manufacturing	Asset-Based Credit Facility
MidCap Business Credit LLC, Lender	Non-bank	**$11.2M**	Producer of luxury bottled and canned water products	Manufacturing	Asset-Based Credit Facility
MidCap Financial, Lender	Non-bank	**$23.0M**	Wine.com, the nation's leading online wine retailer	Retail	Senior Revolving Credit Facility
MidCap Financial, Lender	Non-bank	**$150.0M**	Express Wash Concepts (EWC), an operator of 91 award-winning express car wash locations across six states	Other	Credit Facility
MidFirst Business Credit (MFBC), Lender	Bank	**$25.0M**	LDC Stone, Inc, which provides design, manufacturing and installation of kitchen and bath cabinet solutions to builders/contractors	Manufacturing	Working Capital Facility
Mountain Ridge Capital, Lender	Non-bank	**$30.0M**	Designer and manufacturer of footwear/slippers/hosiery, Midwest	Manufacturing	Senior Secured Credit Facility
Mountain Ridge Capital, Lender	Non-bank	**$25.0M**	West coast-based leading manufacturer and distributor of action sports products	Manufacturing	Senior Secured Credit Facility

DEPARTMENT
INDUSTRY DEALS

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
MUFG Bank and Natixis Corporate & Investment Banking, Bookrunner, Coordinating Lead Arranger	Bank	**$247.0M**	Altius Renewable Royalties Corporation	Energy	Credit Facility
MUFG, Coordinating Lead Arranger; BNP Paribas, Coordinating Lead Arranger; Sumitomo Mitsui Banking Corporation, Coordinating Lead Arranger; First Citizens Bank, Coordinating Lead Arranger; National Bank of Canada, Lender	Bank	**$338.0M**	Arevon Energy, Inc., a leading renewable energy company, supplying clean energy to utilities and corporations across North America, headquartered in Scottsdale, AZ, and New York, NY	Energy	Debt Facility
MUFG, Lender	Bank	**$275.0M**	Summit Ridge Energy, the nation's largest commercial solar company	Energy	Financing Facility
nFusion Capital, Lender	Non-bank	**$7.0M**	Land & Sea Industries, LLC (L&S), a full-service heavy metal fabrication and manufacturing solutions company located in Texas	Manufacturing	ABL Line of Credit
Nomura, Lender	Bank	**$150.0M**	PureSky Energy, a leading developer, owner, and operator of US community solar, C&I and storage projects with headquarters in Denver, CO	Energy	Revolving Credit Facility
Pathward®, N.A., Lender; Briar Capital Real Estate Fund, Lender	Bank, Non-bank	**$23.9M**	Precast concrete company with manufacturing facilities in Houston and San Antonio, Texas	Manufacturing	Briar Capital Provided a $8.9MM Real Estate Loan Facility While Pathward Provided a $15MM Asset-based Working Capital Facility
Royal Bank of Canada ("RBC"), Lender	Bank	**$5.0M**	NeuPath Health Inc., owner and operator of a network of clinics delivering category-leading chronic pain treatment	Healthcare	Credit Facility Consisting of a $3.5 Million Revolving Operating Lone, a $0.5 Million Lease Facility and Refinancing of Existing Term Debt up to $1.0 Million
Runway Growth Capital LLC, Lender	Non-bank	**$50.0M**	Linxup, formerly Agilis Systems, is a leading provider of vehicle and asset-tracking solutions for fleets and service companies in a variety of industries	Technology	Debt Commitment
Sallyport Commercial Finance, Lender	Non-bank	**$7.0M**	Recycled plastics manufacturer	Manufacturing	$7 Million in Accounts Receivable and $9 Million in Machinery and Equipment Finance
Sallyport Commercial Finance, Lender	Non-bank	**$1.5M**	Canadian baked goods manufacturer	Manufacturing	Factoring Facility
Sallyport Commercial Finance, Lender	Non-bank	**$1.0M**	Canadian entrepreneur in the food manufacturing industry	Manufacturing	Accounts Receivable Finance
Sallyport Commercial Finance, Lender	Non-bank	**$350.0K**	Oil and gas services business	Oil & Gas	Accounts Receivable Facility
SG Credit Partners, Lender	Non-bank	**$10.0M**	Water Gremlin, the world's technological and market leader in battery terminals	Technology	Debtor-in-Possession ("DIP") Financing

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Siena Lending Group LLC, Lender	Non-bank	**$45.6M**	Manufacturer of healthier snacks and related food products, California	Manufacturing	Credit Facilities
Siena Lending Group LLC, Lender	Non-bank	**$22.0M**	To support the acquisition of Ottawa, Canada based companies Ontario Medical Supply ("OMS") and Royal Drugs, by Capital Health Partners ("CHP")	Pharmaceutical	Credit Facility
SLR Healthcare ABL, Lender	Non-bank	**$16.0M**	Skilled nursing facility	Healthcare	Asset-Based Revolving Line of Credit
Tacora Capital, Lender	Non-bank	**$30.0M**	Exectras, the go-to provider for SMBs seeking everyday business services, including merchant services, payroll, health insurance and workers' compensation, Missouri City, TX	Other	Debt Financing
Tradecycle Capital, Lender	Non-bank	**$3.0M**	A well-known sports equipment brand for professional and youth athletes	Equipment	Accounts Payable Finance Facility
Trinity Capital Inc., Lender	Non-bank	**$25.0M**	Neuros Medical, Inc., a bioelectric technology company focused on alleviating chronic post-amputation pain and restoring quality of life	Healthcare	Growth Capital
United Capital Funding Group LLC, Factor	Non-bank	**$250.0K**	Security guard company, Ohio	Other	Credit Facility
United Capital Funding Group LLC, Factor	Non-bank	**$300.0K**	Marketing firm, Illinois	Marketing	Credit Facility
United Capital Funding Group LLC, Factor	Non-bank	**$350.0K**	Management firm, Florida	Other	Credit Facility
United Capital Funding Group LLC, Factor	Non-bank	**$400.0K**	Apparel manufacturing company, New Jersey	Apparel	Credit Facility
United Capital Funding Group LLC, Factor	Non-bank	**$1.0M**	Surgical instrument manufacturing company, Arizona	Manufacturing	Credit Facility
United Capital Funding Group LLC, Factor	Non-bank	**$150.0K**	Janitorial company, California	Advertising	Credit Facility
United Capital Funding Group, LLC, Factor	Non-bank	**$1.5M**	Temporary staffing firm, Ohio	Staffing	Credit Facility
United Capital Funding Group, LLC, Factor	Non-bank	**$3.0M**	Temporary staffing firm, California	Staffing	Credit Facility
United Capital Funding Group, LLC, Factor	Non-bank	**$200.0K**	Temporary staffing company, Texas	Staffing	Credit Facility
Valley National Bank, Administrative Agent, Sole Bookrunner, Sole Lead Arranger	Bank	**$130.0M**	Access Capital, Inc. a commercial lender to the staffing industry	Finance	Senior Revolving Credit Facility
Värde Partners, Lender; UBS O'Connor, Lender	Non-bank	**$150.0M**	Spring Oaks Capital, a national financial technology company, focused on the acquisition of non-performing credit portfolios.	FinTech	Senior Secured Revolving Credit Facility

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Wells Fargo Bank N.A., Lender	Bank	**$50.0M**	Graham Corporation, a global leader in the design and manufacture of mission critical fluid, power, heat transfer and vacuum technologies for the defense, space, energy, and process industries	Defense	Senior Secured Revolving Credit Facility
Wells Fargo Capital Finance, Lender	Bank	**$100.0M**	Legacy Corporate Lending, LLC	Lender Finance	Senior Credit Facility
Whitehorse Capital, Lender	Non-bank	**$185.0M**	KORE Group Holdings, Inc., the global pure-play Internet of Things ("IoT") hyperscaler and provider of IoT Connectivity, Solutions and Analytics	Technology	Five-Year Term Loan
Wintrust Receivables Finance (WRF), Lender	Bank	**$15.0M**	Southwest-based, third-party logistics firm	Logistics	Account Receivable Line of Credit
Wintrust Receivables Finance (WRF), Lender	Bank	**$3.0M**	Southeast-based transportation broker	Transportation	Account Receivable Line of Credit
Woodforest National Bank, Lender; First Horizon Bank, Lender	Bank	**$60.0M**	SWK Holdings Corporation (Nasdaq: SWKH) ("SWK" or the "Company"), a life-science-focused, specialty finance company catering to small- and mid-sized commercial-stage companies	Finance	Amended Revolving Credit Facility

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FEATURE
STORY

Secured Finance Executives Predicting Modest Growth in 2024

BY MYRA THOMAS

Despite economic headwinds and higher costs of borrowing, secured lenders are expecting a profitable year ahead.

MICHAEL MAIORINO
FIrst Bank NJ

FRANK MORTON
Gordon Brothers

JASON RILEY
Bank of America
Business Capital

NEIL C. WOLFE
IDB Bank

2023 wrapped up to be a year plagued by inflation, interest rate hikes, and high borrowing costs. The historically tight labor market also left many businesses struggling for workers and watching labor costs rise. Political uncertainty and war added to the tumult. The conflict between Israel and Hamas, as well as the Ukraine and Russia, continued to shape the global economic picture, particularly for the Eurozone. Given the macroeconomic factors, an increasing number of companies turned to secured lenders to boost liquidity when traditional loans were simply out of reach. Asset-based loans and factoring arrangements remain an option for borrowers, particularly during times of economic turbulence. With signs pointing to a slow recovery, secured lenders are expecting that the New Year will bring modest growth for the industry.

According to Jason Riley, Central and West Region portfolio and underwriting manager at Bank of America Business Capital, most of the bank's clients have adapted to the new normal. "They've made adjustments to react to what's happening in the external environment," he says. Secured lenders are responding to the economic upheaval by making sure to properly structure and monitor loans. Fortunately, businesses are benefitting from the expertise that secured lenders provide. "We stay in close contact with our clients to help them navigate through tough situations," notes Riley. "The way we structure our deals and monitor our credits, we're able to offer our clients a lot of flexibility to manage through difficult conditions." No matter the client, there can always be company-specific or industry-specific challenges, and secured lenders are there to provide assistance with those challenges.

A Mixed Bag for Secured Finance

Companies are particularly attracted to the covenant-light structures that asset-based loans can provide, especially with traditional lenders tightening up lending standards. "I think we will continue to see that in 2024, especially with continued industry volatility and economic headwinds," Riley notes. While it's difficult to predict how the economy will shake out in 2024, secured lending remains relatively inflation-proof. Riley notes that secured lenders are remaining supportive of their borrowers, maintaining strong underwriting standards while doing so.

Secured lenders also made strong efforts to add new business in 2023, says Neil C. Wolfe, head of asset-based lending and factoring for IDB Bank. Those efforts are working to offset the expected drop in utilization. "Economic conditions and the higher costs of capital forced clients to be more fiscally responsible, and that resulted in them paying down loans whenever possible," he says. "Average outstandings were down despite successful efforts to put on new loans." For now, companies are not deploying cash for opportunistic or more speculative buys. Wolfe notes that companies are also making sure to reduce overhead and operating expenses, and many are simply keeping lower balances in their accounts.

Higher Pricing and Creative Arrangements

Banks and nonbanks are also dealing with the higher cost of capital. Wolfe notes, "For banks, it's the cost of deposits given the flight from low interest DDA accounts to higher yielding money market accounts. But banks are lending to nonbank finance companies, and the higher rates are being passed along to the nonbanks." The end result—

PENNY ZACHARIAS
McGuireWoods

clients are seeing higher pricing for secured loans. Wolfe notes that in all likelihood, there will be continued pressure to keep pricing up, even if interest rates begin to slowly come down.

Some secured lenders are better positioned than others. Some are taking more innovative steps to get deals done. Wolfe notes that he has seen more "creative" syndicated deals than in past years. "There are agent banks willing to share the treasury management and deposit relationship in some way, shape, or form," Wolfe notes. "In one deal, they were willing to give us a certain level of deposits to entice us to come in, and that's actually helped us to do just that." This sort of arrangement is certainly not typical of syndicated lending.

Challenging conditions require asset-based lenders and factors to be more creative, but they are also looking inward and taking a deeper dive into their portfolios to make sure to consistently revisit collateral values, notes Frank Morton, chief investment officer of Gordon Brothers. "There's no question liquidity in the market has tightened up post COVID," he notes. "There was a huge amount of stimulus going into the economy, which now has dried up. You layer on the fact that the cost of money has gone up across the board, and it's had a major impact on businesses." It's essential for secured lenders to respond appropriately.

In a statement, Brad Bauer, partner and co-chief investment officer at Varde Partners said, "The surge in demand for non-bank financing – an acceleration of a more than decade-long trend – underscores the need for private credit and magnifies already significant lending opportunities."

And, after the failures of Silicon Valley Bank, Signature Bank, and Silvergate Bank in March 2023 and concerns over falling deposits, financial institutions have become more circumspect and tightened up credit standards. Nonbank players like Gordon Brothers, have been the beneficiary of new business because of it. Morton adds that on the private credit side, nonbank lenders just might be a little bit more forgiving in certain circumstances.

Private Equity Interest Grows

Banks have certainly become more selective, says Michael Maiorino, market president, asset-based lending at First Bank NJ. He does note that nonbanks are seeing more business given bank deposit concerns. And while there are worries about liquidity, he does believe that, overall, the banking industry is adapting to more stringent risk standards and oversight from regulators. Plus, concerns over declining deposits are not hitting all banks equally, says Maiorino. "Money center banks are doing fine, for instance," he says. "I know many banks that are very well-heeled in deposits, and they haven't changed a thing as far as lending," he adds.

Asset-based lending and factoring will continue to be a safe haven for companies as pressure increases on cash flow transactions in 2024, says Maiorino. With growing attention on secured finance, he notes that private equity companies continue to take notice, recognizing it as a consistent bet in turbulent times or not. PE funds are also taking advantage of banks looking to offload assets. He notes, "You've got some megacompanies out there, which are now so multifaceted between equipment finance, commercial finance, and factoring. You have a bunch of roll-ups, supported by Ares and other private equity firms."

In June, Ares Management completed the acquisition of a $3.5 billion specialty finance loan portfolio of asset-backed loans from PacWest Bancorp. Three months later, Ares Management closed the $6.6 Billion Pathfinder II Alternative Credit Fund to invest in private asset-based credit. Now, Ares Alternative Credit Strategy is one of the largest investors in asset-based credit. Apollo Global Management also announced the launch of its first-ever private fund for asset-based financing in July.

