THE CAPITAL MARKETS ISSUE

JAN/FEB 2021 WWW.SFNET.COM

Putting Capital To Work

Interview With

Bill Stapel and Greg Eck

NEW LEADERS OF FIFTH THIRD BANK ASSET-BASED LENDING GROUP SHARE VISION FOR 2021

A publication of: Secured Finance Network

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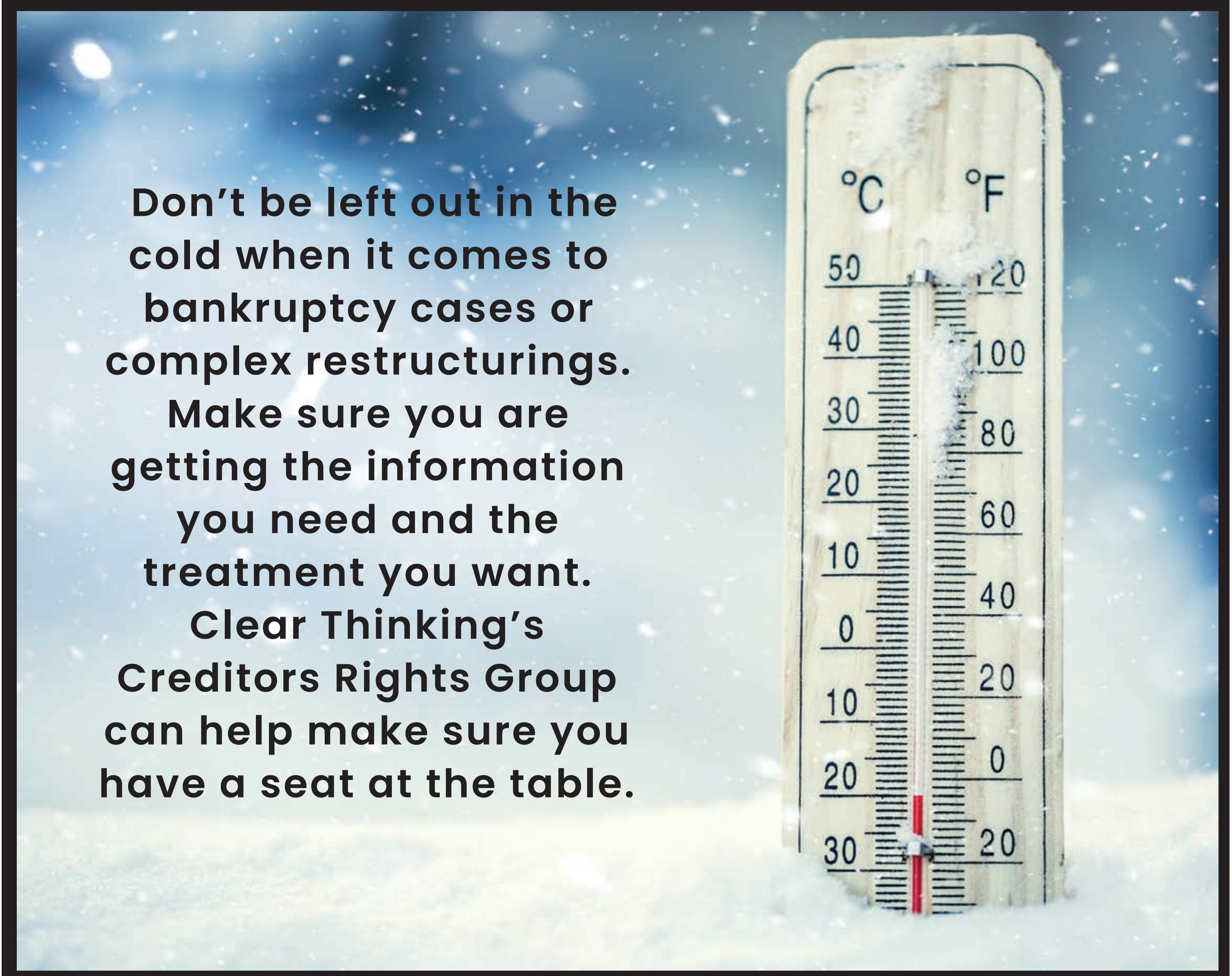

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STAYING CONNECTED

SFNet CEO Announces Plans for 2021

As we come off a year which, in response to the pandemic, was the most interactive with our members in SFNet's history, and notwithstanding the tumult we have experienced including the deeply disturbing events in Washington DC, we are more determined than ever to fulfill our mission of putting capital to work and eager to share our plans to do so in 2021. In consideration of the environment, we continue to shift toward a more accessible and inclusive engagement model; one that offers more frequent and on-demand opportunities for relationship building, accessing information, professional development and expressing our voice in legislative and regulatory matters than ever before.

Building on our most-attended and highest-rated Convention ever, we will continue to stage live online events utilizing our acclaimed SFNet Connect platform. This medium facilitates spontaneous and productive one-on-one and small-group meetings while providing a venue for highly regarded speakers, case studies and interactive panels of value to our communities. Upcoming meetings leveraging this format include our annual Asset Based Capital Conference in March and International Lending Conference in May.

In response to our members' desire for greater connectivity, we are pleased to announce the introduction of new interactive SFNet Forums, whereby professionals with common interests such as legal, credit, business development, operations and technology, past 40 Under 40 Award winners and independent factors, will meet regularly in facilitated informal roundtables to discuss pressing issues and opportunities in their respective disciplines. We're also establishing through our Foundation a recurring SFNet Hall of Fame/Past Presidents Mentoring Forum for young professionals to learn from icons in our industry.

We will continue to offer our Crucial Conversations webinars on timely topics, beginning this month, by unpacking the new "Consolidated Appropriations Act of 2021" and its implications to our community. Building on the successful Workouts and Bankruptcy series we introduced last year, we will be introducing a series of On-Demand education programs including subject matter for legal professionals to earn valuable CLE credits. Even our Guest Lecture Program to benefit aspiring, but disadvantaged, college students interested in pursuing a career in secured finance has gone virtual.

As the year progresses, and it becomes safe to meet again in person, we will begin to reintroduce destination events coupled with online elements so that everyone can participate in the manner most suited to their needs.

RICHARD D. GUMBRECHT
SFNet Chief Executive Officer

The Secured Lender continues to play a crucial role in our efforts to inform, guide and contribute thought leadership to our community. On the cover of this issue, we feature the new leaders of Fifth Third's ABL Group, Greg Eck and Bill Stapel. Turn to page 22 to read about their plans and their market insights.

On page 26, Refinitiv's Maria Dikeos provides an overview of a year like no other in *ABL Lenders Navigated COVID-19 World and Market Bifurcation in 2020.*

In *The Voids Created in Asset-Based and Asset-Backed Lending* on page 30, Charlie Perer of SG Credit Partners discusses how credit cycles typically bring about two correlated occurrences – consolidation and credit voids, creating unique and unrelated voids in both small-ticket ABL and the asset-backed term space and how new firms are emerging to fill the voids.

On November 5, Callodine Group, an asset management firm focused on yield-oriented investment strategies, announced it had entered into a definitive agreement to acquire Gordon Brothers Finance Company, LLC (GBFC). Turn to page 34 to read an interview with Gene Martin, CEO, and Mark Forti, managing director, head of origination, at Callodine Commercial Finance.

To prepare you for legal challenges that may lie ahead, on page 44 Brett Garver and Danielle Marlow of Moritt Hock & Hamroff provide analysis of the top five legal issues secured lenders should be aware of in 2021.

These are extraordinary times and SFNet and our community continue to lead the way forward. Thanks for everything you do for our thriving and vital community to make an impact in the coming year.

Warmest regards,

Rich Gumbrecht
CEO, Secured Finance Network

Bill Stapel and Greg Eck, New Leaders of Fifth Third Bank Asset-Based Lending Group, Share Vision for 2021

Greg Eck and Bill Stapel are the new leaders of the ABL Group at Fifth Third Bank, N.A., one of the nation's largest asset-based lenders, with $8.1 MM in commitments and serving customers in 38 states, Canada and Europe. They step into their roles following the retirement of Fifth Third Business Capital President Mike Sharkey, who was also past president and chairman of Secured Finance Network. 22

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SFNet Q3 Asset-Based Lender Index Analysis

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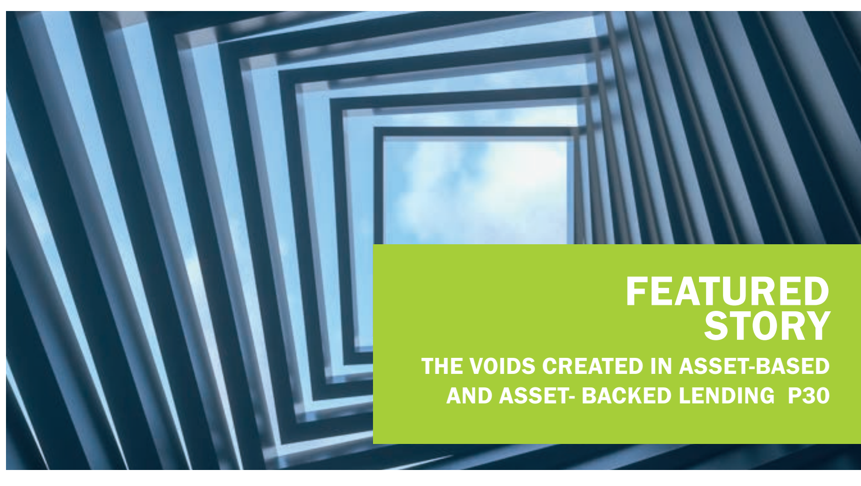
BY SFNET DATA COMMITTEE



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The Voids Created in Asset-Based and Asset-Backed Lending

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The Top 5 Legal Issues Lenders Should Look Out For In 2021

The year 2020 has been a wild ride for secured lenders, particularly in light of the COVID-19 pandemic. The coming year promises be full of plenty of twists and turns as well. Attorneys from Moritt Hock & Hamroff provide analysis of the top five issues secured lenders should be aware of in 2021. **44**

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SFNET COMMITTEE SPOTLIGHT

SFNet Diversity, Equity and Inclusiveness Committee

This column highlights the hard work and dedication of SFNet committee volunteers. Here we speak with Betty Hernandez, chair of SFNet's Diversity, Equity and Inclusiveness Committee. She is also executive vice president and chief credit officer of North Mill Capital LLC. **47**

BY MICHELE OCEJO

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 opinions and views expressed by *The Secured Lender's* contributing editors and authors are their own and do not necessarily express the magazine's viewpoint or position. Reprinting of any material is prohibited without the express written permission of *The Secured Lender*.

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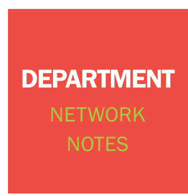

Accord Financial Launches New Brand Founded on Simplifying Access to Capital

Accord Financial introduced a streamlined organizational structure bringing all commercial lending businesses under the Accord umbrella brand, with systems that seamlessly integrate both clients and financial partners, resulting in fast and flexible financing. Accord now offers an expanded solution set, including receivables, equipment and inventory financing, small business term loans, and BCAP loans (in Canada).

Bank of America Business Capital Names Adam Moss New National Marketing Manager

Adam Moss will oversee a team of business development officers who provide asset-based solutions and banking products to large and middle-market companies, intermediates and financial sponsors across the U.S. and Europe. Based in Pittsburgh, Moss most recently served as the head of asset-based lending loan sales & distribution for debt capital markets at PNC Financial Services Group.

BMO Financial Group Announces Executive Appointments

BMO Financial Group announced a series of executive appointments to continue to build on its strategic advantages.

Tom Flynn will move from his current role as chief financial officer to become a vice chair. In his new role, he will support the growth ambitions of corporate clients and deepening client relationships.

Tayfun Tuzun joined BMO as deputy chief financial officer, and became chief financial officer, January 1, 2021, following a transition period. He also joined the bank's Executive Committee. Tuzun has served as CFO of Fifth Third Bank since 2013.

Simon Fish will move from his current role as general counsel and become special advisor to the CEO.

Sharon Haward-Laird will be appointed general counsel, reporting to the CEO, and will join the bank's Executive Committee.

Callodine Group Announces Acquisition of Gordon Brothers Finance Company, LLC

Callodine Group, an asset management firm focused on yield-oriented investment strategies, has entered into a definitive agreement to acquire the loan portfolio, and assume the employees and operating costs of Gordon Brothers Finance Company, LLC (GBFC). In connection with the closing of the transaction, GBFC has changed its name to Callodine Commercial Finance (CCF). *Editor's note: Please turn to page 34 to read the interview with Gene Martin and Mark Forti of Callodine.*

CapitalPlus Construction Services Welcomes HR Veteran

CapitalPlus Construction Services announced the addition of **Clare J. Deegan** as director of Human Resources and business office manager. In her new role she will oversee benefits administration, A/P and A/R functions as well as all personnel management responsibilities, from recruiting and onboarding to team building and exit interviews.

CapX Announces Rebrand as Accord Equipment Finance

CapX Partners (CapX), a leading provider of middle-market equipment leasing and financing programs, has completed its transition, becoming fully part of the Accord Financial Corp. family rebranding as Accord Equipment Finance (AEF).

Restructuring Professional Gennaday Spivak Joins Clear Thinking Group as a Managing Director

Gennady Spivak is an accomplished professional with a proven record in bankruptcy and insolvency, financial analysis, forensic accounting, fraud investigation, litigation support and wind down management.

eCapital Corp. Names Charles Sheppard as Chief Operating Officer

Charles Sheppard will oversee both the eCapital Freight Factoring and eCapital Commercial Finance divisions, ensuring the company has unified leadership and is well-equipped to continue to scale and further establish itself as a leader in alternative finance. As COO, Sheppard will also lead the newly formed corporate-level Marketing and IT departments.

eCapital Corp. Names Kash Ahmad Executive Vice President, Chief Credit Officer for eCapital Commercial Finance

Kash Ahmad will report to Tony Howard, eCapital Corp.'s chief credit and portfolio officer, and lead a team of underwriters and credit specialists to manage credit, risk and compliance, and support the growth of the Commercial Finance business.

Encina Capital Partners and Oaktree Affiliate Launch New Independent Lender Finance Platform

Encina Capital Partners, LLC and an affiliate of certain funds managed by Oaktree Capital Management, L.P. announced that they have launched Encina Lender Finance, LLC, a new independent lender finance platform targeting commercial and consumer specialty finance companies in the U.S. and Canada.

ELF will be led by industry veterans **Luke Graham**, chief executive officer, and **John Thomas**, president, and chief risk officer. Graham and Thomas are joined by **Alex Knowland**, who has 10-plus years of structured credit experience in both risk and capital markets functions, as vice president, Capital Markets & Client Services.

ELF is also receiving support from existing Encina personnel across numerous functions, including **John Ryan**, partner, **Tom Davidson**, partner, **Robert Kennedy**, chief financial officer, **Eric James**, managing director, Operations & Compliance, **Janani Sharma**, managing director, underwriting, **Julie Meade**

managing director, underwriting, Sandy Hom, managing director, underwriting, **Brian Fulton** assistant vice president, operations, **Kristal White**, assistant vice president, administration and **Eric White**, financial analyst.

In addition, **Paul Bossidy** and **William Brasser** – two former officers from General Electric Company – are serving as senior advisors to ELF and members of the firm's Investment Committee.

Fifth Third Announces Appointment of Timothy N. Spence as President

Timothy Spence will oversee all business lines and regional banking, while continuing his leadership of the Bank's strategy. It was Spence's strength in strategy that first brought him to Fifth Third in 2015. He led that area as chief strategy officer and then advanced in 2017 to head consumer banking and payments as well. Spence will continue to report to **Greg Carmichael**, the company's chairman and chief executive officer.

Brian Banning Joins First Business Capital Corp. as Vice President – Business Development

Brian Banning has over 30 years of experience in financial services and is located in the Detroit metro area. He is a seasoned asset-based lending business development professional proficient in the consultative structuring of client solutions in turnaround, restructuring, acquisition, growth, and refinance.

First Citizens BancShares, Inc. and CIT Group Inc. Announce Transformational Partnership to Create a Top-Performing Commercial Bank

First Citizens BancShares, Inc. and CIT Group Inc. jointly announced that they have entered into a definitive agreement under which the companies will combine in an all-stock merger of equals to create the 19th largest bank in the United States based on assets. The combined company will operate under the First Citizens name and will trade under the First Citizens ticker symbol FCNCA on the Nasdaq stock market.

Frank Holding, Jr., chairman and CEO of First Citizens, will retain the same roles at the combined company. **Ellen R. Alemany,** chairwoman and CEO of CIT, will assume the role of vice chairwoman and play a key role in the merger integration

Gerber Finance Launches Gerber+

Gerber Finance,is expanding its portfolio and client offerings with the launch of Gerber+. This new division will service businesses seeking a higher level of funding ranging from $10 to $25 million. Gerber Finance currently focuses on facilities up to $10 million.

Gerber has established this new division alongside its parent company, eCapital Corp. The new division will be led by senior vice president Entela Semini, who will serve as Northeast director of Gerber+.

One must comprehend the whole picture before arriving at conclusions.

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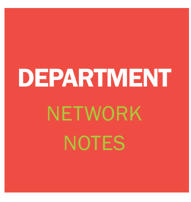


Hilco Redevelopment Partners Hires Real Estate Industry Professional George Needs as Vice President – Mixed Use Development

Hilco Redevelopment Partners (HRP), the real estate development unit of Hilco Global that remediates and redevelops complex and obsolete industrial properties, has hired **George Needs** to the position of vice president – Mixed Use Development.

