THE 76TH ANNUAL CONVENTION ISSUE

THE SECURED Lender

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Putting Capital To Work

Interview With SFNet President

Jeffrey Goldrich

GOLDRICH DISCUSSES HIS PRIORITIES FOR 2021 AND LEADING DURING THE PANDEMIC

A publication of: Secured Finance Network

LOOKING AHEAD

Setting the Tone for 2021

"This Way Forward," the theme of SFNet's 2020 Live Online Annual Convention, is more than a tagline. Leading the way forward will be front and center for SFNet in 2021. As we all continue to navigate our way through this ever-changing environment, SFNet will provide critical information and guidance you need to succeed in 2021 and beyond.

Many of you will be reading this as you participate in SFNet's record-breaking Live Online Annual Convention. Thanks to the virtual format, this is by far our most inclusive event ever. We are thrilled so many of you have the chance to experience the engaging and educational panels, thought-provoking presentations and unique networking opportunities this forum offers. These interactions as well as the articles in this issue of *TSL*, all play a role in shaping where we go from here. Helping our members discover opportunities and overcome obstacles during this unprecedented time is fundamental to what we do as an association. With facilitated discussions ranging from *Disruption in Supply Chains and Innovation in ABL* to *The New Balancing Act and Diversity: A Strategic Imperative*, it's clear that the technology employed to host the live online convention has enabled us to deliver a wide range of topics in an easy-to-access format to appeal to our diverse audience. And this ability won't end with the Convention. We will continue to utilize the SFNet Connect platform for our live online conferences in the coming year, starting with the SFNet Asset-Based Capital Conference this winter. We will also be continuing our Crucial Conversations webinar series to keep the SFNet community connected and informed between events.

In addition to our virtual conferences and webinars, SFNet has a refreshed set of remote education courses planned to help you and your staff prepare for the year to come, starting with these four in December and January: Business Development Level Two, Underwriting Level One, Account Management Level Two and Introduction to ABL. Reach out to Nora Walls at nwalls@sfnet.com or visit sfnet.com for details and to register.

Leading the way forward for SFNet in 2021 will be our new president, Jeffrey Goldrich. Turn to page 18 to read about Jeff's goals for the year. This issue features interviews with two other industry leaders, one starting a new platform and one who has just retired after more than 40 years in the industry. On page 30, Andy McGhee discusses his new role at White Oak and the lender finance market ahead. On page 38, Michael D. Sharkey, former SFNet chairman and Hall of Fame inductee, reflects on 40 years in ABL after retiring as president of Fifth Third Business Capital on September 30.

RICHARD D. GUMBRECHT
SFNet Chief Executive Officer

On page 22, T.J. Humes and Tim Stute of the Hovde Group provide an overview of the effects of the pandemic on M&A market conditions in *Commercial Finance M&A in a Pandemic: What a Difference a Year Makes*.

The rate of default and workouts for loans with IP assets as collateral has reached a crescendo – but not to fear! In *Lessons Learned in Recent Consumer and Retail Brand Workouts and Liquidations* on page 26, David Peress of Hilco Retail Services examines the near-term implications for workouts and liquidations where IP assets are expected to provide a meaningful source of lender recovery.

Retail has taken a huge hit from COVID-19, but all is not as bad as it appears. What sectors within this space are expected to survive, even thrive? What areas are likely to be hardest hit as the pandemic continues? Rick Edwards and Liz Sarhaddi-Blue of Gordon Brothers answer these questions in *A Closer Look at Retailer Resilience During the COVID-19 Pandemic* on page 34.

Adding to the challenges we are all facing, LIBOR is widely expected to cease to be the benchmark rate for loan and derivative products after 2021 and transition efforts are underway. Kim Desmarais of Jones Day provides an update on page 40 in *The Great Transition: A 2020 LIBOR Transition Recap and Things to Keep in Mind as We Approach 2021.*

As the Secured Finance Network and its members have examined the Main Street Lending Program, there have been two aspects of the program in particular that are impacting the utility of the program for borrowers from asset-based lenders that may offer opportunities some may have overlooked. David W. Morse of Otterbourg P.C. provides information crucial to lenders on page 44 in *The Main Street Lending Program: Can It Work with An Asset-Based Credit Facility?*

While I look forward to the day we can elbow tap, first bump or actually shake hands in person, I am excited to see and speak with many of you during our live online convention using our dynamic new platform. Let's continue to not just adapt to our new environment, but seize every opportunity it offers. Stay safe and continue to lead the way forward.


ablsoft
LEND WITH CONFIDENCE
Borrowers demand more.
Credit monitoring doesn't have to be painful for clients or staff. Time is precious, inefficiency is costly. Emails, spreadsheets and outdated software are a sure-fire way to fall behind. Think Bigger.
Imagine a single cloud platform with effortless connectivity to your borrowers. Any data source imported seamlessly (PDF, Excel, QuickBooks), with availability calculated precisely, just one click.
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THE SECURED Lender
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Andy McGhee on White Oak and the Lender Finance Market Ahead

Andy McGhee is vice chairman of White Oak Commercial Finance (White Oak), an affiliate of White Oak Global Advisors, LLC, and leads the firm's lender finance business. He has over 30 years of experience in the lending business, most recently managing a multi-billion-dollar loan portfolio as the CEO of AloStar Capital Finance. In 2011, McGhee co-founded AloStar Capital Finance by acquiring a failed bank in Birmingham, AL. 30

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A Closer Look at Retailer Resilience During the COVID-19 Pandemic

Retail has taken a huge hit from COVID-19. What sectors are expected to survive, even thrive? What areas are likely to be hardest hit as the pandemic continues? 34

BY RICK EDWARDS AND LIZ SARHADDI-BLUE

Michael D. Sharkey Reflects on 40 Years in ABL

Mike Sharkey retired as president of Fifth Third Business Capital on September 30. Prior to the Fifth Third Bank merger with MB Financial, Sharkey was responsible for the bank's asset-based lending group, Cole Taylor Business Capital and then MB Business Capital. For 15 years prior, he ran LaSalle Bank's nationally ranked asset-based lending group. As president and CEO of LaSalle Business Credit, Sharkey helped build the group into the fifth largest asset-based lending company in the United States 38

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REGULATORY INSIGHTS

The Great Transition: A 2020 LIBOR Transition Recap and Things to Keep in Mind as We Approach 2021

Lenders and borrowers have had much to contend with in 2020, including an unforeseen and devastating pandemic upending the way we live and conduct business. One constant remains though, and that is that LIBOR is widely

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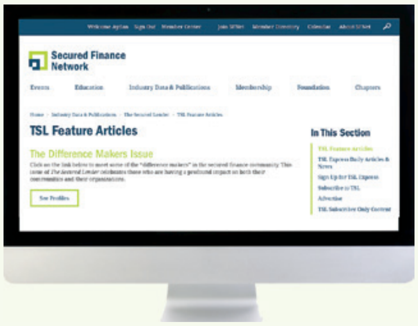

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Secured Finance Network

An association of professionals putting capital to work

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

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

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Robert Fisher, CLFP, Joins Arboretum Commercial Finance, LLC

Arboretum Commercial Finance, LLC has appointed **Bob Fisher,** CLFP as senior vice president of business development to spearhead the sales and operations of Arboretum's new Flex-Ticket Program. Fisher has a 35-year background of sales, credit, and management experience in the equipment financing industry. He can be reached at bfisher@arboretumcf.com.

Seth Benefield Named Head of Bank of America Business Capital

Bank of America is pleased to announce that **Seth Benefield** has been named head of Bank of America Business Capital (BABC) and Asset-Based Financing, succeeding Karen Sessions, who was named head for the Pacific Southwest Region of Global Commercial Banking at Bank of America. Benefield will be responsible for managing an international team of asset-based lenders that deliver secured credit facilities and other complementary banking products and services to mid-size and large corporate companies.

CapitalPlus Strengthens Sales Team to Support Construction Companies

CapitalPlus Construction Services, a leading provider of accounts receivable financing for the construction industry, recently announced the addition of **Adam T. Keck** as senior account executive. Keck will be responsible for business development and client management in the western region of the United States.

FrontWell Capital Partners Announces Launch of Private Credit Fund Focused on Middle-Market Companies in U.S. and Canada

Headquartered in Toronto, FrontWell Capital Partners offers creative, value-added financing solutions, including asset-based (ABL) and cash flow loans, to maximize liquidity support for borrowers that are looking beyond traditional sources of capital.

FrontWell is led by **Patrick Dalton** as CEO, a credit industry veteran who previously served as founder and CEO of Gordon Brothers Finance Company and managed several businesses as senior partner of Apollo Global Management's credit platform. **John Ho,** a finance executive with a proven 15-year track record, is CFO. Ho was previously CFO of an ABL and specialty finance company and prior to that, held senior roles in the Brookfield Asset Management family of operating companies and Barrick Gold Corporation.

FrontWell Capital Partners Adds Experienced Origination and Underwriting Professionals

FrontWell Capital Partners has announced that it has added three professionals. **Aubrie De Sylva** has joined the firm's deal originations team as vice president – deal originations and **Kevin Freer** and **Andrew Isaac** have joined the underwriting team as vice president and assistant vice president, respectively. They will be based in FrontWell's Toronto headquarters.

Gerber Finance Announces the Hiring of Three New Full-time Employees

Graham Nelson joins the California office as a collateral analyst with previous experience in the banking, payments, and healthcare industries. **Hailey Williams** joins as a collateral analyst in the New York office. **Kelly South** came on board as a marketing intern in January and, after assisting with the Gerber Finance Foundation, social media efforts, and marketing campaigns, she has officially been hired as marketing & communications coordinator.

Gibraltar Grows Its Expert Teams to Do More

Gibraltar welcomes **Paulina Nenadovic** to its operations group in the role of collateral analyst. In her new role, she will review and analyze the assets its clients use as collateral. On the credit side, **Todd Seehase** joins as a senior vice president and account executive. Seehase brings 30 years of experience underwriting and managing a combination of middle-market, asset-based, and leveraged loans in various roles at RBS Citizens Bank, FirstMerit, and JP Morgan.

Great Lakes Business Credit Names Rhett B. Rowe as CEO

Brett Rowe, a highly respected leader with more than 30 years in finance, has always been an innovator, and has a proven track record of energizing sales operations, building successful sales and credit teams, managing key accounts, and optimizing people and processes. He has previously served as the CRO and COO at GMA Fund, an international family office.

Hilco Merchant Resources Appoints Charles M. Jayson as Executive Vice President – Retail Business Development

Hilco Merchant Resources announced the appointment of **Charles M. Jayson (Chuck)** to executive vice president, Retail Business Development of Hilco Merchant Resources. Jayson will focus on working with leaders in the consumer sector, developing and structuring transactions with retailers and consumer product companies to maximize return on excess assets.

Kyle C. Murphy Joins Hilco Valuation & Industrial Services as Managing Director of Business Development for the Northeast Region

Kyle Murphy will focus on private equity sponsors, lenders, advisors, consultants, and companies in the northeast region of the U.S. He joins Hilco Valuation & Industrial Services most recently from J.P. Morgan, where he led business development and loan origination for their Middle Market Banking Group.

McGuireWoods Adds Top-ranked Leveraged Finance Partner Linn Mayhew in London from DLA Piper

Linn Mayhew focuses on international acquisition and leveraged finance for private equity sponsors, alternative investment funds, banks, and corporate clients. She advises borrowers and creditors at all levels of the capital structure. She also advises on fund finance, restructurings, and general banking matters.

MH&H Attorneys Named Best Lawyers in America© & Best Lawyers in America© Ones to Watch 2021

The law firm of Moritt Hock & Hamroff LLP with offices on Long Island and in Manhattan is pleased to announce that the following seven attorneys have been selected for inclusion in the 2021 Editions of Best Lawyers® and Best Lawyers®: Ones To Watch.

Best Lawyers®

David H. Cohen - Real Estate Law; **Andrew B. Eckstein** - Bankruptcy and Creditor Debtor Rights / Insolvency and

Reorganization Law; **Robert M. Finkel** - Litigation and Controversy - Tax and Tax Law; **Benjamin Geizhals** - Health Care Law; **Henry L. Goldberg** - Construction Law;

Best Lawyers®: Ones to Watch

Lauren Bernstein - Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Commercial Litigation and **Matthew S. De La Torre** - Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Commercial Litigation

PNC Bank's Linda Bowden Announces Plans To Retire; Commercial Banking Executive Enrico Della Corna To Assume Regional President Role In 2021

PNC Bank announced that long-time regional president, **Linda Bowden**, plans to retire in mid-2021. Succeeding Bowden effective Jan. 4, 2021 will be Enrico Della Corna, who currently serves as regional executive for Commercial Banking in the Northeast at PNC.

Rosenthal & Rosenthal's Heather Fidura Heads to Florida, Expanding Business Development Capabilities in the Southeast

Rosenthal & Rosenthal, Inc. announced that **Heather Fidura** will be relocating to Florida, adding to the Southeast's already robust team of financial services professionals. After nearly 10 years with Rosenthal's New York office, Fidura will now be based in Tampa and will continue her role as a business development officer, sourcing new business for the firm across all products: asset-based lending, factoring and purchase order financing.

U.S. Bank ABF Adds Freeman as MD to Head Corporate Client West and Southwest Originations

U.S. Bank announced that **John Freeman** has been added to the Asset-Based Finance (ABF) team to head the group's Corporate Client West and Southwest Originations. Based in Los Angeles, Freeman brings more than 25 years of asset-based lending experience with an extensive background in credit, restructuring, and originations.

Winston & Strawn Strengthens Bankruptcy and Restructuring Capabilities with Addition of James T. Bentley

Winston & Strawn LLP is pleased to announce the addition of **James T. Bentley**, an experienced and respected bankruptcy and restructuring attorney, as a partner in the firm's New York office. Bentley has considerable experience in corporate restructurings, representing numerous constituencies in bankruptcy and out-of-court workouts.