In Q3 2023, Varde Partners raised nearly $1.5 billion for asset-based lending through its Varde Asset Lending Fund II and related accounts and co-investments. In a statement, Brad Bauer, partner and co-chief investment officer at Varde Partners said, "The surge in demand for non-bank financing – an acceleration of a more than decade-long trend – underscores the need for private credit and magnifies already significant lending opportunities." The investment is also taking the form of startups. In the past year, Bain Capital Credit Asset Management launched Legacy Corporate Lending. While 2023 saw considerable moves from private equity in secured lending, Maiorino expects the trend to continue in 2024.

Tech Aids the Lending Process

Enhanced and emerging technology is also helping to make the industry more attractive to private equity investment, facilitating administrative and operational support and portfolio monitoring. According to Morton, there's no question that technology is streamlining the due diligence process and portfolio management, benefitting private equity and secured lenders alike. Today, it's simply easier for companies to report collateral and for lenders to record business capital. Morton adds that as the technology matures, it will certainly make secured lending an even more seamless process.

By automating loan monitoring, lenders improve performance and mitigate portfolio risk. Decades ago, secured lenders relied on green bar type reports. "At Bank of America, our CashPro credit and treasury platform is making things easier for our clients," notes Riley. "They use the platform to electronically submit their collateral and financial information that we can use to calculate their borrowing bases for them." For secured lenders, the next step will likely be the use of artificial intelligence to better manage asset-level data and credit agreements.

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Reasons for Optimism

As technology improves, secured lenders are freed up to build relationships, bring on more new business, and do the handholding necessary to see a deal through to the signed loan agreement. Penny E. Zacharias, partner at McGuireWoods LLP, notes that there are a lot of reasons to be optimistic about secured lending in 2024. "People are eager to pursue growth in their businesses, and lenders have a huge opportunity as capital providers to add value," she says. ""I believe they have a prime chance to showcase their expertise and demonstrate how their solutions can profoundly benefit a business."."

Given the economic conditions, the most successful asset-based lenders and factors in 2024 will benefit by being the most flexible, says Zacharias. Luckily, secured lending is a very disciplined form of financing in terms of monitoring, reporting, and control elements, like cash dominion. While there will be opportunities for both banks and nonbanks, she notes that secured lenders may see some downward pressure and diminishing asset values, whether it's equipment or inventory. But at the end of the day, she says, companies are looking to grow their businesses and seek out credit. Most have shored up their balance sheets since the pandemic.

There are other favorable economic indicators, as the industry heads into 2024. The GDP increased by 5.2 percent in the third quarter of 2023, signaling a boost in business investment. Sourcing and production costs are also dropping, thanks to a decrease in commodity pricing. And secured lenders will likely benefit from private equity deal growth. EY's Private Equity Pulse report indicated that in the third quarter of 2023, PE firms announced deals valued at US$101b in Q3 2023 — roughly consistent with the first two quarters of the year. And predictions are that PE will see a strong resurgence of deal activity in 2024. All good news for secured finance.

Myra Thomas is an award-winning editor and journalist with 20 years' experience covering the banking and finance sector.

FEATURE STORY

Interview With Holland & Knight ABL Team Members

BY MICHELE OCEJO

TSL's editor-in-chief sat down with key members of Holland & Knight's ABL team, including Wade M. Kennedy, partner and co-lead of the Asset-Based Lending Team; Christopher S. Dillon, partner and co-lead of the Asset-Based Lending Team; Hamid Namazie, financial services partner; Yoojin Lee, financial services partner; and Mark Spitzer, financial services partner. Here, they discuss H&K's strengthening of its finance practice, how they got their start in this specialty and the threats facing lenders in 2024.

H&K has strengthened its finance practice in the past year. What is driving that mission? Increased need in the geographic areas? Increased deals?

Kennedy: I think it reflects an overall mission of Holland & Knight to strengthen and expand its debt finance practice generally with a special recognition of the critical role asset-based lending plays in the industry. Holland & Knight has long had a geographically broad and experienced group of ABL specialists serving middle-market and money center banks and financial institutions, but the firm wanted to grow in the Midwest and West Coast as well as have national leadership specific to the ABL team. Given my Chicago connection, industry background and experience building one of the largest ABL practice groups in the country, my joining the firm made a lot of sense. Hamid, Yoojin and Mark all joined the firm separately several months after I did, but we all saw the same firm commitment to the practice, both in debt finance generally and ABL in particular. We now have over 65 members of the ABL team in offices across the country and particular depth in New York, Atlanta, Dallas, Los Angeles, Charlotte and Chicago. Chris Dillon and I co-lead the ABL team and have been tasked with providing national leadership to this expanding ABL practice and ensure we have the most efficient and effective ABL group in the nation, bringing our breadth of experience and intellectual capital to bear in the most effective way for our ABL clients. Our growth has been incremental and intentional, however, and we expect steady increases in deal flow in the ABL market over the next couple of years, in both bank and non-bank ABL transactions. Asset-based lending provides an important layer of the debt stack for many industries and transactions and is a particularly attractive financial product in down economic cycles like we are seeing now. It has been around for a long time and has distinct advantages for lenders and borrowers in any economic condition. We think that having a strong ABL practice is a good investment for the future of our firm and our clients.

Dillon: H&K is among the largest law firms in U.S. by headcount and our focus is and has been, for decades, serving clients in the middle market. When I joined the firm seven years ago, we were roughly 1,200 lawyers and we are now bumping up against 2,200. But increased headcount simply for the sake of a "bigger is better" attitude is not a recipe for success. Our expansion efforts in the last three years were strategic from both an industry and geographical perspective. Three years ago, H&K combined with energy-powerhouse Thompson & Knight, adding more than 200 lawyers in Texas, leading to an "Energy Practice Group of the Year" recognition by Law360 in 2021. This year we combined with one of the premier healthcare law firms in the country, Waller Lansden Dortch & Davis, adding another 250 lawyers in the Southeast U.S., placing H&K squarely in an elite group of firms serving the healthcare space. Holland & Knight now boasts the largest healthcare law practice in the United States. In ABL in particular, in the last year we have been very intentional in strengthening our team in the Midwest and on the West Coast through the additions of Wade Kennedy, Hamid Namazie, Yoojin Lee and Mark Spitzer. At their core, these combinations and additions were made to further expand and bolster our already significant client expertise in these practice areas and regions. For ABL lenders, this means that not only do we boast top-tier lending expertise in every region in the U.S., but it also means we have deep subject matter expertise in the most consequential industries ABL lenders serve, whether it be

WADE KENNEDY
Holland & Knight LLP

CHRISTOPHER DILLON
Holland & Knight LLP

HAMID NAMAZIE
Holland & Knight LLP

YOOJIN LEE
Holland & Knight LLP

MARK SPITZER
Holland & Knight LLP

healthcare, transportation, energy, government contracting and so on. In that sense, "bigger is better," but only if you have both breadth and depth in the areas our ABL lender clients serve. Without reservation, with these combinations and additions I'd say we hit it out of the park not only from a client-service and economic standpoint but, just as importantly, from a cultural standpoint. Simply put, H&K is a place where great lawyers want to be and we're open for business.

Please tell us a bit about how each of you got your start in secured finance law and what advice would you give to young attorneys considering this field.

Kennedy: I showed up at the doorstep of my first firm in Chicago in 1989 and said "Where do you need me?" They threw me into deals for Heller, Sanwa, GECC and a lot of other ABL shops which are no longer with us as standalone entities and I loved it. David Crumbaugh and Greg Murray were a couple of my early mentors in asset-based lending and I learned a lot from them and the partners and associates I worked with. My advice is pretty simple: (i) be willing to work hard and never say no to an opportunity (or assignment), (ii) ask questions (or find the answer somewhere) if you don't understand something and (iii) treat people the way you want to be treated. Do those things and you'll be okay.

It has been around for a long time and has distinct advantages for lenders and borrowers in any economic condition. We think that having a strong ABL practice is a good investment for the future of our firm and our clients.

Dillon: I remember it like it was yesterday. I was a first-year associate barely two months into my legal career when Chris Carson, head of my finance group in Atlanta at the time and an ABL "guru" in his own right, sent me on a diligence mission to a borrower's headquarters. I was to perform a task only a true "knuckle dragging" ABL lawyer can appreciate – I had to dig through hundreds of aircraft leases in a dusty storage closet searching for liens. Following that, I was given a two-page term sheet and 150-page Wachovia form credit agreement and told to "have at it," which I did for probably nothing short of 35 hours over two days. Looking back, I am sure this was an intentionally harsh test. Well, 20 years later I'm still at it, so I guess I passed?! I always tell associates that in ABL the details matter and they can matter a great deal in ways they don't necessarily matter in the cash-flow world. To this day I am very often still "searching for liens" so to speak (but thankfully not in a storage closet), in that our practice is ever-changing as new ways of doing business are cropping up at a blistering pace. The business and legal issues that we come across that may have been clearer in the past aren't always as clear anymore. But I also tell associates that while having deep expertise in a particular type of loan transaction is a must, you are missing opportunities if your focus is one type of loan transaction alone. Coming up as an associate I was very fortunate to also work extensively for partners whose primary focus was cash flow lending and, more often than not, on sponsor-backed transactions. So, although I got my start in ABL, my upbringing really consisted of a heavy concentration in both ABL and cash flow lending. To cash flow lenders, ABL is often perceived as being "old school," and it certainly is in some really great ways, but in other ways I think nothing could be further from the truth. In the last few years, private equity, in particular, has become prevalent in core middle- and lower-middle-market ABL space bringing their deal terms with them. In many deals these days there is both an ABL and cash-flow component in the capital structure. Consequently, I tell associates that having a diversity of deal experience in both ABL and cash-flow lending is more important than ever.

Namazie: Out of law school, I was convinced that I wanted to be a litigator until I realized that it wasn't that glamorous! As I was debating my career goals, a friend reached out to me and told me that Marshall Stoddard, one of the partners that he worked with, had asked him if he knew any hard-working junior associates that may be interested in joining his ABL team. After an evening spent in the Loyola Law School library reading about ABL and the legal aspects of it, I decided that it was actually interesting and decided to go for it. Luckily, my interview with Marshall went well and I got the job. I was quickly thrown into the fire and was sitting in borrower conference rooms reviewing contracts for days and drafting documents, which came back from partners and senior associates with more comments than words that I had drafted! Although it was not an easy first year, I appreciated that I was thrown into the fire. There were long nights and a lot of time spent researching to better understand what I needed to be doing. I fully acknowledge that the world has changed since 1999 and the amount of junior training available within a law firm and outside of it are significantly more than what I had available to me. Not only should those new to ABL take advantage of all of the training programs, but they should also really take ownership of their own development and put in an extra effort to advance their education. No one is more interested in your success than you (and maybe your parents)!

Lee: After practicing cross-border M&A law abroad for two years, a recruiter reached out to me to see if I was interested in moving back to Los Angeles to join the debt finance department with a partner who would be leading the West Coast practice. Despite having no prior experience in debt finance, I was hungry and eager to learn and it sounded like the perfect opportunity to grow. The West Coast finance practice grew exponentially during Hamid's leadership, and while he was busy expanding and growing the practice, it was also a great opportunity for me to be thrown into the trenches – which is often the best way to learn. My advice for younger attorneys would be to (i) not be afraid to take a chance to grow and learn, even though you may feel like you are not ready and (ii) always be open to learn from the people around you. I am so glad I said "yes" to that recruiter years ago and am so grateful to all the senior associates, senior counsels and partners who were instrumental to my growth and development.

To cash flow lenders, ABL is often perceived as being "old school," and it certainly is in some really great ways, but in other ways I think nothing could be further from the truth. In the last few years, private equity, in particular, has become prevalent in core middle- and lower-middle-market ABL space bringing their deal terms with them.

Spitzer: Against my will (but consistent with the firm's "rotation" policy, i.e., new lawyers were required to rotate through two firm practice groups, preferably with one litigation-oriented, the other transactional (six months each)), I started my career as a creditors' rights, workout/restructure and sometime bankruptcy lawyer. I made around 25 state and bankruptcy court appearances my first year (some during my second rotation). I worked on real property foreclosures, personal property remedies enforcement (I "popped" an RV from a deadbeat debtor, for example), and a major music retailer bankruptcy. Fun stuff if you are into that sort of thing. Unfortunately, I was not - having made my intention to become a transactional attorney known from the jump. I got my wish, and my second rotation was in the transactional side of the banking and finance department. Looking back on it, I was, and remain, a beneficiary of the firm's policy of having its young lawyers get at least some introduction to the "other side" – and the theory that an attorney is a better deal lawyer if they have some litigation/workout experience and vice versa – a litigator/bankruptcy lawyer will have a better understanding of why loan documents are drafted and deals structured the way they are if they have some hands-on, in the trenches, loan document drafting and deal experience. My suggestion to young lawyers is colored by that experience – while you can (and if permitted to do so) seek out work/experience on the "other side." It will not only make you a better, more rounded attorney in your specialty, but it may also enable you to pick up work when workflow in that specialty area is otherwise in a lull. My most productive years have been during choppy economic markets when I had a split of new deal/origination work and a portfolio of workout and loan restructure matters. I should not advertise it too much, but it is also a welcome change of pace to represent a borrower every now and then!

From a legal point of view, what should lenders be looking out for in 2024?

Kennedy: I think we will see the sponsor acquisition market pick up and overall deal-flow improve. On the challenging side, I think we are already seeing increasing workouts for highly leveraged companies that are suffering the double whammy of supply chain and consumer confidence challenges as well as increased costs of capital (interest expense). This will likely continue well into 2024.

Dillon: Let me pull out the ole' crystal ball! Last year at this time we were saying just about the same thing I'll say this time, but this time with a few more cards turned over. Last year we, like many of our clients, expected that the Federal Reserve's inflation countermeasures and tightening credit markets would push more cash-flow borrowers towards ABL and there would be more distress in the system generally, leading to a decrease in new originations, more workouts and restructurings. While all of this did happen to some degree, it didn't happen to the degree many of us expected (and, I daresay, some in our industry hoped for!) due to the amount of cash still left in the system, tighter underwriting standards, relatively weaker deal terms generally, and the patience of lenders to kick the can down the road. Obviously that situation can only go on for so long, but if you ask five financial advisors what 2024 will bring, you'll get five different, though overlapping, answers and most of them will cite some or all of the "X-Factors." For example: Will the Federal Reserve continue to increase rates? And, if so, by how much? Will the conflicts in the Ukraine and the Middle East spill over into wider regional or global conflicts? Will the U.S. and China have more direct "hot" conflict, impacting everything from trade routes, foreign investment, and critical resources? Will there be more bank stress or failures like we saw in early 2023? What will the impact of bank regulation be? Will Harry and Meghan reconcile with the Royal Family?! And, of course, don't forget it's an election year in the U.S.! The answers to all of these questions can have different impacts on different industries and different segments of those industries and, by extension, the lenders who serve those industries. So, the best advice I can offer for lenders in 2024 is the advice I was given by my Scoutmaster father: "Be Prepared."