Iron Horse Credit Hires Savi Hussain as SVP of Underwriting

Iron Horse Credit has hired **Savi Hussain** as its senior vice president of underwriting. Hussain will be the senior officer responsible for the company's credit and underwriting operations.

KeyBank Names John J. Manginelli as Market President

KeyBank announced that **John J. Manginelli**, Northeast regional executive for KeyBank Real Estate Capital, will assume an expanded role that includes market president for Key's Hudson Valley/Metro New York market.

North Mill Capital LLC (NMC) Promotes Karen Marino to Senior Vice President

Karen Marino joined NMC in 2015 and has been serving as both an account executive and underwriter. She is on the board of the Secured Finance Network (SFNet) New Jersey Chapter, is currently Vice Chair of the National SFNet Yo Pro Committee and serves on SFNet's Education Committee.

Peapack-Gladstone Bank Hires New Senior Managing Director

Peapack-Gladstone Financial Corporation and Peapack-Gladstone Bank are proud to announce the appointment of **Michael J. Mulcahy**, senior managing director, commercial private banker (C&I).

Peapack-Gladstone Bank Hires New Senior Managing Director, Commercial Private Banker

Peapack-Gladstone Financial Corporation and Peapack-Gladstone Bank are proud to announce the appointment of **Michael E. DiNizo,** senior managing director, Commercial Private Banker.

PNC Announces Agreement to Buy BBVA USA Bancshares, Inc.

The PNC Financial Services Group, Inc. and the Spanish financial group, Banco Bilbao Vizcaya Argentaria, S.A. (BBVA), announced that they have signed a definitive agreement for PNC to acquire BBVA USA Bancshares, Inc., including its U.S. banking subsidiary, BBVA USA, for a purchase price of $11.6 billion to be funded with cash on hand in a fixed price structure.

Riveron Expands Restructuring Capabilities with Acquisition of Winter Harbor

Riveron announced its acquisition of Winter Harbor, a Boston-based provider of restructuring and turnaround services.

Rosenthal & Rosenthal, Inc. Adds Dan Rogers to Its Southeast Team as Vice President, Senior Underwriter

Dan Rogers joins Rosenthal's growing team in the Southeast and will be based in the Atlanta, GA office. He will be responsible for underwriting asset-based lending and factoring deals for the firm.

John Church Joins Seacoast Business Funding as VP Business Development Officer

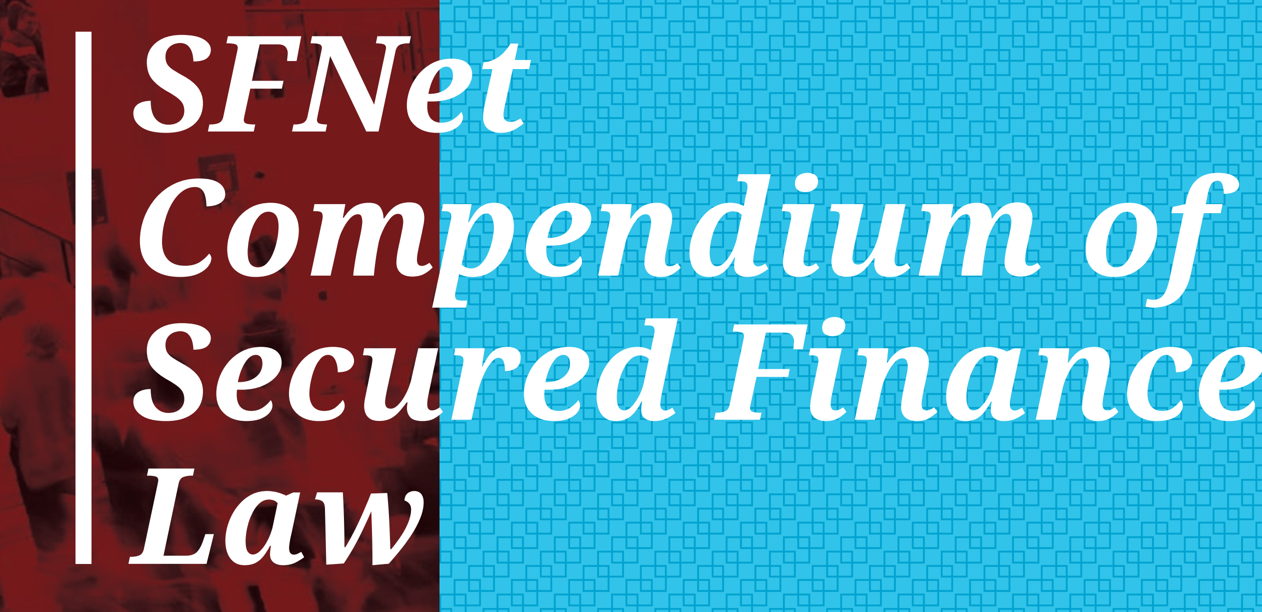
John Church is based on the West Coast and will focus on cultivating and growing the Seacoast portfolio in the region.

Santander Bank Announces Key Executive Appointments

Santander Bank, N.A. announced **Patrick Smith** has been named head of Small Business Banking, **Giancarlo Marchesi** has been named head of Consumer Lending, and **Jennifer Mathissen** has been named Chief Marketing Officer.

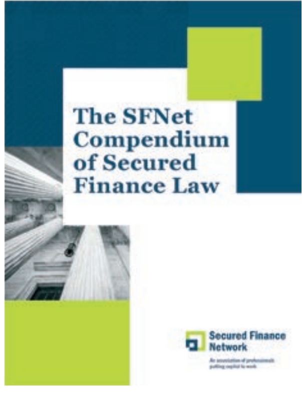
Wingspire Capital Adds Allison Adornato as Managing Director and National Head of Underwriting

Allison Adornato will oversee the underwriting of Wingspire's asset-based lending products, which range from $20 million to $200 million in transaction size and include revolving lines of credit, fixed asset term loans and cash flow stretch term loans.



NETWORKING
INDUSTRY KNOWLEDGE
EDUCATION
ADVOCACY

The **Secured Finance Network Compendium of Secured Finance Law** is a time-saving digital tool that enables you to research important legal issues related to secured transactions in any U.S. state within seconds.



In 2019/2020, 15 of the most active states were updated and additional states are being updated. Covered topics include:

- Lending Licenses
- Wage Liens
- Environmental Liens
- Processors' and Repairmen's Liens
- Corporate Guarantees
- Liens Against Personal Property
- Landlords' Liens
- Usury
- Insolvency Laws
- UCC
- Prejudgment Remedies
- Bulk Sales Law
- Uniform Electronic Transmission Act