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Advantage Capital	Non-bank	**N/A**	All-In Recruiting, a minority- and woman-owned boutique staffing and recruitment agency, Las Vegas, NV	Staffing	Financing	
Ares Commercial Finance	Non-bank	**N/A**	To support Atar Capital's acquisition of WinCup, a leading manufacturer of disposable polystyrene cups, bowls, containers, straws and lids, Georgia	Home goods	Senior secured credit facility	
The Bank of Nova Scotia, The Toronto-Dominion Bank and Canadian Western Bank	Bank	**C$165 Million**	Dye & Durham Limited, a leading provider of cloud-based software and technology solutions	Technology	Credit agreement provides for a C$140.0 million revolving term loan facility with an additional uncommitted accordion of up to C$25.0 million	The Bank of Nova Scotia acted as administrative agent, lead arranger and sole bookrunner. The lending syndicate is comprised of The Bank of Nova Scotia, The Toronto-Dominion Bank and Canadian Western Bank. DLA Piper LLP acted as legal counsel to Dye & Durham for the transaction, and Borden Ladner Gervais LLP acted as legal counsel to the lenders for the transaction.
Bridge Bank	Bank	**$2 Million**	Miva, Inc., an e-commerce software and service provider, San Diego, CA	Software	Credit facility	
Celtic Capital Corporation	Non-bank	**$3.2 Million**	Distributor and fabricator of sheet metal products and industrial supplies, California	Industrial metals	Accounts receivable and inventory lines of credit	
Celtic Capital Corporation	Non-bank	**$1.2 Million**	Wholesaler of industrial supplies, steel, fasteners and bearings, Kentucky	Industrial supplies	Accounts receivable line of credit	
CIBC Innovation Banking	Non-bank	**$25 Million**	Vena Solutions Inc., a provider of cloud-based financial planning and analysis software, Toronto	Software	Growth capital financing	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
CIT Group Inc.	Bank	**$150 Million**	Steven Madden Ltd., a leading designer and marketer of fashion-forward footwear, accessories and apparel for women, men and children	Retail: Clothing	Asset-based revolving credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$350,000**	Regional transportation company, California	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$2.5 Million**	Locomotive services supplier, Illinois	Locomotive	Ledgered line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$1,518,300**	Excavation and aggregate recycling company, Alberta	Recycling	Ledgered line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$1 Million**	Security services company, Texas	Security services	Ledgered line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$350,000**	A freight all kinds trucking company, California	Trucking	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$450,000**	Medical services provider, Michigan	Medical services	Asset-based line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$250,000**	Trucking company in Ohio	Trucking	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$75,000**	Flatbed transportation company, Alabama	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$10 Million**	Precision machined components supplier, Michigan	Machinery supplier	Asset-based line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$500,000**	Freight transportation company, Illinois	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$150,000**	Transportation company, Florida	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$300,000**	Staffing services company, Illinois	Staffing	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$1,523,000**	Loading and conveyance systems manufacturer, Ontario, Canada	Manufacturing	Ledgered line of credit facility	
Crestmark's Asset-Based Lending Division	Non-bank	**$5 Million**	Developer of monitoring and healthcare devices, California	Healthcare	Ledgered line of credit facility	
Crestmark's Vendor Finance Division	Non-bank	**N/A**	Medical provider, Southwestern U.S.	Healthcare	Equipment finance transaction	
Crestmark's Vendor Finance Division	Non-bank	**N/A**	Transportation company, Southeastern U.S.	Transportation	Equipment finance transaction	
Crestmark's Vendor Finance Division	Non-bank	**N/A**	Construction company, Southcentral U.S.	Construction	Equipment finance transaction	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Crestmark's Vendor Finance Division	Non-bank	**N/A**	Custom cabinet and millwork manufacturer, Southeastern U.S.	Manufacturing: Millwork	Equipment finance transaction	
Crestmark's Government Guaranteed Lending Division	Non-bank	**$2,520,000**	Solar company, South Carolina	Solar	USDA Business & Industry loan facility	
Crestmark's Government Guaranteed Lending Division	Non-bank	**$1,550,000**	Metal component manufacturer, California	Manufacturing: Metal components	SBA 7(a) term loan facility	
Crestmark's Government Guaranteed Lending Division	Non-bank	**$2,675,000**	Financial advisory firm, Washington	Financial advisory	Term loan facility	
Crestmark's Government Guaranteed Lending Division	Non-bank	**$124,300**	Independent insurance agency, Colorado	Insurance	SBA 7(a) term loan facility	
Crestmark's Government Guaranteed Lending Division	Non-bank	**$1,350,000**	Independent insurance agency, Texas	Insurance	SBA 7(a) term loan facility	
Crestmark's Government Guaranteed Lending Division	Non-bank	**$865,000**	Independent insurance agency, Texas	Insurance	SBA 7(a) term loan facility	
East West Bank	Bank	**$18 Million**	Enservco Corporation, a diversified national provider of specialized well-site services to the domestic onshore conventional and unconventional oil and gas industries	Oil & Gas	Refinancing consisting of $17 million term loan and a $1 million working capital revolving line of credit	
Encina Business Credit, LLC	Non-bank	**$50 Million**	News publishing company	Publishing	Senior secured credit facility consisting of a senior secured revolving line of credit based on accounts receivable and inventory	
Fast AR Funding	Non-bank	**$200,000**	UK-headquartered temporary healthcare staffing provider that opened a location in the US	Healthcare	Spot factoring facility	
FGI	Non-bank	**$7 Million**	Malin + Goetz, a luxury skincare brand	Beauty	Initial $5 million facility with a further $2 million to provide Malin & Goetz with flexibility for the future	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Fifth Third Business Capital	Bank	**N/A**	To facilitate the acquisition of Donnelly Custom Manufacturing, Alexandria, MN by Akoya Capital Partners, LLC, Chicago, IL	Manufacturing: Plastics	Credit facility
Franklin Capital with turnaround firm Virtas Partners	Non-bank	**N/A**	20-year-old snack foods company that sells to grocery chains	Food	Financing
Fortress Investment Group, STORY3 Credit Partners and Blue Torch Capital	Non-bank				
Gateway Trade Funding	Non-bank	**$2.5 Million**	Importer of PPE gowns selling to a large US municipality	PPE supplies	Purchase order facility
Gateway Trade Funding	Non-bank	**$1 Million**	Importer of PPE products selling to US states, municipalities and the federal government	PPE supplies	Purchase order facility
Gateway Trade Funding	Non-bank	**$3 Million**	Importer of PPE masks and hand sanitizer products selling to large US retailers and drug store chains	PPE supplies	Purchase order facility
Gateway Trade Funding	Non-bank	**$2 Million**	Importer of PPE products selling to US states, municipalities, corporations and the federal government	PPE supplies	Purchase order facility
Gateway Trade Funding	Non-bank	**$500,000**	Importer of cosmetic products selling to US retailers and subscription box companies	Cosmetics	Purchase order facility
Gateway Trade Funding	Non-bank	**$2 Million**	PPE products selling to US states, municipalities, corporations and the federal government	PPE supplies	Purchase order facility
Gateway Trade Funding	Non-bank	**$2 Million**	Importer of PPE products selling to US corporations	PPE supplies	Purchase order facility
Gateway Trade Funding	Non-bank	**$275 Million**	Lands' End, Inc., a leading uni-channel retailer of casual clothing, accessories, footwear and home products	Retail: Clothing	Term loan and ABL facility
Goldman Sachs, Pacific Western Bank, Valley Bank	Bank	**$100 Million**	Directed Capital, a national opportunistic real estate finance firm that acquires and strategically repositions commercial mortgage loans	Real estate finance	Directed Capital recently closed on a $40 million credit facility from Pacific Western Bank and previously received a combined $60 million in two other separate credit facilities from Goldman Sachs Bank USA ($40 million) and Valley Bank ($20 million), which will facilitate the continued acquisition of commercial real estate loans.

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Goldman Sachs, Oaktree Capital	Bank and non-bank	**$200 Million**	QuadPay,a high-growth, US-based payment installment platform	Technology	Senior secured committed revolving line of credit	QuadPay secured its credit facility from Goldman Sachs and Oaktree with advisory from Finitive, leveraging their direct lending platform.
King Trade Capital	Non-bank	**N/A**	Company that sells hand sanitizer and sanitizing wipes, California	PPE supplies	Purchase order financing	
LBC Credit Partners	Non-bank	**N/A**	To support the investment in iVision, Atlanta, GA, a leading managed services and technology consulting provider, by CIVC Partners, in partnership with the existing management team	Technology	Senior secured term loan facility	
Barclays Bank PLC, Truist Bank (as successor by merger to SunTrust Bank), JPMorgan Chase Bank, N.A., Capital One, National Association and Royal Bank of Canada	Banks	**$825.4 Million**	RadNet, Inc., a leading national provider of freestanding, fixed-site diagnostic imaging services in the United States	Healthcare	Revolving credit facility and first lien term loans	
KeyBanc Capital Markets, Keybank, Bank of Montreal, Fifth Third Bank, Silicon Valley Bank, Truist, Wells Fargo, Raymond James, and Arvest Bank	Banks	**$100 Million**	Purple Innovation, Inc., a comfort innovation company known for creating the "World's First No Pressure™ Mattress	Manufacturing: Bedding	Senior secured credit facility consisting of a $45 million term loan and a $55 million revolving line of credit	
K2 HealthVentures (K2HV)	Non-bank	**$30 Million**	Healthcare-focused specialty finance company	Specialty finance	Debt financing	
King Trade Capital	Non-bank	**$5 Million**	Distributor purchase and sell hand sanitizing wipes to 7-11, Walgreens and other national retailers, Texas	PPE distributor	PO finance facility	
Main Street Capital Corporation	Non-bank	**$26 Million**	New portfolio investment to facilitate the minority recapitalization of Superior Rigging & Erecting Co., a leading provider of rigging, steel erection and crane & equipment rental services throughout the southeastern United States, Atlanta, GA	Equipment rental services	First-lien, senior secured term debt and a direct equity investment	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
mBank Business Credit, distributor of consumer food products, Michigan	Bank	**$4.5 Million**	Food distributor, Michigan	Food	Line of credit	
Medalist Partners	Non-bank	**$40 Million**	Ironwood Funding, a leading operator in underwriting and financing the purchase of non-performing consumer loans	Finance	Credit facility	
MetLife Investment Management (MIM)	Non-bank	**$75 Million**	Green Plains Inc., a diversified commodity-processing business with operations that include corn processing, grain handling and storage and commodity marketing and logistics services	Commodity services	15-year term loan facility	
MidFirst Business Credit	Non-bank	**$3 Million**	Northern Brewer, LLC, an e-tailer and retailer of beer, wine and kombucha home brewing equipment and supplies, Roseville, MN	Retail: Food	Working capital facility	
MidCap Business Credit	Non-bank	**$15 Million**	Foundation Food Group, Inc., Gainesville, GA	Food	Asset-based credit facility	
North Mill Capital	Non-bank	**$18 Million**	Optical Cable Corporation is a leading manufacturer of a broad range of fiber optic and copper data communication cabling and connectivity solutions, Virginia	Tele-communications	Asset-based revolving line of credit	
Oxford Finance LLC	Non-bank	**$25 Million**	Enable Injections, Inc., a company developing and manufacturing the enFuse® platform of investigational wearable infusion devices, Cincinnati, OH	Healthcare	Credit facility	
Prestige Capital Finance, LLC	Non-bank	**$7 Million**	Two companies to fund the manufacturing and importing of masks, swab transport containers, disinfectant wipes and more	PPE supplies	Funding	
Prestige Capital Finance, LLC	Non-bank	**$5 Million**	Established import/ export business based in Florida that had a successful gift item business	Manufacturing	Funding	
N/A	N/A	**$475 Million**	PRA Group, Inc., a global leader in acquiring and collecting nonperforming loans	Finance	Amend and extend: An additional term loan by certain lenders in an aggregate principal amount equal to $55.0 million, bringing the total term loan amount to $475.0 million	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
N/A	N/A	**$25 Million**	Fast Cash Legal, LLC, legal services, West Hollywood, CA		Senior debt facility	Bryant Park Capital served as the exclusive financial advisor to Fast Cash
Republic Business Credit	Non-bank	**$3 Million**	Private equity-owned West coast apparel accessory manufacturer	Apparel and accessories	Direct to consumer inventory loan facility	
Republic Business Credit	Non-bank	**$2.75 Million**	Food ingredient manufacturer company, West Coast, in partnership with a leading food industry consultant	Manufacturing: Food	Ledgered line of credit facility	
Sallyport Commercial Finance	Non-bank	**$250,000**	Company specializing in the distribution of specialty piping materials	Piping	Accounts receivable facility	
Sallyport Commercial Finance	Non-bank	**$1,750,000**	Supplier to the trading card industry	Trading card	Credit facility	
Sallyport Commercial Finance	Non-bank	**$1 Million**	Cosmetic wholesale and distribution company working with major retailers worldwide	Cosmetics	Accounts receivable facility	
SG Credit Partners	Non-bank	**$2.5 Million**	Fraud Protection Network, a consumer credit and identity solutions software-as-a-service provider, Southeast U.S.	Software	Covenant-lite loan	
SLIM Capital	Non-bank	**$2.2 Million**	Tire shredding company, Texas	Industrial	Funding	
Sterling National Bank	Bank	**$3 Million**	Right Sized Solutions, Inc., a professional services company focused on secure mission systems development and support to the U.S. Federal Government, Herndon, VA	Professional services	Senior secured credit facilities	
Sunflower Bank	Bank	**$200 Million**	Strategic Data Center Fund Manager, LLC, an investment manager and capital partner focused on acquiring, developing and managing data center real estate assets that help support a digital economy, the cloud and mobile computing	Technology	Revolving line of credit	
TAB Bank	Non-bank	**$2.5 Million**	Manufacturing trucking, Florida	Trucking	Asset-based revolving credit facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
TCF National Bank	Bank	**$9.2 Million**	Strategic Storage Trust IV, Inc., Punta Gorda, FL, a public non-traded real estate investment trust sponsored by an affiliate of SmartStop Self Storage REIT, Inc.	REIT	Term loan	
Tradewind Finance	Non-bank	**$2 Million**	Manufacturer and exporter of East Mediterranean food, Lebanon	Manufacturing: Food	Post-shipment finance facility	
Versant Funding LLC	Non-bank	**$1.8 Million**	National distributor of sweets and treats	Food	Non-recourse factoring facility	
White Oak Commercial Finance, LLC	Non-bank	**$4.5 Million**	Three aerospace businesses providing specialized services to US defense agencies	Aerospace	Factor and ABL-based credit facilities	
White Oak Healthcare Finance, LLC	Non-bank	**N/A**	National Partners in Healthcare, LLC (NPH)	Healthcare	Senior credit facility	
Wingspire Capital Holdings	Non-bank	**$40 Million**	XL Funding, LLC, a provider of floorplan loans to auto dealers, in more than a dozen markets a wholly-owned subsidiary of the XLerate Group		Senior secured financing	Capstone Headwaters advised XL Funding on the transaction.
Wingspire Capital Holdings	Non-bank	**$30 Million**	Leading distributor in after-market auto parts, consumer electronics and personal protective equipment	Manufacturing: Auto, Electronics, PPE	Senior secured working capital revolver	

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Interview with SFNet's New President

BY EILEEN WUBBE

Jeffrey Goldrich:

Jeffrey Goldrich, SFNet's 2021 president, has been in the asset-based lending and factoring business for over 40 years.

He founded North Mill Capital, as its president and CEO, with its management group in 2010. In 1995 he co-founded, as a shareholder and COO, Business Alliance Capital Corp (BACC), a national commercial finance company based in Princeton, New Jersey. Goldrich and his partner sold BACC to Sovereign Bank (now Santander) in 2005. Prior to that, he was a senior vice president and manager of the asset-based lending department of First Fidelity Bank in Newark, New Jersey.

Tell us a bit about how you got into the industry and your career path.

I unintentionally started my career in this industry as a collector at William Iselin and Company. William Iselin was a factoring subsidiary of CIT in New York City, and I remained in factoring for several years in various roles before I went into asset-based lending. I spent 10 years at First Fidelity Bank in Newark, New Jersey, and ended up running that group. In 1995, I started Business Alliance Capital Corp., (BACC), with my friend and colleague, Ted Kompa. Startups are difficult and we ran it for 10 years for an eventual sale to Sovereign Bank. I vowed never to do another startup but, in 2010, Dan Tortoriello, Betty Hernandez, Steve Carroll and Patti Kotusky and I started North Mill Capital. We acquired Prinsource in 1995 and we were fortunate to have Rochelle Hilson join the management team. In 2017, North Mill was sold to our single shareholder now, Solar Capital. Solar has an expertise in specialty finance, and they've been a terrific and productive partner for us.

The priorities have been affected by COVID because the customary in-person networking events and various meetings throughout the country aren't possible now. I think SFNet's advocacy efforts and education, including virtual webinars and conferences, are where it can play the most useful role at this time. Having those areas lead the way, and be the forefront of what SFNet is, will keep the organization relevant and meaningful and provide the most value to the members.

How did you become involved in SFNet and what motivated you to become a volunteer leader?

I started going to SFNet Chapter meetings in New York and then New Jersey quite early in my career. I regarded it as a perk when I was doing collections in the mid '70s, to go to SFNet (then Commercial Finance Association) meetings and network with peers and people at all different levels. I was involved at the Chapter level and became the New Jersey Chapter president in the early 1990s. I always found the networking, whether local or later when I started going to things nationally, to be productive and it always helped me progress throughout my career. Going to those chapter meetings, even ones that were sparsely attended, and then going to the national conferences, created opportunities for me just by meeting people who I would otherwise have no access to.

So, when I started my own business, BACC, back in 1995, I had contacts nationally from bankers to independent lenders and factors, which definitely helped us launch that company. I developed very close relationships with people in the industry at all levels and it's been invaluable. I regard the idea of being a volunteer for SFNet as more of a privilege. It was always a perk to be able to go to SFNet events early in my career and still is even at this stage.

What are your main priorities and goals as SFNet president?

The priorities have been affected by COVID because the customary in-person networking events and various meetings throughout the country aren't possible now. I think SFNet's advocacy efforts and education, including virtual webinars and conferences, are where it can play the most useful role at this time. Having those areas lead the way, and be the forefront of what SFNet is, will keep the organization relevant and meaningful and provide the most value to the members. These things are always valuable, but they become much more valuable when all of the other things that SFNet has been known for, such as networking and attending national events, must now be done virtually.

The quarterly ABL survey that SFNet prepares is particularly important at this time because it is providing critically important data from participating bank and nonbank lenders. We need to expand participation to further enhance its relevance.

As the incoming president, I am excited that this is the first year for a Diversity, Equality, and Inclusiveness Committee, which is being led by my business partner and longtime friend, Betty Hernandez. I believe it will help SFNet in its effort to expand and encourage people of diverse backgrounds to get enthusiastically involved in a welcoming and inclusive environment.

I think the importance is we need to think about the future of our industry and encourage highly motivated people to become involved. This Committee hopefully will evolve over time and will help in that effort as it attracts people who might not otherwise consider our field and industry as an option.

You're taking the helm of the Secured Finance Network during an unprecedented time in the world; what are your thoughts on leading during these challenging and uncertain times?

John DePledge did a great job during this tumultuous time, so I have a good example to follow and I intend to lean on him. There needs to be a focus on encouraging participation in SFNet at all levels. I realize that is a generic statement, but it is particularly important in an environment where we are not getting together in person. It means members getting involved in committees, education, advocacy, and at the chapter level. The SFNet team, led by Rich Gumbrecht, has really done an extraordinary job at keeping the organization relevant through webinars and other online programs and aggressively reaching out to individual members to elicit opinions and feedback. This has never been done before and the effort by the SFNet team I think is extraordinary. We also need to think about the future of SFNet beyond COVID and keeping SFNet fiscally safe and sound. At the end of the day, it is going to stay strong and fiscally sound and provide meaningful opportunities to its members through member involvement. I think the organization needs to continue to do that or enhance that in this environment where getting together means virtually and not in person. I think the best thing for me to do is to be in regular direct contact with as many members as possible. It is just uncharted territory.