On the challenging side, I think we are already seeing increasing workouts for highly leveraged companies that are suffering the double whammy of supply chain and consumer confidence challenges as well as increased costs of capital (interest expense). This will likely continue well into 2024.

Spitzer: A few predictions (my prognostication skills are not particularly noteworthy, however): (i) in somewhat of a "buyer's market", sponsors will be looking to acquire companies experiencing some level (mild to significant) of distress. Private equity firms flush with cash and investor commitments will go bargain-hunting. Target companies fearful of increasing working capital challenges and other market forces will be more willing to cash out – at lower purchase multiples. I suspect a portion of such increased activity will be an uptick in sponsor-to-sponsor transactions where the more sophisticated, better-funded firms snatch up underperforming companies from sponsors that either have less experience in managing portfolio companies in difficult economic environments or have too many anchors in their portfolios. (ii) ABL lenders will face the somewhat contrary pressures of having sponsors insisting on covenant-light, borrower-friendly structures carried over from the cash flow market juxtaposed against tightening internal credit approval requirements – especially for their non-sponsor backed customers. ABL lenders with stronger experience in dealing with distressed or troubled credits – and who are not afraid to finance them - will do particularly well, just as they did in 2008 and the several years that followed. (iii) Increased pressure (some might say interference) from government regulators on ABL lenders to stick to the rules, including stricter review of compliance with credit approval processes, collateral values and other underwriting components.

Is AI having an effect on the legal aspect of secured finance? How so?

Kennedy: Not so directly on the legal and documentation side. Yet, despite the fact that lenders often have to deal with comments from borrowers that seem to be an AI-generated compilation of our toughest deals, we still interact pretty exclusively with humans on the negotiation front. Insert any joke you like here about lawyers being human…

Seriously though, AI can't be underestimated as a tool. I think currently and in the near term, AI has immediate applications for ABL lenders in credit modeling/underwriting and in process automation. There are also probably very near-term applications coming for ABL lenders in identifying and connecting ABL lenders with potential borrowers and even offering general credit structures that may be optimal for particular transactions. It's a wide-open area and moving fast.

Most importantly for our clients, we can offer legal expertise on understanding and avoiding potential liability in implementing AI-driven processes and giving guidance on how AI can be used in their business. Essentially, we can help identify the risks and limitations of processes that switch from human decision making to machine decision making (data privacy, intellectual property, fair credit standards, etc.) The use of AI raises a lot of issues we don't have legal answers for yet, so institutions need to be cautious, yet not get left behind. It's a difficult dynamic, but we have a lot of folks smarter than me who have been looking at the issues for some time.

From a personal standpoint, I think that I (like a lot of other professionals) have suffered from the driving fear that AI would replace attorneys as the primary means of negotiating and drafting credit documents. Having learned more about current AI applications, I don't think that is going to happen given the complexity and nuance of the lending relationships, but I have come to believe that lawyers who use AI effectively may very well replace those who don't. I can see a number of efficiencies in uses of AI, particularly in the "first draft" area as well as the potential for solutions to problems like resolving the "battler of the precedent documents" and what is "market" in a given circumstance. Crunching large amounts of data to see where and when certain provisions have been used could shorten what now can be very long arguments about the "market" and proper use of certain terms. The obvious problem will be where machine learning will get the data set it uses to solve these problems (i.e., just publicly available deals?). I would hate to see EDGAR determine "the market" for ABL lending into the future. I hope the private market will always be a place where human creativity and social and moral factors always play a part in generating new data.

How are new state and federal laws affecting the industry, particularly state disclosure bills and CFPB 1071?

Namazie: This question has been the subject of many SFNet webinars over the last few years. The answer could be a lengthy article all by itself, but I'll keep it as short as I can. Starting in 2018 with California, we saw a number of states enact commercial lending disclosure bills that require commercial lenders (including ABL lenders and factors) to disclose APR as a metric that borrowers can use to compare different lending products. The good news is that these rules apply to lenders providing loans less than a certain threshold ($500,000 in California and $2,500,000 in New York) and regulated banks are excluded. I became intimately involved in discussing the impacts of this law and its associated regulations with the California legislature and regulators and took on the role of Advocacy Committee Chair for the SFNet to help direct our efforts with such laws popping up in other states. Through our efforts, we saw the enactment of new legislation in California in 2023 which provided a safe harbor for lenders acting in good faith in APR disclosure. It was a huge win for SFNet and its members! I strongly urge lenders to be aware of these rules and the states in which they are popping up and make sure that they are complying to the extent the law applies to them. The SFNet has provided compliance guides to its members on its website with respect to the California and New York requirements.

One more important development for lenders to be aware of is the implementation of Consumer Financial Protection Bureau's rules which implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act. As these rules can be very overbearing for smaller lenders, the SFNet has been very involved in narrowing the scope of the final rules. As it stands now, the implementation of the rules is subject to an injunction issued by a Texas court, which delays implementation to the later part of 2024. However, lenders should keep an eye on developments with this as it may have a significant impact on them.

Finally, to give a plug to the SFNet, the association has been working hard to stay on top of new legislation that impact its members. For example, very recently, a new legislation popped up in California which restricts lenders from charging "collateral monitoring fees." The law does not define the fee or give any guidance on what is a "collateral monitoring fee." We are working with local lawmakers to better define the intent of this law, but until it is better defined, it is the law of the land in California and lenders need to work around it.

Michele Ocejo is SFNet director of communications and editor-in-chief of The Secured Lender.

ABL INSIGHTS

2023 Syndicated ABL Loan Volume Tops US$149bn

Total Belies Deal Quality

BY MARIA C. DIKEOS

MARIA C. DIKEOS
Director of Analytics, Refinitiv LPC

Refinitiv's Maria Dikeos provides an analysis of the capital markets in 2023.

The US debt capital markets started 2023 off cautiously optimistic, only to face a dramatic shift at the end of the first quarter following the collapse of two banks (Silicon Valley Bank and Signature Bank), the takeover of a third (Credit Suisse) and growing concerns around possible contagion risk among several regional banks. By early May, the demise of First Republic was added to the roster of lender upheaval in what was the largest US bank failure since the 2008 credit crisis.

The commotion did not stop there. For much of the year, fears of rising inflation cast a long shadow. So too did the rising interest rate environment and the relentless valuation gaps between prospective buyers and sellers across the corporate and sponsor-backed markets. The confluence of technicals ultimately sapped the 2023 market of any sustained or visible deal-making momentum. Instead, both borrowers and lenders took advantage of windows of opportunity where market volatility seemed more tempered, to come to market.

Ultimately, US leveraged lenders supported a combined US$906bn of high yield bond and loan issuance via the broadly syndicated loan market in 2023 to mark the weakest performance since 2011 (Fig. 1).

At just over US$737bn the US leveraged loan market, alone, was off 13% year over year, fueled, in large part, by a series of amendments which primarily supported the market's transition away from Libor based credits. Full refinancings or amend and extend facilities, while not completely non-starters, were largely confined to either better quality credits or names with near term maturities.

At just over US$241bn, new leveraged loan assets represented 33% of total issuance, down from 50% in the prior year. Buyout volume tumbled to a 20 year low as market appetite for lower quality single B credits wavered (Fig. 2) and direct lending constructs provided PE sponsors with greater certainty of execution when buyout opportunities presented themselves. At less than US$40bn, broadly syndicated LBO loan volume marked a 20-year low.

Despite the tally and intermittent wobbles, the debt capital markets did exhibit tenuous signs of returning strength by year

Fig. 1: Leveraged volume

Leveraged volume marks twelve year low; Loan totals down 13%

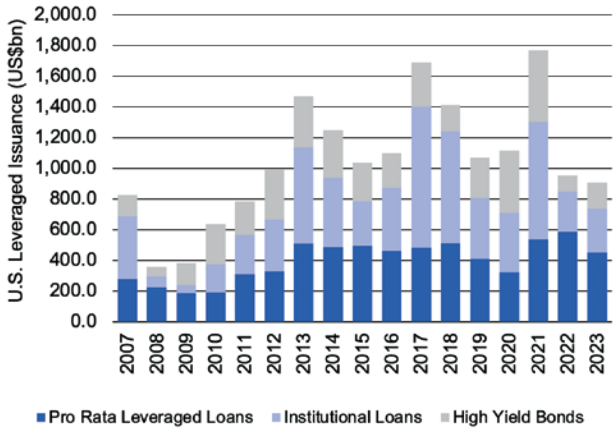
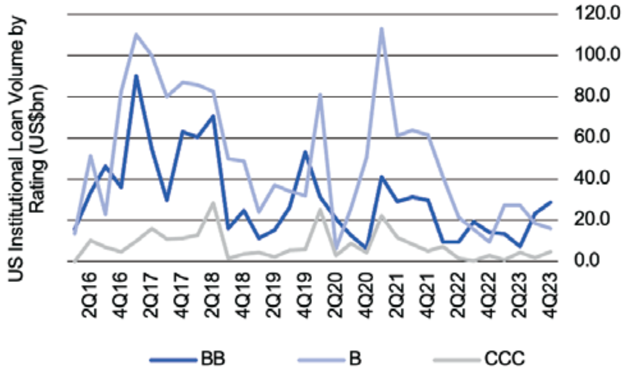


Fig. 2: Institutional Volume by Rating

Stronger institutional credits support leveraged pipeline; Lower single B credits remain scarce



Source: LSEG LPC

Fig. 3 LBO Loan Volume

At less than US$40bn, broadly syndicated LBO loan volume marks 20 year low

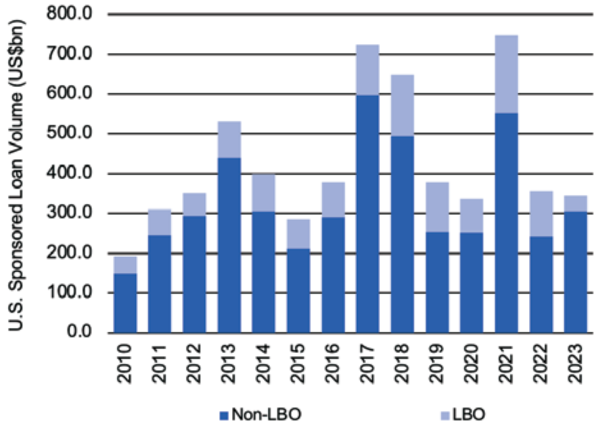


Fig. 4: US ABL Volume & Leveraged Market Share

1Q23 ABL loan volume sets new record at over US$56bn; Numbers tell incomplete story….

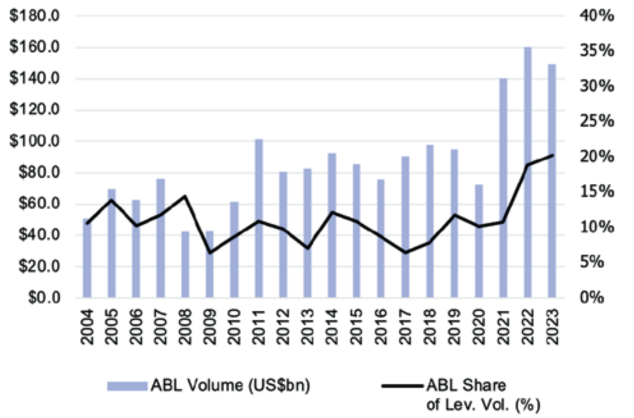
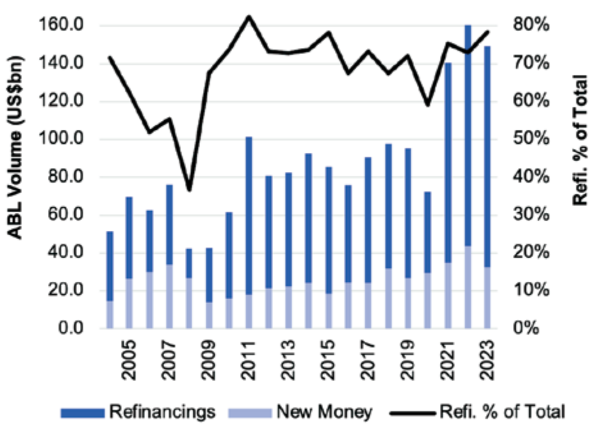


Fig. 5: US: ABL Volume, New Money & Refinancings

Refinancings make up nearly 72% of 2023 ABL calendar



Source: LSEG LPC

end as market sentiment suggested greater confidence in rate stabilization. In turn, institutional investors rallied to support nearly US$287bn of issuance, increasing 8.5% year over year, while the HY bond market completed over US$168bn in deal flow, up 67% compared to 2022 totals.

Despite The Highest Total On Record, Abl Lending Felt Thin

Against this backdrop, the US asset-based lending (ABL) market pushed over US$149bn through retail syndication to make up 22% of total 2023 leveraged loan volume (Fig. 3). An additional US$8.5bn in financing was completed via the clubbed market.

The results represented the third highest annual results on record, but for lenders the calendar of completed deals felt thin and the quality of the deals themselves limited.

Over 76.5% of annual ABL volume cleared the market during the first six months of the year – largely via a series of amendments which allowed borrowers to transition away from LIBOR-based constructs ahead of the June 30th deadline.

In contrast, less than US$35bn of issuance was completed during the second half of the year. Of this total, less than 50% represented new loan assets. Full year results were even more grim: Corporate borrowers raised just over US$20bn in new loan volume in 2023, while sponsored issuers raised slightly north of US$12bn (the third consecutive decline in sponsored ABL volume in the last three years) (Fig. 4). Less than US$7bn of combined corporate and sponsored new issuance for the year backed acquisitions.

“2023 was the year of amendments,” pointed out one ABL lender. “In the last two months of the year there have been more buyout-activity deals that we are now looking at, but they are still tough. It is harder to get term loans underwritten, they are more challenged and bespoke. And we are competing with direct lenders.”

Indeed, the growing direct lender footprint continued to impinge on traditional bank relationships. “If you take a step back and look at where we can grow, increase revenues or fees, it is in private equity lending and this has come under fire as of late from direct lenders,” explained one arranger.