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Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
AFC Gamma, Inc.	Non-bank	**$22 Million**	Organic Remedies, Inc., a single-state vertically integrated cultivator and retailer of medical cannabis	Cannabis	Credit facility	
Amerisource Business Capital	Non-bank	**$1 Million**	Agricultural grower and processor, Michigan	Agriculture	Credit facility	
Amerisource Business Capital	Non-bank	**$3 Million**	Fabricator of membranes used in water treatment facilities, Texas	Manufacturing	Credit facility	
Ares Commercial Finance	Non-bank	**$100 Million**	Pace Industries, LLC, an entity owned by funds and accounts managed by TCW Asset Management Company and by affiliated funds and accounts of Cerberus Capital Management, L.P, Fayetteville, AR	High-pressure aluminum, magnesium and zinc die casting	Senior secured credit facility	
BBVA USA [Administrative Agent] with Citizens Bank, N.A., ING Bank N.V., and [Sabadell Bank Joint Lead Arrangers]	Bank	**$300 Million**	Tecnoglass, Inc., a leading manufacturer of architectural glass, windows, and associated aluminum products for the global commercial and residential construction industries	Manufacturing		
BOK Financial	Bank	**$200 Million**	Vaquero Midstream, a designer, builder and operator of midstream infrastructure	Midstream infrastructure	Revolving credit facility	
Bridge Bank	Bank	**$25 Million**	Health-Ade, an organic beverage company, Los Angeles	Beverage	Credit facility	
Business Capital	Non-bank	**N/A**	Leading curator of world class footwear brands for women	Footwear	Credit facility	
Business Capital	Non-bank	**N/A**	Premiere California North Coast boutique hotel	Hotel	Debtor-in-possession / exit financing	
Business Development Bank of Canada	Non-bank	**$40 Million**	Surge Energy Inc.	Energy	Term loan facility, in partnership with the Company's syndicate of lenders, for a non-revolving facility of $40 million. In addition to the term facility, the Company has received a credit commitment of up to $50 million from EDC, providing Surge with a significant new syndicate banking partner in the Company's existing $335 million credit facility.	
Callodine Commercial Finance	Non-bank	**CAD $20 million**	To support Kingswood Capital Management’s acquisition of MEC, Canada's go-to retailer for outdoor gear, know-how, and inspiration	Retail	Financing	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Canadian Schedule I Bank	N/A	**$7.5 Million**	PopReach Corporation, a free-to-play mobile game publisher focused on acquiring and optimizing proven game franchises	Gaming	Senior secured credit facility	
Canadian Imperial Bank of Commerce (CIBC)	Bank	**$140 Million**	Converge Technology Solutions Corp., a national platform of regionally focused Hybrid IT solution providers in the U.S. and Canada	Technology	Revolving credit facility	
CapitalPlus Construction Services	Non-bank	**$1.5 Million**	Civil engineering firm, Texas	Engineering	Construction factoring facility	
CapitalPlus Construction Services	Non-bank	**$500,000**	Directional drilling contractor, Oklahoma	Drilling	Construction factoring facility	
CapitalPlus Construction Services	Non-bank	**$200,000**	Millwork and cabinetry company, Miami	Millwork	Construction factoring facility	
CapitalPlus Construction Services	Non-bank	**$100,000**	Security equipment installer, Indiana	Security	Construction factoring facility	
Capital One	Bank	**$485 Million**	Covis Group S.á.r.l., a global specialty pharmaceutical company that markets therapeutic solutions for patients with life-threatening conditions and chronic illnesses, Luxembourg	Pharmaceutical	Amended and restated credit facility. This includes a $485 million upsize to its existing facility in support of the company's acquisition of AMAG Pharmaceuticals.	
Celtic Capital Corporation	Non-bank	**$2.5 Million**	Manufacturer of high-volume, low-speed industrial ceiling fans, California	Manufacturing	Accounts receivable and inventory lines of credit	
Celtic Capital Corporation	Non-bank	**$2.5 Million**	Manufacturer of high-volume, low-speed industrial ceiling fans	Manufacturing	Accounts receivable and inventory lines of credit	
CIBC Innovation Banking	Bank	**$52 Million**	Vapotherm, Inc., a global medical technology company focused on the development and commercialization of its proprietary high velocity therapy	Technology	Growth capital financing. The agreement provides Vapotherm with a term loan of $40 million, which matures five years from closing, and a revolving line of credit of up to $12 million.	
CIBC Innovation Banking	Bank	**N/A**	Crunchbase Inc., a leading provider of private-company prospecting and research solutions, San Francisco, CA	Research solutions	Growth capital facility	
CIBC Innovation Banking	Bank	**N/A**	Taplytics Inc., a single platform for both enterprise marketers and engineers to optimize the entire digital customer experience, for Toronto and Palo Alto, CA	Technology	Growth capital financing	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
CIBC Innovation Banking	Bank	**$15 Million**	Yello, a provider of early talent acquisition and recruiting scheduling software	Software	Credit facility	
Citigroup Global Markets Inc., U.S. Bank National Association, Barclays, BofA Securities, Inc. and UBS Securities LLC	Bank	**$250 Million**	APi Group Corporation, a market-leading business services provider of safety, specialty and industrial services in over 200 locations, primarily in North America and with an expanding platform in Europe	Business services provider	Term loan facility	
CIT Group Inc.	Bank	**$175 Million**	MSTS, a B2B payment and credit solutions provider, Overland Park, KS	B2B payment and credit solutions	Financing	
CIT Group Inc.	Bank	**$39 Million**	For the acquisition of the North Hills Health Center in Menominee Falls, WI	Healthcare	Financing	
CIT Group Inc.	Bank	**$70 Million**	Estyle Holdings Inc., makers of Eco Style hair gel and a wide range of other beauty and personal care products, Jacksonville, FL	Personal care products	Senior secured financing consisting a revolving credit facility, delayed draw term loan and a term loan to support the recapitalization of the company by Clarion Capital Partners	
CIT Northbridge Credit	Bank	**N/A**	Arizona Nutritional Supplements LLC, a portfolio company of Endeavour Capital	Nutrition	Senior secured credit facility	
CNH Finance	Non-bank	**$21 Million**	Companies in the home health care industry and skilled nursing facilities	Healthcare	Funded eight commitments in Q3	
Context Business Lending, LLC	Non-bank	**$20 Million**	Universal Metals and parent company, Northwestern Holding Company	Metals	Revolving lines of credit	
CoreFund Capital with Innocap, Inc.'s wholly owned subsidiary, Unique Logistics International (NYC) LLC	Non-bank	**$25 Million**	Innocap, Inc., a global logistics and freight forwarding company	Logistics and freight	Credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$13 Million**	Chemicals packaging and distribution company, Texas	Packaging and distribution	Asset-based lending facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$9 Million**	Designer and manufacturer of hearth products, Alabama	Manufacturing	Asset-based lending facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$125,000**	Refrigerated transport company, California	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$300,000**	Flatbed transportation company, Nebraska	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$2 Million**	Technology-based services provider, Washington	Technology	Ledgered line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$150,000**	Refrigerated FAK transportation company, Texas	Transportation	Accounts receivable purchase facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Crestmark's Asset-Based Lending Division	Non-bank	**$300,000**	Refrigerated transportation company, Ohio	Transportation	Accounts receivable purchase facility	
Crestmark Government Guaranteed Lending	Non-bank	**$830,000**	Independent insurance agency, Kentucky	Insurance	SBA 7(a) term loan facility	
Crestmark Government Guaranteed Lending	Non-bank	**$2,486,250**	Financial advisory firm, Colorado	Financial advisory	Term loan facility	
Crestmark Government Guaranteed Lending	Non-bank	**$6,080,000**	Insurance and financial services company, Washington	Insurance and financial services	Term loan facility	
Credit Suisse	Bank	**N/A**	Francisco Partners' definitive agreement to acquire Forcepoint, a leading portfolio of cybersecurity solutions, from Raytheon Technologies	Cybersecurity	Debt financing	Paul Hastings LLP and Kirkland & Ellis acted as legal advisors to Francisco Partners. Barclays acted as exclusive financial advisor and Davis Polk & Wardwell LLP acted as legal advisor to Raytheon Technologies.
CRG Servicing LLC	Non-bank	**$45 Million**	EyePoint Pharmaceuticals, Inc., EyePoint Pharmaceuticals, Inc., a pharmaceutical company committed to developing and commercializing innovative ophthalmic products	Pharmaceutical: Opthalomology	Amendment to an existing debt facility	
Crystal Financial LLC	Non-bank	**$27.5 Million**	True Religion Apparel, Inc.	Apparel	Senior credit facility	
CVC Credit Partners	Non-bank	**GBP37.5 Million**	Nurse Plus, a healthcare services business backed by Sovereign Capital Partners	Healthcare	First lien credit facility	
eCapital Corp.	Non-bank	**$3 Million**	Distributor of consumer electronics products	Electronics	Factoring facility	
eCapital Corp.	Non-bank	**$5 Million**	Importer and distributor of wine and spirits	Wine and spirits	Factoring facility	
Dwight Funding	Non-bank	**$4 Million**	Men's personal care company and a leading bicycle company	Personal care/ Bikes	Funding	
Entrepreneur Growth Capital	Non-bank	**$5 Million**	Distributor of personal protective equipment, New York	PPE	Working capital facility	
Encina Business Credit	Non-bank	**$80 Million**	Leading global provider of Business Process Services	Business process services	Secured revolving credit facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Espresso Capital	Non-bank	**$7.5 Million**	Zype, a leader in video content management and distribution software	Software	Credit facility	
Express Trade Capital, Inc.	Non-bank	**$6 Million**	A prominent menswear importer	Apparel	Factoring facility	
Fifth Third Business Capital	Bank	**$14.8 Million**	ARC Group Worldwide, Inc., offering a compelling portfolio of advanced manufacturing technologies and cutting-edge capabilities	Manufacturing	Senior credit facility	
Flatbay Capital LLC	Non-bank	**$2.8 Million**	National school apparel manufacturer and distributor	Manufacturing	Commercial real estate loan	
Flatbay Capital LLC	Non-bank	**$2.4 Million**	Private equity-owned steel distributor, Houston, TX	Steel	Commercial real estate term loan	
Gemino Healthcare Finance	Non-bank	**$15 Million**	Infusion therapy provider	Infusion therapy	Asset-based revolving line of credit	
Gemino Healthcare Finance	Non-bank	**$3 Million**	Skilled nursing operator	Healthcare	Asset-based revolving line of credit	
Gerber Finance	Non-bank	**N/A**	Designer Protein. In partnership with PCG Investors, the maker of active nutrition products will use the funding to buy back stakeholder shares and expand the brand into a broader line of active lifestyle products.	Nutrition	Additional line of credit	
Gibraltar	Non-bank	**$15 Million**	Acquisition of Chelsea Lighting, a well-known New York City-based lighting technologies and procurement specialist that has worked with prominent Fortune-500 companies	Lighting	Acquisition financing	
Gibraltar	Non-bank	**$5.5. Million**	Spokane Industries, an international manufacturer specializing in steel castings and metal products across many industries, Washington	Steel	Working capital financing	
Goldman Sachs	Bank	**$14 Million**	Funding U, a financial technology company serving high-performing, underrepresented college students	Financial technology	Debt/equity round. Goldman Sachs Urban Investment Group was added to its roster of credit providers, with a $10 million line of credit. Investors providing $4 million in equity include Deciens Capital, Valor Ventures, MacKenzie Scott, Next Act Fund LLC and The JumpFund.	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
The Hedaya Capital Group, Inc.	Non-bank	**$2.5 Million**	Luxury cashmere and knitwear brand	Apparel	Factoring facility	
Hercules Capital	Non-bank	**$75 Million**	Udacity, a global online learning platform educating workers for the careers of the future, Mountain View, CA	Technology	Debt financing	
Huntington Business Credit	Bank	**$23 Million**	Paragon Steel Enterprises, LLC, Butler, IN, steel processor specializing in prime and secondary sheet coils, including specialty processing and slitting services	Steel	Credit facilities	
InterNex Capital	Non-bank	**$2.55 Million**	Food manufacturer that sells low carb, ready-to-eat foods through U.S. distributors and directly to consumers online, Florida	Manufacturing	$2 million velocity line of credit and a $550,000 stretch facility	
InterNex Capital	Non-bank	**$3.4 Million**	Company specializing in technology staffing services to mid to large-cap companies, Texas	Staffing	VelocityFlex funding solution	
Investec Power and Infrastructure Finance – North America	Non-bank	**$200 Million**	Cypress Creek Renewables	Solar energy	Debt financing. In addition to Investec, other joint lead arrangers for the transaction included Credit Agricole, East West Bank, and Silicon Valley Bank.	Cypress Creek was represented by Kirkland & Ellis LLP as its lead transaction counsel. The lenders were represented by Milbank as transaction counsel.
Iron Horse Credit and Alterna Capital Solutions	Non-bank	**$5.5 Million**	Century-old company engaged in the design, development and marketing of quality women's footwear	Footwear manufacturing	IHC provided a $3,000,000 stand-alone inventory revolving line of credit and Alterna provided a $2,500,000 accounts receivable-based facility.	
J D Factors	Non-bank	**$100,000**	Transportation company, Alberta	Transportation	Factoring facility	
J D Factors	Non-bank	**$100,000**	Transportation company, Georgia	Transportation	Factoring facility	
J D Factors	Non-bank	**$75,000**	Transportation company, Ontario	Transportation	Factoring facility	
J D Factors	Non-bank	**$1.5 Million**	Telecommunications company, Florida	Telecommunications	Factoring facility	
J D Factors	Non-bank	**$150,000**	Transportation company, Ontario	Transportation	Factoring facility	
J D Factors	Non-bank	**$200,000**	Transportation company, New Jersey	Transportation	Factoring facility	
J D Factors	Non-bank	**$350,000**	Transportation company, Illinois	Transportation	Factoring facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
JPMorgan Chase Bank, N.A., Morgan Stanley, Antares Capital, and Crescent Capital	Bank and Non-bank	**N/A**	Leonard Green's acquisition of Service Logic, the largest independent provider of aftermarket maintenance, repair and replacement services for commercial HVAC equipment	HVAC equipment	Debt financing	Harris Williams and Moelis served as financial advisors and Kirkland & Ellis LLP served as legal advisors to Service Logic. Latham & Watkins LLP served as legal advisors to Leonard Green & Partners.
JPMorgan Chase Bank, N.A. [Administrative agent] and a syndicate of three relationship banks	Bank	**$150 Million**	Novocure, a global oncology company working to extend survival in some of the most aggressive forms of cancer	Healthcare	Senior secured revolving credit facility	
King Trade Capital	Non-bank	**$4.5 Million**	PPE distributor importing medical gowns to be delivered to the US Government, New York	PPE	Purchase order-based supply chain finance facility	
LBC Small Cap	Non-bank	**N/A**	To support Susquehanna Private Capital, LLC's (SPC) acquisition of Authority Franchise Systems, LLC (Mosquito Authority), a franchisor of mosquito, pest, and tick control services throughout the United States, Puerto Rico, and Canada. Mosquito	Pest control	Senior secured credit facility and equity co-investment. LBC Small Cap partnered with Modern Bank to provide the senior secured credit facility to Mosquito Authority.	
mBank Business Credit	Non-bank	**$1.25 Million**	Manufacturer of cutting tools	Manufacturing	Line of credit	
MidCap Business Credit	Non-bank	**$2.5 Million**	UG Plast, Inc., a manufacturer of multi-wall polycarbonate, solid polycarbonate, and corrugated polypropylene sheets selling to distributors, York, PA	Manufacturing	Asset-based credit facility	
Monroe Capital LLC	Non-bank	**$11.5 Million**	To support the acquisition of Green Remedies Waste and Recycling Inc., Elon, NC by Quest Resource Holding Corporation	Solid waste and recycling services	Senior credit facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
MUFG Union Bank	Bank		NetMotion, a software company offering security solutions for millions of devices deployed around the world	Software	Debt financing	
National Bank of Canada	Bank	**$325 Million**	North American Construction Group Ltd., one of Canada's largest providers of heavy construction and mining services	Construction and Mining	Expanded and extended its senior secured credit facility	
Naturally Gerber Finance	Non-bank	**N/A**	Cerebelly, maker of organic, brain-supporting baby food	Food	Line of credit	
North Avenue Capital	Non-bank	**$4 Million**	Cornerstone Processing, LLC, a chicken processing facility in Pine Bluff, AR	Chicken processing	Loan	
North Mill Capital	Non-bank	**$4 Million**	Tropical Aquaculture Products, Inc. ,an importer and distributor of fresh seafood headquartered in Rutland, VT	Food: Seafood	Revolving line of credit	
North Mill Capital	Non-bank	**$20 Million**	Reliable Tire Co., Blackwood, NJ	Wholesale tire distribution	Accounts receivable & inventory credit facility	
Oxford Finance LLC	Non-bank	**N/A**	Valor Healthcare, Inc., an outsourced provider of high-quality primary care and mental health services to veterans in the U.S.	Healthcare	Senior credit facility	
Oxford Finance LLC	Non-bank	**$9.5 Million**	AB Asset Management LLC (AB) and Vitalogy Property Holdings LLC	Healthcare	Senior credit facility	
Pathlight Capital	Non-bank	**$125 Million**	The Neiman Marcus Group, one of the largest omni-channel luxury fashion retailers in the world	Retail	FILO facility	
Pathlight Capital LP	Non-bank	**$180 Million**	Christmas Tree Shops, a brick-and-mortar discount retailer with a focus on seasonal products at a value price point	Retail	Senior secured credit facility	
People's United Bank	Bank	**N/A**	EPSG, a leading integrator of payment technology solutions	Technology	Extended and significantly expanded its existing revolving credit facility	
Pivot Financial Inc.	Non-bank	**$1.48 Million**	Kane Biotech Inc., a biotechnology company engaged in the research, development and commercialization of technologies and products that prevent and remove microbial biofilms	Biotechnology	Non-revolving term loan	
PNC Bank	Bank	**$900 Million**	Helios Technologies, a global industrial technology leader that develops and manufactures solutions for both the hydraulics and electronics markets	Technology	Senior secured credit agreement, which is inclusive of a $300 million accordion feature	
Prestige Capital Finance, LLC	Non-bank	**$5 Million**	Company that focuses on the manufacturing and assembly of corrugated retail displays, Southeast U.S.	Manufacturing	Factoring facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Prestige Capital Finance, LLC	Non-bank	**$5 Million**	Company that focuses on the manufacturing and assembly of corrugated retail displays, Southeast U.S.	Manufacturing	Factoring facility	
Rabobank	Bank	**$575 Million**	Kainos Capital, a private equity firm focused exclusively on the food and consumer industry, acquisition of Nutrisystem, the preeminent direct-to-consumer nutrition and weight management brand, from Tivity Health	Direct-to-consumer nutrition management	Debt financing	Winston & Strawn is serving as legal counsel to Kainos.
Republic Business Credit	Non-bank	**$2.5 Million**	Apparel manufacturing and import company, Los Angeles, CA	Apparel	Factoring facility	
Republic Business Credit	Non-bank	**$3.75 Million**	Plastics Manufacturing Company, Midwest U.S.	Manufacturing	Line of credit facility	
Rockland Trust	Bank	**$6 Million**	Yankee Spirits Inc., a retailer of wine, beer, and spirits with four locations throughout Massachusetts	Retail: Wine and Spirits	Revolving line of credit	
Rosenthal & Rosenthal, Inc.	Non-bank	**$6 Million**	Family-owned pawn business and jewelry, metal and accessories retailer	Retail	Asset-based lending deal	
Rosenthal & Rosenthal, Inc.	Non-bank	**$1 Million**	Uniform Importer, Tennessee	Apparel	Purchase order finance facility	
Santander Bank	Bank	**$50 Million**	DB Energy Assets, LLC, a joint venture owned by DCO Energy, LLC and Basalt Infrastructure Partners II	Energy	Revolving loan	
Second Avenue Capital Partners (SACP) and CIT Northbridge	Non-bank	**N/A**	Old Time Pottery, a home décor retailer with stores throughout the Southeast and Midwest, based in Tennessee	Retail: Home décor	Senior secured credit agreement	
Stenn	Non-bank	**N/A**	US importer of wire and cable used in the maritime sector	Wire and cable	Receivables finance	
TD Bank	Bank	**$6 Million**	ProntoForms Corporation, the global leader in field-focused low-code application platforms for enterprise	Technology	Revolving credit facility	
Sallyport Commercial Finance	Non-bank	**$4 Million**	Canadian beauty supply company	Manufacturing	Accounts receivable facility	
Sallyport Commercial Finance	Non-bank	**$5 Million**	Apparel company that was hit hard when major retailers started to cancel orders due to the COVID pandemic	Apparel	Credit facility	
SG Credit Partners	Non-bank	**$3 Million**	Sponsor-backed document scanning company that provides an array of workflow optimization services	Tech enabled services	Cash flow facility	
Silicon Valley Bank	Non-bank	**$30 Million**	Verona Pharma plc, a clinical-stage biopharmaceutical company focused on respiratory diseases	Healthcare	Debt financing	
Stenn International	Non-bank	**N/A**	Worldwide leading manufacturer and exporter of speciality packaging materials, India	Manufacturing	Non-recourse invoice finance facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Sterling National Bank	Bank	**$750,000**	DH Environmental, Inc., Seattle, WA	Environmental services	Senior secured credit facilities	
Sterling National Bank	Bank	**$3 Million**	Staffing solutions firm, New York, NY	Staffing	Senior secured credit facilities	
Sterling National Bank	Bank	**$500,000**	Sporticulture, which combines horticulture and other goods with entertainment licensed products to create team licensed flower gardens, landscapes, home goods, and more, Glenwood, MD	Horticulture	Senior secured credit facilities	
Sumitomo Mitsui Banking Corporation	Bank	**$93 Million**	Canadian Solar, KEPCO and Sprott for Canadian Solar's 126 MWp Tastiota project in the state of Sonora, Mexico	Solar	SMBC acted as sole structuring bank and mandated lead arranger in the transaction. The Tastiota financing package consists of a $67 million senior loan, $15 million letter of credit facility, and a $12 million VAT facility covering the construction and operational phase of the project.	
TAB Bank	Non-bank	**$4 Million**	Diff Eyewear, a provider of premium eyewear while giving the gift of sight to those in need, Los Angeles, CA	Eyewear	Revolving credit facility	
Tech Capital, LLC	Non-bank	**$10 Million**	Taronis Fuels, Inc., a global producer of renewable and socially responsible fuel products	Renewable fuel	Senior, secured line of credit	
Texas Capital Bank	Bank	**N/A**	Liberty Commercial Finance, a leading independent equipment lease and finance company	Equipment leasing	Senior lending facility	
Tree Line Capital Partners, LLC and CVC Credit Partners	Non-bank	**$127.3 Million**	Ingenio, a leading online platform that connects advice-seekers with coaches and advisors, San Francisco, CA	Technology	Term loan increase. Tree Line served as administrative agent and lead rranger on the transaction.	
Varagon Capital Partners	Non-bank	**N/A**	To support the acquisition of US HealthConnect (USHC), a worldwide leader in digital education strategies and engagement data solutions for pharmaceutical, biotech, diagnostic, and device companies, by investment funds managed by Morgan Stanley Capital Partners (MSCP)	Digital education	Senior secured credit facility	
Wells Fargo Bank, N.A.	Bank	**$65 Million**	Tilly's, Inc., an American retail clothing company that sells an assortment of branded apparel, accessories, shoes, and more, Irvine, CA	Retail	Asset-backed credit facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Wells Fargo Bank, NA.	Bank	**N/A**	Phillips Pet Food & Supplies, the national leader in pet food and supplies distribution	Pet supplies	Revolving credit facility	
Wells Fargo Bank and FGI Equipment Finance, LLC	Bank and Non-bank	**$33.7 Million**	Core Molding Technologies, operating in the composites market as one operating segment as a molder of thermoplastic and thermoset structural products	Thermoplastic molding	New credit facility consisting of a $31.7 million of new term loan capacity and $25.0 million of revolving loan capacity	
White Oak Commercial Finance, LLC	Non-bank	**$5 Million**	Software and program management services firm that provides renewable energy-related solutions to public and private utilities providers	Software	Receivables financing facility	
White Oak Commercial Finance, LLC	Non-bank	**$20 Million**	Global manufacturing company that provides innovative product components to the healthcare and consumer goods industries	Healthcare	Receivables financing facility, structured as a recourse factoring facility	
White Oak Commercial Finance, LLC	Non-bank	**$10 Million**	Veteran-owned engineering firm contracting with the New York City Housing Authority	Engineering	Asset-based lending facility	
Wingspire Capital LLC (Agent), Ares Commercial Finance (co-led) and Atalaya Capital Management	Non-bank	**$100 million**	Rubies II, LLC, Long Island, NY, one of the largest designers and manufacturers of costumes and novelties	Retail	Credit facility, consisting of an $80 million senior credit facility, co-led by Ares Commercial Finance, and a $20 million second lien credit facility, provided by Atalaya Capital Management	

SFNet Q3 Asset-Based Lending Index Analysis

The Q3 2020 Asset-Based Lending Index reflects improving confidence for lenders, fears of a double-dip downturn subsiding, and exhibits the continuing impact of PPP funds distributed in April. The U.S. economy rebounded during Q3 as lockdowns subsided, leading to a GDP surge of 33%. This growth had a clear impact on portfolio health with non-accruals, special mention, and write-offs reducing quarter over quarter.

BY SFNET DATA COMMITTEE

While sentiment from both bank and non-bank lenders was more positive from Q2, the overarching theme of Q3 can be told by the continued decline in utilization for both bank and non-bank lenders alike. Bank groups set their lowest level in the five years since these figures were collected by SFNet, with 75% of banks reporting decreases. Non-bank usage reduced slightly over the previous quarter but are back to levels not seen since the first and second quarter of 2017.

Comparing previous periods against Q3 results of $243.3B in commitments and $80.7B in outstandings shows that an issue with portfolio returns could be taking root within the banks, which have been impacted by the defensive draws of Q1 being repaid by PPP funds, robust capital markets issuances, and low utilization by the SNC credits. These circumstances coupled with a low net-interest margin for commercial U.S. banks, (2.81% in 2020 Q2, the lowest margin since the 1980s) imply supply is generally outpacing loan demand.

Bank Utilization

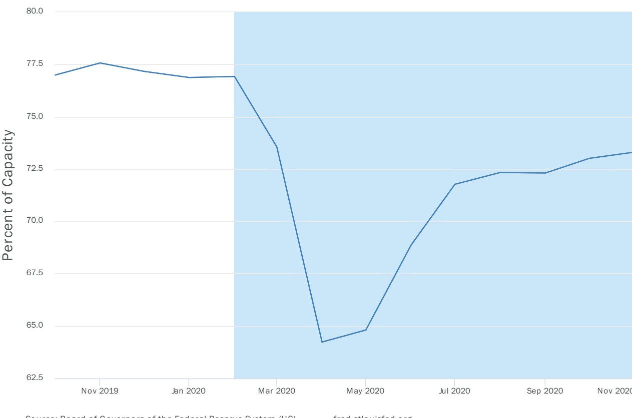
	Commitments	Outstanding	Q3 Outstandings compared to period
Q2 2019	228.6 B	104.1B	22.5 % Decline
Q3 2019	233 B	103.7 B	22.2% Decline
Q4 2019	238 B	97.8 B	17.4 % Decline
Q1 2020	237.8 B	121.9 B	33.8% Decline
Q2 2020	241 B	92.5 B	12.8% Decline

Non-Banks have seen a similar trend but, without the worries of committed capital, the larger trend of increase commitments will ultimately have a positive impact through larger unused spreads and prepayment penalties.

Non-Bank Utilization

	Commitments	Outstanding	Q3 Outstandings compared to period
Q2 2019	2664.3 M	1445 M	27.4% Decline
Q3 2019	2764.2 M	1393.2 M	24.7% Decline
Q4 2019	2932.9 M	1392.5M	24.6% Decline
Q1 2020	2881.1 M	1433.5M	26.8% Decline
Q2 2020	2742 M	1012.1M	3.7% Increase

With industrial production and capacity utilization still running below historical levels, there is hope that loan utilization will improve as customers ramp up production in the coming quarters and return to historical levels of production.