Will you implement any of the strategies you used in leading North Mill Capital throughout 2020 for the Secured Finance Network?

At North Mill we have a highly experienced group of people and I see that as the same with SFNet, the SFNet Executive and Management Committees, and the SFNet team under Rich Gumbrecht. I think the best strategy is simply to be collaborative and communicative. The people on the committees and the team are so well versed and experienced, I think it's just all about being communicative and really good things will come out of that. I know that is what works in my company.

What are you most looking forward to as president of the SFNet?

I think doing this at such an unusual time in SFNet's long history is an exciting opportunity. I am not excited about COVID, but I am excited about doing this at a very unusual time and working through uncharted ground. I think there is risk to that, but that risk can be very rewarding, and I like those kinds of opportunities. The Executive Committee is comprised of extraordinary industry talent and their willingness to take this challenge on during unprecedented times is just professionally outstanding of them.

I've also gotten to know the Management Committee, Peter York at J.P. Morgan Securities LLC; Jennifer Palmer at Gerber Finance and the Co-Counsels, Jonathan Helfat at Otterbourg P.C. and Bobbi Accord Noland, Parker, Hudson, Rainer & Dobbs LLP. They have extraordinary experience and I feel privileged to be part of that team. I think the Executive Committee, Management Committee and the SFNet team, who I have gotten to know over the years, some more recently than others, is extraordinary.

What challenges and opportunities do you see for the industry in 2021?

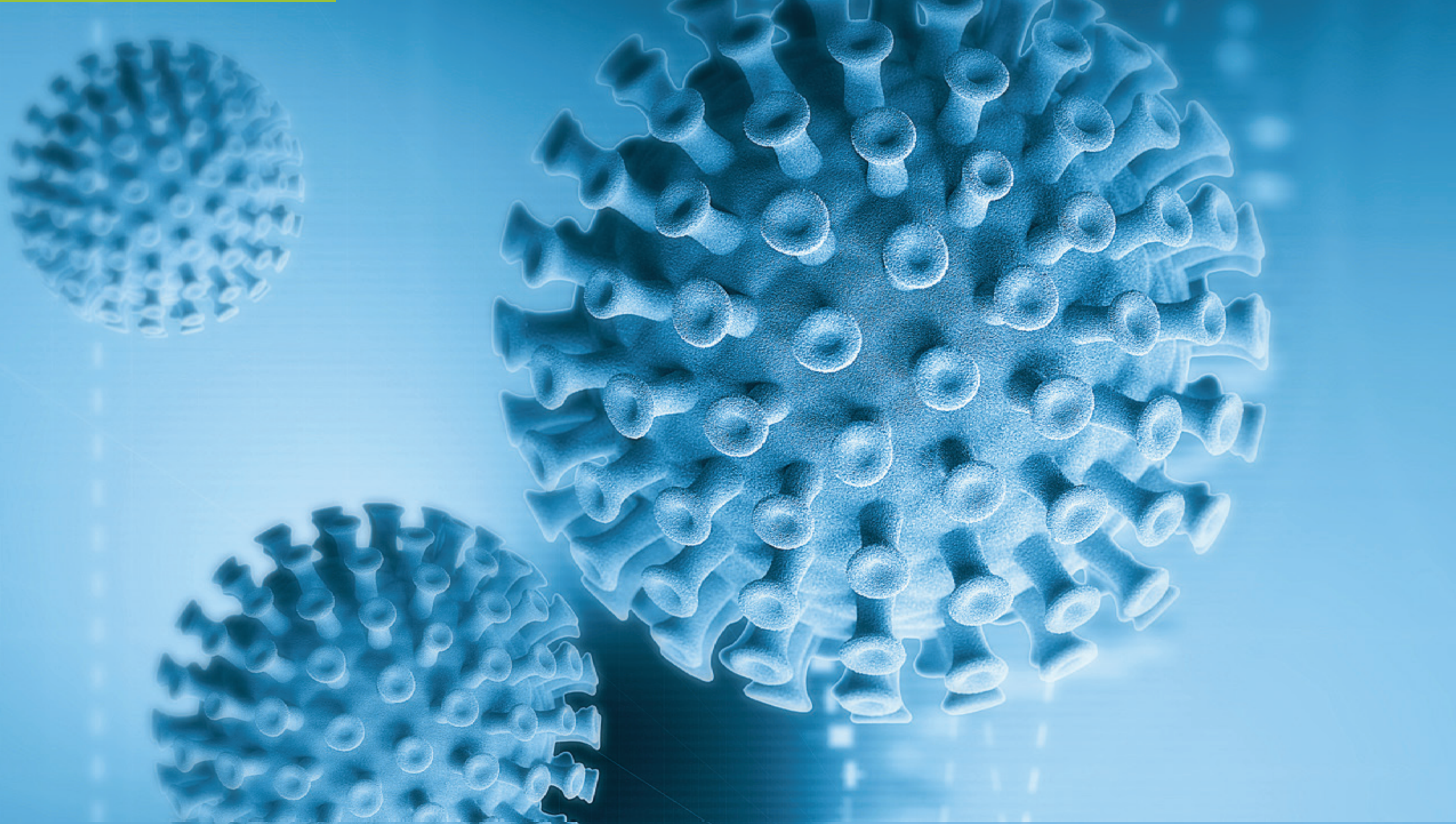
Since we are largely a credit industry, there are going to be credit issues, which will continue to arise as a direct result of an unprecedented disruption in business and personal lives. What we were once all able to predict with reasonable certainty, whether it was recessionary times or more robust times, we can no longer do because we're not able to find relevant experience predicting through a global pandemic. I think the long-term viability of businesses that we finance and support and entire industries, even getting down to collateral and asset valuations and how assets perform in liquidations, and then ongoing health issues, which create their own vulnerabilities, all create an environment that's untested. The opportunities will be for banks and nonbank lenders to figure out underwriting standards in a changed climate and be able to thrive during and after. Those who can figure it out have a unique and potentially lucrative opportunity. I think the opportunities will be for those that just stick to basics and stay vigilant. While I am optimistic about the long term, I think we all have to acknowledge the uncertainties of what lies ahead in the immediate future.

How do you spend your time when you aren't working, pre-COVID and now?

My wife and I collect certain kinds of art and some antiques, which I'm confident our adult kids will one day sell in a garage sale. We maintain a residence in New York City, which we love and, despite naysayers, I am confident that things will be fine there, and they are already going in that direction. We also spend as much time as possible with our kids and their spouses who are all wonderful, and our four grandchildren who are not bored with us yet.

Eileen Wubbe is senior editor of The Secured Lender and TSL Express daily e-newsletter.

FEATURE STORY



Commercial Finance M&A in a Pandemic: What a Difference a Year Makes

BY T.J. HUMES AND TIM STUTE

Hovde Group executives provide an overview of the effects of the pandemic on M&A market conditions

Takeaways

1 **Close to ideal M&A conditions for sellers prior to outbreak of COVID-19. Robust buyer universe driving near-peak valuations. COVID-19 substantially put healthy-way M&A on hold as would-be buyers and sellers reacted to the pandemic and evaluated portfolio.**

2 **Many commercial finance companies saw portfolio contraction due to PPP and slower business for borrowers. Despite depressed portfolio size and compressed earnings, sellers maintained pre-pandemic valuation expectations.**

3 **Buyer deal drivers remain similar to 2019; however, seller deal drivers are more varied and generally categorized as opportunistic, under sponsor pressure, or under lender pressure.**

4 **Focus on platform, rather than portfolio, for premium valuations. Deal structuring used to bridge valuation differences.**

5 **Expect more acquisition activity in 2021 as bank buyers seek net interest margin, asset managers and BDCs seek assets under management, and distress hits loan portfolios, creating more sellers.**

TIM STUTE
Managing Director
Hovde Group

T.J. HUMES
Director
Hovde Group

This year was off to a great start. M&A market conditions were close to ideal. There was a robust buyer universe that included banks business development companies (BDCs), credit funds and strategic buyers. Banks were interested in independent specialty finance companies in an effort to find yield and new borrowers. Flush with liquidity, BDCs and credit funds were enthusiastic to deploy capital and build assets under management (AUM).

Strategic buyers were looking to accelerate growth and diversify product offerings. The result was a crescendo of sorts that had built over the last decade, and deal multiples were at pre-Great Recession levels. We were feeling confident as well with seven completed specialty finance M&A transactions in 2019, two in early 2020, and a strong pipeline of engaged deals with a number of additional pitches on the horizon. Ironically, at the beginning of the year, we wrote in a different article that “We do not see evidence suggesting a rapid drop from a peak M&A market to the recession era M&A that unfurled in 2008.” But then – March happened.

Practically overnight, thanks to COVID-19, buyer and seller expectations changed and deal drivers shifted, putting most of our healthy-way M&A pipeline on hold. While a number of groups went ominously silent, generally, there was still plenty of buyer interest, particularly by groups that (perhaps by luck) recently raised capital. Now, buyers see today as an attractive time to invest in good companies that can be sold when M&A markets improve. However, buyers previously open to meaningful premiums are now looking for a good deal. Buyers also grapple with the question of why a “good” company is looking to sell now. Looking backward, buyers are approaching a target company’s existing portfolio with extreme caution, and buyer interest is directed toward companies that can demonstrate credit has held up through the pandemic, thus far. It is fairly telling that the announced acquisition of Kabbage, a financial technology company providing cash flow management solutions to small businesses, by American Express, explicitly excluded the pre-existing loan portfolio.

For some sellers, it’s perhaps more notable that expectations have not changed. At the onset of the pandemic and anticipated economic decline, defaults and credit losses seemed to be the natural threat for lending institutions. However, portfolio contraction, due to PPP and slower business for borrowers, quickly became a mounting challenge for asset-based lenders. Reduced revenue and a fixed overhead put considerable pressure on earnings. While there are portfolio challenges, the dynamics with PPP and other programs have led many asset-based lenders to generally maintain credit quality. Despite portfolio and earnings dynamics, many would-be sellers have maintained pre-pandemic valuation expectations. For sellers with higher valuation expectations and no pressure to transact, pursuing a sale is largely on hold.

While the outbreak of the pandemic caused a pause, there is M&A activity, albeit with evolving deal drivers. In many ways, buyer deal drivers remain the same as 2019. Banks continue to operate in a low-interest environment, and see specialty finance companies as an opportunity to enhance net interest margin. Asset-based lenders and factoring companies present an easier asset to assess relative to commercial real estate in today’s environment. Many BDCs and credit funds have substantial liquidity and are motivated to build AUM and their loan product offering. During the first few months of the pandemic, many non-depository lenders implicitly or explicitly ascribed a “pandemic risk premium” of sorts to all new acquisition or lending opportunities. This dynamic seems to have subsided as these funds remain under pressure to deploy capital. However, buyer interest has to be considered with the backdrop of acquirers managing existing portfolios — buyer interest is different from buyer conviction to close.

In the current environment, seller deal drivers are more varied. We would generally categorize sellers in today’s environment as opportunistic, under sponsor pressure, or under lender pressure.

Opportunistic sellers are generally niche-focused and/or smaller platforms that performed well during the pandemic, so far. These sellers are not under pressure to sell and perceive little reputational risk if a deal is not consummated. Similar to opportunistic sellers, we have seen a few situations where a sponsor has elected to push forward with a sale of a portfolio company that is performing well despite the current M&A market challenges. There is typically a well-considered answer to the "why now?" question, but investment hold period and fund life are common underlying motivations. Pressure from lenders, both senior and subordinated, has been modest yet evolving. While operating across a spectrum, lender finance groups were largely accommodating in the early months of the pandemic. Regulatory treatment of COVID-affected loans gave banks more flexibility, and stimulus programs provided an extended runway to address problem assets. The "we are in it together" and "how can we help" mentality was refreshing. However, depending on future stimulus or other intervention, eventually these assets will need to work through the system. We believe this could lead to a cornucopia of distressed deal flow. Many buyers are keeping a close eye on this third category of sellers.

As we move forward, premium pricing for sellers is no longer going to be the norm, but, in our view, still attainable in today's market. Buyers have consistently ascribed premium value to companies with certain characteristics. As a gating item, for a company to achieve a premium sale price in the current market, its portfolio has to be clean with visibility on the impact of COVID and broader economic challenges. Some exceptions may exist for younger companies, ironically, that don't have a large loan portfolio of unknown credit losses.

In certain M&A transactions, buyers are ascribing premiums based on portfolio value, with the platform value being secondary. Anticipating asset sale deal flow from distressed lenders and new origination opportunities, portfolio premiums are less likely. Thus, the opportunity for meaningful premiums shifts to value of the platform. The quality of the team is always a top factor. Beyond team, platforms with differentiated origination channels, proprietary technology, and unique product offerings garner the greatest opportunity for outsized valuations.

Another consideration in the current environment is structure. Buyers will not want to step into new problems through acquisitions, and therefore will frequently use credit reserves, hold backs, or exclusions to cover credit concerns. This does not always sit well with sellers who lose control of the asset; however, it may be necessary to bridge bid/ask spreads. Likewise, earn-outs and other deferred compensation are a way to provide sellers with a premium based on the performance of a platform and loan portfolio. This presents the same control challenge as holdbacks, but it is effective in delivering a premium in a challenging M&A environment.

Looking to the future, the balance of 2020 will largely be a time of additional discovery — election outcome, further stimulus, uptick in COVID cases, etc. Any M&A transactions will likely have a clear strategy. In 2021 and beyond, an uptick in M&A can be anticipated. The treatment of distressed platforms and portfolios will be a major determinant of the form of such deals. Scale and efficiency will remain themes driving strategic M&A. The various "U" and "V" shape analogies for economic recovery apply to specialty finance valuation multiples as well, and some sellers will elect to test the market if they cannot wait for a longer recovery.

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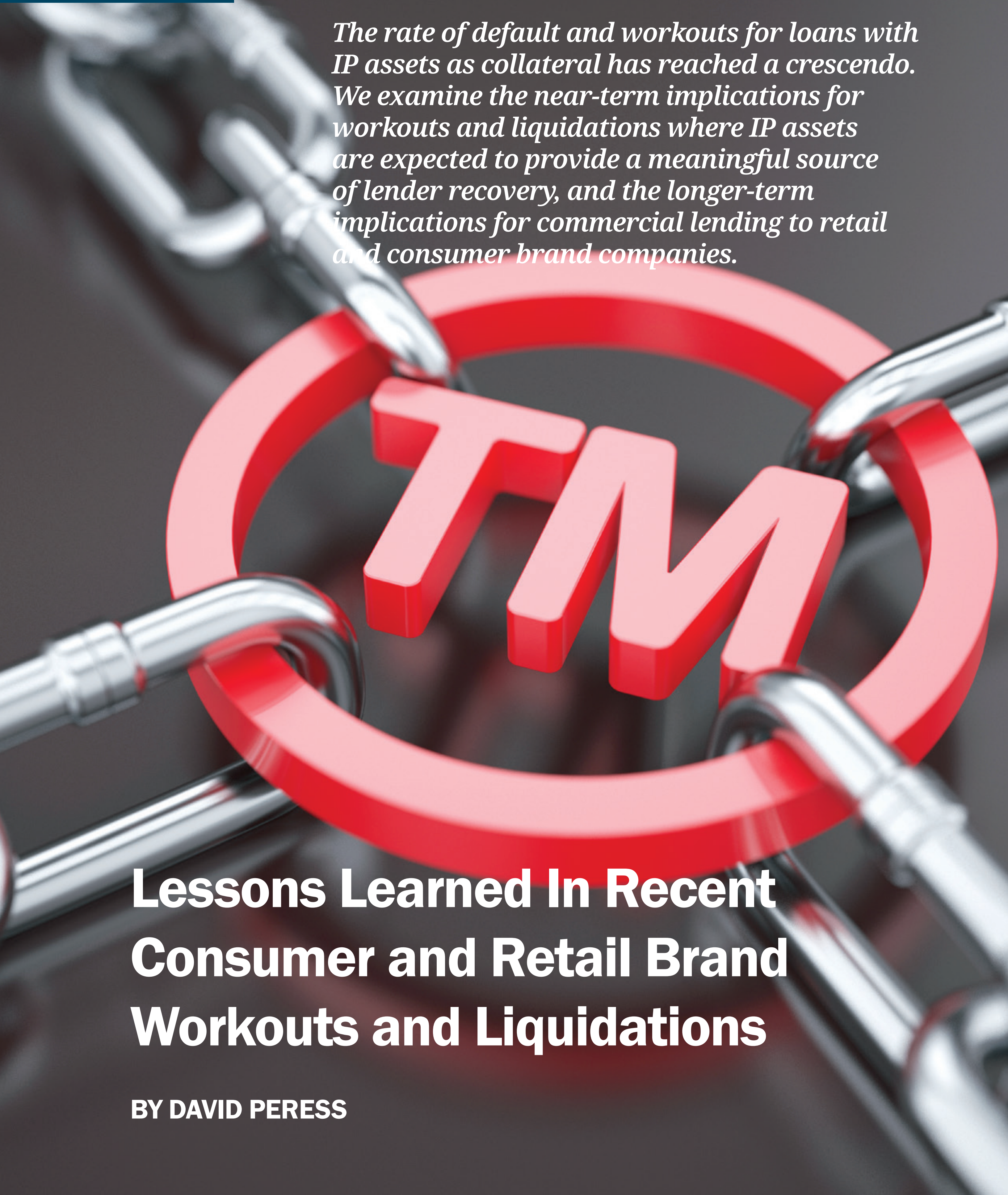
The rate of default and workouts for loans with IP assets as collateral has reached a crescendo. We examine the near-term implications for workouts and liquidations where IP assets are expected to provide a meaningful source of lender recovery, and the longer-term implications for commercial lending to retail and consumer brand companies.