There are some possible opportunities in this space. Split lien deals are an option since direct lenders, more often than not, don’t want to hold revolvers or do a deal at 200bp over Term SOFR. But it’s a balancing act – split-lien constructs can signal an underperforming or tougher credit and ABL lenders don’t want to pick up the ABL piece inside of a direct lender deal so two credit agreements and an intercreditor agreement add complexity to the financing.

Qualified Refinancings Drive Activity

Ultimately, at almost US$117bn, refinancings dominated the calendar (Fig. 5).

Over 90% of 2023 ABL volume supported general corporate purpose needs, down slightly from full year 2022 totals but higher than the 75-85% range historically. Event driven activity in the form of DIP/exit financings and M&A activity did edge up to 4.3% and 4.9% of total issuance respectively – more normalized levels for DIP/

Fig. 6: US ABL pricing by bucket

Average ABL pricing edges up in 2023; 40% of issuance priced at 225bps or greater by 4Q23

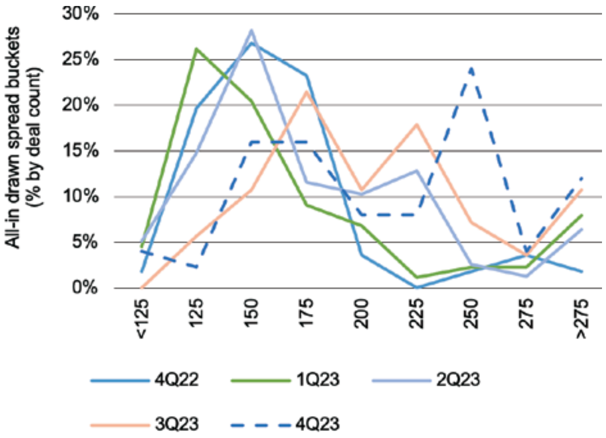


Fig. 7: US ABL Estimated Maturing Volume

Outstanding ABL holdings at nearly US$354bn

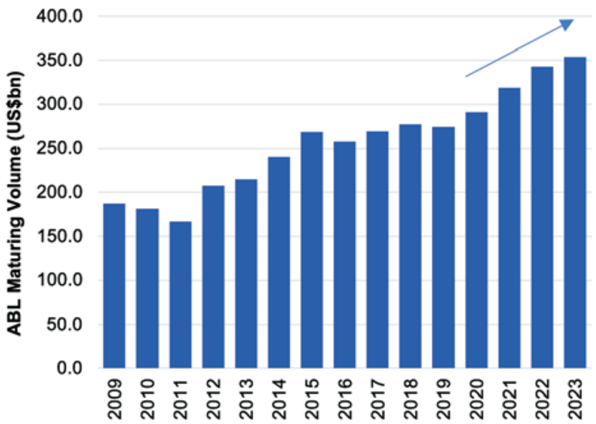
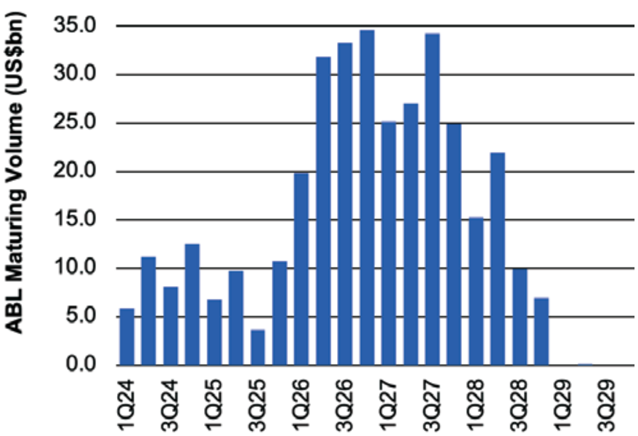


Fig. 8: US: ABL Estimated Maturing Volume

US$188bn or 53% of current ABL outstanding commitments are to mature between 2024 and 2026



Source: LSEG LPC

exit financings but well below historical M&A norms well north of 10%.

Borrowers instead opted to upsize existing credits where possible, via add-ons or the exercising of accordion features. But there was selectivity among lenders. "It is difficult for banks to muster the liquidity to come in at a higher ticket without ancillary business," said one lender. Although deposits did stabilize in the wake of the bank failures earlier in the year, lender allocated capital was directed to core relationship borrowers who provided ancillary fee generating opportunities. "Banks are looking for relationships not loans," explained one source. "Even large banks which don't have liquidity problems are still making decisions with a relationship focus."

"No one is telling the street that they will grow loans," adds another. "They are telling them that they will manage portfolios. That is different from where we were five years ago. No one in the business is doing loan-only relationships."

Still, there are opportunities to be had.

Amid tighter deal structures and richer spreads – pricing is still 25-50bps wide where it was last year and 56% of 4Q23 issuance priced at 200bp or greater, up from less than 11% at total issuance the end of 2022 (Fig. 6) - lenders point out that there is a growing maturity wall that needs to be addressed in 2024.

Ironically, although refinancings fueled the 2023 calendar, in a testament to episodic market volatility, a smaller number of them amended and restated existing documentation to push out maturities. At the start of 2024, outstanding ABL loan commitments total US$354bn (Fig. 7). Of this total, US$188bn comes due in the next 24 months (Fig. 8).

"Better companies will pay up to get in front of the refinancing wall," according to one lender. "Tougher credits are having a more difficult time finding capital."

"We are desperate to see rates come down," adds another lender. "Our hope is that rates come down, activity increases and ABL and term loans become more regular way."

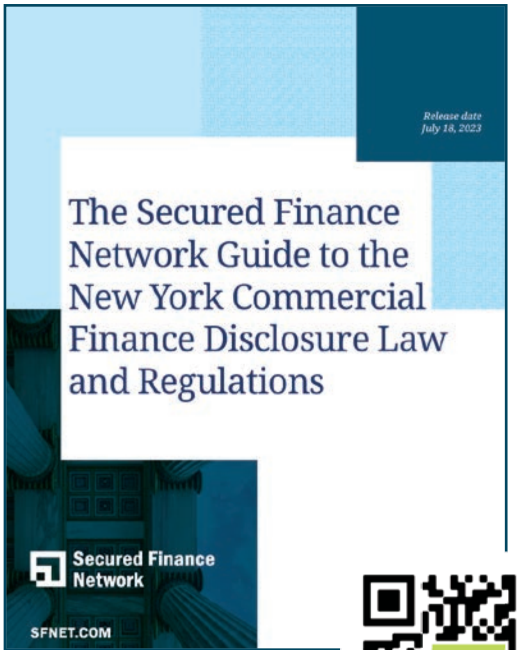
Maria C. Dikeos is a director of Analytics and head of Global Loans Contributions at Refinitiv LPC in New York. Dikeos runs a team of analysts in the US, Europe and Asia who cover analysis of the regional syndicated loan markets. She has a B.A. from Wellesley College and masters in international affairs from Columbia University.

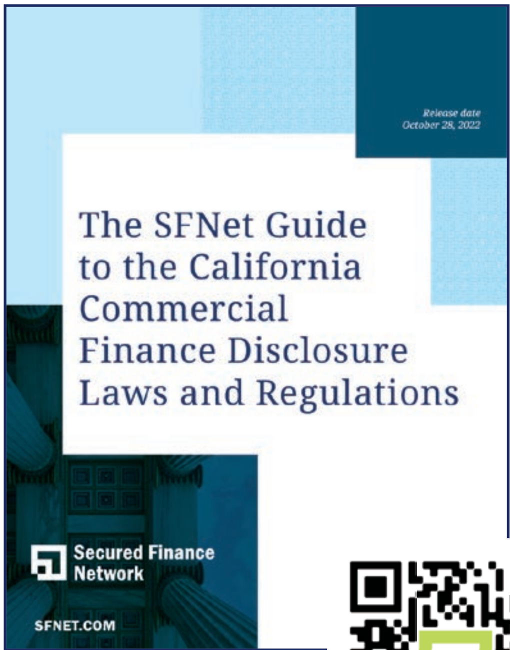
Secured Finance Network

New State Disclosure Laws: What You Need to Know

SFNet is pleased to offer what we believe are the most comprehensive guides to complying with the Disclosure Regulations for Commercial Finance Transactions for both New York and California.

With these guides, we hope to provide greater clarity on how to comply with the new legislation and regulations.





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FEATURE STORY

Gauging Credit Risk for 2024

BY BILL MAYER

The credit risk panel at SFNet's 79th Annual Convention focused on challenges such as consumer headwinds, the higher cost of capital, looming refinancing deadlines, and the prospect of more downgrades, bankruptcies and defaults. Overall, though, panelists were optimistic about credit appetite and the ability to negotiate risk through tighter deal structures and more in-depth borrower and sector analytics.

TITLED "CREDIT RISK IS FRONT AND CENTER," THE NOVEMBER 16 EVENT BROUGHT TOGETHER:

JOYE LYNN
Wells Fargo Capital Finance

COLEIGH MCKAY
Regions Bank

LOUIS NATALE
White Oak Commercial Finance

MEGAN NEUBURGER
Fitch Ratings

BILL MAYER
Tiger Capital Group

Ratings Trends

Megan Neuburger kicked off the discussion by highlighting trends in Fitch Rating's corporate, speculative grade-rated portfolio. In the first half of 2022, she said, ratings improvements were widespread due to the continuing pandemic recovery. But in the second half of 2022, credit performance among speculative-grade issuers in the portfolio began to deteriorate, relative to their investment-grade peers. As the Fed kicked off its tightening cycle, Neuburger explained, high-yield issuers had less financial flexibility and more floating-rate debt.

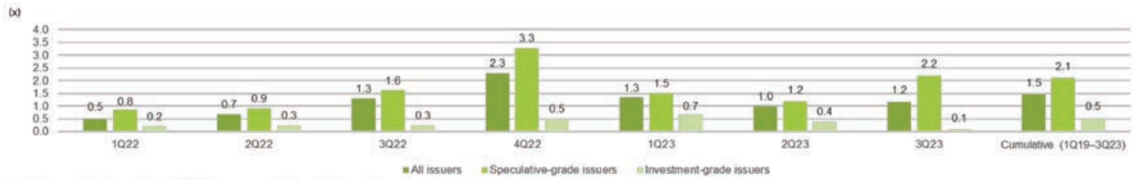
The percentage of issuers with a negative outlook or watch also started to creep up in this timeframe. Relative to historical levels, this number has now reached a "fairly high" 18 percent. "If you look back to those early borrowers in 2019, about 10 percent of this portfolio would typically be on a negative watch or outlook," Neuburger noted.

But context is everything. Given the previously high levels of liquidity and credit quality in lenders' portfolios, the current correction is more likely a return to normalcy for asset-based lending, in the view of Joye Lynn of Wells Fargo. "Our credit appetite still remains incredibly strong, albeit I'd say more disciplined," she said. "But we're doubling down on our underwriting standards. Our underwriting timeframe is taking a bit longer, not only on the collateral side, but also on the financial side."

In addition to downgrade/upgrade trends, Wells Fargo is paying close attention to borrowers' liquidity as well. Neuburger listened with interest to Lynn's remarks on credit appetite. "I was just really happy to hear that you're still leaning in, albeit with discipline," she said. "The refinancing environment is the other big thing we're watching with some of these issuers."

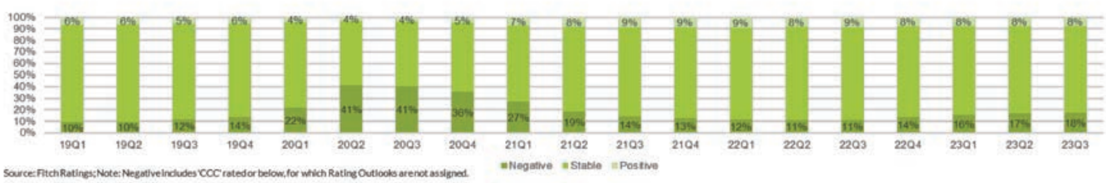
Fitch Ratings' Speculative Grade Rating Trends

Fitch Speculative Grade Rated U.S. Corporates Downgrades/Upgrades



Note: Universe consist of approximately 2,000 actions across publicly and privately rated parent issuers.
Source: Fitch Ratings

Fitch Speculative Grade Rated U.S. Corporates Rating Outlook Distribution



Source: Fitch Ratings; Note: Negative includes 'CCC' rated or below, for which Rating Outlooks are not assigned.

FEATURE STORY

Sectors and the Consumer

Credit risk is a moving target given the fluidity of the current macroeconomic environment. Louis Natale of White Oak pointed to a consistently important variable in the equation—consumer spending habits. Today's pullbacks, he said, could mean that "some consumer-facing companies will start experiencing issues." He also encouraged the audience to watch for the "trailing effects" of different marketplace shifts—for example, sluggish spending on cars and furniture causing problems for whole ecosystems of suppliers.

Neuburger provided a slide showing eight particular sectors—Fitch Ratings covers about 30 in all—with non-neutral outlooks. Global aerospace/defense was the sole sector with an "improving" outlook for 2024; the rest fell into the

Sectors with Deteriorating or Improving Outlooks: Fitch's Preliminary View for 2024

Region	Sector	Sector Outlook June 2023	Sector Outlook 2024
Global	Aerospace & Defense	Improving	Improving
Global	Shipping	Deteriorating	Deteriorating
North America	Building Products & Materials	Deteriorating	Deteriorating
North America	Utilities, Power & Gas	Deteriorating	Deteriorating
North America	Leverage Finance	Deteriorating	Deteriorating
North America	US Real Estate - Equity REITs	Deteriorating	Deteriorating
North America	US Retailing	Deteriorating	Deteriorating
North America	US Technology	Deteriorating	Deteriorating

Source: Fitch Ratings

"deteriorating" bucket. They included global shipping and, for the North American region:

- building products and materials
- utilities, power and gas
- leverage finance
- U.S. real estate, equity REITs
- U.S. retailing
- U.S. technology

These sectors represent about 20 percent of Fitch's total, Neuburger noted. "If we had looked at this chart in June of this year, we would have seen about 40 percent of sectors on deteriorating," she said. "So the picture has gotten a bit better."

With respect to U.S. retailing, the half-full view is that Teflon U.S. consumers will keep on supporting retailers' cyclical business models. On the other hand, Neuburger said, "you're still paying a lot more for that basket of goods and services today than you were in 2020 or 2021. At a certain point, the consumer is going to show weakness."