Q3 Bank Data Highlights

Confidence Index

Confidence indicators improved or remained steady as the economy rebounded during the third quarter. Lenders were expecting the economy to improve in Q2 and this sentiment has continued in Q3 as outlook for portfolio performance and general business conditions increased. Both write-off and non-accrual saw a significant improvement, mainly due to economic improvement and immediate and careful action at the beginning of the pandemic. Credit standards continue to tighten within both small and large banks alike.

As highlighted above, utilization continues its decline and, while respondents in Q2 did not expect this to occur in Q3, they have tempered their expectations slightly and expect Q4 to remain the same. New business demand expectations were slightly lower, but zero Bank respondents expect demand to decline. Expectations for hiring declined with all reporting firms indicating that they do not intend to reduce or increase hiring levels.

Commitments and Outstandings

Continuing a negative trend of the 2nd quarter, outstandings reduced further during the period to $80.7B. Clients used PPP funds and took advantage of robust capital market issuances leading to further paydown in revolvers. This decline is well beyond the recent periods and recent defensive draws and places the industry back into the first quarter of 2017 and similar to quarters prior to 2016.

New credit commitments fell significantly to $5.3B, a reduction of 22.1% from Q2 and 44% from the same quarter in 2019. New outstandings decreased by 4.8% from Q2 and were significantly so when compared to 2019, a 45% reduction. A silver lining can be gleaned from the net change in commitments rebounding in both Q2 and Q3.

Amongst those reporting an increase in new commitments and runoff was consistent with Q2 but this data does not match the values presented on the whole. This leads the data committee to believe that runoff was not equal across the peer group.

Credit Quality

Q3 witnessed reducing non-accruing loans and criticized/special mention classifications with non-accruals reduced $116 million, an 18.7% decrease from Q2 2020. Net write-offs reduced 74.6% from the prior quarter, but the reduction was mainly due to a large Q2 one-off event, bringing 2020 write-offs to a manageable percentage of outstandings. Concerns of a larger event similar to that of the great recession have now passed, but with an eye towards continued COVID spikes or broad shutdowns.

Due to the broad decrease in both non-accruals and write offs, credit quality remains a strong point for the banks. The second-quarter rush to move credits into special mention would have led the industry to believe that Q3 would bring additional write-offs, but it now looks like it was part of a larger process for the banks to carefully track customers impacted by COVID. For comparison, C&I delinquencies and write-offs ticked up to 1.3% and 0.6% in Q2, respectively, while ABL non-accruals rose to 0.8%. Losses are well below Great Recession highs, 4.4% and 2.6% for C&I delinquencies & write-offs and 2.3% for ABL non-accruals. It will take some time to determine if the recent decline in write-offs is a trend or if there is a longer lag as historically seen during periods of economic stress.

Q3 Non-Bank Data Highlights

Confidence Index

Stable for business conditions, portfolio performance, new business, and expected hiring from Q2, the non-banks continue to hope that economic dislocation to have a positive impact on portfolio growth and utilization. While easy monetary policy and new lending facilities have had a limited impact on banks' willingness to lend, Non-Banks are likely to continue to be a major source of credit as long as central bank policy keeps yields low and pushes investors to seek higher returns.

Loan outstandings were slightly up and utilization was flat, which reflects clients in this market using up April PPP loan funds and slight borrowings to replenish stock, but not breaking past figures that were last reported in Q3 of 2017. Unlike the Bank market where significant run-off was seen because Issuers had access to the equity and debt capital markets, it is expected that utilization and outstandings will grow in the immediate future. It is important to note that this metric compares outstandings to commitment size. It does not capture the effect of shrinking borrowing bases. When outstandings are compared to availability, the utilization picture may be a bit different. New commitment growth in Q3 increased sharply to a level above the historical average. The backlog of workflow and pauses taken by non-bank credit teams and investors in Q2 has subsided and it is clear that non-banks are taking advantage of market disruption. Multiple lenders announced acquisition financing for sponsor groups that were historically completed by banks.

Following a significant spike in non-accrual loans during Q2, values as a percentage dropped 330 basis points returning to levels similar to those seen in prior periods.

Conclusion

Q3 2020 resulted in a surprisingly quick rebound for lenders in both credit quality and confidence following what was the most volatile quarter since the great recession. Demand for the ABL facilities increased during the quarter but, with low utilization, the market has become very aggressive for any new opportunity that can increase portfolio yields. The true test for lenders in Q4 will be whether ABL lenders will continue to compete aggressively for new transactions, as previously noted, in order to hunt for meaningful outstandings, or if the M&A market and fallen angels can bring an increase in the supply of transactions.

The 2019 Secured Finance Market Sizing & Impact Study

The Authoritative Tool for the Secured Finance Industry to Plan, Benchmark, & Raise Capital

The **Secured Finance Foundation**, in conjunction with **Ernst & Young**, has conducted the first of its kind **Secured Finance Industry Market Sizing and Impact Study** for the purpose of benchmarking, strategic planning, attracting capital and assisting in advocacy efforts on behalf of the industry.

Through primary and secondary research, the study dimensions the size and scope of the commercial marketplace for secured lending and its related products and services. Part primer, part data compilation and part analytical assessment, the study provides the reader with a detailed view into the **highly interconnected segments of this network** and their collective impact on capital deployment and economic development. The findings dimension an industry that is far-reaching, influential, thriving and presenting significant growth opportunities for its participants to expand their served and available markets.

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COVER STORY

Bill Stapel a

New Leaders of Fifth Third Bank Asset-Based Lending Group Share Vision for 2021

BY MICHELE OCEJO

nd Greg Eck,

Greg Eck and Bill Stapel are the new leaders of the ABL Group at Fifth Third Bank, N.A., one of the nation's largest asset-based lenders, with $8.1 MM in commitments and serving customers in 38 states, Canada and Europe. They step into their roles following the retirement of Fifth Third Business Capital President Mike Sharkey, who was also past president and chairman of Secured Finance Network.

Eck and Stapel couldn't be better suited for their new roles. Not only did both begin their careers in Chicago, but they also started as trainees at Heller Financial – on the same day in 1986. From there, each built a career in a different direction, but now together again, they bring a combined experience in virtually every aspect of asset-based lending. Eck and Stapel are leading teams of experienced professionals who provide comprehensive asset-based lending solutions to companies across the spectrum of size, location and industry.

COVER STORY: GREG ECK AND BILL STAPEL

Five years ago, when Fifth Third Bank entered the ABL market, Eck was brought on board as the team's first leader. Today, he puts to work his extensive experience in sales, underwriting and portfolio management, much of it gained at Bank of America and GE Capital, where he was responsible for a broad array of middle market/large corporate customers. He now leads an ABL-team, many who migrated to Fifth Third Bank with him. Together, they serve middle-market/large corporate companies as they implement strategies for organic growth, turnaround and mergers/acquisitions.

Stapel joined Fifth Third Bank in early 2019 with the acquisition of MB Financial Bank, which included a robust national ABL business. He was part of the senior management team that Mike Sharkey had built over decades at various banks, most of who remain an integral part of Stapel's team. Growing up in a family-owned Wisconsin hardware business means Stapel offers customers his unique perspective as a business owner.

That background also gives him an understanding of the dips in every business cycle and the patience required when a business is experiencing an adverse situation. As the team works with customers on the road back to good health, he sees ABL as "a great tool for middle-market businesses, giving them the financing resources to support growth and address pressing liquidity needs."

Please tell us how you and your teams work together.

ECK: At Fifth Third Bank we take a holistic approach – unlike some organizations whose ABL teams work in silos defined by industry segment, geography or size. We know what's important is meeting our customers' and prospects' needs and applying our creativity, industry expertise and ABL experience to accomplish that. So our teams collaborate to ensure clients get the solutions they need.

STAPEL: At the end of the day, you get the right solution at Fifth Third Bank, no matter who you call.

As you look toward the coming year, what's ahead for your customers?

STAPEL: We are stepping into our new positions at a time when the nation and the world are adapting to new challenges. Companies are now reevaluating their businesses, including fresh looks at growth plans and their strategies for moving forward. That said, we're seeing sales increase from the low point in May 2020, but we won't know if the worst is behind us until we fully evaluate fourth quarter numbers. The Payment Protection Program, leveraged as an invaluable funding resource by many lower middle-market companies during the pandemic, could delay change of control or refinancing transactions going forward. They will have to go through the process of loan forgiveness before they can look at a change in ownership.

ECK: Our customers are dealing with impacts and uncertainty from COVID, including a possible resurgence, a highly charged election cycle and change in leadership. Managing a business under these circumstances is challenging, to say the least. We see some promising signs; as an example, through September, the U.S. economy has recovered two-thirds of what was lost through June, and we are seeing this in with many segments of our customer base.

"During the crisis, many CEOs and CFOs who never considered ABL came to appreciate, the significant flexibility, resilience and the cost of capital that ABL can provide." — Greg Eck

While some sectors – such as retail – have reopened and are showing signs of recovery, other industries like energy are likely to continue feeling the effects of both the pandemic and economic slowdown. I think from both our perspectives we see that while there may be some significant challenges ahead, there are catalysts in place for a very strong 2021.

How do you see the economic challenges created by the pandemic impacting customers' views of ABL?

ECK: During the crisis, many CEOs and CFOs who never considered ABL came to appreciate the significant flexibility, resilience and the cost of capital that ABL can provide.

STAPEL: ABL used to be considered the solution of last resort, but today deals are often priced thinner than a traditional commercial deal because it's secured by collateral. Companies will need additional capital to rebuild their balance sheets, and ABL is now a mainstream solution."

ECK: We anticipate that the market's migration to ABL during the pandemic will result in customers' "stickiness" as they plan for stability and growth next year. ABL is in a great place – every time we go through an economic cycle, the market appreciates the product more.

What trends do you see for economic recovery?

ECK: We're both optimistic about the coming year, but we also

“ABL used to be considered the solution of last resort, but today deals are often priced thinner than a traditional commercial deal because it’s secured by collateral.” — Bill Stapel

agree that this recovery will be different from those following previous global financial crises. We are seeing a ‘K recovery’ across our portfolios. As I mentioned earlier, several industries - such as general merchandise retailers and consumer/durable goods - are seeing signs of recovery over the last quarter, while others like aerospace and energy are still facing significant challenges. Much will depend on what course COVID takes over the upcoming months and how the government addresses the potential need for further economic stimulus.

STAPEL: One trend we see crossing industries is the reshoring of sources and production. After experiencing broken supply chains, customers want sources to be closer to home.

When compared to other crises, many customers have more liquidity this time because they reacted quickly and received PPP loans. That, coupled with the liquidity an ABL facility provides, puts them in good shape to grow as the economy comes back.

During the pandemic, many across the ABL sector quickened their adoption of technology. What role does it play with your teams?

ECK: Even though our teams leverage tech solutions, we believe more of ABL depends on people rather than tech. ABL is an art, not a science. We dig into a business and understand nuances that don’t lend themselves to tech. It’s human capital that makes a successful ABL lender.

Many years of attracting and training young talent has paid off for Fifth Third Bank. Young people want to join a successful team, so you have to show them how and why your business is going to be successful. And then you have to grow your talent. You have to train new grads from the ground up. The young talent on our teams look at ABL as “an opportunity-rich business,” with routes to advance their careers.

STAPEL: Both of us have a deep appreciation of the foundation for growth and success that comes from another team – the Fifth Third Bank leaders. Our senior leadership embraces what we do, they’ve leaned-in heavily to support our growth. They have the right credit philosophy – that is critical now and particularly going forward.

What are the key challenges you see coming in 2021?

ECK: The notion that the market doesn’t like uncertainty is figuring into our assessments of challenges that will come with the new year. Distribution of an effective COVID-19 vaccine, possible additional waves of the virus and a shifting regulatory environment all figure into our watch lists for 2021.

Added to all of that is the competitive set that bank ABL lenders must address. An uneven playing field is created when finance companies and banks must operate with very different regulatory constraints.

STAPEL: Because banks can offer a much broader range of finance solutions, they have an edge when it comes to meeting the full range of client needs. That’s a clear competitive advantage.

In planning your agenda for next year, what are your goals?

ECK: We share a common 2021 goal: growth. We’re well-positioned to take advantage of deeper market penetration in the U.S. We’re a seamless team for customers across the entire spectrum. No silos here. At the end of the day, every company is unique and every deal stands on its own. Our focus is working as a team to understand each client’s specific challenges and needs so we can help them be successful.

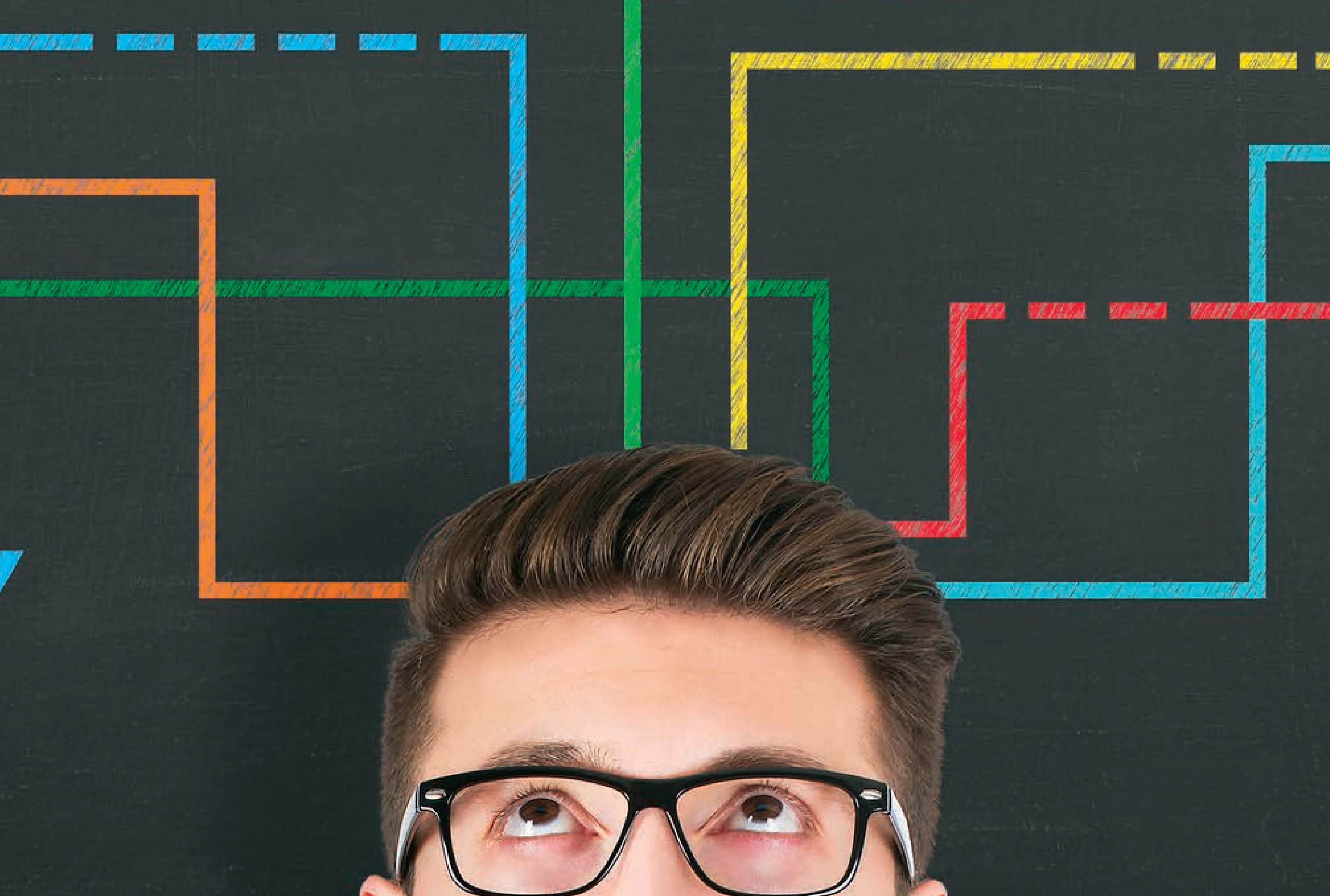
STAPEL: These are among the best of times I’ve seen for ABL. Customers need support, and we’re here to help them grow their businesses.

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

ABL Lenders Navigate COVID-19 World And Market Bifurcation In 2020

BY MARIA C. DIKEOS

Refinitiv's Maria Dikeos provides an overview of a year like no other.



cross the globe, there was little that was routine about 2020. Businesses, markets and households that began the year with ambitious – or even not so ambitious – goals were quickly presented with a new reality that had the world hanging on rising COVID-19 case numbers, vaccine data and hopes for subsequent rollouts.

MARIA C. DIKEOS
Director of Analytics, Refinitiv LPC

In the loans space specifically, the market that had looked forward to an auspicious start to the year amid expectations of targeted event-driven financings and even the return of select opportunistic refinancings was quickly thrown into chaos as the world came to a standstill. Amid widespread lockdowns and social distancing that made working from home the norm for those that could and increased unemployment levels among those who couldn't, the loan market emerged as the lender of last resort during bouts of market dislocation while establishing some semblance of "normalcy" despite the ongoing threat posed by the pandemic.

Wherever possible, virtual office environments were up and running far more successfully than many would have anticipated. As one lender noted, "Not being in the office has not impacted our ability to transact."

At the same time, while the markets debated whether the recessionary fallout from the pandemic was over and how much of a slog any hopes of a recovery might be, investors broadly felt that the Federal Reserve had their backs regardless of the extent to which monetary and fiscal policy was applied. And this made a difference as the market went through several gyrations in a matter of weeks and, in many cases, just days.