Lessons Learned In Recent Consumer and Retail Brand Workouts and Liquidations

BY DAVID PERESS

The period of recovery following the Great Recession sparked a shift in consumer product distribution and retail strategy. Merchants further increased investment in intangible assets such as CRM systems and ecommerce platforms, while at the same time migrating to "asset-light" models by reducing retail footprints and pushing working capital investments back to their vendors and third-party affiliates. During this cycle, commercial lenders became more willing to utilize retail and consumer brand-related intellectual property (IP) assets as acceptable forms of collateral. Beginning in the fourth quarter of 2019, the rate of default and workouts for loans with IP assets as collateral began to increase, reaching a crescendo as we entered the third quarter of 2020. In the discussion that follows, we will assess the current market for IP assets and the relevance of that market for lenders to consumer and retail companies. We will examine the near-term implications for workouts and liquidations where IP assets are expected to provide a meaningful source of lender recovery, and its longer-term implications for commercial lending to retailers and consumer brand companies.

DAVID PERESS
Executive Vice President
Hilco Retail Services

During the previous cycle, lenders gained a greater comfort level in underwriting to IP collateral. The market for IP assets generally became more liquid with the development of public and privately funded brand management and licensing platforms. Many of these platforms were financed by agented ABL facilities and ABS structures tied to the income generating characteristics and projected recovery value of the underlying IP. Underwriters became more comfortable with IP appraisal models and underwriting fundamentals as they 1) Provided seasonal overadvance lines secured by IP collateral; 2) Agented FILO and split lien deals where IP was encumbered and; 3) Participated in workouts where IP recoveries closed gaps between the borrowing base collateral and outstandings. Additionally, during this period greater numbers of new private investment funds entered the commercial lending markets, providing term loans utilizing various forms of IP collateral. Along the way, we began to see 1) BDCs and leveraged finance lenders justifying notably higher leverage multiples by taking into account projected IP recovery values and; 2) brand licensing platforms increasingly seeking access to the commercial finance market in an effort to generate additional acquisition financing.

Heading into the fourth quarter of 2019, there were already telltale signs of stress in both the retail and consumer markets. The onset of the COVID-19 pandemic in North America starting in late March/early April 2020 led to a sizable, subsequent wave of retail and consumer workouts and bankruptcies in the U.S. with over 3,600 companies filing for Chapter 11 bankruptcy protection in the first half of 2020 alone, according to the American Bankruptcy Institute. In the initial stages of the correction, we saw depressed IP recovery levels. These results were driven by reduced liquidity in the IP asset market, largely the result of a pullback from the market by strategic buyers (e.g., traditional brick & mortar retailers) who had no choice but to focus their attention on managing their own P&Ls and balance sheets during that period. At the same time, publicly traded brand management platforms had, by and large, withdrawn from active participation in the market for IP assets.

In the post-Great Recession recovery, publicly traded brand management platforms such as Iconix, Cherokee, and Sequential Brands created large consumer brand portfolios based on a direct-to-retail brand licensing model. That model had generated significant market value through much of the last cycle via the acquisition of brands that were then licensed to retailers such as Target, Walmart, Amazon among others, who agreed to pay guaranteed minimum royalties to the licensing companies in return for the exclusive use of the licensed brand. Over time, however, the direct-to-retail model came under pressure as large retailers sought to enhance margins by developing or acquiring their own private label brands. Retailers became unwilling to pay guaranteed minimum royalties for brands that they were largely responsible for developing. Today many of these public brand management platforms have become sellers rather than buyers.

The impact on liquidity in the IP asset market from the pullback by brick & mortar retailers and the public brand management platforms has proven to be short-lived, as those market participants have been replaced by privately owned platforms financed through private equity and institutional fund investors. Going into the third quarter of 2020, we observed an emerging trend of increasing liquidity in the IP asset market driven by a significantly expanded stream of capital being made available to privately held brand management platforms such as Authentic Brands Group, Wave Hill Partners, Marquee Brands, and Spotlight Brands, among others, seeking to capitalize on market conditions to strategically expand their brand portfolios. These privately owned brand management platforms practice a much more vertical model of brand management and active engagement with their licensees. Often, this includes being more involved in the operation of specific channels, such as the direct-to-consumer channel, which provides the brand manager greater control over the development of its brands and provides increased value to licensees.

Increased liquidity in the IP acquisition market is also being fueled by technology advances in cloud-based ecommerce software applications such as Shopify, Squarespace, Volusion, and others with large, embedded-user bases. This has enabled the increasing number of digital marketing platforms to seamlessly connect to both the front- and back-end of the ecommerce ecosphere without the level of significant capital investment previously required. The improvement in cloud-based ecommerce infrastructure solutions has occurred at a moment in time when digital marketing and social media advertising costs utilizing Google and Facebook remain somewhat below their pre-pandemic levels, with many traditional advertisers having retreated from auctions.

Digital marketing platforms have been quick to adjust to these developments. These platforms represent highly scalable investments. A distressed IP sale provides a digital marketing platform the opportunity to acquire brands coupled with an engaged customer database. The exclusive opportunity to market to that customer, coupled with a wealth of transaction data, provides the digital marketer the opportunity to connect with the customer directly. This reduces customer acquisition costs and increases the return on investment in digital marketing and social media advertising. These digital marketers understand that brands provide one of the only moats to competition in the digital marketplace.

The development of large ecommerce marketplaces like Amazon, Wal-Mart/Jet, Rakuten, Wayfair and others has led to increased efficiencies in 3PL warehousing, logistics and drop shipment capabilities. Leveraging these developments, digital marketers have migrated brands with high customer awareness and acceptance into "asset- light" ecommerce models, efficiently expanding the breadth and scope of the brand through affiliate programs and the creation of their own marketplace environments.

The combination of increased investment in privately held brand-management platforms, and acquisitive digital-marketing platforms has led to increased liquidity in the IP asset market, and increased recovery values for IP assets in distressed sales. A host of recent high-profile distressed IP sales illustrate the pervasiveness of these increased values in the current market climate:

- Pier 1 acquired for $31 million by a digital marketing platform
- Sur La Table acquired for $35 million by partnership between a digital marketing platform and privately held brand management platform
- NY & Co. and Fashion To Figure acquired for $23.5 million by partnership of digital marketing platform and plus size retailer

In addition, other recent high-profile brand sales have drawn meaningful interest resulting in exceptional recoveries through acquisitions by privately owned brand management platforms and digital marketing platforms. These include Brooks Brothers, Catherines, and John Varvatos.

For commercial lenders, these developments have a number of implications. In the near-term, given the liquidity in the market for consumer and retail brand assets, opportunities exist for lenders to enhance recoveries in troubled credits with IP collateral. Longer-term, as borrower balance sheets continue to get skewed more and more to their intangibles and away from traditional working capital assets, the proliferation of asset-light models will require lenders to become more comfortable with the value of IP as collateral. As the recovery progresses, the secondary market for IP assets possesses sufficient liquidity to support consumer brands that are driven by licensing and digital marketers seeking expansion into both new product channels and customer categories. It is likely that the growth in commitments secured by high-quality intellectual property assets will continue, and the importance of partnerships between lenders and IP valuation experts tied into the dynamics of the IP asset market will increase.

David Peress serves as executive vice president of Hilco Retail Services where he provides critical oversight and vision for all Hilco retail valuation and monetization client teams. In 2017, Peress added this new role to his existing responsibilities as a principal at Hilco Streambank, where he has successfully built one of the top intangible asset valuation and monetization practices in the nation, focusing on brands, trademarks, patents, and domain names. He has 25 years of experience working in the corporate restructuring and distressed investing industry as both an advisor and investment professional.

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Andy McGhee on White Oak and the Lender Finance Market Ahead

BY MICHELE OCEJO

Andy McGhee is vice chairman of White Oak Commercial Finance (White Oak), an affiliate of White Oak Global Advisors, LLC, and leads the firm's lender finance business. He has over 30 years of experience in the lending business, most recently managing a multi-billion-dollar loan portfolio as the CEO of AloStar Capital Finance. In 2011, McGhee co-founded AloStar Capital Finance by acquiring a failed bank in Birmingham, AL.

A

At the time of its sale in 2017, AloStar had committed more than $3 billion to middle-market companies. McGhee has also served in various leadership roles covering asset-based lending (ABL) at SunTrust, Citicorp, Bank South and Bank of America. McGhee sits on the board of directors for Piedmont Hospital in Atlanta and is an Elder at Peachtree Presbyterian Church. He holds a B.A. in economics from the University of Georgia.

ANDY MCGHEE
Vice Chairman
White Oak Commercial Finance

You joined White Oak in May. What attracted you to the company?

First and foremost, they have a very good reputation in the market. Their people are smart and are client-centric. There is a strong credit culture that is backed by a deep bench of professionals with significant experience; together with White Oak, we are able to develop our business and help our clients to get the financing they need. It was also a good fit when it came to vision, strategy and risk management, which are important in a quickly growing firm. They didn't have a lender finance group, but they knew we did. The lender finance business is now part of White Oak Global Advisors' broader asset-based lending platform, which currently has over 160 professionals, including those of its affiliates, dedicated to originations, underwriting and credit management and cover the entire product suite including invoice discounting, factoring, trade finance, and supply chain finance among others. What's more, they do not shy away from complex transactions and they like to deploy capital in creative ways. Those are all positives for me.

How will the firm be able to help you in creating a lender finance business?

Crucially, White Oak has a prolific fundraising group and we were convinced that there would never be a liquidity issue around our product. We can get out into the market quickly and build a platform without major roadblocks or having to backtrack. Liquidity is critical in today's environment, but particularly so for a business that's defined by lending to other lenders who work in consumer or commercial finance. It's a huge boost to us that White Oak has the resources to provide the kind of credit facilities that best serve clients with scalable and reliable financing solutions. Being fortified with that kind of foundation makes it a lot easier to build a robust lender finance business.

You came to White Oak with a team, correct?

That's right. We arrived as a small team, having been given a mandate to grow the platform and personnel. I worked with Susan Hall and Neil Mulford, who joined White Oak at the same time as me. They were big contributors to the growth at AloStar. They know how to operate in a startup environment and build a business. Susan and I have worked together for almost 30 years and have assembled a couple of different platforms from scratch.

So, your entrepreneurial background will be a big plus at White Oak?

It will. If you look back over my career, I've always been in situations where I have tried to build and grow something. I went to SunTrust and was able to build a lender finance business from nothing. At AloStar, we also created something from the ground up. We bought a failing bank, wound it down and put together a commercial finance platform that grew to a $1 billion portfolio. Now we have the opportunity to partner with a great team that knows how to raise capital and execute deals. Again, White Oak has the capital and infrastructure to help us scale. We just have to grow our team prudently to go out and build the business.

Do you expect to contribute to White Oak in other ways?

While our main focus will be on the lender finance business, we can also help them grow their asset-based lending business. They do deals of different sizes: small, mid-size and large. We can help them with deals that range anywhere from $15 million to $200 million. There are synergies in the lender finance and asset-based lending businesses that we can leverage.

What makes White Oak unique?

As part of an alternative asset manager, we have the ability to be more creative and flexible in our lending terms. Taking a step back, regulations placed on the banks since the Global Financial Crisis have really changed how these institutions operate, and how they approach risk, in my opinion. After 2009, banks have been forced to limit the risk they hold on their balance sheets, putting them in a position where capital markets drive a lot of their business. So, they need to look at transactions that drive their capital markets fees.

By contrast, we can come in early in a lender's lifecycle and become a long-term partner, not just someone who's there to do a transaction. While the banks are being pushed into the position of structuring loans to meet a regulatory box, we cater to an investor's risk-return profile. And those investors have different risk appetites, giving us more structuring opportunities with more borrowers.

We also have a "people" advantage because we have three seasoned veterans in this space. Unlike asset-based lending, which has been around forever, lender finance is a relatively new product for banks. So I think there really hasn't been a lot of time to develop a deep bench in the space. The lender finance teams that have been successful have identified the right people to join their ranks; the teams that have struggled often hired less-experienced people who may have not known about the importance of infrastructure and systems to help manage their book of business. When you do that in the lender finance world, you can get yourself in trouble very quickly.

Are there particular niches in specialty finance where you plan to concentrate?

We are building a diversified portfolio of companies from many verticals within the lender finance business so we're not just a two- or three-category leader. We like ABL, factoring, consumer finance, and distressed assets, among others. Adding more than a dozen different buckets of asset classes to fill out the portfolio will give us a lot of granularity, options and diversification. Having many different products and verticals better protects the business if one particular company happens to hit a bump in the road.

Is expanding globally part of your agenda?

Absolutely. White Oak Global Advisors and its affiliates already have a presence in Europe and Australia, mostly in developed markets, so we think we'll be able to take advantage of those relationships.

How is the COVID-19 crisis affecting your business?

We have to understand how the economic slowdown has impacted every single company because it isn't hitting everyone equally. A lot depends on the diversification of their client base and the products they sell. We also need to understand how a company will fare in a world where it might be smaller over the next 18 months. Smaller companies with less equity may have difficulty repositioning to survive. The Paycheck Protection Program was a positive, but another large-scale shutdown would be extremely difficult for these businesses. We're working to find creative solutions for companies to keep their staff employed, so that when the economy does come back, they'll have the resources to grow.

It's also important to consider the outlook for middle-market companies throughout the pandemic and how that affects their borrowing needs. These businesses are anxious. According to second-quarter numbers in a survey released by Chubb and the National Center for the Middle Market, middle-market firms recorded a clear decline in economic confidence, revenue and employment growth, as well as a higher awareness of risk—especially where business environment volatility is concerned—compared to the same survey for Q4 2019. Late last year, middle-market businesses were far more optimistic about the future. Today, the longer the pandemic lasts, the more uncertain and perilous they say that future grows.

Whether we're talking about the lenders to middle-market companies or the companies themselves, they're looking to us for reassurance and help.

On a different note, the pandemic has also made it harder to meet with your customers in-person. I still like to walk the factory floor and sit down with CEOs to hear what they're doing with their companies so we can structure the right debt instrument for them. You can still do that today, but it's more difficult.

What impact is information technology having in your industry?

Historically, this has been a very people-intensive business. For years, you had to pour through tons of information manually. You'd also talk to your clients multiple times per week and get a lot of information on borrowing bases. Now, thanks to technology, we can collect data faster, do more granular analysis and identify trends earlier, all of which gives us significant operating leverage to benefit our clients. I would expect that to continue.

Technology is also making our people more efficient. For example, a portfolio manager might have been able to handle ten relationships in the past. With better technology to run different scenarios, we can add more accounts to her plate without sacrificing the quality of her work.

You are starting yet another new business. What's the appeal of that for you?

I love to create something out of nothing, guide it as it builds to scale and then watch the employees reap the benefits. I get a big thrill watching its impact ripple through each company.