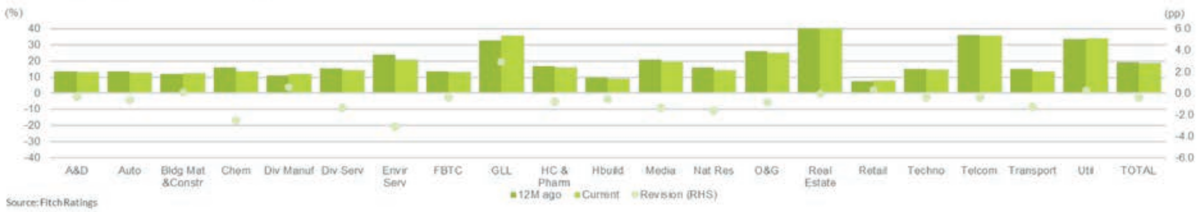
[NOTE: In a Dec. 1 non-rating action commentary, Fitch said it "expects 2024 U.S. retail volumes to decline at a low single-digit rate, particularly in discretionary categories." It cited factors such as:

- moderating consumer health and sentiment
- reduced consumer savings
- rising consumer debt levels
- climbing interest rates, and
- the cumulative impact of recent inflation.]

Meanwhile, noted Coleigh McKay of Regions Bank, the healthcare industry continues to struggle with persistent labor and wage pressures, especially those associated with doctors and nurses. Lenders also should pay close attention to leverage and cap ex trends among borrowers in technology,

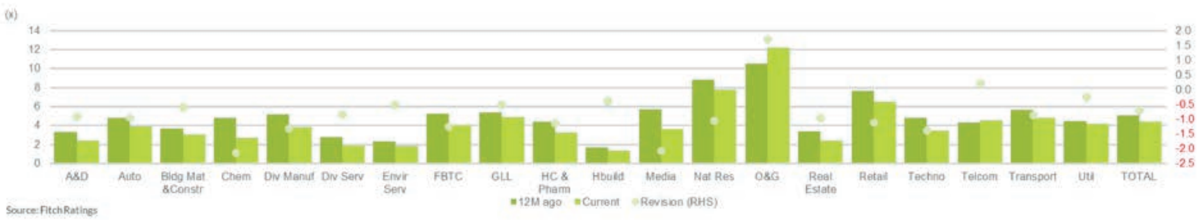
Fitch Speculative Grade Issuer Forecast Evolution

Fitch Aggregate EBITDA margin 2024 Forecast Evolution



Source: Fitch Ratings

Fitch Aggregate Interest Cover 2024 Forecast Evolution (EBITDA/Cash Interest Paid)



Source: Fitch Ratings

media and telecom, he said, giving the example of telecoms spending heavily to rollout rural broadband. "The current environment is going to separate the really good operators versus the ones that are just muddling through," McKay said.

He also called attention to the rate-sensitivity of commercial real estate, where some borrowers are headed for a refinancing wall. "Office and multifamily are going to be having some issues going forward, so we're probably not going to see a lot of leaning in there," McKay said. "Housing and building is going to be driven by how well the consumer holds up. It's one of those wait-and-see areas."

"As long as I have two of those three, I'm good," she said. "When you're only reliant on one, that's when you can get yourself in trouble." Natale then suggested a fourth pillar—the management team. "You want them to be able to execute," he said. "There's an expectation in the ABL world that there will be defaults. The question is the severity of it. Where does it really lie in starting off?"

Credit Metrics

Midway through the presentation, Neuburger showed a slide with forecast evolutions (current vs. 12 months ago) for high-yield, speculative-grade issuers. One chart focused on aggregate EBITDA margin, the other on aggregate interest cover (EBITDA/cash interest paid). "From a forecast perspective, things are getting incrementally worse for these high-yield issuers, but not terribly so," she told the audience. "The picture looks a bit worse from a coverage perspective than from a margin perspective, which is not surprising given that this is a high-yield population."

Many of the issuers have a substantial amount of variable-rate debt in their capital structures. Fitch's forecast at the time of the event called for one additional Fed hike this year, with no additional rate cuts until the middle of 2024. The ratings agency, according to that forecast, expects the Fed to keep the policy rate in restrictive territory for several years to come, creating additional challenges for issuers with maturing, fixed-rate debt. "They're going to need to refinance," Neuburger noted.

Against this backdrop, some banks have ramped up their provisions as though they were getting ready for an impending storm. While panelists were sanguine about credit appetite, they described pivoting to better assess and adjust to risk. Metrics and analytics have come to the fore.

"One thing that none of us have experienced in a really long time is a rising-interest-rate environment," Natale said. "Today, the level of analysis you're going to do on your existing portfolio, or when you're bringing in a new transaction, is going to be heavily weighted toward interest-rate sensitivity."

Hedging around interest rates can be challenging even in a working capital facility, Natale noted. "You always need to have a certain amount of outstanding to do that," he said. In today's brave new world, one approach would be to encourage the borrower on, say, a $10 million to $50 million facility to "lock in a portion of the interest rate, so that you at least know what it looks like from a cash-flow perspective."

Upsides of a Downcycle

Lynn encouraged the audience to remember that, when lending throughout the business cycle, opportunities can emerge. "When the client needs you much more than you need them, that's really when those best relationships can be formed," she said. Indeed, finding skillful ways to assist stressed sectors is already helping Wells Fargo develop new business.

The lender has intensified its interest-rate analysis, both on the floating-rate side but also with respect to high-yield maturities. These factors came into play recently when a borrower came to Lynn and her team with what looked like, in her words, "a fantastic acquisition opportunity."

Aware of the need to focus on distribution risk, she took a step back. "I started asking, 'Well, where are those high-yield notes trading that the client has today and that are going to come due and need to be refinanced in the next 18 to 24 months?'"

The answer changed the calculus: Those refis were "going to wipe out all of their free cash flow … We probably would have been fine on the ABL side, by the way, but the client really didn't understand the refinancing risk on the notes that they were going to incur if they took on the additional debt, on top of needing to refi their existing notes given the significant discount the debt was trading at."

The lender flipped the dialogue, encouraging the client to preserve liquidity and cash and pay down some of those notes rather than put its business on the line with a costly and risky acquisition.

In the banking context, McKay seconded Lynn's focus on the importance of forging closer ties during challenging times. "We're constantly looking for a broader, deeper relationship," he said. "Whether that's capital markets activity or treasury-management or cash-management." These ancillary solutions, he explained, enable banks to generate full-relationship returns. "It's where a lot of banks are spending most of their focus," McKay said.

Default Dynamics

While borrowers are rapidly adjusting to the new normal, the panelists were clear-eyed about default risk moving forward. As McKay flatly stated, "We're going to see more defaults."

Fitch is forecasting about a 3.25 percent default rate on both bonds and loans for 2023, down from a 5 percent forecasted default rate at the beginning of 2023 for both asset classes, Neuburger noted.

In this environment, Lynn said, Wells Fargo is focusing harder on providing stretched availability and taking distribution risk, tightening up on in-transit inventory, and is more likely to put reserves in at the outset at closing. McKay encouraged the audience to pay closer attention to middle-market borrowers that are broadly syndicated and covenant-light. "They could slide further before they trip any covenant," he explained. "In many cases, we expect recoveries to be worse in those situations. There isn't the ability to come back to the table and try to right-size that particular borrower."

On the lower middle-market side, deals tend to be structured slightly differently due to smaller baskets and EBITDA definitions that may not be as complex. These borrowers could potentially trip covenants sooner, Lynn noted, giving the lender "more creative flexibility and options on how we help address and find solutions for those defaults."

She cautioned that flexibility in the documents associated with larger, syndicated or sponsor-backed deals can translate into higher risk, pointing specifically to situations in which baskets are significantly higher than EBITDA and borrowers "can then reallocate amongst the baskets in any given month, depending on how the company is doing. We're trying to tighten up on some of those EBITDA add-backs."

Lynn encouraged the audience to look for at least two of three pillars when evaluating credit risk associated with a borrower/deal:

- the company's ability to sustain cash-flow performance
- the strength, liquidity and marketability of the embedded collateral and
- the ability to put in a favorable loan structure

"As long as I have two of those three, I'm good," she said. "When you're only reliant on one, that's when you can get yourself in trouble." Natale then suggested a fourth pillar—the management team. "You want them to be able to execute," he said. "There's an expectation in the ABL world that there will be defaults. The question is the severity of it. Where does it really lie in starting off?"

For 2024, Fitch is forecasting defaults of 3.5 to 4 percent for leveraged loan defaults, and 5 to 5.5 percent for high-yield defaults, up from 2023 default forecasts of 3 to 3.5 percent. For 2025, Fitch is forecasting a 2 to 3 percent default rate for both the leveraged loan and high-yield market, as default activity is expected to slow following elevated defaults in 2023-2024, and amid improving macro conditions including lower Fed rates.

This represents a scenario in which consumers are resilient enough to support the economy without fueling inflation and further rate hikes. "To my mind," Neuburger concluded, "that is probably one of the most salient risks for this group of issuers today."

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MACRO TRENDS

2024 Threats to Manufacturing and Industrial Businesses – Lenders Beware

BY STEVE SAVOY

How will reduced consumer spending and increased leverage cost stress manufacturing & industrial companies in the year ahead? Manufacturing & industrial companies are precariously balanced right now. On the one hand, sales remain strong and these businesses have, at last, been able to hire more of the right talent, albeit at a higher cost than a couple of years ago. This, however, is occurring within an environment of significantly increased cost of debt, where OEM customers are applying pressure and leverage to secure increasingly painful cost reductions from their suppliers.

With this landscape in mind, the below outlines what we view as the primary threats to manufacturing and industrial businesses as well as their lenders with exposure in these areas. The information provided also addresses important considerations and proactive steps for these companies to take that can help them minimize future downside risk. Lenders should look out for portfolio companies that are still struggling with legacy challenges from 2020; e.g. trouble getting parts on time, supply chain challenges, finding and hiring good people, and getting equipment serviced (on-site technicians & parts).

Leading Threats

Something Sudden: The U.S. industrial industry has taken lessons from the pandemic and tariffs to diversify their supply chains. Companies have implemented near shoring and redundant suppliers to reduce their exposure to these risks.

Ultimately, the real risk every year is something unexpected. The top of the list of hypothetical concerns include: cyberattacks and the resulting data breach and escalating global conflict.

Consumer Spending Collapse: Even with recent U.S. government data indicating a notable surge in consumer spending, factors including rising credit card balances and the recent resumption of the student loan repayment burden for millions across the country, place a continued high level of consumer spending during 2024 in question. Notably, current data shows a consumer spend slowdown. Keep in mind consumer spend approximates 60% of GDP. Consumer behavior matters.

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Fed Rate Hikes: The Federal Reserve decided in November to maintain interest rates at a target range of 5.25 to 5.5%. This marks the third instance in the last four meetings where the Fed has opted to keep rates steady. While this cautionary stance has prompted speculation about whether the Fed may now have concluded its series of rate increases, uncertainty remains as to whether new developments could lead to further, potentially aggressive, increases and its impact on cash-interest expense.

High Cost of Doing Business: The inflationary environment has notably added expense, ranging from costlier insurance, healthcare and utilities to anything dependent upon oil production, including transportation cost, plastics and resin-based manufacturing.

Lack of Capital: The Fed continues to pull liquidity from the system and lenders are under pressure to strengthen and diversify their balance sheets, as a result, industrial and manufacturing businesses will see restricted access to capital. The lack of access to capital could impact business growth and hiring plans.

The Ever-Coming Recession Arrives: While the economy seems to have avoided a recession in 2023, there is speculation that if real GDP growth remains modest on a prolonged basis, we could see what some have termed a "growth recession" characterized by a sluggish economy, but very little impact on the employment market.

Election Cycle, Legislative and Administrative Policies: The uncertainty that accompanies any pre-election period in combination with ongoing instability in the House of Representatives, the specter of another government shutdown and the U.S.'s unavoidable and polarizing connection with the ongoing conflict in Gaza, could lead to economic fallout and reverberating supply chain and other repercussions both domestically and globally.

2024 Tailwinds

- GDP growth continues in 2024 to a consensus estimate of 1.7% with ranges from 1% to 2.5%. This is less than the 2.1% growth for 2023.
- Inflation has slowed significantly since its peak of 9% in June 2022, dropping to 3.2% in November 2023. While labor and material costs have increased significantly since 2020, companies have been able to price for these increases and

profit margins are generally higher today than in 2020.

- Private Debt is available to fuel corporate growth, albeit at higher rates than from regulated bank commercial lenders. High leverage is putting strain on companies who borrow as they grapple with higher rates, decelerating free cash-flow growth and the current multitude of economic challenges.
- Labor Participation Rates continue to improve from the 2020 lows of 60% to the current levels of 62%. The trend is continuing to improve towards the recent average of 63% (recent average 2013 to 2020).
- Federal Spending Implications of The CHIPS and Infrastructure Investment Acts will continue to flood the economy with cash. The infrastructure projects will receive significant funding throughout 2024.

Middle-Market Considerations

We are seeing middle-market industrial and manufacturing companies remain generally optimistic about 2024 as a performance year, and continuing to make capital and talent investments. This is not to say that there are not strong headwinds to navigate, including a continued, tight labor market – complicated by a vast percentage of baby boomers now reaching retirement age – and the ongoing unknowns surrounding interest rates, inflation and the potential for recession. While this has resulted in a bit of a “push forward while simultaneously waiting for the other shoe to drop” scenario, it should also be considered that the U.S. remains one of the safest places in the world to store capital right now, and continued global unrest is highly likely to result in an even greater level of capital influx from international markets in the coming years.

Factoring in each of these threats and considerations, our view is that middle-market companies would be well advised to prepare now and proactively address the threats that stand to inhibit their growth or, worse yet, result in their distress in the coming year. And their lenders should be sensitive to these issues and monitor/be prepared to navigate these matters as they may relate to their borrower’s performance. Our top five recommendations on where to begin this process are indicated below:

1. **Revisit suppliers –** Thoroughly understand supply chain strengths and weaknesses, and seek new relationships to fill any gaps.
2. **Bolster operational capabilities –** Make the effort to manage cash-to-cash working capital cycles, analyze receivable exposure, inventory levels, operational processes and production planning.
3. **Strengthen the balance sheet –** Certain borrowers may try to renegotiate existing terms and conditions for more flexibility in their access to liquidity, particularly those that were entered into under duress or disadvantageous circumstances. Lenders should be prepared for this and what your response, credit or exit strategy would be for any such requests/ accommodations.
4. **Capitalize on competitor missteps –** Cracks in the armor of weaker competitors are more likely to appear under current market conditions. Be prepared to capitalize on resulting supplier and customer opportunities.
5. **Be visionary –** Look well beyond 2024, particularly in regard to the regulatory environment and how things may play out under either a new administration or with a second term of existing leadership making policy.

