THE ACCOUNTS RECEIVABLE ISSUE

THE SECURED Lender

APRIL 2021 WWW.SFNET.COM

Putting Capital To Work

INTERVIEW WITH

Mac Fowle

GLOBAL HEAD OF ASSET-BASED LENDING FOR J.P. MORGAN COMMERCIAL BANKING

A publication of: Secured Finance Network

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FORGING AHEAD WHILE CELEBRATING THE PAST

SFNet Keeps You Connected

This year we celebrate the 30th Anniversary of the Secured Finance Foundation, an organization dedicated to "the betterment of our community." One of the pillars of the Foundation is its focus on our next generation of leaders. Undaunted by the current environment, the Foundation recently announced plans for SFNet's 2021 40 Under 40 Awards. Nominations opened on March 17 and I encourage every SFNet member to nominate a rising star on their team. The submission deadline is May 1. It is more important than ever to come together to recognize the achievements of these outstanding individuals.

We are excited to offer a high-energy, uniquely entertaining, fully virtual award ceremony set for September 9, 2021, during which we will also honor the 2020 winners. The format will make this truly a unique and memorable experience for the award recipients and guests.

You can read more celebrating the accomplishments of SFFound as we kick off our Corporate Giving Campaign, on page 26. For details on how you can support its mission, contact Charlie Johnson at cjohnson@sfnet.com.

On the heels of our record breaking virtual ABCC meeting, we will hold our annual International Lending Conference live online May 12 and 19. In June, the Women in Secured Finance Conference will be held on the 16th and 23rd, featuring a dynamic new interactive format and networking opportunities. SFNet will be hosting a new conference, July 14 and 21, focused on Innovation and The Future of Work. The pandemic has accelerated social and technological changes that are reshaping our industry. This conference will help us break this down and visualize our future. Be sure to visit sfnet.com for details and registration information.

Our next education course is the Spring Underwriting Course, Level Two, during which you will learn from case studies of real deals gone wrong. Students will take away invaluable lessons learned to make better credit decisions in the future. In addition, examine current trends in the changing retail industry, and how to structure around some of the pitfalls when lending to retailers. Contact Nora Walls at nwalls@sfnet.com for details.

Our cover story this month features an interview with Mac Fowle, Global Head of Asset-Based Lending for J.P. Morgan Commercial Banking, on page 12. Mac assumed this role earlier this year. Here, he discusses his goals in his new role and his outlook for the rest of the year.

Much of this issue spotlights the accounts receivable space; starting on page 16, an interview with Jennifer Lickteig, CEO of TBS Factoring and chair of SFNet's Factoring Committee. Lickteig has more than 25 years of C-Level tenure leading corporations specializing in construction, advertising, federal contracting, disaster response and finance. Here she discusses leadership during COVID and the lessons she has learned along the way.

RICHARD D. GUMBRECHT
SFNet Chief Executive Officer

Lending against receivables involves lending against the most liquid and readily collectible asset of a company, but it is not without challenges. On page 20 in *Whose A/R Is It, Anyway?* Kathy Bell, Jennifer Hildebrandt and Stacy Hopkins discuss the appropriate analysis and diligence required.

In *Returns, Returns and More Returns* Joseph Marchese of Clear Thinking Group discusses the increased return rates experienced by e-commerce due to the pandemic and what lenders need to know.

On page 34, executives from the accounts receivable financing space discuss the effects of the pandemic, PPP loans, and current trends with *TSL* senior editor Eileen Wubbe.

Like so many other sectors of the economy, the healthcare industry faced unprecedented challenges over the past year. On page 40, in *COVID-19 Relief and Its Impact on Secured Healthcare Lenders*, Doug Nail and Keith Taylor of Parker Hudson discuss how the months ahead will create new and unique issues to focus on when assessing healthcare borrowers post-COVID.

SFNet, our Foundation and our community continue to lead the way for the good of the industry and our economy. I look forward to connecting with you all as we forge ahead.