Functionality Amid Uncertainty

Briefly taking stock of loan market dynamics since the onset of the pandemic, March was a month of emergency liquidity requests where lenders faced a series of drawdowns and accelerated requests for new liquidity credits. Despite the fact the upheaval was not rooted in financial concerns, corporates did not want to leave their access to liquidity to chance, and boards pushed for the drawdown of backstop facilities. Of course, in other cases, the need was severe with several industries requiring additional liquidity to ensure long-term viability as operations stalled.

Fig. 1: US ABL Loan Vol & Deal Count:
At just over US$63bn, 2020 ABL totals hover near 10-year low

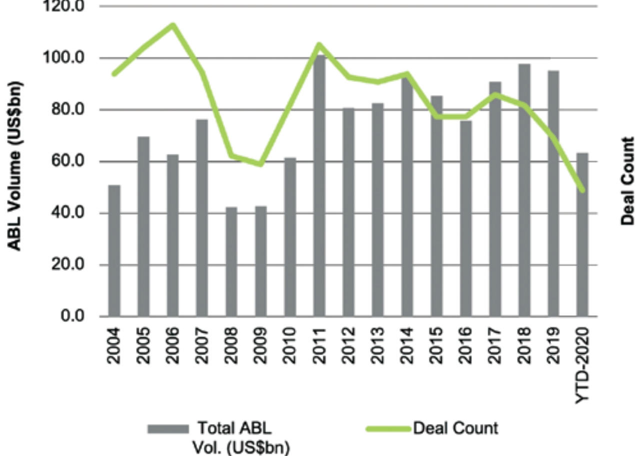


Fig. 2: US ABL Vol by Industry:
Retail industry faces reckoning; lenders weigh concerns of possible second wave

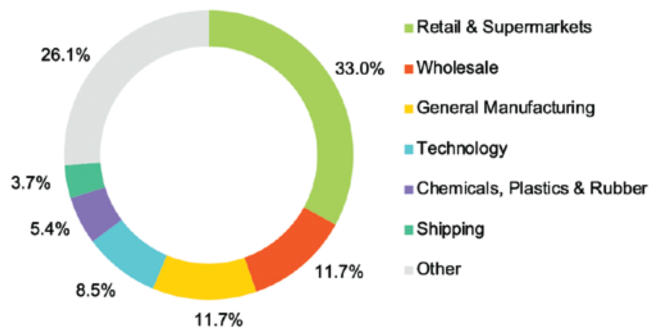
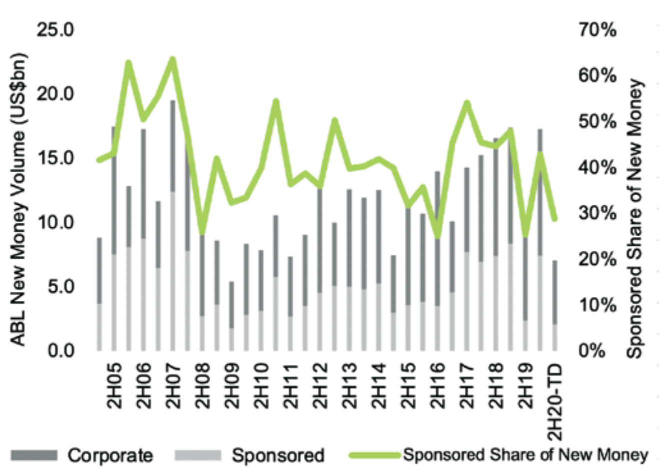


Fig. 3: US New Money Corporate v Sponsored:
After strong start to year, new loan assets limited in 2H20; sponsor activity stalls



Source: Refinitiv LPC

"Let's give companies enough liquidity to get through this and then we will see what is on the other side. Credit is important, but secondary, right now," said one arranger.

New liquidity facilities were difficult, but in most cases doable – especially for the better credits.

April saw more uncertainty. Lenders added new levels of oversight to credit approvals, prioritizing not only overall relationships and returns from clients, but their own management of capital amid the rising number of negative credit migrations.

By the end of the month, the capital markets regained their footing as the equity markets were bid up. In May, amendment requests and refinancings came into play as issuers bumped up against their covenant thresholds, a small selection of existing credits went current, and borrowers sought to pay back drawn facilities with longer term bonds or term facilities when possible.

As a group, lenders asked new questions. What do refinancings look like? How long a memory will the market have and what will happen to spreads and credit terms? And what of more lucrative event-driven transactions?

Throughout these machinations, market sentiment could turn quickly. Lenders and borrowers who thought they saw a light at the end of the tunnel in mid-June were, in many cases, less optimistic days later as hopes of a deeper economic rebound became increasingly linked to headlines around risks of COVID-19 upticks in the U.S. and the timing and efficacy of any vaccine.

By summer and heading into year end, as promising vaccine test results and hopes for phased inoculation came into focus, sustained market optimism gained traction amid robust liquidity, but limited deal pipelines. The result? The return of looser, arguably more normalized, deal structures among better-quality credits.

Against this backdrop, U.S. lenders completed over US$63bn of syndicated asset-based loan volume as of the end of November (Fig. 1), trailing year-ago levels and flirting with 10-year lows.

Structuring Changes

At a high level, with the onset of the pandemic, the mix of deals that came to market changed, moving away from M&A financings toward self-help credits and restructurings as operational slowdowns took hold. Less than US$16bn of ABL volume was completed in the first quarter to mark the weakest quarterly results since 4Q16. In 2Q20, issuance increased to over US$26bn, punctuated by a flurry of retail name restructurings from cash flow to ABL. Large corporate issuers, including Gap, Kohl's, Goodyear, LBrands, Dillard's and Macy's, all converted their cashflow credits to asset-based loan structures.

There were even some upsizings (Dick's Sporting Goods, for

Fig. 4: US ABL Mkt Share by Tenor

Tenors contract during height of pandemic fears in late 2Q and 3Q20; Five year credits resurface in 4Q20

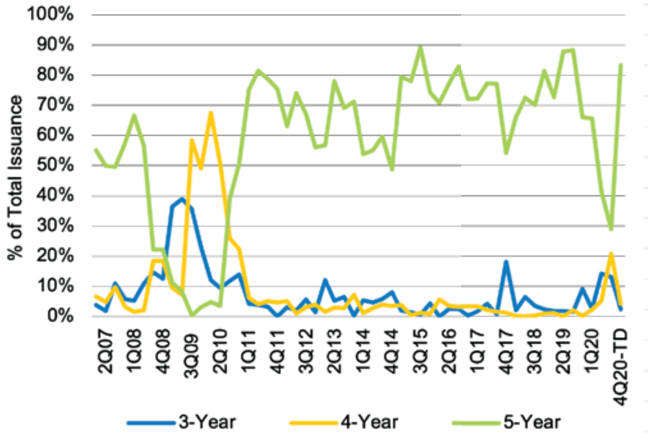


Fig. 5: Monthly pricing:

ABL spreads back to historic norms after pandemic fueled increase March-May

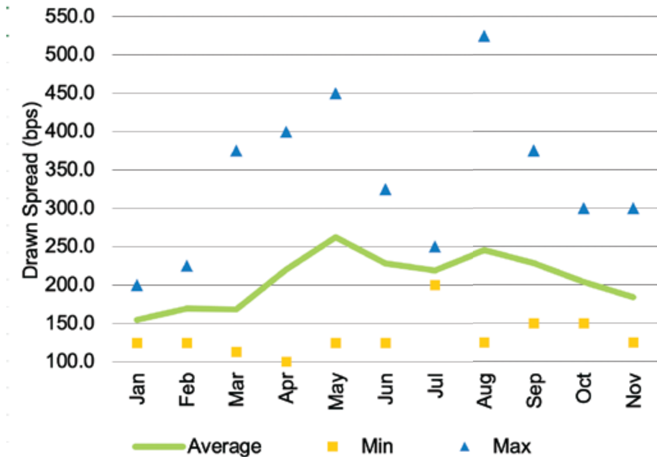
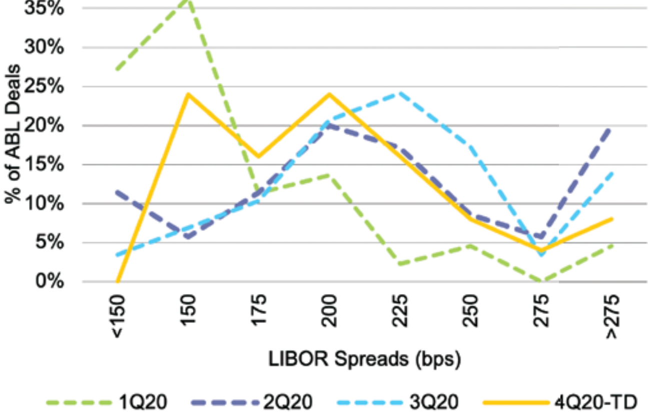


Fig. 6: US ABL Spread Dispersion:

Market bifurcation: Lenders favor better credit quality with thinner spreads



Source: Refinitiv LPC

example). By the end of November, deals for retail names alone represented 33% of year-to-date issuance (Fig. 2).

What the market did not necessarily see, however, were DIP financings – normally a sweet spot for ABL lenders and a cornerstone of new lending opportunities during market downturns.

Although several retail names, including JCPenney, Neiman Marcus and J.Crew were restructured, none of them tapped the ABL market.

"They had all drawn down on their facilities, and there was no extra liquidity for pre-petition," one lender said. "Banks could not do the deals."

"In the run-up to COVID over the last 10 years, the market got aggressive. We stretched against collateral, leaving ABL guys short to provide value during problem times. This is something that needs to be on our radar going forward," said another lender. Fulcrum credits ultimately stepped in to provide reorganization financing.

At US$24bn, new ABL loan assets through November were on par with year-ago totals, but over US$17bn, or roughly 71%, was raised during the first half of 2020 as borrowers sought incremental liquidity in the wake of growing impact from the pandemic (Fig. 3).

Availability and Predictability

Throughout the year, lenders and clients focused on both the availability of liquidity and the predictability of securing it. Across their portfolios, lenders grappled with cost of capital and tenor implications for extensions.

During the first six months of the pandemic, the ABL market remained open, but borrowing terms did inevitably shift – albeit temporarily. New loans in particular saw tenors compress to three or maybe four years (Fig. 4) while the availability of five-year credits tumbled from a high of 88% of total multi-year issuance as of 3Q19 to a low of less than 30% in 3Q20.

Pricing also edged up. While incremental liquidity often garnered spread premiums, rollovers that were broadly pricing at 125bp over Libor pre-pandemic, occasionally came with a premium throughout April and May, although other structural changes were often unnecessary. Average spreads that hovered as low at 154.5bp over Libor at the start of the year hit a high of 262.4bp over Libor by May (Fig. 5).

Nevertheless, the syndicated loan market held up well. By the end of the summer, there were even signs of a turnaround.

"Going back to early March versus the end of July, the velocity at which the market moved and started to thaw for the right credit, I don't know that we have seen that kind of velocity before," said one ABL arranger. "We had five years of loan growth [across our institution] in five weeks."

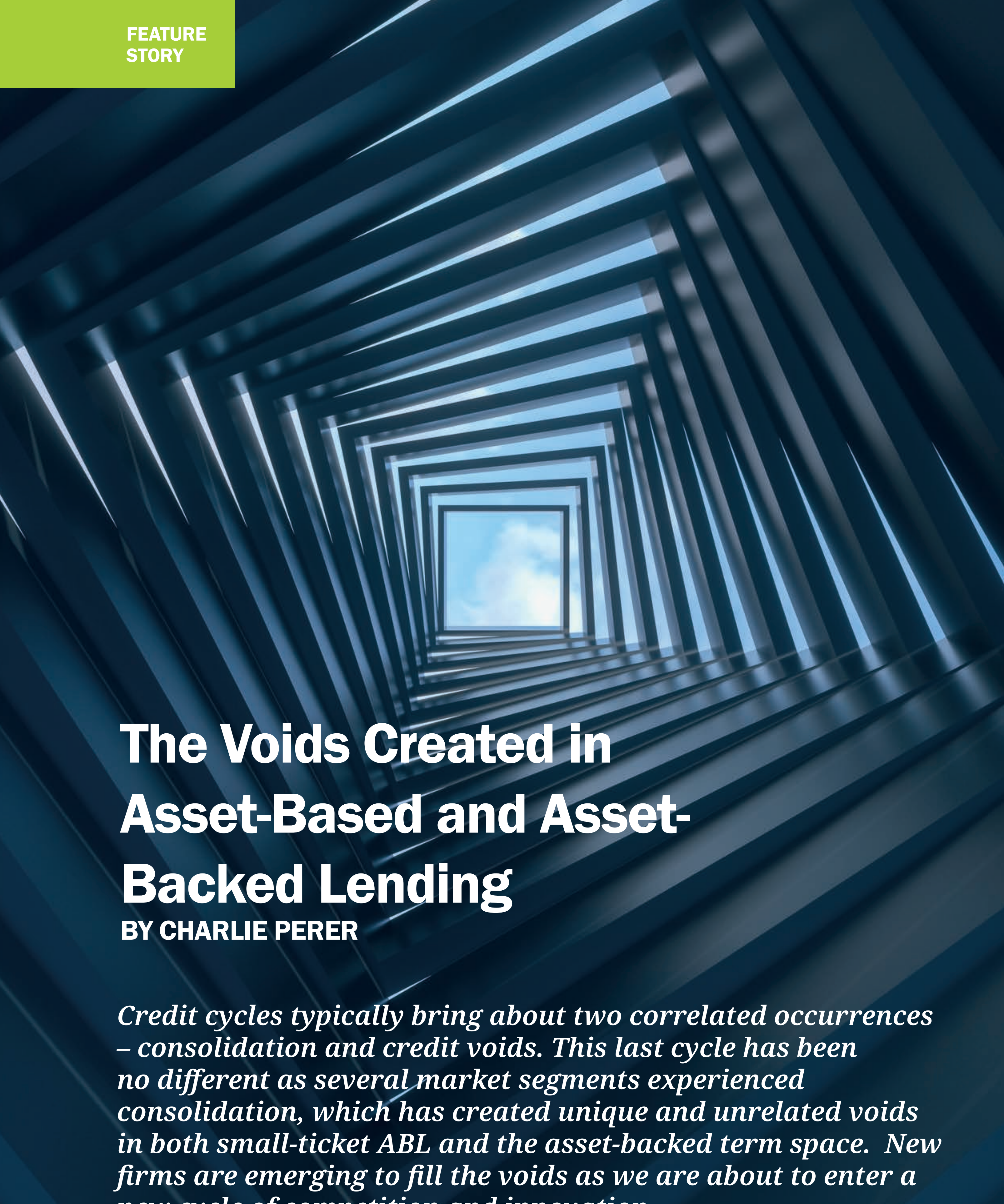
"We are at least having a dialogue on M&A stuff," said one arranger.

And sponsors are looking to buy good names, although higher equity checks may be required in some cases. More significantly, as 2020 thankfully winds down and the market looks to a stronger, less angst-ridden 2021, the ABL market is already hinting at a return to looser structures amid stronger deal appetite.

"All of a sudden we are doing five-year deals," said one arranger. In 4Q20, five-year credits currently make up over 83% of lending activity. At the same time, rather unsurprisingly, spreads have tightened meaningfully since 2Q20, with roughly 40% of all 4Q20 credits pricing at under 200bp over Libor, up from just over 17% in the prior quarter (Fig. 6).

Maria C. Dikeos is a director of Analytics and head of Global Loans Contributions at Refinitiv LPC in New York. Maria 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.

FEATURE STORY



The Voids Created in Asset-Based and Asset-Backed Lending

BY CHARLIE PERER

Credit cycles typically bring about two correlated occurrences – consolidation and credit voids. This last cycle has been no different as several market segments experienced consolidation, which has created unique and unrelated voids in both small-ticket ABL and the asset-backed term space. New firms are emerging to fill the voids as we are about to enter a new cycle of competition and innovation.

Takeaways

1. There is a tremendous opportunity for firms that can finance multiple forms of illiquid or esoteric collateral rather than being a single-focused provider.

2. Providing a one-stop shop solution for small-ticket ABLs which primarily focus on AR will be critical in 2021 as lender finance groups have curtailed credit to or increased restrictions on many small-ticket ABL lenders.

3. The small-ticket ABL space is consolidating and becoming efficient. Financing non-liquid collateral continues to be a challenge due to risks associated with smaller businesses.

4. Success breeds competition from larger term lenders. The voids were created purely from the success of market leaders raising more capital and going upmarket.

5. What used to be a small group of firms competing against each other has now greatly expanded to include many others, such as Crystal, Pathlight, White Hawk (fka Great American), Great Rock, Callodine (fka Gordon Brothers Finance), First Eagle, FrontWell and Carlyle, among others.

CHARLIE PERER
Co-Founder
SG Credit Partners, Inc.

Traditional ABL has, by any measure (growth, market share, adoption), become a mainstream product over the past decade. Market share gains have come from all over including at the expense of both banks and factors, among other participants. As with all markets, growth in one area has created voids in others. Not one, but two huge market opportunities exist in the asset-based and asset-backed lending world that no one is talking about. The first market opportunity is to provide small-ticket ABL to companies where AR is not the dominant form of collateral, thus creating a collateral imbalance. Small businesses are tougher credits to begin with, but especially hard to obtain lender financing for when receivables are the smallest part of the collateral base. The second opportunity is to partner with the traditional ABL community to provide sub-$10 million split-lien asset-backed term facilities in conjunction with a working capital facility. These asset-backed term facilities would be used to finance any and all fixed assets including M&E, RE & IP, among others. The uniqueness of the asset-backed split-lien category is being able to write smaller checks that the big asset-backed funds can't, as many of them have moved upmarket. What's clear is that both of these market voids were born out of the last cycle as the bigger the traditional bank and non-bank ABL world became the bigger the voids created for the non-traditional.