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

Wolters Kluwer

When you have to be right

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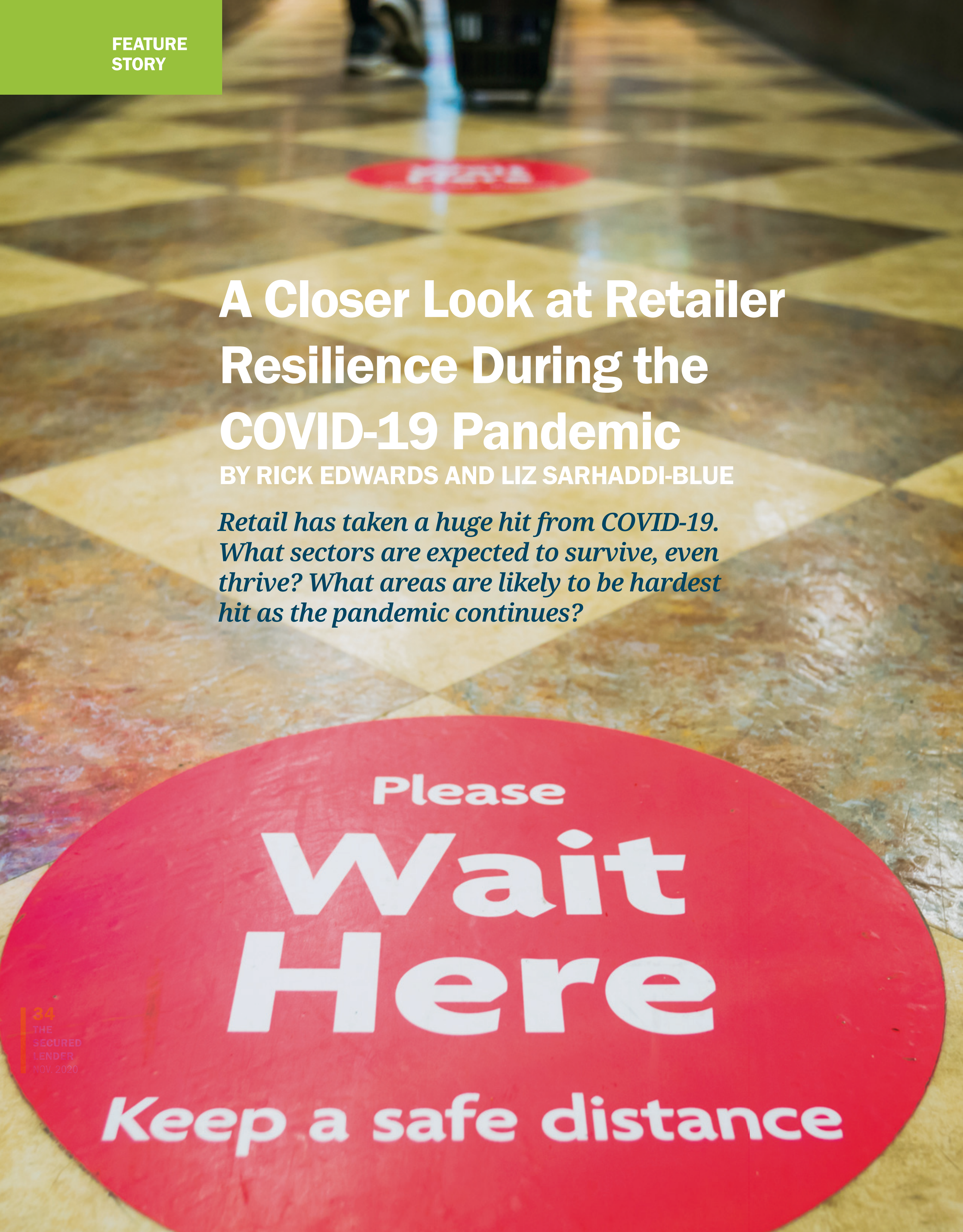
A Closer Look at Retailer Resilience During the COVID-19 Pandemic

BY RICK EDWARDS AND LIZ SARHADDI-BLUE

Retail has taken a huge hit from COVID-19. What sectors are expected to survive, even thrive? What areas are likely to be hardest hit as the pandemic continues?



Much has been written about the significant impact of the COVID-19 pandemic on the retail sector, as policymakers encourage consumers to wear masks and remain vigilant when leaving home, e-commerce sales have soared, and supply chain concerns persist. Retailers have been challenged to maintain operations and attract current "homebody" consumers, more than 68 percent of whom planned to continue their at-home habits after restrictions were lifted, according to a study by management consulting firm McKinsey & Company.[1]

RICK EDWARDS
Gordon Brothers

LIZ SARHADDI-BLUE
Gordon Brothers

The COVID-19 pandemic is having a more deleterious effect on retailers that were already facing pre-pandemic hurdles such as high debt loads, sector shifts away from core offerings, and slow progress toward digital sophistication. By contrast, companies that entered 2020 with strong e-commerce channels, favorable product sentiment, and stable cash flows with the ability to meet four-wall expenses[2] and other obligations, are better managing the pandemic. In addition, certain parts of the retail landscape—mainly essential services and home-related items—have been growing throughout the crisis, as demand in these areas has jumped.

Takeaways

1. The COVID-19 pandemic is having a more deleterious effect on retailers that were already facing pre-pandemic hurdles, such as high debt loads, sector shifts away from core offerings, and slow progress toward digital sophistication.

2. Companies that entered 2020 with strong e-commerce channels, favorable product sentiment, and stable cash flows are better managing the pandemic.

3. The increase in e-commerce demand has led to better performance from retailers with well-built, efficient digital platforms in place before the pandemic.

4. Even the largest retailers had to adjust or further develop their supply chains, digital offerings, or BOPIS services this year—adjustments that came at a cost.

5. Companies offering home-centric products have exhibited resilience due to ongoing needs from consumers, but the pandemic has also prompted greater price consciousness from U.S. consumers.

Advantage to Essential Services Retailers

A principal theme is that demand for essential services such as food, nonalcoholic beverages, and healthcare has remained robust throughout the pandemic (Figure 1). Sales at grocery stores, convenience stores, and broadline retailers have soared as consumers have stocked up on items considered indispensable. By contrast, from early April to mid-June, Americans reported less and less intent to return to spending on "discretionary" categories in the near term, according to the McKinsey study.

Looking specifically at grocers, the groundswell of consumers forced to shift away from restaurants toward eating at home due to nationwide closures also increased sales. According to Goldman Sachs survey data, in mid-March, less than half of U.S. consumers said they cook at home, but by the end of March this figure had risen to more than 75 percent.[3] For their most recent fiscal quarters, large grocers Albertsons Companies Inc., The Kroger Co., and Publix Super Markets Inc. reported hefty same-store sales growth (excluding fuel) of 26.5 percent, 19 percent, and 20 percent, respectively. By the end of May, smaller grocers were typically posting revenues more than 20 percent higher than in 2019, versus 5-percent revenue declines at other small business retailers, according to JP Morgan.[4]

Of course, essential service retailers with efficient delivery, curbside pickup, and buy-online-pick-up-in-store (BOPIS) platforms have been best positioned to weather the crisis (Figure 2). Companies weaker in these offerings had to swiftly expand them; for example, Bed Bath and Beyond rolled out and expanded its BOPIS and curbside pickup offerings to help meet 100-percent growth in digital sales in April and May. Smaller retailers without robust delivery platforms partnered with firms like San Francisco-based Instacart to meet rising demand. For the first week of April 2020, Instacart reported a 300-percent rise in customer volume year-over-year.[5]

Even the largest retailers had to adjust or further develop their supply chains, digital offerings, or BOPIS services this year—adjustments that came at a cost. For example, Target Corporation reported blockbuster same-store sales growth of 24.3 percent in its second fiscal quarter

[1] McKinsey & Company survey based on data collected in the U.S. from July 30 through August 2, 2020, sampled and weighted to match the U.S. general population age 18+, www.mckinsey.com/business-functions/marketing-and-sales/our-insights/survey-us-consumer-sentiment-during-the-coronavirus-crisis.

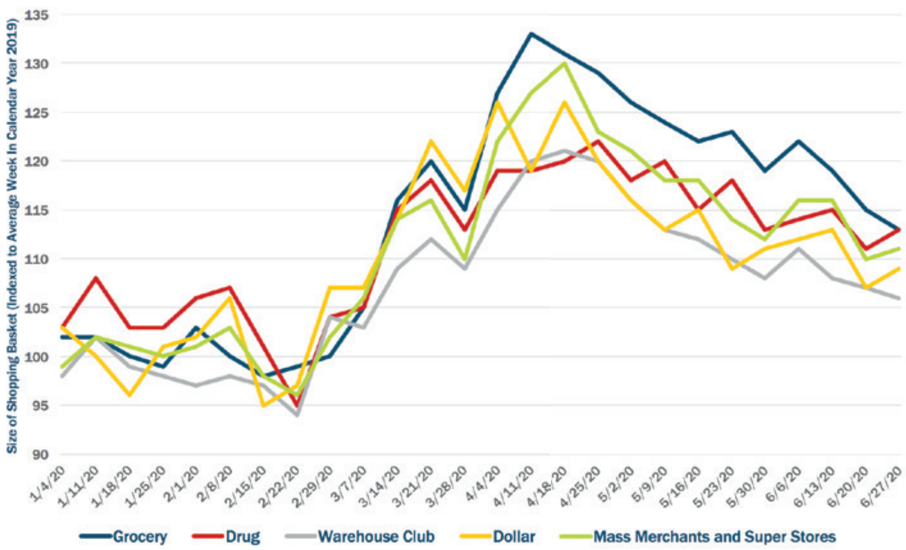
[2] The term four-wall expenses refers to direct costs required to operate a brick-and-mortar store, such as rent, utilities, and wages.

[3] Remarks from Katherine Fogertey, Restaurants Research Analyst, Goldman Sachs Global Investment Research on a Launch with GS podcast data April 8, 2020.

[4] Small Business Financial Outcomes during the COVID-19 Pandemic, JP Morgan Chase & Co., July 2020, institute.jpmorganchase.com/institute/research/small-business/report-small-business-financial-outcomes-during-the-covid-19-pandemic.

[5] Erika Adams. "Instacart Adds More Flexible Delivery Options As Customers Struggle to Place Orders," April 8, 2020, ny.eater.com/2020/4/8/21213463/instacart-grocery-delivery-app-updates.

Figure 1: Led by Grocery, Essential Service Demand Remained Strong Through



Source: Nielsen Homescan and Nielsen U.S. e-commerce measurement, 2020. The Nielsen Company (US), LLC.

ending August 1, 2020, comprising 10.9-percent in-store growth, 270-percent same-day delivery or BOPIS services growth, and 195-percent digitally originated growth. However, operating margin for the first two quarters of 2020 fell 30 basis points versus the same period in 2019. Still, Target and many of its peers have been nimble enough to meet the dramatic rise in activity that occurred very quickly, helping to build loyalty from new and existing customers that will likely last well beyond the pandemic.

Retailers Well-Positioned In Digital

In June 2020, U.S. online sales reached $73.2 billion year to date, up 76.2 percent from the same period a year earlier, according to credit rating agency Standard & Poor's. Overall, four out of five consumers have shifted their in-store shopping online, according to an April survey from global research and advisory firm 451 Research.[6] U.S. Census Bureau data for the second quarter of 2020 showed e-commerce growth of 44.5 percent over 2019, while total retail sales decreased 3.6 percent in the same period. Additionally, e-commerce as a percentage of total sales jumped to 16.1 percent as compared to 11.8 for the first quarter 2020.

Data shows that companies with bold digital strategies have had higher sales and operating profit over the past few years,[7] and the COVID-19 pandemic has continued that trend. The increase in e-commerce demand has led to better performance from retailers with well-built, efficient digital platforms in place before the pandemic. In 2019, nearly half of businesses surveyed by 451 Research did not have a formal digital transformation strategy and were not actively digitizing business processes and technologies.[8] For companies that 451 Research deemed "digitally delayed" prior to the pandemic, 46 percent stated that digital transformation was still not in the plan.[9] Meanwhile, larger retailers like Walmart Inc. and Target Corporation entered the pandemic with strong online platforms and fared better in consumers' shift online. That said, even companies with years of progress in digitization were forced to expand their platforms rapidly in recent months, with a quarter of "digitally driven" companies reporting an acceleration in their digital transformation timelines, according to 451 Research.[10]

Focus on Value-Oriented Retailers

The pandemic has prompted greater price consciousness from U.S. consumers. As consumers have sought value in their purchases, some consumer demands have shifted. While lower discretionary income typically helps value-focused retailers (as seen in the global financial crisis), dollar stores and other discount retailers have faced social distancing challenges to manage the influx of new business. Per company financial reporting, Dollar Tree Inc. and Dollar General Corp. both generated strong sales growth during the pandemic. For example, Dollar Tree reported comp store sales growth of 7.1 percent for the first half of 2020 on top of positive growth over the same period in 2019, with a gross margin increase of 1.8 points for the 13 weeks ended August 1, 2020. Similarly, Dollar General posted year-to-date comp stores sales growth of 21.7 percent over 2019 as of July 31, 2020. In April 2020, Five Below Inc. announced that it would continue its store expansion plans, but at a lower level, with an intent to open 100 to 120 stores versus the 180 stores originally targeted. The company has since furloughed employees and canceled or delayed orders to manage inventory levels.

That said, during the summer months promotional activity lessened, as many essential items became hot commodities. Only 21 percent of fast-moving consumer goods were sold on promotion in June 2020 versus 30 percent in June 2019.[11] However, basket sizes have come down from peak pandemic levels,[12] and as scarcity wanes for some of the most sought-after products, stores will need to reset and be attuned to price elasticity.

Home-Centric Products Prevail

Travel restrictions, work-from-home policies, and business closures have kept consumers at home and elevated demand for domestic products. In the U.S., more than three quarters of businesses implemented policies including travel bans (81 percent) and expanded work-from-home policies (75 percent)[13] some of which extend into 2021. Companies offering home-centric products have exhibited resilience due to ongoing needs from consumers.

[6] 451 Research's Macroeconomic Outlook, Consumer Spending Survey, dated April 2020 based on 1,151 complete responses from consumers in the U.S. and Canada between April 1, 2020, and April 13, 2020.

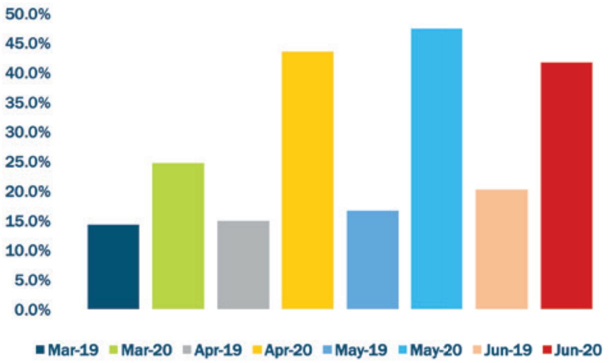
[7] Simon Blackburn, Laura LaBerge, Clayton O'Toole, and Jeremy Schneider, "Digital Strategy in a Time of Crisis," McKinsey & Company, April 22, 2020, www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-strategy-in-a-time-of-crisis.

[8] 451 Research's Voice of the Enterprise: Customer Experience and Commerce, Digital Transformation survey based on 636 respondents.

[9] 451 Research's Voice of the Enterprise: Digital Pulse, Coronavirus Flash Survey dated June 2020 conducted between May 26, 2020, and June 11, 2020, based on 575 complete responses from pre-qualified IT decision-makers.

[10] Ibid.

Figure 2: Sharp Rise in BOPIS Sales



Kibo Commerce, as of June 18, 2020. June 2020 data reflects activity from June 1 to June 11.

- **Home Improvement**

  Home confinement spawned a rash of do-it-yourselfers commencing small home-improvement projects, leading to increased demand at companies such as The Home Depot Inc. and Lowes Companies Inc. These companies had advanced digital platforms before the pandemic, allowing them to meet the boom in online orders. For the second fiscal quarter of 2020, Home Depot reported a comparable store sales increase of 23.4 percent, while Lowe's reported an increase in U.S. comps of 35.1 percent for the same period.

- **Home Office**

  Office equipment has also increased in demand, given new requirements for home office setups, leading to resilience at stores like Staples Inc. and The ODP Corporation (Office Depot). Office Depot reported a 17-percent sales decline in the second quarter of 2020, but this topline contraction included double-digit growth in e-commerce sales.

- **Sporting Goods**

  The broad shift to working out at home has kept sporting goods stores afloat, especially those with rich online platforms. Throughout the pandemic, people have been encouraged to be outside, which has expanded the demand for outdoor fitness equipment. Without team sports, demand for individual fitness equipment has ratcheted higher and boosted online sales at stores like Dick's Sporting Goods Inc. Dick's online revenues shot up 110 percent in the first fiscal quarter ending May 2, 2020, though overall same-store sales fell 30 percent due to brick-and-mortar store closures and reduced customer foot traffic. However, sales rebounded as stores reopened in June, with comps increasing 20.7% for the second quarter ended August 1.

Weights, personal fitness trackers, and other home fitness gear have been highly sought after, and big-ticket exercise equipment has also become more in demand due to lockdowns. Recreational services provider Peloton Interactive Inc.'s revenue increased 66 percent and paid subscribers rose 64 percent in its third fiscal quarter ending March 31, 2020. Peloton also raised its fiscal 2020 guidance on strong performance. Of course, sporting goods stores with more developed direct-to-consumer platforms, such as Nike Inc., have been better able to offset topline weakness from store closures. For its fourth fiscal quarter ending May 31, 2020, Nike revenues fell 38 percent, as approximately 90 percent of Nike brand stores across major geographies were closed for about eight weeks. However, this sales decline included 79-percent growth in Nike digital, representing about 30 percent of total revenue. The company had previously targeted reaching 30-percent digital penetration by 2023, but the timeline has accelerated due to the pandemic, as company management now expects to reach 50-percent digital penetration in the foreseeable future.