Warmest regards,

Rich Gumbrecht
CEO, Secured Finance Network

THE SECURED Lender
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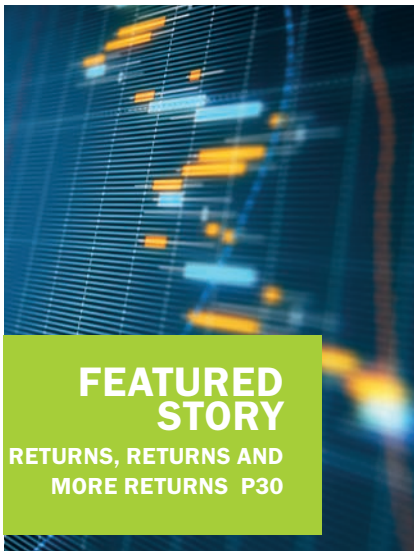
TABLE OF CONTENTS. APRIL 2021 VOL. 77 ISSUE 3



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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Armstrong Teasdale Opens in Delaware

Armstrong Teasdale proudly announces its intent to establish a physical presence in Wilmington, DE. This marks the firm's seventh office opening in the past two and a half years. Armstrong Teasdale will initially welcome a team of four partners, with plans to expand in the market. Partners **Shelley A. Kinsella, Jonathan M. Stemerman, Eric M. Sutty** and **Rafael X. Zahralddin** joined the firm, effective Jan. 4, 2021.

Briar Capital Real Estate Fund Promotes Leah Goldberg to CFO

In addition to this expanded role, **Leah Goldberg** will continue to share in Briar's underwriting responsibilities as she has for close to two years.

Clear Thinking Group Promotes Brian Allen to Partner

Brian Allen has over 25 years of experience serving in senior finance positions with both public and private companies. As a consultant for the past 13 years, Allen has been engaged by numerous companies in the consumer product, retail, and manufacturing industries to improve financial operations and performance through strategic and financial alternatives.

Citizens Hires Peter Ulmer as Managing Director in Transitional Finance

Peter Ulmer will report to **Brent Hazzard**, head of the Transitional Finance and ABL Group.

Dwight Funding Names Jessica Bates Managing Director and Head of Business Development

Jessica Bates is responsible for driving product growth, market expansion and for leading the sales team across products and industries. Since Bates joined Dwight in 2016, she has been a key contributor to Dwight's product, market, and portfolio expansion.

First Business Bank Promotes Chris Doering and Melissa Fellows to Senior Vice President

First Business Bank promoted **Chris Doering** to senior vice president – Commercial Banking and **Melissa Fellows, CTP**, to senior vice president – Treasury Management – Madison market leader.

Geoffrey Hiscock to Join FrontWell Capital Partners as Senior Vice President, Originations

Geoffrey Hiscock joined the firm on January 11 from Canadian asset-based lender Waygar Capital, where he served as managing director, head of originations.

Huntington Bancshares Incorporated Announces Additions to The Executive Leadership Team Structure for Combined Company Following TCF Merger

Huntington Bancshares Incorporated announced that **Tom Shafer**, CEO of TCF National Bank, will join Huntington's Executive Leadership Team as co-president of Commercial Banking following the completion of Huntington's merger with TCF, which is expected to occur late in the second quarter, subject to the satisfaction of customary closing conditions.

Lighthouse Financial Corp. Welcomes Andy Graziano

Andy Graziano joined as vice president, business development, covering the Southeast region including Georgia, Tennessee, Alabama, and Florida. Graziano's primary responsibilities will include the marketing of Lighthouse's product offerings and origination of new asset-based loan opportunities.

Morgan Lewis Further Bolsters Finance Practice: Luis Herrero Joins as Partner in Chicago

Morgan Lewis is again adding strength to its global finance team with the addition of **Luis Herrero**, who joins from Sidley as a partner resident in the Chicago office.

Morgan Lewis Expands Finance Team with Arrival of Partner Mark Kirsons

Mark Kirsons joins from Sidley, where he also previously served as a co-leader of its Global Finance group and will be resident in Chicago. He is recognized for his lender-side practice, representing banks, financial services companies, and private equity funds, many of which Morgan Lewis already serves in its US East and West coast offices and in the United Kingdom.

Moritt Hock & Hamroff Announces 2021 Attorney Promotions

Moritt Hock & Hamroff has announced that **Jill T. Braunstein**, formerly counsel of the firm, has been elevated to partner, that **Brian P. Boland** and **Christine H. Price,** formerly associates of the firm, have each been elevated to counsel, and that **Stephen Breidenbach**, formerly an associate of the firm, has been elevated to assistant general counsel-technology.

Rob Swanson Joins MUFG Union Bank as Northern California Market President for Commercial Banking

Rob Swanson has joined as managing director, Northern California Market president. Based in the Bay Area, Swanson reports to Bita Ardalan, head of Commercial Banking for Union Bank.