These two voids arose and grew across separate and distinct parts of the market for both shared and disparate reasons. The small-ticket ABL void is for businesses who are more often than not inventory-heavy and AR-light. These are smaller businesses that are traditionally abandoned by most of the ABL universe, which primarily focuses on receivables as a dominant form of collateral. The reason they are abandoned is that most conventional ABLs can't get leverage to finance these businesses when there is a large imbalance. For an industry that typically works on a 4:1 leverage ratio, it's not worth it to tie up equity on tougher-to-finance and tougher-to-liquidate businesses. The second void is to finance assets including M&E, RE and IP or a combination of them to provide a one-stop solution to partner with ABLs across the market-ranging from small-ticket to large bank-ABLs. Again, these are harder forms of collateral to get leverage on and the reason most term providers are fund structures. This is also why the larger term players need scale to make the economics work and are too big to serve sub-$10 million capital needs. These voids in both asset-based and asset-backed are real and exist for several reasons including lack of lender financing, scale and difficulty of liquidation, among other reasons.

Both the traditional ABL and lender finance market grew and matured together so the appetite to finance non-liquid collateral changed. With so much industry focus on the world of traditional ABL, very little attention has been given to the non-traditional world. The gulf between the two worlds is large for many reasons. First, let's be clear to define traditional ABL as any ABL deal where accounts receivable is the dominant form of collateral and non-traditional where the inventory, M&E, IP or other form is dominant. Essentially, any ABL deal with AR being less than 50% of the collateral becomes tougher to finance because the loss in a liquidation increases as the imbalance increases. Inventory-and M&E-dominant companies are hard to finance and harder to liquidate. This is why there is a dearth of lenders chasing these companies. Most non-bank ABLs are thinly capitalized to begin with and any risk of tying up capital for a pro-longed liquidation makes the bar to lend that much higher.

This is also why the traditional ABL market predictably consolidated during the last cycle, which leads us to where we are today. The traditional ABL market has never been more competitive or efficient from small-non-bank to large-bank ABL. What is not efficient is the non-traditional world for the majority of companies that either collect their AR rapidly so they have minimal AR or have a balancing issue. These are typically companies heavy in inventory or other forms of collateral that are not as liquid. All forms of capital entered the traditional ABL market from investors, lender finance and new and old management teams who saw the non-bank opportunity. The efficiency at all levels created an efficient market for both clients and finco acquirers wanting to enter this asset class. It also created massive inefficiencies that exist today.

It's really not an overstatement to say that any firm can get into traditional ABL, but very few can get into non-traditional. The product has become no different than any consumer product that is driven by cheap costs of goods and great marketing or distribution. The same cannot be said for the non-traditional side of lending. The leverage ratios are lower, the need for financial and human capital is much higher. The author also denotes the difference between true asset-based and asset-backed to illustrate voids in different market segments. The asset-based void is relegated to small-ticket ABL and the asset-backed void spans across all lending markets from small to large. It is really meant to fill the void left by the myriad large-term funds that raised too much capital and simply can't finance smaller deals.

New firms need to be over-equitized, have an originations engine and really understand esoteric assets and liquidations. It's no surprise that many firms have shied away from this space. Why bother when there is so much opportunity in the middle of the proverbial football field and chasing these deals just ties up equity? The beauty and simplicity of the non-bank model is that it offers a surprisingly high ROI, but relies on 4x leverage --meaning for every $1.00 of AR financed, the ABL is borrowing 80 cents and putting up 20 cents. Not a bad model and easy to understand why it is very attractive for both lender finance groups and equity investors in the asset class. This leverage, at least in the small-ticket space, typically only works with AR-heavy deals as a means for lender finance groups to control risk. The same cannot be said when there is an imbalance of collateral with inventory or other collateral being the dominant form. This is why most small-ticket ABLs focus on transactions where AR is the dominant form as they get the most leverage on these deals.

The ABL playbook including the lender finance model became not only clear, but widely adopted in the past 10 years. This drove industry growth and consolidation for traditional ABLs. Ironically, non-traditional ABL did not really change, consolidate or experience margin compression for many reasons, including that not a lot of equity or firms entered the space. The barriers to entry are higher at each and every level. There is no 4x leverage so, unless a team can raise significant capital, then the story stops right there. Assuming a team can raise capital, then the next hurdle becomes one of product marketing and national reach. The more one goes through the hurdles to enter, the more one realizes why the voids exist in disparate parts of the market. A firm also has to be indifferent as to being the sole lender or partnering to outsource the non-traditional part.

This conversation about voids can't be had without mentioning the changes in the lender finance market. The diaspora of executives from some of the market-leading lender finance banks left larger groups to join competing banks or start new groups so more entrants entered the bank lender finance space. At the same, new non-bank lender finance groups started gaining traction to finance many of the firms targeting non-conforming niches, whether it be M&E, RE or others. Most of the actual lenders formed for non-traditional asset-backed were formed for single-use products only. This would be a firm formed solely to finance equipment or solely to finance RE. Many of the single-use, non-traditional firms have higher rates and better margins than typical traditional ABL, but usually have a higher cost of capital, given the illiquid collateral and potential for losses in liquidation.

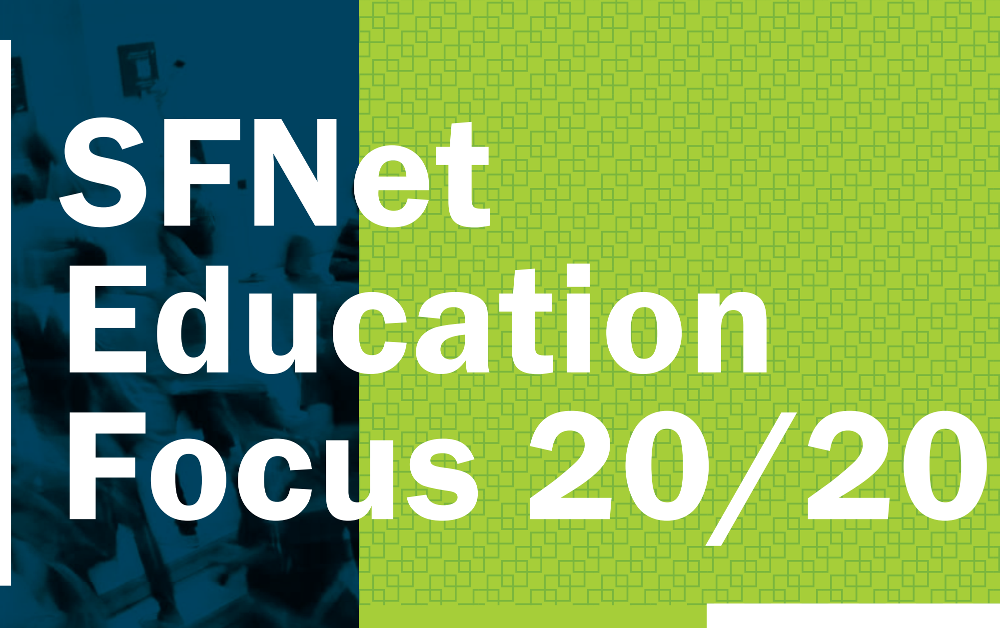
Few firms have over-equitized and provided traditional ABLs with a one-stop shop partner to finance everything non-traditional, including stretch risk. By focusing on all non-traditional niches and not being limited by single-use product, a firm can ensure providing a complete solution for the majority of working capital lenders. Plenty of deals require a working capital lender to partner with one or two single-use non-bank firms and the deal still might need stretch. By being well capitalized, a firm could provide all non-traditional products and provide a stretch to truly craft a bespoke solution to help the working capital lender and simplify life for the client. Dealing with just one other lender can be time-consuming, but multi-lender deals for small businesses created meaningful challenges.

We are entering a new dawn for lenders entering the non-traditional asset-based and asset-backed spaces for several reasons. Firstly, the non-bank lender finance firms are growing, so the financing appetite is there. There would be no opportunity were this not the case. Secondly, and just as importantly, the voids are there, which means the market is there. Entrepreneurs and firms like SG Credit are going to grow in size and we can expect to be joined by others. While the past decade was about traditional ABL consolidation and market efficiency, the next decade should bring rise to many lenders focused on the voids created.

Charlie Perer is the co-founder and head of originations of SG Credit Partners, Inc. (SGCP). In 2018, Perer and Marc Cole led the spin out of Super G Capital's cash flow, technology, and special situations division to form SGCP.

Perer joined Super G Capital, LLC (Super G) in 2014 to start the cash flow lending division. While there, he established Super G as a market leader in lower middle-market second lien, built a deal team from ground up with national reach and generated approximately $150 million in originations.

Prior to Super G, he co-founded Intermix Capital Partners, LLC, an investment and advisory firm focused on providing capital to small-to-medium sized businesses. He graduated cum laude from Tulane University. He can be reached at charlie@sgcreditpartners.com.



SFNet Education Focus 20/20

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FEATURE STORY

Interview with Gene Martin, CEO, and Mark Forti, Managing Director, Head of Origination at Callodine Commercial Finance

BY EILEEN WUBBE

On November 5, Callodine Group, an asset management firm focused on yield-oriented investment strategies, announced it had entered into a definitive agreement to acquire the loan portfolio and assume the employees and operating costs of Gordon Brothers Finance Company, LLC (GBFC).

I

n connection with the closing of the transaction, GBFC has changed its name to Callodine Commercial Finance (CCF). Led by CEO Gene Martin, and the current investment team, CCF will be the successor firm to Gordon Brothers Finance Company, LLC. Callodine's acquisition represents approximately $400 million in assets and is being funded in part by new strategic financing from KKR, East Asset Management and Axar Capital Management. BlackRock Capital Investment Corporation ("BCIC"), the most recent majority owner of the business, will also remain a financial partner to CCF. *The Secured Lender's* senior editor spoke with Gene Martin and Mark Forti at Callodine Commercial Finance about opportunities in the asset-based lending space and what lies ahead.

GENE MARTIN
CEO
Callodine Commercial Finance

MARK FORTI
Managing Director,
Head of Origination
Callodine Commercial Finance

Gene and Mark, please provide our readers with an overview of your background.

GENE MARTIN: My background is a little different. I was in leveraged finance for 25 years. Most recently, I was co-head of Global Leverage and Acquisition Finance for Morgan Stanley. I was at MS for 10 years and sat on the firm's credit committee and ran the High Yield Underwriting Committee. I was also part of the management committee in capital markets. I left Morgan Stanley in '13 and was very intrigued by what was going on in private credit. I was looking to do something in private credit, and had a long relationship with BlackRock, the previous owner of the business, and they contacted me in early '16 to ask me to run the former GBFC. So, I've been at the predecessor of Callodine Commercial Finance since early 2016 and it has been a lot of fun working in this business.

I started my career at Shawmut Bank way back in 1990 and did some asset-based lending, believe it or not, back then. So, it was a product I was familiar with, but I had spent most of my career in leveraged finance, running and building those businesses in a couple of the investment banks, Donaldson, Lufkin & Jenrette Credit Suisse, and then Morgan Stanley.

MARK FORTI: I started in the industry in 1987, with the majority of that time spent in the asset-based lending segment. Similar to Gene I began my career with Shawmut Bank and then spent the next 19 years with Bank of America and its predecessor banks working in a variety of credit roles in asset recovery and asset-based lending. In 2006, I was recruited by GE Capital to help them build out a retail asset-based platform, where I spent nine years until the decision was made to sell their portfolios to Wells Fargo. At this point I was fortunate enough to be asked to join Gordon Brothers Finance Company as a senior originator. Now at CCF I will perform a similar role as head of originations.

What opportunity do you see in the asset-based lending space?

MARTIN: We think there's a huge opportunity in the asset-based lending space. Obviously, the overlay of COVID-19 has enhanced that opportunity, not just in the lower and middle-market segments of the marketplace, but in larger companies looking for pools of liquidity and asset-based lending is one that they are already beginning to explore and tap.

From a Callodine perspective, we are looking to build out a broader credit business and credit platform, one that focuses on income-oriented investments. Callodine had been studying this space for quite some time and the opportunity came up to get involved with GBFC. The Callodine Group management team spent a lot of time with the CCF team and got to know all of us very well. We're thrilled to have a partnership between the Callodine Group and the Callodine Commercial Finance team, previously the GBFC team, to take the business to the next level. It's sort of the next step in the evolution of the business.

What made this year the ideal time for the acquisition?

MARTIN: The whole team moved to Callodine, and that was clearly the attraction for the senior management at Callodine. It is a world-class and incredibly experienced team. Mark has mentioned he's got 30-plus years of experience. Our head of credit, David Vega, has substantial experience, similarly 30 years. Our CFO and COO have been in the business for 35, 40 years, first in public accounting and then as CFO of a number of investment-oriented vehicles like hedge funds and real estate investment. Folks who are the next level down have a lot of experience and energy.

In terms of timing, asset-based lending is a space that we see not only just opportunity here in the U.S. but also in certain jurisdictions in Europe. I would say overall, the pie is growing. Having been around the credit capital markets for many years, it was a pretty quiet and smaller corner of the credit markets, one

generally the domain of a lot of retailers. The reality is, it's a much bigger market than that and touches many, many industries. That's where we see the opportunities being, not necessarily in traditional retail, but also in a variety of industries.

We've got investments in high-tech manufacturing, pharma and in the AG world, so we see the opportunity set as growing. I won't say exponentially, but growing substantially as we go forward.

What are some first steps or goals for Callodine?

MARTIN: First off, it's to deploy capital like we always have in a smart and prudent way. Asset-based lending is a highly technical area of credit; it takes a very specific skillset. So, the goals are, like any investment business, find good investments, structure them well and benefit from that. That's what we're going to be focused on. The goals really haven't changed a whole lot.

What are Callodine Commercial Finance's product offerings and loan sizes?

FORTI: As we come out of the gate with the new Callodine platform, I think our product offering is going to remain unchanged. We provide fully secured asset-based term loans. We are not a senior lender, mezzanine lender, subordinated debt, nor are we an equity investor. We lend money and we charge interest, and our one product at this juncture is asset-based term loans with a size range anywhere from $10 million up to $100 million which we would underwrite to. Our sweet spot is probably in the $20-to-$30 million range. At times there will be chunkier deals, which we are happy to get involved in, but we're also perfectly happy making those $10 and $15 million loans because that's what our clients need.

MARTIN: From a size perspective, you're seeing sizes of some ABL term loans grow significantly, a couple hundred million dollars in some cases. Those are things that we can easily do. We've got a lot of friends, family and financial partners who want to co-invest with us, so that's something that we can easily accommodate with the new platform.

What are your observations of the asset-based lending space now?

MARTIN: My observation of the space in general is that it's all about the team and that this is a highly specific, highly technical segment of the credit market and it's not something you can just wade into and start buying and trading. I spent almost all of my career in, as I used to say, slinging loans and bonds for a living. This is a different segment of credit. The analysis is not only a credit analysis, but a heavy focus on collateral analysis: this is purely lending money. It's easy to lend money, particularly in difficult times when a lot of people need it, but it's also about lending money and getting paid back. That is the science and the art of this business.

What are some of Callodine's strategies in partnering with ABLs?

FORTI: Our primary clients are in the asset-based lending community and all the major national and regional banks throughout the country. That's our primary referral base and our client. That's how we fund our business and where we get our deals. So, we always like to make it clear to the market that we do not ever want to be viewed as being a competitor to the senior asset-based lending community. Bank of America, JP Morgan, Wells Fargo, all have their relationships, and they lend to certain clients. If there's a need for additional liquidity or a situation that requires another form of capital in the capital structure, they can come to us. We very rarely, if at all, ever call directly on a company. We almost always go through our primary client, the senior asset-based lender.

MARTIN: We partner with those senior banks. We're not a revolving lender, we're a term loan lender and we're always working in partnership with them. They may be comfortable at a certain attach point on the asset base and we may be comfortable a little bit deeper against the assets, just given our knowledge and given where we play. So, it oftentimes works out that the bank's client may need a bit more capital than the bank is comfortable with providing and we slide in aside or behind the banks to get the client that capital and provide a complete solution.

When you're not at Callodine Commercial Finance, what can you be found doing in your spare time?

MARTIN: In my spare time, I really enjoy spending time with my wife Renae and our two boys – Colin (17) and Ryan (15). We're a pretty active family and love the outdoors. We ski a lot and surf a bit. I really enjoy playing golf, but anyone who has seen me play would hardly call it golf!

FORTI: Outside of the office my time is focused on my wife Mary and trying to keep up with the active lives of our daughters Madeleine (2020 Elon University graduate) and Lydia (a sophomore at Boston University). Beyond that I am a voracious reader of the classics and history and I also really enjoy riding Harley Davidson motorcycles.

Eileen Wubbe is senior editor of The Secured Lender and TSL Express.