Overall in the U.S., sporting goods and leisure year-over-year sales growth was 17.8 percent in July 2020, according to the U.S. Census Bureau, as lockdowns eased and consumers could return to stores. However, like all brick-and-mortar retailers, sporting goods stores have had to fund additional labor and safety costs and prepare for the removal of lease relief. Dick's was one of many retailers shoring up liquidity due to pandemic-related costs; Dick's expanded its revolving credit facility by $255 million and drew down $1.4 billion in response to the pandemic. Nike issued $6 million of senior unsecured notes, increased its commercial paper program by $2 billion, and entered a new $2 billion revolving credit facility.

Looking ahead to a COVID-19-influenced holiday season, consumers can look to projections for guidance on what to expect. Research organization The Conference Board offers an optimistic scenario in which the U.S. gross domestic product growth momentum seen from May through August is sustained for the remainder of the year, albeit at a slower pace. This outlook contemplates a swoosh-shaped recovery for the U.S. economy, which projects a strong rebound of 6.9 percent in 2021. In this scenario, U.S. monthly economic output recovers completely to pre-pandemic levels by January 2021. Although 2021 will likely come in below 2019 in absolute dollars, these numbers reflect a recovery all hope to see.[14]

Rick Edwards is the president of Gordon Brothers' Retail division and is responsible for divisional growth strategy while overseeing all retail client engagements and daily operations. Rick lends specific merchandising expertise, strategic planning, and leadership to asset disposition deals. He is also responsible for the division's overall strategic vision and retail business development initiatives.

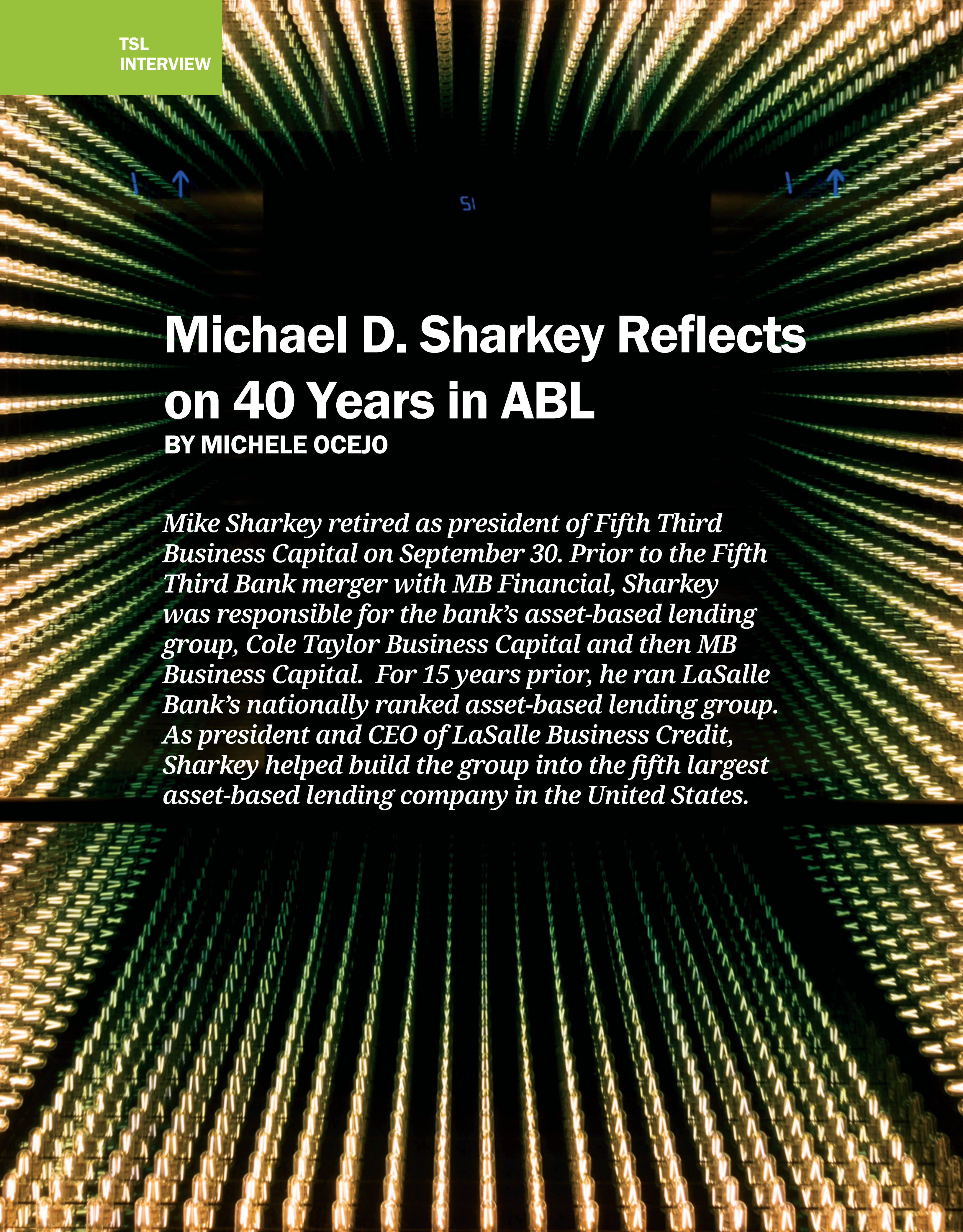
Liz Sarhaddi-Blue is the managing director for Retail Marketing & Business Development for Gordon Brothers. Liz develops customized marketing plans for the firm's top retail clients, collaborates with divisional leadership on client-specific strategies, and contributes to the business development efforts of the group.

[11] "Predicting the COVID-19 Behavioral Reset," Nielsen CPG, FMCG & Retail, August 6, 2020, www.nielsen.com/us/en/insights/report/2020/predicting-the-covid-19-behavioral-reset (data for period ending June 14, 2020).

[12] Ibid.

[13] 451 Research's Voice of the Enterprise Digital Pulse Coronavirus Flash Survey dated March 2020 based on 820 responses from IT decision makers from organizations in a range of sizes, geographies, and markets.

[14] The Conference Board Economic Forecast for the US Economy, September 9, 2020, www.conference-board.org/research/us-forecast.



Michael D. Sharkey Reflects on 40 Years in ABL

BY MICHELE OCEJO

Mike Sharkey retired as president of Fifth Third Business Capital on September 30. Prior to the Fifth Third Bank merger with MB Financial, Sharkey was responsible for the bank's asset-based lending group, Cole Taylor Business Capital and then MB Business Capital. For 15 years prior, he ran LaSalle Bank's nationally ranked asset-based lending group. As president and CEO of LaSalle Business Credit, Sharkey helped build the group into the fifth largest asset-based lending company in the United States.

During his tenure at LaSalle, he also served as executive vice president for LaSalle Bank and ABN Amro. Sharkey began his career in financial services with GE Capital as a field examiner and loan officer and moved on to Manufacturers Hanover Commercial Corporation where he served as senior loan officer. From there, he joined and within four years became president of StanChart Business Credit, which was ultimately acquired by LaSalle Bank. Sharkey devoted his career to building teams of talented asset-based financing professionals committed to managing risk, creative thinking, excellent customer service, and being a trusted partner to thousands of middle-market businesses. He is a recipient of the SFNet Lifetime Achievement Award and has been inducted into SFNet's Hall of Fame. He is also a past president and chairman of SFNet.

MICHAEL D. SHARKEY
Retired President
Fifth Third Business Capital

What would you say has been the most significant change in the industry over your career?

That is an interesting question. One might say the recent proliferation of the fincos has been, a significant change but, when I got into the business in 1978, the entire industry was made up of finance companies! The ABL universe was made up of companies like GE, Heller, Associates, AJ Armstrong, Talcott, CIT and Commercial Credit. The banks didn't really start getting into ABL until the 1980s. I think the biggest change that I have seen in the industry is the rapid advancement in technology. Technology has made every aspect of our business from top to bottom more efficient. This has allowed the banks to get into and stay in the game and has driven margins down dramatically over time. Those tight margins make it difficult for the fincos to compete on the better-quality deals. However, the other major trend of rapidly rising regulation and compliance requirements have made room for those higher priced alternative lenders on the tougher deals. In short, there has been such widespread acceptance of our product into the mainstream of lending that there is plenty of room for everyone. ABL lenders are no longer just the lenders of last resort.

If you could go back 40 years and give advice to yourself, what would you say? Would you give the same advice to the young professionals of today?

The most significant piece of advice that I was given early on in my career was that, no matter how strong a mentor you think you have or how supportive a manager, no one is ever going to care about your career as much as you do yourself. That is very true and that is why over the years I have rarely tried to talk an employee out of pursuing an alternative opportunity. The other tenet that I have always subscribed to is never turn down a promotion even if you think that you aren't ready for it. That opportunity may never come again and, even if it does, you don't want to slow down your ability to get the next one after that. You have to be confident that you can do the job or learn how to quickly. The only positions that I turned down were those that would have taken me away from ABL. I deeply care about what we do and I believe that we accomplish a lot of good in this world for thousands of people employed by our customers.

What were some of the most memorable deals over your career?

When I was a loan officer at Manufacturers Hanover, we literally financed the first sales of a small company in McHenry, Illinois that was assembling golf clubs in an old flower mill. The name of that company was Taylor Made. At Stanchart in the 1980s, we financed the buyout of the Steinway Piano company for two brothers in Boston and at LaSalle we did a deal with Congress Financial where we literally financed the first shipments of Kia automobiles into the United States. None of those deals could have been financed without the ABL product. When I announced my retirement, I received dozens of emails from customers and referral sources remembering certain situations or transactions that we did together. All of them were memorable in their own way.

Do you have any advice for readers about surviving the ongoing effects of the pandemic?

My advice is to take care of yourself and your family and remember what is important in life. In some ways, this pandemic is a gift to those of us who don't know how to slow down or spend enough time with our families. Use the time to reconnect. You don't have that long commute, so sleep in a little each day. Get some rest. This pandemic is going to pass and things will get back to normal at some point so enjoy this time while it lasts and for what it is. I am sure it is something that everyone will be telling their grandchildren about. Of course, we all feel for those who have lost loved ones. For my part, this time has given me the confidence that there is more to life than working and that I should enjoy it now while I still can.

What are your plans for retirement?

My plan at first is to have no plan. I finally decided that it was time to do this and that I am just going to have to figure it out as I go. I have a number of friends who have retired, and while they certainly went through an adjustment period, most say that there are not enough hours in the day. Of course, you may see my wife Sue and I wandering around an SFNet chapter meeting, a convention or the ABCC in Las Vegas looking to catch up with old friends. After 40 years, we have a lot of them!

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

REGULATORY INSIGHTS

The Great Transition: A 2020 LIBOR Transition Recap and Things to Keep in Mind as We Approach 2021

BY KIM DESMARAIS

Lenders and borrowers have had much to contend with in 2020, including an unforeseen and devastating pandemic upending the way we live and conduct business. One constant remains though, and that is that LIBOR is widely expected to cease to be the benchmark rate for loan and derivative products after 2021 and transition efforts remain underway.

It is hard to believe that it has been over three years since the July 2017 announcement by the then-chief executive of the UK's Financial Conduct Authority ("FCA") that the FCA had reached an agreement with LIBOR panel banks to continue submitting London Interbank Offered Rate ("LIBOR") quotations through the end of 2021, but that the financial markets should not expect LIBOR to continue to be published after that date. While market participants around the world have recovered from the shock of that statement and come to terms with the expected cessation of LIBOR, there remains a significant amount of work to ensure a smooth transition to a new benchmark rate, including the Secured Overnight Financing Rate ("SOFR"), which has emerged as the leading contender to serve as the primary alternative to USD LIBOR. This article provides a brief recap of where we are today, a look at potential replacement rates and suggestions as to things that lenders and borrowers should keep in mind as we approach 2021.

KIM DESMARAIS
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2020 has been a productive year on the transition front despite COVID-19

The Alternative Reference Rate Committee ("ARRC"), a group of private-market participants convened by the Federal Reserve Board and the New York Fed to help ensure a successful transition from USD LIBOR to a more robust reference rate, was reconstituted in 2018 to, among other things, coordinate and track LIBOR transition planning. Consistent with its "Key Objectives for 2020"[1] and despite hurdles posed by the pandemic, a significant amount of work has been done in 2020 to further aid market participants in the transition away from LIBOR. Below are a few highlights.[2]

- "Consultation on Spread Adjustment Methodologies for Fallbacks in Cash Products Referencing USD LIBOR" — released January 2020
- Released "Best Practices for Completing Transition from LIBOR", clarifying recommended timelines and interim milestones for the transition away from LIBOR in a way that will minimize market disruption – May 2020
- Published "Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products" – June 2020
- Developing conventions related to using SOFR in arrears, both daily simple SOFR and daily SOFR compounded in arrears, in syndicated loans – July 2020
- Hosted a multi-session webinar called the "SOFR Summer Series," which was designed to, among other things, educate the public about the development and strengths of SOFR
- Released "Internal Systems & Processes: Transition Aid for SOFR Adoption", to assist lenders with operationalizing the transition to new benchmark rates – July 2020
- Updated "Hardwired Approach" recommended language for syndicated loans released in June 2020 and recommended language for bilateral loans released in August 2020
- Released a "SOFR Starter Kit" to provide market participants with the primary tools for the use of SOFR in new loan and derivative products – August 2020
- Released two RFPs to the market for selection of administrators and publishers of Term SOFR and SOFR spread adjustments – September 2020

The Loan Syndications and Trading Association ("LSTA") also is having an active and productive 2020, including in its role as co-chair of the

[1] See "ARRC Announces its Key Objectives for 2020", April 17, 2020.
[1] See link to ARRC website with additional details. https://www.newyorkfed.org/arrc/announcements

ARRC's Business Loan Working Group ("BLWG"). Summarized below are a few of the key documents and announcements released by the LSTA to assist the syndicated loan market with the transition to and operationalization of new SOFR-based rates.[3]

- Developing "concept" credit agreements based on daily simple SOFR in arrears and daily SOFR compounded in arrears;

  — As noted by the LSTA, the concept credit agreements are "illustrative examples" and were developed as an "educational tool" to support the transition to SOFR-referenced loans.

- Establishing a working group to develop operative terms that can be used in amendments and other documents to aid in the transition from LIBOR to Daily Simple SOFR in Arrears in legacy syndicated loans
- Publishing examples of the various SOFR-based rates and analysis of the related conventions to assist the market with understanding how the rates operate relative to each other and LIBOR. LIBOR: Conventions for Unconventional Thinking – July 2020[4]

SOFR – What It Is and What Has Changed Since 2019

SOFR is the average rate at which institutions can borrow U.S. dollars overnight in the repo market secured by U.S. Treasury securities. It is published by the New York Fed on each business day at approximately 8 a.m. Eastern time and reflects the previous day's SOFR. The ARRC selected SOFR as its preferred rate to replace USD LIBOR. As noted in the ARRC "SOFR Starter Kit", "SOFR has several characteristics that make it much safer and less vulnerable to manipulation by private actors than LIBOR, including that it:

- Is based on an active underlying market with a diverse set of borrowers and lenders;
- Is based entirely on transactions (not estimates);
- Is produced in compliance with international best practices; and
- Covers multiple market segments, ensuring robust transaction volumes in a wide range of market conditions."

However, it is well documented that there are certain fundamental differences between SOFR and LIBOR, which are summarized in the table below:

Feature	LIBOR	SOFR
Term	Forward term rates (seven tenors, from overnight to one year)	Backward-looking overnight rate
Credit Spread	Reflects bank credit risk	(Nearly) zero credit risk
Construction	Bank submissions, based on actual transactions and "expert judgment"	Based solely on actual transactions

To address the "term" difference between LIBOR and SOFR, the ARRC has set a goal of actively finding an administrator to develop and publish forward-looking term rates or "Term SOFR". As noted by the LSTA[5], all cash asset classes prefer this SOFR-reference rate to the other options, which are summarized below, because (1) it is known in advance of the applicable interest period and (2) since it will operationalize similar to LIBOR, operational risk will be minimized upon LIBOR cessation. The creation of a "Term SOFR" is the final step in the ARRC's Paced Transition Plan and, based on the RFP released by the ARRC in September 2020 and assuming sufficient liquidity in the SOFR derivatives market, it is aiming to have these forward-looking rates available to the market by the end of the first half of 2021.

In the meantime, a few overnight SOFR-based rates have emerged over the last year and a half or so for use in the loan markets to assist with the transition away from LIBOR. These are based on certain "conventions" in terms of how daily SOFR is used to determine the interest rate for the applicable period. In the case of "Compounded SOFR in Arrears", "Compounded SOFR in Advance", "Simple SOFR in Arrears" and "Simple SOFR in Advance", instead of being based on a single day's published rate, each of these rates are based on an average of published rates over a predetermined period.