Otterbourg Names Valerie Mason and Nneoma Maduike as Co-Chairs of Lender Finance Practice Group

Otterbourg P.C. announced that **Valerie S. Mason** and **Nneoma A. Maduike** have been named co-chairs of the firm's Lender Finance Practice Group. Maduike and Mason are members of Otterbourg's Finance practice, which encompasses acquisition finance, asset-based lending, structured finance, bankruptcy financing, international and syndicated lending, among other specialized areas.

Otterbourg Names Thomas Duignan Co-Chair of Finance Practice Group

Otterbourg P.C. announced that **Thomas P. Duignan** has been named co-chair of

the firm's Finance Department. Duignan represents many prominent banks, commercial finance companies and other institutional lenders in connection with a wide range of transactions. He will join co-chair David Morse in guiding a financial group at Otterbourg that is firmly established as an industry leader.

Paul Hastings Welcomes Experienced Finance Lawyer Stacy Hopkins Back to the Firm

Paul Hastings LLP, a leading global law firm, announced that experienced finance lawyer **Stacy Hopkins** has rejoined the firm, resident in the firm's Los Angeles office. She joins from Wells Fargo Commercial Capital (WFCC), where she served as senior vice president in the Healthcare Finance group.

Alexandra Scoggin Joins Sallyport Commercial Finance

Sallyport adds **Alexandra Scoggin** to its business development team with more than 15 years of experience in factoring and asset-based lending. Scoggin previously served as vice president of business development at Goodman Capital Finance.

Santander Strengthens Senior Leadership in Commercial Banking

Santander Bank, N.A. announced the appointments of **Taryn Phelan** as Commercial Banking chief experience officer and **Michael McDonough** as head of Trade & Working Capital Solutions. Phelan will report to Joe Abruzzo, head of Commercial Banking, and McDonough will report to Ken Deveaux, head of Transaction Banking.

SG Credit Announces Promotions

SG Credit Partners continues its growth as a leading credit fund by promoting high performing team members from within. **Spencer Brown** and **Oren Moses** have each been promoted to managing director, Carlos Tan has been promoted to principal and Daniel Looker and Gerardo Mora have been promoted to the role of associate.

Siena Healthcare Finance Hires Western Region Business Development Officer

Siena Healthcare Finance is pleased to announce the addition of **Nicholas "Niko" Tsitsos** to its team. In the capacity of director of business development, Niko will be covering the Western Region of the U.S. and is located in San Francisco, California.

Siena Lending Group Strengthens DIP & Exit Financing Capabilities, Adds Samuels to Team

Siena Lending Group LLC announced that it has reinforced its focus on special situation financing with the hiring of **Geoffrey Samuels**, VP – new business originations. With a committed focus on special situations including Chapter 11, DIP and exit financings, Samuels will be based in Charleston, SC, and report directly to Nick Payne.

TD Bank Creates New Commercial Bank from Commercial and Corporate and Specialty Bank Teams

TD Bank, America's Most Convenient Bank®, announced that it has combined its previous Commercial and Corporate and Specialty Banking teams to create a new Commercial Bank. **Chris Giamo**, head of Commercial Bank, will lead the newly formed business. **Marla Willner**, who had led the bank's Corporate and Specialty Bank, will take on a new role leading Commercial Credit Management for TD as well as other strategic initiatives.

TD Bank Group to Acquire Wells Fargo's Canadian Direct Equipment Finance Business

The Toronto-Dominion Bank and Wells Fargo & Company announced a definitive agreement, subject to certain closing conditions, for TD to acquire Wells Fargo's Canadian Direct Equipment Finance business.

Gail Glave Named Managing Director at Tiger Capital Group

Tiger Capital Group announced that director of Field Financial Operations, **Gail Glave**, has been promoted to managing director. As a key leader in the retail disposition practice of the asset appraisal, disposition, and investment firm, she serves as both a senior financial analyst and operations specialist, responsible for financial modeling, tracking, and analyzing daily sales data, and the on-site management of Tiger's field supervisors.

White Oak Commercial Finance Bolsters its ABL & Lender Finance Team with Three Senior BDO Hires

White Oak Commercial Finance ("White Oak") is pleased to announce the addition of three senior business development officers to its ABL and Lender Finance platform. **Garrick Tan, Fridolf Hanson** and **Bill Kearney** will join five members of the existing Originations team and will focus on sourcing transactions with committed capital needs ranging from $15-to-$250 million.