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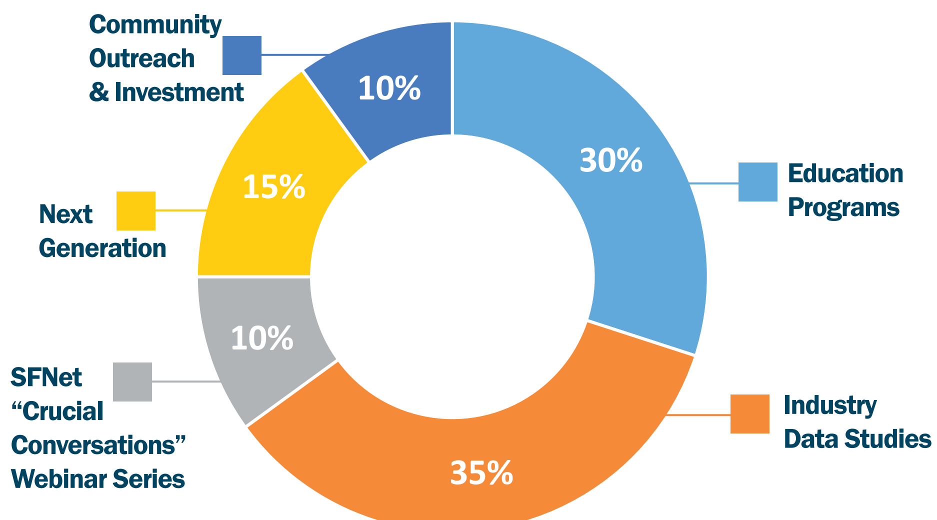

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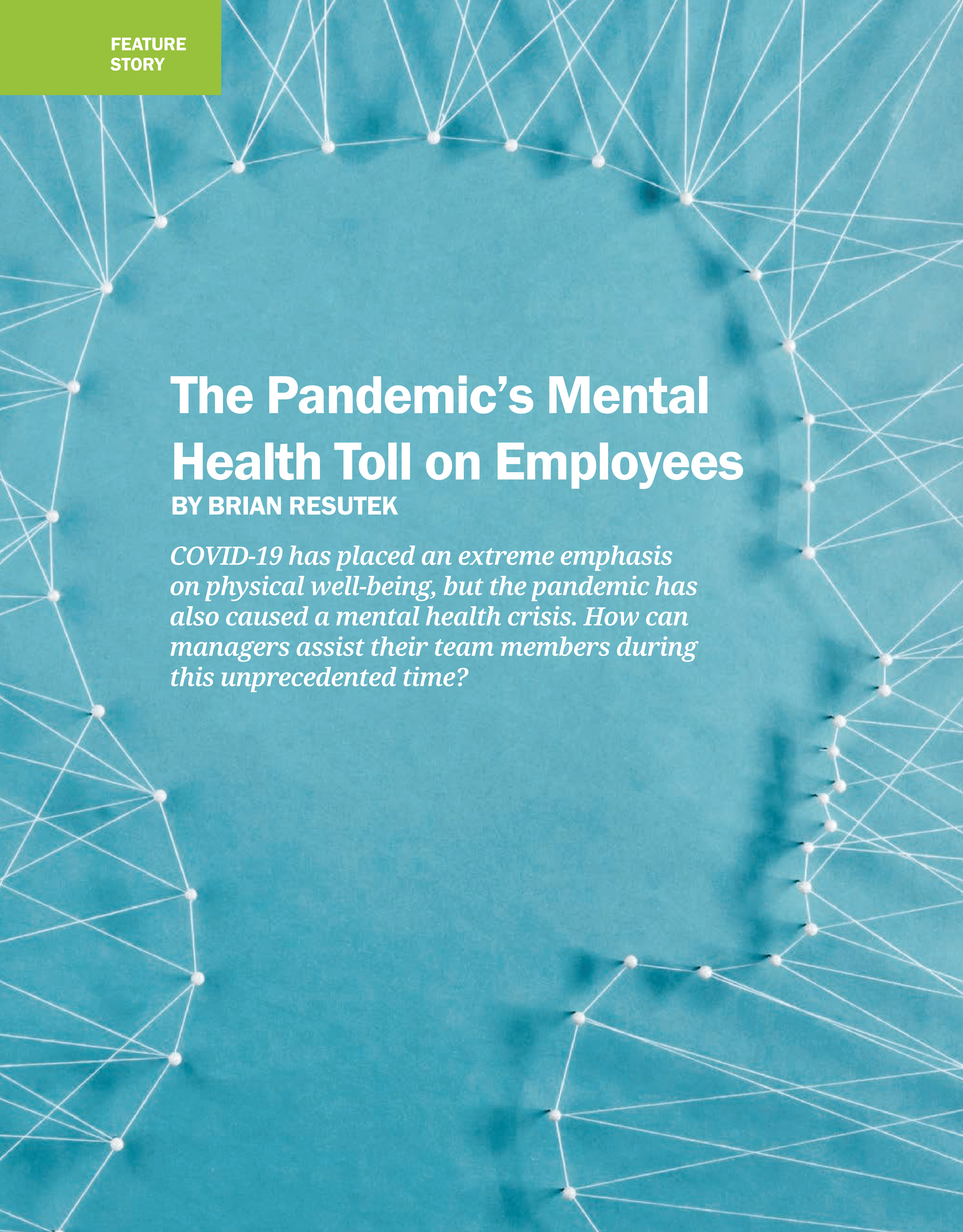


FEATURE STORY

The Pandemic's Mental Health Toll on Employees

BY BRIAN RESUTEK

COVID-19 has placed an extreme emphasis on physical well-being, but the pandemic has also caused a mental health crisis. How can managers assist their team members during this unprecedented time?

In the immediate days that businesses went remote as COVID-19 quickly rippled through the U.S. economy, the news media was engulfed in speculation about the potential impact on companies' earnings, loan-loss provisions along with the physical health risk that the virus could have on the population. As terms such as PPE, lockdowns and quarantine became everyday conversation along with the hospital utilization rates and letter-shaped economy models, that graced our televisions, another serious, although less transparent illness was taking aim at employees: their mental health state.

BRIAN RESUTEK
Rosenthal & Rosenthal

Forty percent...this was the figure cited in a May 2020 *Harvard Business Review (HBR)* article regarding the percentage of employees that stated their company had not even asked them how they were doing since the pandemic began. While leaders of companies were, in fairness, trying to understand what the next day or even hour might bring, having a firm understanding of the mental aspects of your employees, often a secondary or, in some cases, ignored thought, is instrumental in a company's response in challenging times. The author looked at this issue from the position of some of the leading sources studying this important topic along with how some SFNet members deal with this critical issue at their respective companies.

Understanding where mental health fits into a company is no easy task, largely because it encompasses all employees and is not a subject of frequent discussion in most companies. As the Harvard Business Review (HBR) wrote in its "How CEOs Can Support Employee Mental Health in a Crisis" article: "Our research shows that mental health of your reports should not be outsourced to human resources." In fact, the HBR cited that the human resources area, as a group, was the area that employees are least willing to talk to regarding mental health. Instead, the importance of mental health needs to be understood and continually practiced at the manager and even CEO level, as uncomfortable as it may seem.

Practice with mental health awareness has paid dividends for a few SFNet members, including Scott Winicour, CEO of Gibraltar Business Capital, and Marc Cole, CEO of SG Credit Partners. In the case of Gibraltar, Winicour indicated that it starts with proper hiring and onboarding to ensure that the individuals brought into the company understand culture and importance of mental health. "Our management team has been trained to encourage productive conflict, which I believe has made us a stronger organization over the years,"

Mental Health Statistics during COVID-19	
Employees who want some form of weekly communication from their company	**90%**
Employees who feel more socially isolated	**75%**
Employees that report higher stress level than prior to CV-19	**67%**
When companies proactively share how to access mental health resources, percentage of employees that say their company cares about their well-being	**60%**
Companies that did not ask about employee well-being before May 2020	**40%**

Source: *Harvard Business Review:* "How CEOs Can Support Employee Mental Health in a Crisis"; Smith, Ryan. 2020.

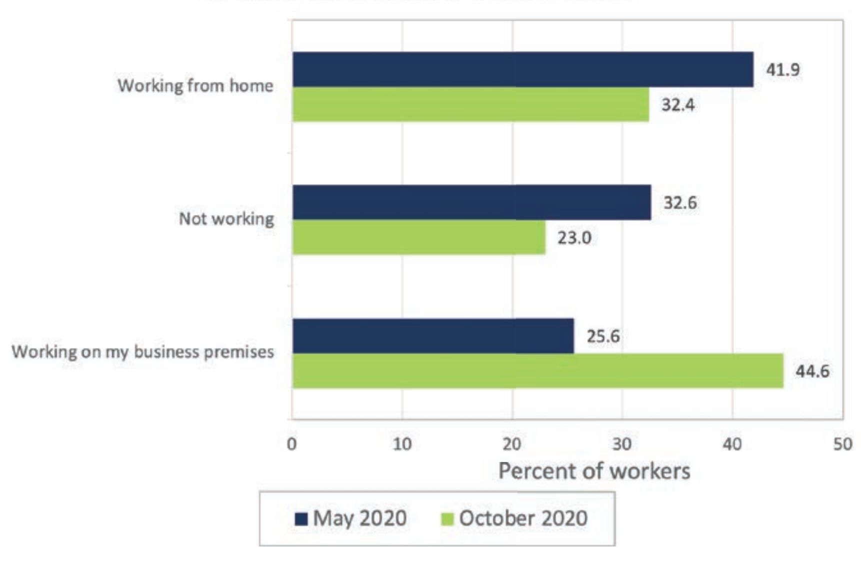
Winicour responded when asked about reactions from his company as the pandemic hit. As a psychology major, Winicour firmly understands that a happy employee is a more engaged and productive employee, which provides strong results to the bottom line. While the pandemic was a change for all at Gibraltar, having already established a solid foundation through various team-building exercises and constant encouragement of all employees to share positive and especially negative feelings, proved beneficial. "We didn't have to make any material changes to our approach. We stepped up the frequency on contact in the early stages as things were very fluid the first month or two of the pandemic."

At SG Capital, working remotely was common pre-pandemic, given the spread of employees over seven office locations. CEO Marc Cole cited that, "We have always made communication a priority through scheduled calls and time in our offices. While there was no playbook for this pandemic, we made a concentrated effort to continue one-on-one conversations while also giving employees space to focus on family and other issues." When Zoom and Teams calls suddenly became in vogue for most, SG Capital utilized a different tool in Slack, which Cole credited as more effective, casual and even entertaining during a stressful time for all. An additional benefit of using Slack was the amount of reduced email traffic between employees that will likely remain in the future.

As the world looks optimistically towards coming out of COVID-19, it is important that people understand the mental health effects that have been incurred. As Steven Taylor, the author of The Psychology of Pandemics, argues, "for an unfortunate minority of people, perhaps 10 to 15%, life will not return to normal," due to the impact on their mental well-being. Experts are trying to alert management that the mental health tail from COVID-19 is most likely long in nature and not completely understood by most. As researcher Joshua C. Morganstein perhaps best summed up from a manager's standpoint, "stress is like a toxin, such as lead or radon. In order to understand it and how it is affecting society, we need to know who is exposed, when, how much and what effects were caused by the exposure."

Nicholas Bloom, a professor at Stanford who recently participated as a panel member for the SFNet 2020 Convention, cautions managers that the increased productivity numbers during Covid may

not continue in a post-Covid world. In his December 2020 paper, Why Working from Home Will Stick, Bloom does forecast an increase in productivity of 2.4% along with a permanent shift in greater capacity in the work from home environment. Additionally, even after a vaccine is rolled out, Bloom's study predicts that 22% of all workdays will be WFH, a dramatic increase from about 5% pre-pandemic, concluding that WFH will become much more of the norm. But some productivity gains only take the pandemic months into consideration and the gains could be short-term in nature or overstated. One of the major reasons is if workers fail to internalize externalities associated with face-to-face collaboration that raise firm-level productivity which are stifled when employees work from home. Secondly, while many workers have been WFH full-time during the pandemic, close to 75% intend or prefer to be in the office at least one day a week or more should pre-pandemic conditions return, per Bloom's sampling.



As it relates to the mental health of a company's workforce, key management should realize that discussion of mental health is a matter their leadership, as a team, is competent in handling. As a son of a psychologist along with other family members, Marc Cole at SG recognizes that he is more comfortable than most when it comes to mental health and stated that, "managers need to be extra-understanding this year and some of the typical metrics/standards of productivity won't work. SG Capital made a concerted effort to give employees space in the spring to focus on their families and encouraged people to take time off, even if there was no place to go." While this approach may run counter to traditional business school logic, leaders should always think of their employees' health as a long-term asset. Or perhaps better stated by Cole, "Balance sheet size and strength are critical, but lenders will only be as productive as their people."

Gibraltar recognizes the value and investment of people and for years has setup a rotating culture committee that is tasked with building a plan for the firm's team-building events each year.

Scott Winicour admits that not every team building event is a hit, but having these on a consistent basis, with employees taking on different roles, has enabled his company to establish a "very strong cultural foundation, which enabled us to be set up for success when the pandemic hit." Winicour credits his employees for staying committed to these events over the years as he believes overall productivity increased remotely during the pandemic months, but largely due to established culture and mental health. Winicour noted, "I've learned over the years that mental health is not one size fits all. Each individual has a unique set of circumstances and needs that we, as leaders, must adapt to."

Simply stated, true focus on and investment in employees' mental health must be in every company's long-term plan. Managers need to be comfortable in speaking with their employees and communicate regularly regarding mental health. As our contributors to this article have indicated, the groundwork for mental health well-being is laid over the years, but is also constantly reevaluated. Additionally, if mental health well-being might be overlooked at your company, it is never too late to start.

Brian Resutek is an account executive and SVP at Rosenthal & Rosenthal in Atlanta, GA. He can be reached at bresutek@rosenthalinc.com.

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ACCOUNTING INSIGHTS

New Considerations in Preparing 2020 Financial Statements

BY DAVID CICH, III AND JOSEPH HEIM

David Cich and Joseph Heim of Dopkins & Company examine key considerations in preparing financial statements in light of the unprecedented business environment

In speaking with business owners throughout the year, we have learned of the unprecedented operational changes that have been made due to COVID-19. Similarly, in preparing financial statements, accounting departments will be faced with new questions and challenges that may not have required as much emphasis during "normal" years.

Here we will examine some of the key considerations that should be made in preparing financial statements this year.

Asset Impairments

Given the deterioration in certain economic conditions related to the pandemic, financial statement preparers must give careful consideration to potential asset impairments. Some examples include the possible impairment of investments, inventory, indefinite-lived intangible assets, and amortizing and depreciable assets.

While certain investments are recorded using a mark-to-market approach with the gains and losses recognized through net income, others that do not follow this path may be impaired if their market value has decreased substantially during the year. Similarly, equity method investments may also be impaired if the investee has sustained a non-temporary loss in value, perhaps through continued operating losses. The investor entity also needs to consider if certain actions taken will now require the consolidation of an investee. Such investor actions may include additional equity investment, assuming of investee's debt, or restructuring of the investee's ownership or management.

Inventory operations may have been severely impacted by required business closures, fluctuations in demand, and COVID-19 processing changes. If management has concerns as to the demand of year-end inventory, a write down may be required from cost to net realizable value (NRV).

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JOE HEIM
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As in prior years, both goodwill and indefinite-lived intangible assets (such as tradenames) require impairment testing at least annually; however, several internal and external indicators of impairment may be newly present for 2020. Such external factors include a deterioration in industry economic conditions, detrimental foreign exchange fluctuation, freezing of capital markets, or the adverse impact of regulatory changes and restrictions. Internal factors include steep rises in labor and raw material costs, inadequate cashflow, declines in revenue streams, production disruption, and discontinuations within the company's strategic plan. Depending on the severity of these factors and the Company's overall response to the pandemic, management may be required to perform a quantitative analysis to determine if an impairment has occurred.

Both property, plant and equipment, and amortizing intangible assets (such as patents and copyrights) also require impairment testing if certain triggering events have occurred. Potential triggering events may include unsuccessful intellectual property litigation, discontinued product lines, or substantial deterioration of capital asset markets.

Debt and Lease Modifications

The impacts of COVID-19 may have led a borrower to violate their debt covenant or modify their existing debt arrangement. Depending on the provisions of the debt agreement and the intent of the lender, upon violation of the debt covenant, the

debt balances may need to be reclassified as current. More often, the lending parties will proactively renegotiate the loan agreements and covenant terms. In doing so, the borrower must analyze the circumstances within the renegotiated agreement to determine which of three accounting models is most appropriate to account for the change.

Given the abundance of work-from-home policies, potential production shutdowns, and cashflow concerns, leasing arrangements may have been renegotiated as a result of the pandemic. Particularly, lessees may have received lease concessions from their lessor. To ease the burden of accounting for such concessions, the FASB issued a Q&A (Topic 842 and Topic 840: Accounting for Lease Concessions Related to the Effects of the COVID-19 Pandemic) which allows both the lessor and the lessee to potentially avoid lease modification treatment if the concessions granted result in the total lease cash flows being substantially the same or less than the original lease provisions. It is also important to note that, while the FASB has extended the adoption date for the new lease standard (ASC 842) for non-public entities to 2022, management should not underestimate the potential complexity of the implementation effort, depending on their lease arrangements.

Revenue Recognition

Revenue recognition in accordance with ASC 606 may require additional analysis if there are changes in variable consideration, contract terms, or customer collectability. In investigating variable consideration, the financial statement preparer must identify any required changes to the estimates used for product refunds, returns, milestone payments, penalties, and price concessions that may have occurred due to the economic impacts of COVID-19. Additionally, certain alterations within the contract terms may require adjustment and disclosure as either a separate contract, a termination of the original contract and a new contract or attached to the original contract. Collectability also requires heightened scrutiny in the COVID-19 financial reporting environment. Specifically, if a customer's creditworthiness has deteriorated substantially, management must reassess both the incoming recognition of revenue and the allowance for doubtful accounts reserve.