- Compounded SOFR in Advance – References the average of SOFR published rates determined *prior to* the beginning of the current interest period and multiplied by the outstanding principal + accrued and unpaid interest
- Compounded SOFR in Arrears – References the average of SOFR published rates *during* the current interest period and multiplied by the outstanding principal + accrued and unpaid interest
- Simple SOFR in Advance – References the average of SOFR published rates determined *prior to* the beginning of the current interest period and multiplied by the outstanding principal
- Simple SOFR in Arrears – References the average of SOFR published rates *during* the current interest period and multiplied by the outstanding principal

The ARRC has concluded that such averaging "will accurately reflect movements in interest rates over a given period of time and smooth out any idiosyncratic, day-to-day fluctuations in market rates."[6] The averaging, from a technical perspective, may be either "simple" or "compounded". A fundamental difference between the two conventions relates to the time value of money, which is not addressed

Takeaways

1 **2020 has been an active year on the LIBOR transition front. The ARRC and LSTA have released further guidance and updated documents to assist the market with the transition away from LIBOR.**

2 **Understand SOFR, SOFR-based rates and the related conventions. Doing so will aid lenders and borrowers as the loan market moves to "hardwiring" in alternative benchmark rates.**

3 **Have a LIBOR transition plan. While the impact of the transition is uncertain, working with experienced advisors to assist with the legal, regulatory and the operational impact will assist with anticipating the potential impact.**

[3] See link to LSTA website with additional details. https://www.lsta.org
[4] See https://www.lsta.org/news-resources/libor-conventions-for-unconventional-thinking
[5] See "To Dream The Possible Dream: Term SOFR & Spread Adjustments" published by the LSTA on September 15, 2020. https://www.lsta.org/news-resources/to-dream-the-possible-dream-term-sofr-spread-adjustments

with the "simple" convention and could be an issue in rapidly changing interest rate markets. While the "simple" convention could result in significant value variation, the ARRC and the LSTA have indicated that their analysis suggests this is only a theoretical concern, i.e., when applied and compared to one another, the basis, if any, between "simple SOFR" and "compounded SOFR" has typically been not more than a few basis points. The "simple" convention, on the other hand, offers ease of implementing since it can be accommodated by current systems. Moreover, in the case of "in arrears" calculations, since the rate is not known at the beginning of the interest period, there could be issues associated with calculating the rate in enough time to invoice the borrower. Certain conventions, as summarized below, have been developed to address this issue. It is worth noting that the "plain" payment convention has generally not been considered a workable solution since it does not sufficiently address the timing issue.

Convention	Compounded or Simple SOFR in Arrears
Plain Payment	Averaged SOFR over the current interest period is paid on the first day of the next interest period. Requires payment on the same day that final interest payment amount is known.
Payment Delay	Averaged SOFR over current interest period is paid [x] days after the start of the next interest period.
Lookback	For every day in the current interest period, use the SOFR rate from [x] days earlier.
Lockout	Averaged SOFR over current interest period is used with last rates set at the rate fixed [x] days before the period ends – may be necessary for terminal interest accruals under the "Payment Delay" convention.

In July of this year, the ARRC released "SOFR 'In Arrears' Conventions for Syndicated Business Loans" in which it recommended that either Compounded SOFR in Arrears or Daily Simple SOFR in Arrears be used in syndicated business loans. Consistent with these recommendations, the ARRC updated its "Hardwired Approach" recommended fallback language for syndicated loans to replace "Compounded SOFR in Arrears", which was the second step in the rate fallback waterfall after "Term SOFR", to "Daily Simple SOFR in Arrears". To assist the market in transitioning to this rate, both in new syndicated loans and as a fallback in USD LIBOR legacy loans, the LSTA shortly thereafter published its "Daily Simple SOFR in Arrears" Concept Credit Agreement. A comparison of this concept credit agreement against the LSTA form term loan credit agreement is equally useful in understanding the technical modifications required to implement Daily Simple SOFR in Arrears into syndicated credit agreements. Understanding these rates and the various conventions will become increasingly critical as we approach June 30, 2021, the cutoff date

Convention or Feature	Daily Compounded SOFR in Arrears	Daily Simple SOFR in Arrears
Calculation	Daily SOFR pulled for each day in the current interest period and on each business day multiplied by (a) the outstanding principal + accrued and unpaid interest or (b) 2 different methodologies that apply a calculated rate of daily compounded interest to principal – a "Cumulative Compounded Rate" and a "Noncumulative Compounded Rate"	Daily SOFR pulled for each day in the current interest period and on each day multiplied by the outstanding principal
Payment Delay, Lookback or Lockout?	Business day lookback without an "observation shift" (without shifting the observation period so that each daily SOFR rate applies to repo transaction period it represents)	Same as Compounded
Holiday & Weekend Convention	Apply preceding business day's rate, weighted by the number of calendar days until the next business day	Same as Compounded
Day Count	Actual/360 days	Same as Compounded
Floors (new SOFR loans)	Floor calculated daily, not at the end of an interest period	Same as Compounded
Spread Adjustment (Fallback to SOFR in LIBOR legacy loans)	ARRC/ISDA spread adjustment for the appropriate tenor, provided that while the daily SOFR is compounded the spread adjustment and the loan margin would be treated as simple interest added to the compounded rate	ARRC/ ISDA spread adjustment for the appropriate tenor
Floors (Fallback to SOFR in LIBOR legacy loans)	Apply LIBOR legacy floor, but as applied would be the difference between the LIBOR Floor Rate and the SOFR spread adjustment	Apply LIBOR legacy floor to the daily SOFR rates plus the SOFR spread adjustment

[6] See "A User's Guide to SOFR", the Alternative Reference Rate Committee, April 2019.
[7] See Staff Statement on LIBOR Transition Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and Office of the Chief Accountant, July 12, 2019.
[8] See Office of Compliance Inspections and Examinations Risk Alert - Examination Initiative: LIBOR Transition Preparedness, June 18, 2020.

for new issuances of USD LIBOR loans as recommended by the ARRC in its "Best Practices". The ARRC's recommended conventions are summarized on the table on previous page.

To address the "credit spread" and "calculation" or cost of funds issue in USD LIBOR legacy transactions that will transition to SOFR, the ARRC has actively been working to develop "spread adjustments" and "spread adjusted rates" that look at the historical difference between LIBOR and SOFR based on a 5-year look-back period and, for consumer products, with a 1-year transition period. As noted above, the ARRC recently issued an RFP for the selection of "one or more firms" to publish indicative and static spreads and spread-adjusted rates for cash products that will transition away from USD LIBOR. The RFP requires the administrator(s) to be ready to publish the spreads and rates no later than March 31, 2021. As a result of the RFP and the publication deadline, we may see more interest by the market to implement LIBOR fallback language in syndicated and bilateral loans based on the "Hardwired Approach." This interest could build off of the momentum we saw in the syndicated loan market as we approached the ARRC's September 30, 2020 recommended date for implementation of hardwired fallback language in new syndicated business loans and in connection with the press release by the Federal Financial Institutions Examination Council in July 2020 guiding banks to include language, presumably hardwired, in their new contracts that provides for a "clearly defined alternative reference rate" upon LIBOR's cessation.

Year-end goals and possible 2021 LIBOR resolutions

As we approach the last part of 2020, it is a good time to consider what we hope to resolve in 2021. While the impact of LIBOR cessation on the U.S. lending market remains to be seen, there are many steps that can be taken now and into 2021 to ease the transition for both lenders and borrowers. Seeking the assistance of experienced advisors to assist with the legal, regulatory and the operational impact of the transition, both on legacy transactions referencing LIBOR and new SOFR rate loans, would be prudent and can help both lenders and borrowers anticipate the impact of LIBOR's expected cessation.

Knowing your portfolio is a primary goal for all market participants and a key factor in the ARRC's "Best Practices."[7] If you are a public filer or SEC registrant, this takes on even greater importance in light of the SEC's Staff Statement on LIBOR Transition released in 2019 and the risk alert on LIBOR Preparedness released by the Office of Compliance Inspections and Examinations in 2020[8], each of which focus on LIBOR exposure assessments and risk mitigation strategies in connection with the cessation of LIBOR. Lenders that have a comprehensive understanding of their LIBOR exposure, including now and through the transition to new benchmark rates, should experience an easier path to remediation and the transition of their portfolio to new SOFR-based rates, including greater success in amending their contracts when required. It also will allow both lenders and borrowers to immediately understand the impact of legislative solutions should they emerge in the United States, regulatory changes that U.K. regulators may implement that could allow "LIBOR" to continue beyond 2021 in the United States, or judicial decisions that could inform the interpretation of legacy contracts.

The ARRC has recommended in its "Best Practices" that new issuances of USD LIBOR-based loans should cease by June 30, 2021. Assuming that the market adheres to this best practice, we could see a significant number of lenders moving to SOFR-based rate loans as we approach and head into 2021. Since the loan markets appear to be coalescing around the SOFR-based options noted above, it would be pragmatic to review and understand those rates and their related conventions and adjustments. It would likewise be prudent for borrowers to understand how and when these rates will be calculated and any effect the conventions have on timing of interest payment dates to ensure existing payment systems can be adjusted accordingly. Lenders will want to consider what SOFR-based rates can be operationalized today and those that will require further enhancements or modifications to their existing systems. The ARRC's "Internal Systems & Processes: Transition Aid for SOFR Adoption" provides a useful guide when thinking about how to transition systems to handle SOFR-based rates and the systems and processes impacted at each step of the transition.

A critical concern with the LIBOR transition from a tax perspective is whether a taxable event would occur upon the transition to a new rate. In response to regulatory relief sought by the ARRC and other private sector groups overseeing the LIBOR transition, on October 9, 2019, the Treasury and Internal Revenue Service published Proposed Treasury Regulations intended to facilitate transitions from LIBOR (and other interbank offered rates) to alternative rates without adverse tax consequences. There are, however, certain parameters that must be met for contract changes addressing a transition from LIBOR to a new replacement rate to not result in a "significant modification" or a taxable event, including that the replacement rate must be classified as a "qualified rate." As a result, it would be prudent for both borrowers and lenders to consult with their tax advisors as they are negotiating these contract changes, including the implementation of fallback language.

Please feel free to contact Kim Desmarais at 212.326.3414 or kdesmarais@jonesday.com if you would like to discuss further any LIBOR transition issues noted above.

The views and opinions set forth herein are the personal views or opinions of the author; they do not necessarily reflect the views or opinions of the law firm with which the author is associated.

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LEGAL INSIGHTS

The Main Street Lending Program: Can It Work With An Asset-Based Credit Facility?

BY DAVID W. MORSE

As the Secured Finance Network and its members have examined the Main Street Lending Program, there have been two aspects of the program in particular that have been identified as impacting on the utility of the program for borrowers from asset-based lenders.

Both points, along with some others, have been raised in letters from the Secured Finance Network to the Department of the Treasury and the Federal Reserve. And the Secured Finance Network has followed up with specific questions to Treasury arising from the "Main Street Lending Program Frequently Asked Questions" published on July 31, 2020 by the Federal Reserve Bank of Boston (the "FAQs") in understanding what is permitted under the Program that could significantly impact how it may be used with an asset-based facility.

First, there are the requirements for a company to be an "Eligible Borrower" under the Program. The criteria are tied to EBITDA, which is not necessarily the best benchmark for a typical asset-based borrower. As the Secured Finance Network has pressed the issue, informal indications from the Treasury and several references in the FAQs suggest that the Treasury and Fed are considering how the existing criteria might be adapted to facilitate liquidity for an asset-based borrower. The Secured Finance Network has even generated support for its position from the Senate Committee on Banking, Housing and Urban Affairs as set out in the July 31, 2020 letter from the Committee's Chairman, Mike Crapo, to the Department of the Treasury and the Federal Reserve.

Second, there is the requirement that the liens that secure the Main Street Lending Program loans must be "senior to, or pari passu with, in terms of priority and security," the borrower's other debt (other than debt secured only by real estate). This is referred to in the materials for the Program as the "Priority and Security Requirement," discussed below in more detail.

If the debt under the Main Street Lending Program must be secured by liens on the same collateral that secure the asset-based facility on a pari passu basis, then what's the point?

There will need to be a reserve against the borrowing base for such debt and there is no benefit to the borrower of any additional liquidity. This "Priority and Secured Requirement" has reduced the interest of asset-based lenders in finding ways to use the Main Street Lending Program with their borrowers.

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Is there a way that asset-based lenders may be able to have borrowers access the Program? In fact, in a careful review of the FAQs, there do appear to be certain paths for the use of the Main Street Lending Program in conjunction with an asset-based facility.

Any discussion of the Main Street Lending Program requires working through each of the different facilities available under the program:

- the Main Street New Loan Facility (MSNLF)
- the Main Street Priority Loan Facility (MSPLF)
- the Main Street Expanded Loan Facility (MSELF)

Putting aside the issues around whether a borrower is eligible, let's just focus on the lien priority issue in the context of each of the types of facilities.

Main Street New Loan Facility (MSNLF)

The Main Street New Loan Facility (MSNLF) is the most straightforward. Loans under the MSNLF may only be term loans but may be either secured or unsecured. Obviously an unsecured facility avoids the issue—but also as a practical matter means that an "Eligible Lender" under the program is prepared to make an unsecured loan to an Eligible Borrower using such lender's own underwriting standards. Or as said in FAQ I.2:

> "Eligible Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application. Eligible Lenders will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. An Eligible Lender may require additional information and documentation in making this evaluation and will ultimately determine whether an Eligible Borrower is approved for a Program loan in light of these considerations."

But, even if the Eligible Lender is not prepared to make an unsecured loan, the Eligible Lender may make a MSNLF loan secured by a second lien on the collateral (FAQ B.3), subject to an intercreditor agreement negotiated between the Eligible Lender making such loan and the asset-based lender. This is because the MSNLF does not have a “Priority and Security Requirement” like the Main Street Priority Loan Facility (MSPLF) and the Main Street Expanded Loan Facility (MSELF). The MSNLF loan may not be “contractually subordinated in terms of priority” as stated in B.3 of the FAQs, which refers to “debt subordination” but does not prohibit “lien subordination.” FAQ B.3 says that the provision that the MSNLF Loan not be contractually subordinated does not prevent the issuance of a MSNLF Loan that is a secured loan “including in a second lien or other capacity”, and whether or not the Eligible Borrower has an outstanding secured loan of any lien position or maturity.

Consequently, an MSNLF Loan may be secured by a second lien on collateral that is subject to a first priority lien to secure obligations arising under an asset-based credit facility. While the FAQs do not specifically address intercreditor issues, the use of a typical intercreditor agreement is certainly consistent with the general principles of documentation under the Program.

Main Street Priority Loan Facility (MSPLF)

Unlike the MSNLF, the Main Street Priority Loan Facility (MSPLF) has the Priority and Security Requirement as set out in FAQ C.5. So, do we just stop right there?

Actually, FAQ C.5 also says:

> “The MSPLF Loan need not share in all of the collateral that secures the Eligible Borrower’s other Loans or Debt Instruments”.

This FAQ is the key.

This means that the asset-based facility may have its first priority lien on receivables and inventory, without the requirement of having a pari passu lien to secure the MSPLF loan on the same collateral. Problem solved? And the good news about the MSPLF loan is that it may be used to refinance existing debt.

What’s the catch?

For an MSPLF loan, either the loan must be secured by the same collateral on a pari passu basis with the asset-based debt or if not, then the “Collateral Coverage Ratio” for the MSPLF loan at the time of its origination must be either:

- at least 200%, or
- not less than the aggregate Collateral Coverage Ratio for all of the Borrower’s other secured Loans or Debt Instruments (other than Mortgage Debt).

What is a “Collateral Coverage Ratio”? The term “Collateral Coverage Ratio” is defined in FAQ C.5 to mean:

- the aggregate value of any relevant collateral security, including the pro rata value of any shared collateral, divided by
- the outstanding aggregate principal amount of the relevant debt.

So, if the MSPLF loan can be secured either on a loan to collateral value ratio of “2 to 1”, that is 2 times the collateral value to the amount of the loan, or the ratio of the loan to value of the collateral for the MSPLF is the same or better than the loan to value ratio for the other secured debt (like the asset-based facility), then there may be separate pools of collateral for the MSPLF loan and the asset-based facility (with no lien on the receivables and inventory that the asset-based lender is relying on to secure the MSPLF debt).

There is a question about what “value” to use for purposes of this ratio, and the suggestion is that it should be the same form of value that the lender would use in the ordinary course, whether that is appraised fair market value for real estate or appraised net orderly liquidation value of equipment or other applicable methodology—tying back to the lenders’ own underwriting standards.

Obviously, a borrower may or may not have other collateral to give for the MSPLF, but keep in mind that even if the borrower has existing debt secured by assets like real estate or equipment, that debt may be taken out and replaced with the MSPLF loan.

There is another option.

The MSPLF might be used where the lenders under an existing syndicated credit facility were interested in reducing their exposure to an Eligible Borrower. Unlike with the MSNLF or a MSELF, the proceeds of a loan under a MSPLF may be used to refinance existing debt owed by the Eligible Borrower to a Lender that is not the Eligible Lender. FAQ H.33 says that “…however, the Eligible Borrower may, at the time of origination of the MSPLF Loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender.”