Much of our own work with industrial and manufacturing clients in 2024 will be focused in these areas to help build in resilience for those businesses, enabling them to fend off these and other threats which present a high level of risk and increase the potential for future distress.

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SECURED FINANCE TRENDS

Perfection of Security Interests in Electronic Bills of Lading Under the UCC

BY LEONARD LEE PODAIR AND MONA R. PATEL

In an increasingly paperless world, electronic bills of lading are garnering attention as an industry choice for cross-border commercial and shipping transactions. This article provides an overview of the legal framework prescribed by Articles 7 and 9 of the Uniform Commercial Code for a secured lender seeking to perfect its security interest in electronic bills of lading.

Bills of lading have a long history in commercial transactions, dating back as early as the eighteenth century.[1] Among the numerous pieces of paper that accompany shipments (certificates of origin, letters of credit and others), bills of lading are arguably the most important, as they serve several significant purposes: (1) they evidence the carriage agreement between shipper and carrier, (2) they serve as a receipt for the goods (including confirmation that the goods have been shipped on board the carrier at a named port for delivery to a named destination) and (3) a negotiable document of title evidences constructive possession of the subject goods.[2]

Electronic bills of lading ("EBOLs") are garnering increasing attention as an industry choice for cross-border commercial and shipping transactions. Compared to "tangible" bills of lading, EBOLs provide greater security, efficiency, convenience and the cost-effectiveness of utilizing an electronic medium.[3] With tangible bills of lading, there is greater time and money spent passing the physical bill of lading from party to party (which also increases the possibility of misplacement and delay), and there are greater concerns for human error and fraud since the paper can be more easily forged or mishandled. In contrast, EBOLs are generally shared and used on secure electronic systems, where access is more readily monitored and controlled. Yet authorized parties can access them almost instantaneously from any part of the world. Recent global events, such as the COVID-19 pandemic, have also encouraged industries to transition to paper-less methods to conduct business, including the use of EBOLs.

In 2014, New York State adopted, with limited modifications, the 2003 model version of Article 7 of the Uniform Commercial Code ("Model Article 7"),[4] which seeks to facilitate the use of electronic documents of title, including EBOLs, in commercial financing transactions, by including a mechanism for "control" of EBOLs.[5] EBOLs were explicitly included in the definition of "document of title" in the New York Uniform Commercial Code ("NY UCC"): "[t]he term includes bills of lading" and "an electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium."[6]

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Perfection and enforceability of a lender's security interest in EBOLs are governed by Articles 7 and 9 of the NY UCC. Under Section 9-314 of the NY UCC, a security interest in EBOLs may be perfected by the secured party obtaining control under Section 7-106 of the NY UCC and such secured party remains perfected by control only while the secured party retains control.[7] In addition, if an EBOL is negotiable[8] under Section 7-104 of the NY UCC, perfection may be achieved by filing a UCC-1 financing statement against the debtor.[9] Establishing control is a method by which a secured party may both perfect and enforce its security interest in negotiable and non-negotiable EBOLs.[10]

The mechanism of establishing "control" with respect to EBOLs is governed by NY UCC §7-106, which provides as follows:

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized."[11]

Thus, the general rule set forth in subsection (a) of NY UCC §7-106 requires the secured party to demonstrate, at any point in time, that the secured party is the person entitled to the electronic document.[12] The Official Comment to UCC §7-106 gives an example wherein a carrier could issue an EBOL by having the required information in a database or computer system that is encrypted and accessible by a password, and this requirement could be satisfied if such computer system identities the person as the person to which the EBOL was issued or transferred.[13] Specifically, the identification may be by virtue of password or other encryption methods. Though the foregoing example is given, notably, the Official Comment states that "[t]his Article leaves to the market place the development of sufficient technologies and business practices that will meet the [foregoing] test."[14]

While subsection (a) of NY UCC §7-106 establishes the general rule for "control" of an EBOL, subsection (b) provides a "safe harbor test" that creates one avenue by which the general test in subsection (a) can be satisfied.[15] To the meet the test under subsection (b), a party should be able to identify the single authoritative copy which is unique and identifiable as the authoritative copy; provided, however, the authoritative copy is permitted to be moved or copied from its original location so long as it remains at all times the authoritative copy.[16] These parameters in subsection (b) are not further elaborated in the Official Comment, but the drafters do point out that the parties may not contract to establish that "control" of the EBOL exists.[17] Rather, the test for control is a factual test that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is satisfied.[18]

It is important to note that an EBOL may be reissued in a tangible form. A secured party that is perfected by control in an EBOL should file as to the EBOL that is negotiable before relinquishing control in order to maintain continuous perfection in such EBOL upon its conversion to a tangible bill of lading.[19] Reissuance in an alternative medium is different than simply printing out an EBOL. Printing out a copy of an EBOL does not convert the document into a tangible bill of lading; Section 7-105 of the NY UCC requires the issuer of the EBOL and the person entitled to the EBOL fulfill certain requirements to effectuate the conversion.

Interestingly, the Official Comment from 2003 acknowledges that third-party registry systems are "just beginning to develop" and that there are challenges to envisioning rules regulating such systems that are still developing or may not even be in existence yet.[20] For example, the drafters make a distinction between "closed" systems and "open" systems.[21] Closed systems, which appear to be the predominate type of such systems to date, are systems in which all participants are required to sign on to a master agreement, which provides for rights as against the registry system as well as rights among the members/users. The drafters contemplated that the control mechanism in NY UCC §7-106 would provide a method for the participants in the closed system to achieve the benefits of obtaining control allowed by Article 7 of the NY UCC. Conversely, in an open system, parties expecting to obtain rights through an EBOL may not be a party to a master agreement.[23]

One "closed" system explored by the authors and available today is designed so that multiple interested parties can exchange documents and information and hold copies of documents and information in their online account; however, only one party is granted functional capacity and features in their account to transfer or amend (or in the case of amendments requested through the system by other parties, to approve such requests to amend) the "original" EBOL. Only such "controlling party" holds the "original" watermarked version of the EBOL and all other parties view a version that has a "copy" watermark. The "controlling" party can transfer control to another member of the closed system, which is routinely done in the case of banks issuing letters of credit (i.e., the issuing bank would transfer the EBOL on the system to the buyer once the buyer, as applicant under the letter of credit, reimburses the issuing bank for its payment to the beneficiary).

While there is a great deal of interest in the digitization of bills of lading, there have been challenges in building one uniform system on an international level.[24] For one, there are several different closed systems that have been available and evolving in the market in the past decade, the Bolero Project and essDocs being two examples of such systems.[25] Some interested parties may hesitate to wholeheartedly adopt the electronic approach given there is not yet an international legal framework which governs use and enforcement of rights under EBOLs seamlessly across different foreign jurisdictions.

Also, from a practical and business perspective, each of the service providers compete for and target different subsections of clients and need to be acceptable to, and address the requirements of, different parties involved in the process, such as bankers, secured lenders, carriers/freight forwarders, sellers and buyers.[26]

As the market and technology evolve, it is hoped that Article 7 of the UCC will continue to provide a legal framework for secured lenders to perfect their security interests in EBOLs.[27] However, due to the ever-changing landscape of bill of lading digitization, it is not yet entirely clear how the prescribed rules will be applied in all instances in the real world. Further, application of UCC §7-106 in secured lending transactions has not yet, to our knowledge, been tested in the courts. Judicial application of Article 7 of the UCC will surely help us develop a better understanding of how market participants may utilize Article 7 with greater confidence.

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1 David A. Bury, *Electronic Bills of Lading: A Never-Ending Story?*, 41 Tul. Mar. L.J. 197, 201-202 (2016).

2 Eleanor Wragg, *How the electronic bill of lading became a battleground for trade digitization*, GLOBAL TRADE REVIEW (Dec. 07, 2021), https://www.gtreview.com/magazine/volume-19-issue-3/electronic-bill-lading-became-battleground-trade-digitisation/; CLYDE & CO FOR THE INTERNATIONAL CHAMBER OF COMMERCE, THE LEGAL STATUS OF ELECTRONIC BILLS OF LADING: A REPORT FOR THE ICC BANKING COMMISSION 8 (2018).

3 Bury, *supra* note 1, at 210-212.

4 U.C.C. ARTICLE 7, DOCUMENTS OF TITLE (2003).

5 G. Ray Warner, Rejoice In New York's Revised UCC, But Beware Traps, LAW360 (February 18, 2015), https://www.law360.com/articles/621303/rejoice-in-new-york-s-revised-ucc-but-beware-traps.

6 N.Y. U.C.C. LAW § 1-201(16) (McKinney 2014).

7 N.Y. U.C.C. LAW § 9-314(A)-(B) (McKinney 2014).

8 Under Section NY UCC §7-104, an EBOL is negotiable if, by its terms, the goods are to be delivered to bearer or to the order of a named person; any EBOL that does not meet the foregoing description (or which, at the time it is issued, contains a conspicuous legend stating that it is non-negotiable) is non-negotiable. N.Y. U.C.C. LAW § 7-104 (McKinney 2014).

9 Perfection by filing a UCC-1 financing statement is generally subordinate to perfection by control. N.Y. U.C.C. LAW §9-312(A) (McKinney 2014).

10 N.Y. U.C.C. LAW §9-203(B) (McKinney 2014).

11 N.Y. U.C.C. LAW §7-106 (McKinney 2014).

12 U.C.C. §7-106 OFFICIAL COMMENT #3 (2003).

13 *Id*.

14 *Id*.

15 U.C.C. §7-106 OFFICIAL COMMENT #4 (2003).

16 *Id*.

17 *Id*.

18 *Id*.

19 U.C.C. §9-314 OFFICIAL COMMENT #2 (2003); N.Y. U.C.C. LAW §7-105 (McKinney 2014). A party may perfect its security interest in goods covered by EBOLs that are negotiable by perfecting a security interest in the EBOLs. N.Y. U.C.C. LAW §9-312(C) (McKinney 2014). In contrast, to perfect in goods covered by EBOLs that are non-negotiable, a secured party must perfect its security interest in the covered goods themselves. N.Y. U.C.C. LAW §9-312(D) (McKinney 2014).

20 U.C.C. §7-106 OFFICIAL COMMENT #5 (2003).

21 *Id*.

22 *Id*.

23 *Id*.

24 Wragg, supra note 2.

25 *Id*.

26 *Id*.

27 As of September 30, 2023, all fifty states and Washington, D.C. have adopted some form of Model Article 7. Uniform Law Commission, *UCC Article 7, Documents of Title*, UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?communitykey=9893636e-0046-498a-8ed9-3d57c192489a#LegBillTrackingAnchor (last visited Nov. 21, 2023).

INSIGHTS FROM SFNET'S CONVENTION

AI SECURED FINANCE TRENDS

Navigating the AI Landscape in Secured Finance

Insights from SFNet's Annual Conference

BY RYAN JASKIEWICZ

At the Secured Finance Network Annual Convention in Orlando, a compelling panel discussion unfolded, focusing on the burgeoning role of AI in secured finance. As one of the panelists, Ryan Jaskiewicz, CEO of 12Five Capital, joined Deborah Reuben, CEO and founder, TomorrowZone; Eldon Richards, CTO, Solifi; Matt Noll, senior manager, EY; and Daniel Barsky, partner, Holland & Knight, in exploring both the immense potential and the multifaceted challenges AI presents to our industry.

AI Trends in Secured Finance

The session commenced with Deborah Reuben providing a dynamic overview of the current AI trends. She touched on the significant advancements over the past year, including the emergence of models like ChatGPT and the rise of Prompt Engineering as a critical tech role. This backdrop of AI's rapid evolution set the stage for a deeper dive into its practical applications and implications in the finance sector.

Panel Discussion Highlights

- What's New and Possible with AI: Eldon Richards offered a comprehensive look at AI's trajectory, from its conceptual beginnings to its current transformative role in finance. His insights laid the groundwork for understanding how these technologies are reshaping our industry.
- AI Adoption and Readiness: Matt Noll captured the essence of the current AI revolution, stating, "ChatGPT is a watershed moment for artificial intelligence." He elaborated on the transformative potential of such technologies in the financial sector, underscoring their critical role in the industry's future.
- Practical Use Cases in Secured Finance: My segment focused on the operational application of AI in finance. I emphasized the dual nature of AI, noting, "Anywhere I can reduce friction and elevate the human to a higher job, that is what I'm focused on." This statement encapsulates my approach to leveraging AI for enhancing efficiency while also being mindful of its potential to inadvertently scale fraudulent activities.

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DEBORAH REUBEN
TomorrowZone

ELDON RICHARDS
Solifi

MATT NOLL
EY

DANIEL BARSKY
Holland & Knight

- Risks and Opportunities: Daniel Barsky delved into the deeper existential and legal questions posed by AI, reflecting, "Science fiction showed us questions coming up 350 years from now, and this technology has plopped them in our laps right now." His discussion underscored the pressing need for a legal and ethical framework to navigate these emerging technologies.

Challenges and Opportunities

The conversation on challenges was particularly revealing. I highlighted the operational difficulties, especially the potential for AI to scale fraud alongside efficiency. "While these tools can speed and accelerate my team at scale, it can also accelerate fraud at scale," I pointed out. Eldon Richards responded to this concern by emphasizing the need for countermeasures, stating, "We will need to create tools using AI to fight the people using AI to defraud others." This discussion underscored the ongoing arms race in technology and security within the financial sector.

Encouraging AI Adoption

The panelists collectively stressed the importance of embracing AI with a balanced and informed approach. We discussed the need for pilot projects and gradual scaling, ensuring that AI integration in financial operations is not only efficient but also aligns with ethical standards and regulatory requirements.

The panelists collectively stressed the importance of embracing AI with a balanced and informed approach. We discussed the need for pilot projects and gradual scaling, ensuring that AI integration in financial operations is not only efficient but also aligns with ethical standards and regulatory requirements.

Conclusion

The panel at the SFNet Annual Conference brought to light not just the opportunities but also the intricate challenges that AI presents in the world of secured finance. The insights shared by the panelists, particularly on the latest AI developments and the complexities they introduce, are invaluable for guiding the industry in this new era of technological advancement.