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Amerisource Business Capital	Non-bank	**$1 Million**	Healthcare staffing firm, Texas	Healthcare	Senior credit facility
Amerisource Business Capital	Non-bank	**$4 Million**	Steel fabricator, Texas	Steel	Senior credit facility
Ares Management	Non-bank	**N/A**	ForwardLine Financial, a leading provider of financing to small businesses, secures new credit facility	Financial	Senior credit facility
Assembled Brands	Non-bank	**$4 Million**	Hammitt, a premium line of handbags and accessories that's a beloved favorite among retail partners and digital shoppers alike, Los Angeles, CA	Retail	Revolving line of credit
Atlantic Park Strategic Capital Fund, L.P.	Non-bank	**$225 Million**	Horizon Global Corporation, a designer, manufacturer and distributor of a wide variety of high-quality, custom-engineered towing, trailering, cargo management and other related accessory products in North America and Europe, Plymouth, MI	Towing and trailering equipment	Term loan facility. Jefferies served as the exclusive financial advisor to Horizon Global on the transaction.
Bank of America, N.A.	Bank	**$25 Million**	Orion Energy Systems, Inc., a provider of LED lighting systems and turnkey project implementation, including installation and commissioning of fixtures	Lighting	Revolving credit facility
BMO Capital Markets Corp., JPMorgan Chase Bank, N.A., U.S. Bank National Association and Wells Fargo Securities, LLC	Bank	**$250 Million**	AssetMark Financial Holdings, Inc.	Financial	Secured revolving credit facility
BMO Harris Bank, N.A.	Bank	**$150 Million**	Synalloy Corporation, a chemical manufacturing company, Spartanburg, SC	Chemicals	Four-year revolving credit facility
Cadence Bank	Bank	**$11 Million**	Good Times Restaurants Inc., an operator of Bad Daddy's Burger Bar and Good Times Burgers & Frozen Custard	Restaurant	Amended credit agreement
CIT Group Inc.	Bank	**$56 Million**	Seamax Container Shipping II LLC	Marine	Senior secured financing
CIT Group Inc.	Bank	**$165 Million**	iEnergizer, a leading technology services and media solutions company	Technology	Financing, which includes a $150 million term loan and a $15 million revolving credit facility
CIT Group Inc.	Bank	**$16.1 Million**	For Cypress West Partners, who acquired the portfolio of six newly constructed built-to-suit dialysis centers in Meridian, McComb and Jackson, Mississippi; Lake Charles, Louisiana; Sacramento, California; and Bellmead, Texas. The facilities are occupied by Fresenius Medical Care, a leading dialysis provider.	Healthcare	Financing