COVID-19 Financial Assistance Reporting

Perhaps the most profound consideration for an entity that accepted COVID-19 assistance through the Small Business Administration's Paycheck Protection Program (PPP) or other programs will come in the reporting of the funds received and the related loan forgiveness. As Nick Fiume of Dopkins points out in his recent blog post, how to account for the COVID-19 assistance provisions is a complex decision that requires consultation of the accounting guidance, tax implications, and overall business strategy.

Takeaways

1 **Financial reporting for 2020 involves many new questions and unprecedented challenges due to the impacts of the COVID-19 pandemic.**

2 **Several asset classifications including investments, intangibles, inventory, and depreciable assets may need to be written down.**

3 **Any debt and lease modifications will require unique consideration for presentation and disclosure.**

4 **Both the recognition of revenue and corresponding collectability of customer payments require heavy scrutiny.**

5 **Management needs to adopt an acceptable policy surrounding the treatment of COVID-19 financial assistance.**

In summary, there are many unique financial statement topics to consider for 2020 that may require more time and attention than typical years.

An associate in the Assurance Services Group at Dopkins & Company, LLP, David Cich, CPA helps clients understand business processes and master enterprise risk management implications. Since joining the firm in 2018, David has focused on risk assessment, attestation, and accounting advisory services within the manufacturing industry. For more information, please contact him at dcich@dopkins.com.

Joe Heim is a partner with the accounting firm Dopkins & Company, LLP and is responsible for Dopkins ABL Consulting Services: coordinating and supervising all aspects of field examination services throughout North America as well as administering and developing their team of ABL due diligence professionals.
He is well recognized within the ABL profession, most recently leading the design of the Field Examination Framework to assess movable property lending in Colombia, South America. The objective of the field examination framework is to advance asset-based lending and women's access to finance in Colombia and was designed in partnership with the United States Agency for International Development's (USAID) Office of Gender Equality & Women's Empowerment, USAID INVEST and the International Finance Corporation (IFC). Previously, Heim led the revision of the course curriculum of the Secured Finance Network Field Examiner School. He frequently conducts seminars and participates on industry panels on asset-based lending field examinations, due diligence, fraud and white-collar crime.

LEGAL INSIGHTS

The Top 5 Legal Issues Lenders Should Look Out For In 2021

BY BRETT GARVER AND DANIELLE J. MARLOW

The year 2020 has been a wild ride for secured lenders, particularly in light of the COVID-19 pandemic. The coming year promises be full of plenty of twists and turns as well. Attorneys from Moritt Hock & Hamroff provide analysis of the top five issues secured lenders should be aware of in 2021.

The CARES Act, the Future of Legislative and Regulatory Support and the Aftermath of the COVID-19 Pandemic

In the early weeks and months of the COVID-19 pandemic, there was an extraordinary legislative and regulatory effort to support the entire economy in the unprecedented wake of complete and almost instantaneous economic standstill. The CARES Act, with extensive emergency programs, including the Paycheck Protection Program ("PPP") and the Main Street Lending Facility, sprang up quickly, aimed at bridging businesses (and to some extent their credit providers) to the other side of the crisis. In addition, regulated financial institutions were afforded broad deference in working with borrowers and granting loan modifications and payment deferrals that otherwise would have triggered capital reserves (on the lender's balance sheet), increased risk ratings and lender-side balance sheet issues.

We are at a critical juncture. Vaccine distribution is beginning, but we are still facing the potential of widespread lockdowns as numbers rise. At the same time, some of the key CARES Act programs are ending. The initial funding phase of PPP has concluded and the forgiveness phase will stretch into 2021. While the initial funding phase of PPP moved with great speed, the forgiveness process will stretch into 2021 as lenders are faced with collecting a daunting amount of information to obtain forgiveness (effectively underwriting loans after they were made). Unlike the seemingly bipartisan race to get the CARES Act adopted and even amended to provide supplemental PPP funding, the election cycle and traditional political battles put further legislative relief out of reach for most of the second half of the year. In 2021, the finance industry will have to adjust to the legislative relief adopted, including a revamped PPP program.

BRETT GARVER
Moritt Hock & Hamroff LLP

DANIELLE J. MARLOW
Moritt Hock & Hamroff LLP

Documenting a Return to "Normal"

Much like the race to get regulatory support in place, in the early days of the COVID-19 pandemic, credit providers similarly moved quickly to support borrowers and their own balance sheets by crafting sweeping deferral programs affording relief to businesses forced to adapt to a very different business model virtually instantaneously (e.g., retail sales) or whose industries ground to a complete halt (e.g., hospitality) or who were secondarily impacted, such as commercial and residential landlords faced with tenants who simply could not pay. Many lenders moved quickly to adopt streamlined loan modifications or deferrals that in some cases simply reflected the reality that the COVID-19 problems were simply transient and at the end of the lockdowns, borrowers' ability to pay should reset back to their pre-pandemic norms. That worked in many cases and at the end of a three, six or even nine-month deferral, borrowers are able to get back on normal terms. However, this will not be universally true. Secured creditors are faced with a new reality for some industries that may never be the same (such as hospitality and public venue entertainment) or industries that were already in jeopardy before the pandemic (brick and mortar retail). These creditors face the daunting task of turning what were well meaning and prudent emergency extensions into true negotiated forbearance agreements or into adversarial workouts for borrowers who are now almost one year behind and unable to return to normal. Creditors will face decisions about whether to impose tighter conditions,

or demand additional collateral or guarantees. Further documentation of deferral and extensions will have to focus on permanent solutions and move away from putting off the borrower's troubles for another day.

Extreme Limitations Upon Foreclosures

Mortgage foreclosure is one of the most powerful tools available to secured lenders. But in the wake of the COVID-19 pandemic, the availability of mortgage foreclosure has been extremely limited. For example, in New York, initiation of foreclosure proceedings was prohibited altogether from March 2020 until October 2020. Beginning in October 2020, residential foreclosure actions were permitted to proceed (with numerous limitations), but residential evictions are still prohibited through at least January 1, 2021, and commercial foreclosures and evictions are also still prohibited. Several other states have likewise prohibited residential and commercial foreclosures. Thus, in many areas, secured lenders have no practical ability to realize upon the value of the mortgage collateral securing their loans.

While, during the fall, it appeared that these restrictions may be lifted, in light of the uptick in COVID-19 cases and resulting resumption of shut downs in many areas, the extreme limitations upon foreclosures are likely to continue into 2021.

Stricter Scrutiny of UCC Article 9 Sales and "Commercial Reasonableness"

Mezzanine lenders have likewise seen their fair share of defaults in the wake of COVID-19. As a result, mezzanine lenders have and will likely need to continue to invoke their right to sell the equity collateral securing their loans in a Uniform Commercial Code ("UCC") Article 9 sale. In light of the limitations of mortgage foreclosures, UCC Article 9 sales – which in most cases have not been held to be subject to the foreclosure ban – are an important tool. However, mezzanine lenders need to be cognizant of the commercial reasonableness requirements of UCC §9-610(b), which courts have strictly construed, in the COVID-19 environment.

For example, Justice Masley of the New York Supreme Court issued a decision on June 23, 2020, holding that a UCC Article 9 sale on thirty-six (36) days' notice, which required the winning bidder to make a non-refundable deposit of 10% of the purchase price, pay the remaining balance within 24 hours, and precluded the borrower from submitting a bid, was commercially unreasonable. Similarly, on August 3, 2020, Justice Schecter of the New York State Supreme Court enjoined a lender from conducting a UCC Article 9 sale, holding that: "Severe turmoil in the real estate market due to the pandemic makes the notion of a sale resulting in payment of fair market value highly uncertain." Taken out of context, this decision could be read to preclude UCC Article 9 sales during the pandemic altogether.

Takeaways

1 **Temporary COVID-19 related regulatory and statutory upheavals will continue through 2021. Credit providers will have to actively monitor regulatory development in real-time.**

2 **Creditors will have to focus their efforts on restoring outstanding credit facilities to good standing and distinguishing between credit facilities that were disrupted by the pandemic and those that the pandemic revealed were already in trouble.**

3 **Creditors will continue to face challenges imposed by extreme restrictions on foreclosures and evictions.**

4 **Careful consideration will need to be given to the commercial reasonableness of the process by which UCC Article 9 sales are conducted while the marketplace is still restricted by the limitations imposed by COVID-19.**

5 **Creditors will have to focus on whether debtors gain traction asserting defenses to payment such as force majeure, impracticability, and frustration of purpose which prior to the pandemic had only limited success.**

However, recent decisions reflect a significant change in the tide. For example, in the very same case, in a decision dated October 27, 2020, Justice Schecter reversed herself and allowed the UCC Article 9 sale to proceed. Her decision this time had a decidedly different tone:

> *Forcing defendant to continue funding the costs that plaintiff failed to pay would be commercially unreasonable given the state of the property and the debt to the senior lender . . . Given the circumstances of this case and the current state of the pandemic, further enjoining this sale would be highly inequitable.*

Other courts have similarly demonstrated an increased willingness to allow UCC Article 9 sales to proceed. However, in light of the recent spike in COVID-19 cases and the prospect of potential additional shutdowns, mezzanine lenders should be careful to insure that Article 9 sales are "commercially reasonable," including by providing ample notice, advertising the sale in widely distributed periodicals, and conducting the sale by virtual means.

Force Majeure, Impracticability, Frustration of Purpose, and Other Defenses

The increase in loan defaults in the wake of the COVID-19 have also brought to the forefront numerous legal defenses put forward by borrowers – such as force majeure, impracticability, and frustration of purpose. Decisions by the courts during 2020 provided some insights as to how judges will view these defenses, but these cases are likely to more fully develop during 2021.

Force majeure allows a party to suspend or terminate their obligations when certain circumstances beyond their control arise. Impracticability may be invoked if it is still theoretically possible to perform a contract, but the costs necessary to complete it render the contract uneconomical. Frustration

of purpose applies when a change in circumstances makes one party's performance virtually worthless to the other. The decision whether to permit these defenses boils down to the allocation of risk, specifically (i) who should bear the risk of unforeseen circumstances, such as the pandemic, and (ii) does the lending agreement or other governing contract address the allocation of risk?

The lease context provides colorful examples as to how these issues may play out. Several prominent lessees, such as The Gap, which leases space in Times Square, Victoria's Secret, which leases space in Herald Square, and Hugo Boss, which leases space in Time Warner Center, have all tried to get out of their pricey leases, invoking force majeure, impracticability, and similar defenses. They argue that the exorbitant rent they pay was based upon the expected foot traffic at these renowned locations, which has almost ceased in the wake of the COVID-19 pandemic. To date, it appears that judges only have limited sympathy for these arguments. For example, in the case of The Gap, while the presiding judge enjoined the landlord from terminating The Gap's lease, The Gap was required to post a bond in the amount of 90% of the rent due as a condition of this relief. Lenders should keep a close watch on these and similar cases as they are decided throughout 2021, and the lessons these decisions provide, both for the interpretation of present lending agreements, and the drafting of new ones.

Force majeure allows a party to suspend or terminate their obligations when certain circumstances beyond their control arise. Impracticability may be invoked if it is still theoretically possible to perform a contract, but the costs necessary to complete it render the contract uneconomical.

Although this article focused primarily on the continuing impact of the COVID-19 pandemic, in 2021 secured lenders, will face a whole assortment of industry wide issues that pre-date the pandemic, including the impending end of LIBOR in 2021, continuing struggles in the retail industry, and ever-present cybersecurity and anti-money laundering regulations.

Brett Garver is a partner with Moritt Hock & Hamroff LLP and serves as chair of the firm's Secured Lending and Equipment Finance practice group.

Danielle J. Marlow is a partner in the firm's litigation practice group. She has more than 24 years of experience and has litigated extensively in both state and federal courts throughout the country and before the American Arbitration Association.

SFNET COMMITTEE SPOTLIGHT

SFNet Diversity, Equity and Inclusiveness Committee

This column highlights the hard work and dedication of SFNet committee volunteers. Here we speak with Betty Hernandez, chair of SFNet's Diversity, Equity and Inclusiveness Committee. She is also executive vice president and chief credit officer of North Mill Capital LLC.

BY MICHELE OCEJO

BETTY HERNANDEZ
North Mill Capital LLC

This is a new committee. Please tell readers why it was developed and its mission as well as why you were interested in chairing it.

Our mission is to build diversity, equity and inclusion within SFNet member companies as well as the industry as a whole. We seek to identify the issues and create awareness of the challenges, provide resources for improvements and demonstrate sustained measurable positive outcomes throughout the SFNet community. I've been involved with the SFNet community for over 30 years and, although I have seen some improvements over the last few years as far as diversity with the Women in Secured Finance Committee for example, there was no real discussion of other types of diversity and even less acknowledgment of the issues that diverse people confront each and every day whether it is at work, at an industry function or in their communities. As a Latina woman in the commercial finance space, I have experienced times where I've felt uncomfortable. I don't want this to happen to others so, when I was presented with the opportunity to chair this new committee, I embraced it enthusiastically.

What are the Committee's goals for 2021?

Our Committee has now met several times and we continue to add goals,

both short-term and long-term goals, that we'd like to accomplish. Some are very ambitious, but I think, if we can tackle at least some of these in our first year of forming the Committee, I'd feel like we've accomplished something. One of our short-term goals is educating members about what Diversity, Equity and Inclusiveness means and why it not only makes business sense, but also on a principle level, to have diverse talent within our organizations. We would like to offer our members resources and best practices in order to educate them about diversity, equity and inclusion. We would like to work side by side with SFNet Chapters and the Foundation to assist with the guest panel lecture series at local community colleges and, ultimately, offer internships at our member firms to disadvantaged students who would never have considered a career in secured finance. We would like to see the composition of SFNet's Executive Committee become more diverse. We'd like to hold a Diversity Conference which connects members and digs deeper into equity and inclusiveness.

On a longer-term basis, we are talking about establishing a recognition award to an SFNet member firm which best embodies what Diversity, Equity and Inclusiveness means.

The key is to volunteer and follow through. If you step up to take on a responsibility within a Committee, others are depending on you to follow up and get results. The results may not be what you initially thought they would be but, nevertheless the follow through is what all other committee members are expecting from you. We are all volunteers and have day jobs, so you do need to make sure to not take on more than you can handle.

You've chaired other SFNet Committees in the past. What advice would you give to others who are on committees, but would like to take on a chairperson role? Any tips for juggling the extra responsibility?

I am a member of various committees and have chaired a Committee before. The key is to volunteer and follow through. If you step up to take on a responsibility within a Committee, others are depending on you to follow up and get results. The results may not be what you initially thought they would be, but nevertheless the follow through is what all other committee members are expecting from you. We are all volunteers and have day jobs, so you do need to make sure to not take on more than you can handle. Every job has busier and slower periods however, so balancing your volunteer and work life (not to mention family) is important. We rely heavily on the SFNet staff who is always there to assist us in writing minutes and setting up meetings, and anything else we need. They are our safety net, along with other committee members, so, if you feel that you can't get to something because you are too busy at your day job, just raise your hand and someone else will pick it up. Communication is the key. Overall, working with other committee members has been something I really enjoy and can see myself continuing throughout my career.

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

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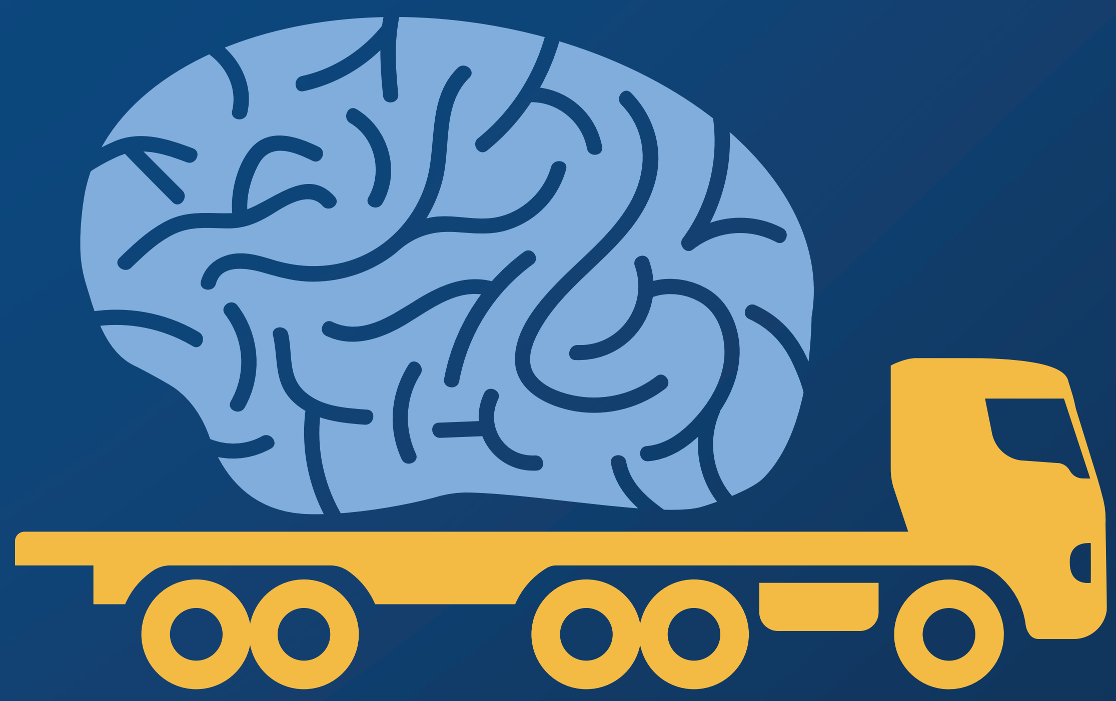

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