Ryan Jaskiewicz is CEO of 12five Capital, LLC. He started 12five Capital in early 2006 at the age of 23. Responsible for overseeing all facets of the business, he focuses his efforts heavily on systems, processes and. He successfully grew the business from zero dollars in revenue or funding to a company of twelve people, topping over $35mm in net funds employed over the last 15 years.

TRADE FINANCE TRENDS

Pros and Cons of Letters of Credit

BY TOM NOVEMBRINO AND JEN EISAN

Letters of Credit have been used to finance international trade since at least the 1800s. The present-day documentary Letter of Credit ("L/C") is typically a SWIFT (Society for Worldwide Interbank Financial Telecommunication) message issued by a bank on behalf of the buyer, called the applicant to another bank, called the advising bank, on behalf of the seller, called the beneficiary; to guarantee payment provided specific documents and conditions are met by the beneficiary, as specified in the L/C. The International Chamber of Commerce has created a Uniform Customs and Practice for Documentary Credits, which provides a guide and agreed-upon framework and procedure for Letters of Credit. These detailed rules remove differences in interpretation, regulation, and business practices between parties in different countries.

The L/C was created to provide security to both the seller and buyer for goods shipped by ocean, which is still relevant today. Original ocean bills of lading are title documents for the goods. The original bills of lading are typically sent to the bank, which effectively acts as an escrow agent to hold those original documents until payment is made. At that point, documents are released to the buyer. The buyer cannot obtain goods without paying for them, and the seller does not hand over the title to the goods without getting paid.

Additionally, an L/C removes the risk to the seller that the buyer may not have available funds when it comes time to pay for a shipment. The bank that issues an L/C guarantees that funds are available for payment. The issuing bank's role is to review the documents and compare them to the L/C language to verify that the documents conform to the conditions stated in the L/C, such as a description of goods, Incoterms, the date by which goods must be shipped, etc. Payment is made when documents conform to the L/C or when the buyer approves discrepancies.

Today, in international trade, additional payment methods are utilized, but the L/C provides a clear-cut structure for payment to suppliers. When a U.S.-based buyer contacts a seller to purchase products, payment terms are agreed upon. When an L/C is the agreed payment method, the buyer will contact its bank and request that an L/C be issued to the supplier. The supplier is now relying on the creditworthiness of the issuing bank and not the buyer's creditworthiness. The L/C assures the seller that the bank will make payment if the seller provides the documents related to the transaction, which have been stated as required in the L/C.

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In theory, the L/C protects both the buyer and the seller, but there still must be a certain level of trust between the parties. When they review the documents, the banks are still just relying on the documents to determine that the shipment matches the intended sale of goods. The banks don't see the actual product, and there can be quality and/or quantity issues. This is a risk in any payment method, whether it is an international or domestic transaction. However, inspection requirements can be added to the L/C and are recommended to add further comfort to the buyer. Independent, 3rd party inspection firms typically perform these inspections.

Additionally, if a full container ocean shipment is being made, the risk may be further mitigated by having a third-party inspection company witness container loading. The inspector will open a sampling of cartons to be sure the contents match the intended products, and they will count the cartons or pallets being loaded.

As mentioned previously, the buyer will request an L/C from the bank. This assumes that the buyer has a line of credit with the bank large enough to accommodate the L/C request or, in other cases, cash collateral. Alternatively, asset-based lenders such as a purchase order finance firms may be able to accommodate the L/C financing provided the buyer has a purchase order from its customer. One problem with using a bank line for L/Cs is that it may limit availability on the credit line. In addition, L/Cs may be open for weeks or months, which can tie up availability. How to obtain a line of credit from a lender for Letters of Credit or other options is another topic, for another day.

Pros of using a documentary L/C:

- Suppliers may be able to use letters of credit as collateral with their bank to obtain working capital to purchase raw materials and support production costs.
- Many suppliers won't ship products without an L/C to reduce the risk of the buyer having the necessary funds or changing their mind for any reason. The cost and hassle to return the product to the supplier if a buyer is unable or unwilling to pay after goods have been put on board a vessel is prohibitive.
- Protects the buyer that the product to be purchased will be shipped on time to conform with their ability to deliver on time to their customers.
- In most cases, this relieves the need to provide a cash deposit to the seller, but an L/C can cover the balance due to the supplier after a deposit has been paid.
- The supplier must be familiar with the L/C procedure or rely on their bank for assistance.

Cons in using a documentary L/C:

- Relying on documents means the product can be received with quality and/or quantity issues.
- Buyer will, most likely, need a line of credit with a bank or non-bank asset-based lender, or cash collateral, to secure the L/C.
- Buyer needs to have knowledge of the L/C process, including how to condition the L/C to protect their needs best and reduce risk.
- Bank fees will be incurred for L/C issuance, negotiation, etc., by both the buyer and seller. Each party typically pays for the charges from their respective banks. While this is not a significant cost, it needs to be considered by both parties. Some suppliers cover the bank charges and document preparation fees by adding to their sales price.

As mentioned, not all transactions utilize L/Cs. Open payment terms are common when buyers and sellers have a good relationship. Note that an L/C may be required if the seller has a set credit limit for the buyer that is exceeded.

To offer a comparison to another payment method, a common alternative currently used is a wire transfer from the buyer to the seller after the ocean bill of lading is issued. Here are the downsides:

- Either the seller must accept some risk by releasing ocean bills of lading to the buyer and then waiting for payment, or the buyer must accept some risk by paying for the goods and then waiting to receive title to those goods.
- The creditworthiness and trustworthiness of the buyer and seller must be carefully considered rather than having the bank's security acting as the trusted party who will abide by the UCP regulations in their conduct and handling of the L/C.

In summary, Letters of Credit are an excellent method of financing both international and domestic trade. The process is relatively straightforward once some experience is gained by the parties involved to understand the customary procedures involved in handling and working with L/Cs. Importing firms based in the U.S. may or may not utilize L/Cs, but L/Cs do strengthen the transaction and provide protection to both the buyer and seller. There is a reason that L/Cs are still in use after a couple of centuries!

Thomas A. Novembrino, principal and co-founder of Gateway Trade Funding, is a seasoned expert with more than 25 years in international trade finance. With prior executive roles at US Bancorp and experience as an FDIC Bank Examiner. He currently leads the SFNet Southern California Chapter as president.

Novembrino earned his M.B.A. in international finance from Thunderbird School of Global Management in Phoenix, AZ, complementing his B.S. in business administration from the University of Massachusetts, Amherst. Tom can be reached at (714) 671-0999 or tnovembrino@gatewaytradefunding.com. For more information on Gateway Trade Funding visit www.gatewaytradefunding.com.

Jennifer Eisan, senior vice president/Purchase Order Finance at Gateway Trade Funding, is responsible for the administration of purchase order finance transactions including the issuance of letters of credit, documents against payment (D/P) and wire transfers.

Eisan has more than 25 years of experience as an export and import specialist. She has a BA degree from the University of Illinois and has certifications as a Certified U.S. Export & Import Compliance Officer (CUSECO & CUSICO) and Certified ITAR Professional (CIP) at the International Import-Export Institute at Dunlap-Stone University.

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GLOBAL BUSINESS TRENDS

Geopolitics and Business in 2024:

Confusion, Competition and Conflict

BY DAVID CHMIEL

My day on October 6, 2023 began with a roundtable discussion with a client's board on how geopolitical risks potentially affected their footprint in Latin America. The day ended with a dinner with friends in which "political" discussions focused on China, India and the current state of US politics. The Middle East figured little, if at all, in these discussions since it appeared comparatively calm. Yet, the following morning, I awoke to the first reports of Hamas' horrific attacks on Israel and much of my time since then has focused on understanding the implications of that conflict atop all of the other global flashpoints with which society is dealing.

If you consider any survey of global business leaders on the risks confronting them in 2024, geopolitics is almost certainly at or near the top. Even where other sources of risk are cited, such as economic weakness or regulatory uncertainty, they cannot be viewed independently from domestic and international politics. When I am asked – as is often the case – how I would assess the year ahead in geopolitics, I characterize the world's challenges as falling into three broad themes – confusion, competition and conflict. What do they all mean for business?

2024 will be a year of elections throughout the world. Yet, the political landscape in many of the countries that will go to the polls remains very confused. Populist, anti-establishment political leaders are vying for greater support in societies where trust in institutions of media, business and government continues to be precarious. Moreover, political parties of all ideological stripes seem prepared to embrace less conventional and often more interventionist approaches to economic policy making. In the first few months of 2024, we will see elections in Taiwan, Indonesia and India – all of which are both increasingly important to the global economy and to the Indo-Pacific security environment. Elections in June across all European Union member states for the European Parliament will test the degree to which populist politicians continue to siphon votes from establishment leaders. That same month, Mexico will elect a new president and congress, thereby setting the political agenda in a country of increasing importance to the US economy while also showing a propensity to economic nationalism. In the UK, Prime Minister Rishi Sunak's mandate will run out in 2024 and the prospects of a new left-leaning government are high. Meanwhile, Canadian Prime Minister Justin Trudeau's minority government looks increasingly unsteady and unpopular. And then, of course, there is November's US presidential election in which both the presumptive Democratic and Republican nominees command neither unanimous support within their own parties nor appeal to independent and floating voters. All of this will keep political observers fully engaged and the global political landscape at the end of 2024 is likely to look very different from what it does now. Political confusion remains the order of the day.

DAVID CHMIEL
Global Torchlight

At the same time, global trade and investment flows are increasingly subsumed by the suspicion that is now endemic to international politics – not least in bilateral relations with China. The propensity for near-shoring of manufacturing to allied countries gained momentum in 2023 – as evidenced by Mexico overtaking China to become the single-largest trading partner of the US. That trend could be accelerated by threats to shipping – both actual, in the Red Sea, and potential, in places like the Taiwan Straits – which are further highlighting vulnerabilities in global supply chains. Meanwhile, governments are casting a more critical eye on cross-border investment flows amidst concerns that investment capital is providing opportunities for countries like China to gain strategic advantage in critical economic sectors. Export bans on strategic commodities are also increasingly prevalent arrows in government quivers. But economic decoupling is easier said than done and sometimes achieved only through extensive subsidization and at the risk of creating unattractive regulatory environments for even friendly investors. Governments of all ideological stripes are now embracing more interventionist industrial policies to bolster national self-sufficiency in sectors such as semiconductors. The increase in global conflict is placing considerable strains on defense supply chains and necessitating even further recalibrations for sustained production. The reality is that global trade and investment flows are now longer independent of the broader trend towards strategic competition in global affairs.

As we enter 2024, the world confronts two major wars in Europe and the Middle East and the prospect of emerging conflict in other places. In Ukraine, even President Zelensky has acknowledged that his country's 2023 counteroffensive against Russian forces fell short of its objectives. That war is now very much one of attrition and, while recent polling indicates that a majority of Ukrainians support the war's continuation, that support has declined since 2022. A critical test in the year ahead will be whether the US and other NATO members continue both to supply Ukraine with the weapons it needs and to maintain economic pressure on Russia through sanctions and similar measures. In the Middle East, the war in Gaza between Israel and Hamas risks escalating into a broader conflict – either geographically or through the involvement of other states. Sustained attacks by Iran-backed Houthi rebels in Yemen on shipping in the Red Sea will almost certainly lead to increased deployment of naval forces by the US and other countries and thereby raise the collateral risk to them. And while, at the time of writing, the West Bank and Israel's northern border with Lebanon remain broadly quiescent, those circumstances could change quickly and present Israel with a multi-front conflict. Meanwhile, the world continues to assess the risks of escalated tensions over Taiwan which will gain renewed focus with January's Taiwanese presidential elections. Given the inherent complexities involved, a Chinese invasion of Taiwan would be a highly risky endeavour – and we must always remember that the Chinese military is untested in combat, even if it is well-equipped. However, even measures that stopped short of a full-scale invasion such as the closing of the Taiwan Straits would elevate the risk of conflict between the US and China and present grave consequences for global trade.

As we enter 2024, the world confronts two major wars in Europe and the Middle East and the prospect of emerging conflict in other places. In Ukraine, even President Zelensky has acknowledged that his country's 2023 counteroffensive against Russian forces fell short of its objectives. That war is now very much one of attrition and, while recent polling indicates that a majority of Ukrainians support the war's continuation, that support has declined since 2022.

Hence, in 2024, the geopolitical watchwords will be confusion, competition and conflict. The domestic political environments of many of the world's key economies remain highly volatile – both in terms of the personalities involved and the policies adopted. The global trading system and many aspects of domestic economic policy are increasingly impacted by a world in which international competition is the prevalent dynamic. Finally, the eruption in global conflict remains largely uncontained and any reticence for use of force appears to be weakening in many parts of the world. None of this is particularly new and the warning signs have been present for some time. A few years ago, we spoke of this as the "new normal". It is now just "normal" and there are few signs of both those trends and the increasing consequences for business abating in 2024.

David Chmiel is the managing director of Global Torchlight, a geopolitical risk advisory firm, and a prolific speaker and commentator on international affairs and their impact on business.

Feeling the Beat

BY EILEEN WUBBE

In this new column, *The Secured Lender* focuses on members' hobbies and interests outside of work. In this issue, we explore music and dance.

Michael F. Albanese, president, Cost Reduction Solutions

Michael Albanese is a self-taught guitar player and started playing as a senior in high school in 1972.

"My good friend lived just a few blocks down from me in Palisades Park, NJ, and said, 'Mike, I've got two guitars, and we are going to learn "Stairway to Heaven" together.' At one point he said to me, 'You're going to make it, but I can't because I can't use my ring finger to hold bar chords properly.' That inspired me!"

To learn songs, Albanese used 8-track tapes and played The Beatles on repeat. Guitar wasn't his first instrument, though. He learned to play piano at 10 years old, "forced by my mother, Thoma," Albanese said.

"A wonderful woman in town taught me, sternly and properly," he recalled. "I could play and read music technically and proficiently, but since I didn't like piano lessons, once Little League Baseball came around, I stopped and forgot how to read sheet music. Although I regret that, I think some of that has truly helped me to play guitar and other instruments a tad better."

Albanese now plays a variety of guitars, harmonicas, piano, bass and percussion. He used to play 30 minutes a day by singing to his children before bedtime. Today he often has various weekend gigs and farmers markets performances and gets to practice and play more frequently, anywhere from one hour to six hours straight on a Saturday or Sunday. He practices almost daily.

"Farmers markets allow me to play the 'background songs' that have been my 'hit my heart and head' favorites for the past 45-plus years," Albanese said. "I enjoy mostly playing the several different 12-string guitars, acoustic and electric."