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Crestmark's Asset-Based Lending Division	Bank	**$400,000**	Refrigerated transportation company, Illinois	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Bank	**$5 Million**	Manufacturer and distributor of nutraceuticals, Colorado	Manufacturing: Nutraceuticals	Asset-based lending facility	
Crestmark's Asset-Based Lending Division	Bank	**$6 Million**	Manufacturer and distributor of snack foods, North Carolina	Manufacturing: Snack foods	Asset-based lending facility	
Crestmark's Asset-Based Lending Division	Bank	**$2 Million**	Flatbed trucking company, Texas	Flatbed trucking	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Bank	**$1.5 Million**	Freight brokerage, Georgia	Freight brokerage	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Bank	**$3 Million**	Blender and distributor of quality ink products, Michigan	Ink	Asset-based lending facility	
Crestmark's Asset-Based Lending Division	Bank	**$200,000**	Freight all kinds transportation, Michigan	Transportation	Accounts receivable purchase facility	
Crestmark's Asset-Based Lending Division	Bank	**$4 Million**	Oilfield materials distributor, Louisiana	Distribution	Asset-based lending facility	
Crestmark's Government Guaranteed Lending	Non-bank	**$10,505,400**	Solar developer, New Hampshire	Solar	Term loan facility	
Crestmark's Government Guaranteed Lending	Non-bank	**$1,770,000**	Wealth advisory firm, Pennsylvania	Wealth advisory	Term loan facility	
eCapital Commercial Finance	Non-bank	**$1.5 Million**	Industrial LED lighting company in Chapter 11 bankruptcy	Lighting	Debtor-in-possession factoring facility	
Encina Business Credit, LLC	Non-bank	**$35 Million**	Retailer	Retail	Senior secured revolving credit facility	
Encina Business Credit, LLC	Non-bank	**$21 Million**	Regional retail pharmacy chain	Retail pharmacy	Senior secured revolving credit facility	
Encina Lender Finance and Sterling National Bank	Non-bank and bank	**$150 Million**	iBorrow LP, a national private commercial real estate lender	Commercial real estate	Credit facility	
Encina Business Credit, LLC	Non-bank	**$30 Million**	E-commerce retailer	Retail	Senior secured revolving credit facility	
Express Trade Capital Inc.	Non-bank	**$5 Million**	Apparel industry client that pivoted to PPE production	Apparel	Letter of credit facility	
First Business Bank	Bank	**$1 Million**	Provider of IT staffing and consulting to large corporate customers	Staffing	Factoring transaction	
Fifth Third Business Capital	Bank	**$13.8 Million**	Hardin Holdings, Inc. (dba Ancon Marine), Carson, CA	Industrial and environmental cleaning	Revolving line of credit and term loan	
Gerber Finance - Gerber+	Non-bank	**$11 Million**	Prominent Brooklyn-based real estate holding company	Real estate	Line of credit	
Gibraltar	Non-bank	**$20 Million**	CriticalPoint Capital's acquisition of a farm supply retail and service cooperatives, Los Angeles, CA	Private equity	Acquisition financing	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure
Goldman Sachs Specialty Lending Group, L.P. and Guggenheim Credit Services, LLC	Bank and Non-bank	**$245 Million**	Landec Corporation, a diversified health and wellness company with two operating businesses, Curation Foods, Inc. and Lifecore Biomedical, Inc.	Health and wellness	Comprehensive refinancing of its existing credit facilities
Great Rock Capital	Non-bank	**$11.8 Million**	One of North America's leading providers of high-quality catalog solutions	Catalog	Senior secured credit facility
Hercules Capital, Inc.	Non-bank	**N/A**	AVEO Oncology, a biopharmaceutical company that develops and commercializes a portfolio of targeted medicines for oncology, Boston, MA	Biopharmaceutical	Incremental term loan
Horizon Technology Finance Corporation	Non-bank	**$8 Million**	Clara Foods, Inc., a food technology company that is developing animal-free proteins as ingredients for food and beverages, including egg proteins that will match the taste and texture an unique culinary functionality of a real egg, San Francisco, CA	Food	Venture loan facility
Horizon Technology Finance Corporation	Non-bank	**$5 Million**	Corinth MedTech, Inc., a medical device company, San Jose, CA	Medical devices	Venture loan
Huntington Business Credit	Non-bank	**$17.5 Million**	InfoCision Inc. and operator of telemarketing call centers in 13 locations throughout Ohio, Pennsylvania and West Virginia, Akron, OH	Telemarketing	Credit facility
J D Factors	Non-bank	**$120,000**	Transportation company, Ohio	Transportation	Factoring facility
J D Factors	Non-bank	**$100,000**	Transportation company, Alberta	Transportation	Factoring facility
J D Factors	Non-bank	**$50,000**	Transportation company, Arkansas	Transportation	Factoring facility
J D Factors	Non-bank	**$300,000**	Transportation company, New York	Transportation	Factoring facility
J D Factors	Non-bank	**$120,000**	Transportation company, Illinois	Transportation	Factoring facility
J D Factors	Non-bank	**$200,000**	Transportation company, Maryland	Transportation	Factoring facility
J D Factors	Non-bank	**$150,000**	Transportation company, California	Transportation	Factoring facility
LSQ	Non-bank	**$3 Million**	Growing manufacturer to the U.S. government	Manufacturing	Invoice financing facility
JPMorgan Chase Bank, N.A., Citizens Bank, N.A., PNC Capital Markets LLC, Silicon Valley Bank, and Truist Securities, Inc.	Bank	**$250 Million**	Avid®, a leading technology provider that powers the media and entertainment industry	Media	Consisting of a five-year $180 million term loan and $70 million revolving credit facility. JPMorgan Chase Bank, N.A., Citizens Bank, N.A., PNC Capital Markets LLC, Silicon Valley Bank, and Truist Securities, Inc. served as the Joint Bookrunners and Joint Lead Arrangers for the new credit facility with JPMorgan Chase Bank, N.A. serving as Administrative Agent, and Citizens Bank N.A., PNC Bank, National Association, Silicon Valley Bank, and Truist Bank serving as Co-Syndication Agents.