So, in an existing syndicated credit facility, a new institution that is an Eligible Lender under the Main Street Lending Program could become a lender in the syndicated facility and its share of the credit facility could reduce the loans and commitments of some or all of the other lenders in the credit facility.

For example, suppose a Lender is the agent for a $60 million senior secured asset-based facility to a Borrower that otherwise satisfies the various requirements for an MSPLF loan. The Lender is the agent for itself and another bank and each have a $30 million commitment in the credit facility, secured by liens granted to the agent. A third institution, that is an Eligible Lender, could make a $20 million MSPLF Loan and then each existing Lender could reduce its commitment by $10 million to keep the facility at $60 million, with each of the three Lenders now having a $20 million commitment. The obligations of all three Lenders would be secured by the lien of the agent as is customary at the same level of priority with the proceeds of collateral shared pro rata between the three Lenders so as to satisfy the MSPLF Priority and Security Requirement.

To the extent that the existing syndicated credit facility is a revolving facility, rather than a term loan facility, since the MSPLF may only be a term loan, there would be some issues to be addressed. To have the MSPLF Loan as a term loan work alongside the other revolving loans, the regular, recurring payments on the revolving loans in the ordinary course would need to be permitted without a concurrent payment on the term loan of its pro rata share of such payment, otherwise it would defeat the purpose of the revolving facility, where a borrower may make payments and then reborrow on a recurring basis.

FAQ H.3 says that the covenants required by each of the MSNLF, MSPLF and MSELF are not to prohibit an Eligible Borrower from "repaying a line of credit (including a credit card) in accordance with the Eligible Borrower's normal course of business usage for such line of credit…" Consequently, it would seem possible to have an Eligible Borrower with an asset-based revolving credit facility, i.e. a "line of credit" that it can borrow on and repay—in the ordinary course, while still having a loan under the MSPLF—where the revolving loan under the asset-based credit facility and the term loan under the Main Street Lending Program would be secured by the same lien held by one of the Lenders as agent for itself and the other Lenders and presumably post-default would likely need to be repaid from the collateral on a pari passu basis with the revolving facility ceasing to make advances in order to comply with the Program requirements—since post-default it would not be in the normal course of business usage for such line of credit.

At the request of the Secured Finance Network, Treasury has indicated it would consider this issue.

Main Street Expanded Loan Facility (MSELF)

Like the MSPLF, an MSELF "Upsized Tranche" is required to be senior to, or pari passu with, in terms of priority and security, the Eligible Borrower's other Loans or Debt Instruments, other than Mortgage Debt as set forth in FAQ D.11.

The simple approach to this "Priority and Security Requirement" in the context of an MSELF loan is that, if an Eligible Borrower is looking to increase its asset-based facility, and none of the other current lenders in a syndicated facility want to increase its commitment, or in the case of a single lender credit facility, the sole lender does not want to increase its commitment, the Eligible Lender under the Main Street Lending Program may provide a new commitment in the syndicated facility or in the case of the single lender facility, the single lender may upsize its facility with the MSELF if it is an Eligible Lender or can bring in an Eligible Lender and restate the facility as a syndicated facility. The MSELF, unlike the MSNLF or MSPLF, may be either a term loan or a revolving facility—whatever is required to match the facility that is being increased, so we avoid the question raised above in the context of the MSPLF.

What about a borrower that has both a term loan and a revolving loan as part of its asset-based facility?

FAQ D.11 says:

> "If the underlying credit facility includes both term loan tranche(s) and revolver tranche(s), the MSELF Upsized Tranche needs to share collateral on a pari passu basis with the term loan tranche(s) only." (emphasis added)

This may be of interest. Perhaps the asset-based lender can stretch a bit on the fixed assets with the MSELF increasing the term loan and relying somewhat on a last out on the current assets (since the MSELF would not have to be pari passu on the receivables and inventory collateral)? In effect a version of a first-in-last out (FILO) structure?

What about a typical "split collateral" structure? Could an Eligible Borrower upsize its term loan facility secured by a first lien on equipment and real estate held by an agent on behalf of the term loan lenders using an MSELF Upsized Tranche, while having a second lien on accounts and inventory, so long as the MSELF Upsized Tranche is secured by the same lien on a pari passu basis with the other debt incurred under the term loan facility?

FAQ D.11 only specifically refers to the "underlying credit facility" having both a term loan tranche and a revolver tranche—but the principle is the same even if, instead of tranches in the same facility, it is a separate term loan facility and asset-based revolving facility. On this basis, the Eligible Borrower should be able to use an MSELF Upsized Tranche to increase the term loans, but not have a first lien on the accounts and inventory that secure the revolving loans even if they are not in the same "underlying credit facility."

Conclusion

There are no doubt other scenarios and examples of how the Main Street Lending Program might work with an asset-based facility beyond those described above. And while the threshold issue of whether a borrower is an "Eligible Borrower" exists, there may be circumstances where an asset-based lender may be able to use the Main Street Lending Program.

David W. Morse is member of Otterbourg P.C. and presently co-chair of the firm's finance practice group. He represents banks, private debt funds, commercial finance companies and other institutional lenders in structuring and documenting loan transactions, as well as loan workouts and restructurings. He has worked on numerous financing transactions confronting a wide range of legal issues raised by Federal, State and international law.

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SFNET MEMBER PROFILE

Iron Horse Credit: Full Steam Ahead

Iron Horse Credit (IHC) was founded in 2016 as the commercial lending arm of Pruvista Capital (Pruvista). Iron Horse Credit provides stand-alone inventory revolving lines of credit to small- and mid-sized companies. Alongside IHC, Pruvista's subsidiaries include Luxury Lease Partners (LLP), an exotic/luxury vehicle leasing company, In-House Capital, a consumer lending company, and Custom Home Shop, an affordable housing manufacturer.

BY EILEEN WUBBE

CESAR SILVA
VP, Business Development
Iron Horse Credit

Iron Horse Credit provides revolving lines of credit backed solely by a company's inventory. "Our lines of credit range from $500,000 to $15 million for companies throughout various industries selling to businesses or directly to consumers," explained Cesar Silva, VP of business development at Iron Horse Credit, who currently serves on the Board of Directors for SFNet's South Florida Chapter.

"As for our team, we have a diverse and talented group with many years' experience not only in the asset-based lending space but in different areas of finance. The company's CEO, Bill DiPaula, brings over 20 years of experience in the financial services, including 17 years with Citigroup, where he served as chief financial officer and head of Workforce Planning for the Global Consumer & Commercial Bank's Operation and Technology functions."

IHC's parent company, Pruvista, was founded by senior finance executives who built specialty finance companies serving both the commercial and consumer space to provide liquidity where traditional bank financing options are limited or unavailable. Founders include Anish Shah, with a 25-year career in financial services who most recently served as a partner at Sherman Financial Group, a privately held diversified financial services company, and Scott Tanguay, with a 24-year career at Citigroup who most recently served as the head of operations for Citigroup's Global Consumer & Commercial Bank.

"Early on, our founding partners recognized a need in the industry to lend to small- and mid-sized companies that were having difficulty securing traditional bank financing," Silva explained. "Many of these companies are inventory-heavy and seeking additional working capital to meet their business needs. These businesses typically did not qualify for traditional bank financing due

to hyper growth, business seasonality or overall restructuring strategies. Although these businesses may seek factoring or an asset-based lending facility, most lenders do not lend against inventory as a stand-alone asset class or might have inventory-to-A/R ratio limitations. This resulted in borrowers being forced to rely on high-cost lending solutions that ultimately hinder the company's cash flow and profitability."

Iron Horse Credit services companies nationwide and can provide financing to a wide array of industries that are inventory-focused, selling business-to-business or directly to consumers. IHC will carve out the inventory, treat it as a stand-alone asset, and lend up to 65% of the cost of inventory. Facilities are structured as revolving lines of credit with a weekly or bi-weekly borrowing base analysis. This allows a company to access additional capital, even in the case of a highly seasonal business where the A/R can vary significantly during certain times of the year.

IHC's primary focus is to partner with other A/R lenders to maximize a company's access to capital. Through an intercreditor agreement, IHC can leverage a company's inventory while the A/R lender simultaneously leverages the company's receivables. IHC's stand-alone inventory revolving lines of credit are not intended to compete with other A/R lenders.

"We pride ourselves in working in conjunction with banks, factors, and other asset-based lenders," Silva added. "We are trying to provide these partners with a complementary solution for both their current and prospective clients. We differentiate ourselves by relentlessly focusing on the customer experience. IHC constantly aims to build the trust with each of our partners, and we are doing so one transaction at a time."

Like many companies first starting out, one of IHC's biggest challenges was getting its name out there and building rapport with potential clients and partners.

"We constantly work on marketing campaigns and attend many networking events around the country to build such relationships," Silva said. "During COVID-19, we have simply shifted that to a virtual model where practical. We are in the relationship business and the company's success is fueled by building and earning the trust of all our stakeholders, including our financial partners, industry partners and our clients."

Amidst the current market disruption, IHC has seen an acceleration in the shift of businesses selling online, especially through Amazon's FBA program.

Prior to COVID, Silva noted they had seen an uptick in the number of businesses needing to carry additional inventory due to longer lead times from suppliers. However, this abruptly halted as economic uncertainty increased towards the end of February.

"In early January we provided a $3 million stand-alone inventory line of credit to a client selling through Amazon's FBA program and, by the end of August, we increased the facility to $9 million to support its exponential growth. As consumer shopping behavior continues to shift, we are glad we can help businesses make this transition," Silva explained.

Prior to COVID, Silva noted they had seen an uptick in the number of businesses needing to carry additional inventory due to longer lead times from suppliers. However, this abruptly halted as economic uncertainty increased towards the end of February.

"Early in the year we started noticing a major disruption in the industry and, like many commercial lenders, we shifted all our focus from business development to client management," Silva explained. "We made sure to stay in constant communication with all our existing clients to provide the support needed as the entire industry braced for the unknown. We knew during these unprecedented times our clients needed us more than ever and we aimed to be very proactive and responsive to our clients' needs. Although many businesses have resumed operations, there is still a great deal of uncertainty as to how this pandemic will ultimately impact the overall economy. Over the past several months, our clients have done an excellent job working through supply chain disruptions, altering business processes and, in several cases, meeting sharply higher customer demand. We were able to provide several borrowing-line increases during April and May to several of our e-commerce and food packing clients."

The last couple of months have been incredibly busy for IHC, Silva said. In addition to providing liquidity to helping its existing clients, they have seen significant increase in volume from its partners. IHC's partners are meeting new clients who have seen their access to liquidity tightened and, in some cases, cut off altogether.

"IHC's stand-alone inventory program is the perfect solution for these businesses. Many companies are experiencing higher levels of inventory as it compares to their A/R and our program can provide additional access to capital because we do not have inventory-to-A/R ratio constraints."

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

SFNET COMMITTEE SPOTLIGHT

Convention Planning Committee 2020

This column highlights the hard work and dedication of SFNet committee volunteers. Here we speak with Robert Meyers, the chair of SFNet's Convention Planning Committee and president of Republic Business Credit, LLC.

BY MICHELE OCEJO

ROBERT MEYERS
President
Republic Business Credit, LLC

Why were you interested in chairing the convention committee this year?

I think the first answer is I wasn't. I was actually the chair of the Factoring Committee when the year started and Richard Gumbrecht had called me in early February, and, having known what I know now, I wish I would have sent it to voicemail.[laughs] The original plan was to hold the live event in New Orleans, which is a wonderful city and our business is headquartered down there, and so this was an awesome opportunity to take over and work with a lot of great people on SFNet's marquee event. So, although I didn't set out to chair this Committee, it has been such a cool and rewarding experience, although it has certainly been unique creating a virtual conference.

Can you talk a little bit about pivoting to virtual and what that entailed?

Absolutely, although I can't wait to stop talking about coronavirus and the "new normal." I think one of the best things we did was to pause in early April and say, hey, we're going to pick up this conversation in May. There was just not enough information and it was so early for many of us to clearly see what the winter might look like. Now, of course, it's obvious you need to have virtual events in 2020, but in March and April it wasn't nearly as clear. I remember personally being pretty optimistic in early June, cases were going down, states were reopening, hope of warm weather effects and then reality hit as the cases grew rapidly over the summer, but that further justified our pivot that many have done over the past six months. Every business in our community, whether they're a service provider, lender or manufacturer, we have all considered in recent months, what do we do now? Personally, for me, I've really enjoyed the pivot because it removed some of the capacity constraints of the conference. Typically, we're only able to hold up to 1,500 people, and it requires flights and hotels. We were able to eliminate all of those expenses and travel time. That, combined with the format, really opened up our potential audience.

Traditionally, there are only a certain number of people from a firm who will attend, where now we could have hundreds attending from a firm. Right now, we are several weeks out and we have over 1,300 people registered with many more expected. It will be our most-attended conference ever, thanks to the support of so many in our community. We increased the number of panels to 31, which has allowed us to offer content geared to people across our industry, experience level and tailor content to those who have never experienced an SFNet event before.

We are featuring over 150 panelists, setting a requirement that each have at least one member of our Women in Secured Finance community on each panel as well as SFNet 40 Under 40 winners represented on almost every panel. And I'm super excited about how much more inclusive and, frankly, how much more freedom we had with putting the event together.

You're a dad of two boys, including one just born in June; how do you juggle your home life and work life?

Our first son was born in January of '19, and he entered a very different world than than our son who was born in late June of 2020. And in the midst of that we thought it would be a good idea to move to a suburb about 10 miles outside of Chicago, so never a dull moment. I used to travel a lot, maybe every other week, and I haven't been on a plane since early March, and, as I sit here today, I don't expect to be on a plane for the rest of the year at a minimum. And what that's allowed is a different prioritization of time and a different work schedule. I can start a lot earlier than maybe some others might and I can work a lot later, but I've been able to be there for every breakfast, dinner and a few lunches a week. I have been able to set a priority of playing golf at least once or twice a week to help with the seemingly never-ending weeks. I wouldn't have been able to thrive without my amazing wife; we work very hard at communicating, supporting each other and taking turns cleaning the never-ending pile of dishes. It is great to be present and watch our kids grow up together. I've been able to spend more hours each day with my family than would otherwise be possible in normal times. Shocking, I know, but we actually really like each other after all of the concentrated time together! We've redistributed those traveling hours into meals, cooking, running, golf and long walks where I would have been traveling. Our family recognizes how lucky our experience during this pandemic has been compared to the losses many have suffered, so we focus on trying to be generous, kind, understanding and thankful wherever possible.

Of course, some of those hours were dedicated to the Convention planning. I am super proud of what the Convention Planning Committee has organized this year. We have a bigger group of about 50 members, several smaller working groups and hold standing weekly calls with the SFNet leadership to stay on top of all of it. The good thing is there aren't a lot of international trips happening, meeting conflicts, so the planning and milestones have gone rather smoothly from that perspective. It will probably be one of the more efficient conferences we've done, where I believe all of the moderators we asked said yes.

Juggling everything is a matter of prioritizing what's important to you. I don't volunteer for something if I'm not going to give it my best. We have six of the past 10 conference chairs throughout the working groups and their advice, expertise and guidance have been invaluable. There are a lot of experienced people who want to see the Convention succeed.

So, to answer your question, it's a lot with two young kids, but the pandemic made it easier to do this in my opinion, to juggle everything, all while growing a finance company. At the same time, I pride myself in creating an environment for people to be successful and don't micromanage or feel compelled to do it all.

What advice would you give to others who are on committees, but who would like to take on a chair-person role?

I start everything with the thought of what I want it to look like in the end and then I work my way backwards from there. If you think about the number of things you have to do, it can feel insurmountable at the beginning. I am lucky that I am a very organized person by nature. When I took on the chair role, I reviewed the P&Ls from the last five or six conferences, agendas, budgets, panels and keynote speakers. We didn't want to steal or borrow ideas from the past but, rather, I feel as a steward of the convention, it was my job to continue the previous great work done by so many. The past can (not always) be a good indicator of future successes and it was great to see all of the survey results. And then, before I talked to anyone, before I started any of the planning, I wanted to write down a few key objectives so that served as our true north during the different decisions along the way. I will be forever grateful to the past chairmen and chairwomen who answered my call to help this year!

So, my advice to someone interested in chairing a committee is: understand where it has been, surround yourself with really good people and people who have done it before, as well as people who have never been involved with it. There will be a lot of decisions along the way that you might agree with or disagree with but, if you have the two, or three, or four things that signify success to you, I think it will help make the process a lot easier, more digestible and keep you on a path towards a successful event.

Is there anything you would like to add?

I would just like to convey my appreciation to all the sponsors, exhibitors, committee members, SFNet member organizations, and the staff at SFNet. This event would not be possible without all of them. All the ideas in the world don't matter if people don't support you and pitch in to champion a vision. I can't wait to "see" you all at the SFNet Annual Convention!

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