Although it has been a few years since performing, Albanese played in a band called The Industry Partners at many SFNet New Jersey Chapter summer beach events. Some of the hits played included "In My Life" by The Beatles, "Margaritaville" by Jimmy Buffet, and Bruce Springsteen's "Jersey Girl."

"'Jersey Girl' was my wife's, Denise Albanese, 'insistence song' and I truly enjoyed learning it the way Bruce Springsteen did it live as well as learning that Tom Waits wrote it. Waits' 'folksy' version is amazing, too."

"Playing at SFNet events helped me learn the true technical details from these fellow musicians who had more technical skills and live band experience. The other Industry Players 'trust me and guide' to the selections they asked me to play, as well as guide me to support their songs as best as I could."

The Industry Partners Band members:

- Victor Alarcon, relationship manager, PNC – Percussion
- Robert Anchundia, SVP, Sr. Relationship Mgr., PNC Business Credit – Bass
- Foster Fegarsky, vice president and head of ABL Field Exam, TD Bank, America's Most Convenient Bank
  Business Line Liaison -TD Bank Asset Based Lending – Drums
- Theresa Gamboa, vice president/managing director of Business Development at CV Credit – vocals
- Vince Grillo, former senior vice president, Access Capital (now retired) – Lead guitar
- Tom Rappazzo – People's Bank – Lead guitar and vocals and the original founder of The Industry Partners
- Paul Shur, shareholder, Becker & Poliakoff, P.A. – Keyboard
- Daniel Stampfel, senior vice president, U.S. Bank – Guitar, keyboards and other instruments and vocals

Some of the band members have expressed reuniting after taking a break during the pandemic.

Foster Fegarsky, vice president and head of ABL Field Examination - Business Line Liaison - TD Bank Asset Based Lending

Foster Fegarsky started playing the drums at five years old, getting his first full-sized kit from his grandparents. Having moved around a lot as a kid, his first drum kit got lost. He eventually bought his own "mutt kit" when he was 14 and now has four acoustic kits including a road kit, studio kit, home studio kit, and one for when he teaches.

Foster Fegarsky has been playing drums since he was five years old.

"I also have two electronic kits, so my wife does not have to hear all the banging," Fegarsky added.

Mostly self-taught, Fegarsky took private lessons when he was younger, but said the teachers couldn't keep up with his accelerated learning and he moved on.

"I practice on my own every day and with my band, 'The Rockaholics,' (www.therockaholics.net, https://www.facebook.com/groups/49740277071) once or twice a week," Fegarsky said. "The Rockaholics are a classic '70s rock band and. I've been playing with them since 1991."

The Rockaholics, formed in 1986, consist of a group of friends who have all known each other for 30 years, and are based out of Ft. Mill, SC. They put on 40-50 shows per year in bars and at festivals, private events, and the occasional wedding, mostly throughout North and South Carolina.

With a catalogue of more than 200 songs, if he had to pick one as a favorite it would be 'Comfortably Numb' by Pink Floyd, with 'Grey Ghost' by the Henry Paul Band, (formerly of the Outlaws) as a close second.

While playing in The Rockaholics, Fegarsky also played in, and recorded an album with an easy listening band in the late '90s.

Theresa Gamboa, vice president/managing director of Business Development, CV Credit (recently re-branded to Exitus Global)

Outside of Theresa Gamboa's professional career in secured finance, she has always loved to dance, sing, and act. While in her 20s in Los Angeles, she took dance classes regularly from well-known choreographers such as Michael Rooney, Jason Myhre, Marguerite Derricks and Brian Friedman to name a few.

"I was lucky enough to have performed at the Wilshire Ebell Theatre, Pasadena Auditorium, Shrine Auditorium and small lounges as a back-up dancer and singer for international artists," Gamboa said. "I also taught jazz dance at Metro Dance and Arts Academy to children and adults for many years."

When Gamboa moved to New York City, she got involved in the ballroom dance world and performed several showcases at the Danny Kaye Playhouse at Hunter College with her good friends and World Champion, Melanie LaPatin, a U.S. Professional Ballroom Dance Champion and world-renowned choreographer, best known for her choreography work on TV shows such as "So You Think You Can Dance" and ABC's "Dancing With the Stars," and Tony Meredith, an American professional ballroom dancer, choreographer and U.S. Professional Latin Dance Champion.

"I also got involved with small local theatre productions with drama coaches Ted Bardy, and Annie Ward, the founder and artistic director of The Complete Theatre Company in Manhattan," Gamboa added.

"A few of us in the finance industry put together a band and performed at a few SFNet New Jersey Chapter Events, where I was the featured female vocalist for the band, The Industry Players. Now that I am living in Florida, I have competed in ballroom dance with a female group led by Iveta Lukosiute, who was a finalist on 'So You Think You Can Dance' and a Ballroom Champion," she added.

Gamboa is currently on the HipHop, Reggaeton, and Lyrical Dance Team at Contempo Dance Club in Naples, FL, and recently performed at Nascar in Miami, the Naples Parade, and the Orange Bowl. She is also an active jazz and lyrical dance instructor at Contempo.

Alisa Rusanoff, head of Credit / Trade Finance, Crescendo Asset Management LLC

Alisa Rusanoff comes from a family of musicians and started performing around five years old. Her mother is a pianist, and her grandmother was an accordion player and teacher. While growing up in Russia, she spent after school from ages 8-15 attending music school, majoring in piano.

"My days were busy with almost no spare time, as you can imagine, and filled with musical classes, additional curriculum and dance."

Today, Rusanoff plays the piano at least once per week and sings.

"I live my life with music," Rusanoff says. "I work and study with music in my background. It makes it easier for me. I'll switch on jazz, classical piano or 20th century French chanson the moment I wake up."

Alisa Rusanoff has sung at music venues such as Drom, Arlene's Grocery and Pianos in New York City.

Serious preparation occurs when Rusanoff is getting ready for a concert or a gig. In New York City, she has played at music venues such as Drom, Arlene's Grocery and Pianos, as well as Brooklyn College. Several of her songs have been in rotation on radio stations. In addition to music, Rusanoff has acted and performed in theaters along the East and West Coasts.

To prepare for a performance, Rusanoff stressed the importance of having your own interpretation of each song. She will perform old-school classical jazz covers and tries to live through them.

"It is like acting," she explained. "You need to understand and feel it. Math is the same for me - I need to understand it. I'm incapable of memorizing if I'm not interested or engaged in the subject. I honestly think there're a lot more similarities and structural resemblance between math and music and art generally than a lot of people think. Ludwig Van Beethoven became deaf in the middle of his life and continued composing. The golden ratio, a mathematical formula, creates an absolute harmony and perfection in art. One of the best examples is all of Leonardo da Vinci's masterpieces."

"Math and art go hand in hand, enriching each other," Rusanoff said. "Musical harmony is math, subject to rules, meanwhile, a rule can be broken for a beautiful new sound. The same applies in finance - if you don't go outside the box in your thought process, it's unlikely you'll succeed at scale."

Although it depends on mood, occasion, and audience, some of Rusanoff's favorites to sing and play include "Summertime," by Ella Fitzerald, "My Funny Valentine," by Chet Baker, "Cry Me a River," by Julie London, "Moon River," by Henry Mancini, "Ne Me Quitte Pas," by Nina Simone and "La Vie en Rose," by Édith Piaf.

For modern musicians, she enjoys Zaz, Norah Jones and Melody Gardot.

Regardless of the industry you're in, having a creative outlet is important. For those wondering how to balance a creative outlet along with a busy career in the secured finance industry, it is all about priorities.

"There's enough time in a day, it's about priorities and desires. If David Solomon can be a CEO of Goldman Sachs, and one of the most successful DJ's, (DJ D-Sol) so can you," Rusanoff said, adding that she is able to carve out time to practice and play by not watching TV shows or sports.

"I have an efficient time-management process, which I'm used to since I was a child. I truly believe that every person would be able to carve out 20-30 minutes on a daily basis and devote to something outside of their scope of everyday work routine. It will become a habit and an excellent break from your daily routine, which is crucial to forming new brain patterns and increasing overall productivity. If I interview people in the finance industry, I find those people that are multitalented the most adaptive and successful in finance as well. They're just driven differently. I've been lucky enough to have worked with a few and it's an incredible joy to speak about things outside of work. It creates an incredible bond and adds immensely to the work culture."

Paul Shur, shareholder, Becker & Poliakoff LLP

For Paul Shur, piano and keyboards have always been his forte. He took seven years of classical piano lessons and taught himself jazz, pop tunes and chord structure. While he considers his primary instruments to be piano and electric piano, Shur also took saxophone lessons in high school and has played that at times.

Shur began playing professionally when he was 16, using his father's tuxedo to play "club dates" in restaurants and to play weddings and parties. He joined the American Federation of Musicians in 1971 when he was in college at Rutgers University and had a regular night club band that played in New York and New Jersey.

"We later expanded to playing in hotels in the Catskills," Shur added. "I also had a band through law school that played every weekend. At one point my agent in New York City wanted to send me full time into the circuit, but law school interfered. My drummer, Dan Gottlieb, continued and became a very successful studio musician and the first drummer in the Pat Metheny Group, a well-known jazz group. After law school, my judicial clerkship became an obstacle for several reasons, so I withdrew from the music scene. I still practice at home on my concert Baldwin I purchased with my savings over the years, mostly on the weekends. I always found my musician personality to be an asset as a lawyer in terms of my comfort level with clients and industry contacts. I still 'sit in' with a number of bands such as The Industry Partners and with the band which played at my son's wedding."

Pictured far right, Paul Shur, and his band SoundTrack

Shur's favorite music to listen to is rock, jazz, and classical.

"I play standards, jazz, and pop. While I don't play regularly anymore because of my career in law, someday I hope to resume playing during retirement, as I have kept up with my musical contacts."

Do you have an interesting hobby to share? Contact ewubbe@sfnet.com.

Eileen Wubbe is senior editor of The Secured Lender.

■ PUTTING CAPITAL TO WORK

How Marco helped Vector Global Logistics achieve a 10x increase in international operations

BY PETER D. SPRADLING

■ **PETER D. SPRADLING**
Marco

Vector Global Logistics (VGL) specializes in logistics and supply chains, with offices in the United States, Mexico, and Chile. They offer supplementary services for project logistics, including an expedited shipping option, support in particularly complex regions, and assistance to various charitable organizations.

"One key factor contributing to the success of Vector and Marco's relationship is their shared commitment to establishing long-lasting and trusting partnerships. As outlined in VGL's proposal, "We work hard to earn your business and your trust. The logistics and supply chain industry can be complex, but your relationship with us doesn't have to be."

Current relationship with Marco

Vector currently has two factoring lines with Marco: one for their client Unión de Cervecerías Peruana, the local representative in Peru of AB InBev, and another with a U.S. buyer called Detroit Diesel, a Daimler-owned engine manufacturer located in the city that bears its name. They initiated an $800,000 line in August 2021, and the positive results have led to VGL's line being increased by 11x in less than a year. VGL is also planning to open new lines for buyers from LatAm.

Marco spoke with Sergio Cervantes, an executive member of the Vector Global Logistics team, to learn more about their challenges as a small and medium-sized enterprise, the solutions they have found with Marco, and their prospects.

What challenges do you face as a small and medium-sized enterprise in obtaining financing in Mexico?

"I come from the banking world, and it is difficult for small and medium-sized enterprises to access these financial services, particularly for international invoices. They ask for a lot of collateral when the collateral should be the actual payor of the invoice. For example, AB InBev is AAA risk (triple A), so it is very unlikely to go bankrupt. The same goes for Detroit Diesel, which belongs to Daimler. Something catastrophic would have to happen for them to stop paying you. Despite this, in Mexico, banks ask for 'two to one' patrimonial relationships; that is, to request $11 million, I would have to show properties worth… $22 million! A house in the best neighborhood in Monterrey costs $1 million."

How did the relationship with Marco begin?

"In my search for more agile factoring options, I came across Marco. My former boss had gone to a factoring company in Mexico, and I asked him for a product of this type. As his company couldn't cover it because they don't do international factoring, he recommended doing it with Marco. I am in Mexico, but my service is from Brazil, Chile, or England to Peru, for example."

Please comment on the value your relationship with Marco has brought to your business.

"We started with an initial line of $800,000, and in less than a year, we grew to $11 million. I didn't increase the line just because I wanted to; the client took us there. Before taking that step, I would talk to Marco and explain that I had a project that required $3 million more, but didn't have the financial muscle to do it. Marco responded quickly that it was possible, and I accepted the project. It was the same with each case. Without Marco, it would have been impossible for me, and I would have had to reject them.

The rates in Mexico are very competitive, but Marco's great advantage is the speed at which they approve a credit line. It lets you know in a very short time if you can take on the projects. The bank won't give you that solution. Instead, the bank will tell you: 'give me all the information, and we'll talk in a month or a month and a half.' That kind of flexibility to make such a crucial decision as to move forward with a project makes a tremendous difference and is why I have felt so comfortable with Marco. And additionally, Marco asks for more reasonable collateral than the banks."

How do you see the collaboration between Vector and Marco in the future?

"Continuing to grow the client portfolio. In the case of Daimler's Detroit Diesel, the reality is that we could finance $1 million without any issues. However, we involved Marco in this case because it is part of the reciprocity we want to give as a client at the end of the day. I am bringing to Marco different AAA clients so the relationship continues and the portfolio grows.

Marco's use of insurance for the portfolio has also been beneficial. The insurers themselves tell you the risk of the client that they calculate based on the country. That kind of information that Marco provides me with about how much the client can be insured for is also vital information for me. As the owner of the company, I can measure the risk. It is one more filter."

About Marco

Marco is a fintech company revolutionizing global trade by providing reliable working capital for North American and Latin American businesses. Addressing the $350 billion trade financing gap in LatAm, Marco utilizes innovative risk models for real-time data processing to dynamically mitigate capital loss. Founded in 2020 by Peter D. Spradling and Jacob Shoihet, Marco is headquartered in Miami, FL, with offices in New York City and Montevideo, Uruguay. The company aims to streamline trade finance through automated underwriting and operations workflows, enabling businesses to leverage balance sheets effectively.

Peter D. Spradling is COO & co-founder at Marco, a Miami-based fintech company revolutionizing global trade by providing reliable working capital for North American and Latin American companies. Before Marco, he was an entrepreneur with over a decade of experience in international trade, having started his first company at the age of 16. Spradling holds a B.A. in political science from The George Washington University and an M.A. in international relations and international development from American University. Linkedin: https://www.linkedin.com/in/pspradling.

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