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
JPMorgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc., Wells Fargo Securities, LLC, Goldman Sachs Bank, USA, Deutsche Bank Securities Inc., TD Securities (USA) LLC and Mizuho Bank, Ltd.	Bank	**$150 Million**	Consolidated Communications, a broadband and business communications provider, Mattoon, IL	Telecommunications	Term loan	
Marco Financial	Non-bank	**$750,000**	Staffing company specializing in providing law firms with temporary legal personnel, New York	Staffing	Factoring facility	
MidCap Business Credit	Non-bank	**$6 Million**	Private equity-owned company in the energy space	Energy	Asset-based credit facility	
MidFirst Business Credit (MFBC)	Non-bank	**$8.5 Million**	Morcon, Inc., a commercial paper tissue converting company with three primary product lines, Eagle Bridge, NY	Paper tissue	Working capital and capital expenditure facilities	
Monroe Capital LLC	Non-bank	**N/A**	To support the acquisition of Serán Bioscience, Inc., Bend, OR, by private equity sponsor Vivo Capital LLC	Contract development and manufacturing	Senior credit facility	
N/A	N/A	**$1.87 Billion**	UK airline EasyJet	Airline	Five-year term loan facility	
Oaktree Capital Management, L.P.	Non-bank	**$200 Million**	Ashford Hospitality Trust, Inc.	REIT	Senior secured term loan	RBC Capital Markets, LLC served as the Company's financial advisor on the transaction, and Weil, Gotshal & Manges LLP and Cadwalader, Wickersham & Taft LLP served as legal counsel.
Oxford Finance LLC	Non-bank	**$122 Million**	Tarrytown Expocare, a closed-door long-term care pharmacy specializing in serving individuals with intellectual and developmental disabilities (IDD), Austin, TX	Pharmaceutical	Senior credit facility	
Oxford Finance LLC	Non-bank	**$30 Million**	Greenbrook TMS Inc., a leading provider of Transcranial Magnetic Stimulation (TMS) therapy in the United States		Secured credit facility	Bloom Burton Securities Inc. acted as the Company's sole financial adviser

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
Republic Business Credit	Non-bank	**N/A**	Paul Fredrick, a portfolio company of ClearLight Partners, a leading designer and retailer of men's apparel and related accessories, Baltimore, MD		Direct to consumer inventory loan facility	
Rosenthal & Rosenthal, Inc.	Non-bank	**$500,000**	To support the production financing requirements of a cosmetics and beauty products company, California	Cosmetics	Production finance facility	
Rosenthal & Rosenthal, Inc.	Non-bank	**$950,000**	To support the production financing requirements of a cosmetic and beauty products company, California	Cosmetics	Purchase order finance facility	
Sallyport Commercial Finance	Non-bank	**$4 Million**	Sponsor-backed metal components company	Metal	Accounts receivable financing facility	
SG Credit Partners	Non-bank	**$3.35 Million**	A newly formed pharmaceutical company set up specifically to acquire, promote, and sell four prescription pharmaceutical products.	Pharmaceutical	Loan structured primarily around the founder's personal assets	
Siena Healthcare Finance	Non-bank	**$15 Million**	Skilled nursing operator, California	Healthcare	Asset-based line of credit	
Silicon Valley Bank	Non-bank	**$100 Million**	Stilt, a provider of financial services for immigrants in the United States	Financial services	Warehouse facility	
Stenn International	Non-bank	**$2 Million**	Trading company based on the West Coast that sources sporting goods from the Asia-Pacific	Sporting goods	Trade receivables finance program	
Sterling National Bank	Bank	**$8.5 Million**	Ice Air, a developer and manufacturer of a wide variety of HVAC equipment used in new construction and retrofit/ replacement applications, Mount Vernon, NY	HVAC equipment	Senior secured credit facilities	
Sunflower Bank, N.A. and KeyBanc Capital Markets	Bank	**N/A**	To support the acquisition of NextEdge Networks Holdings, a leading provider in turnkey small cell services for outdoor and in-building solutions and its wholly-owned subsidiary, Modus by Bow River Capital	Technology	Senior debt facility	
TAB Bank	Non-bank	**$1.5 Million**	Manufacturer of electrical assembly, wiring, and connections for the robotics and assembly lines used in the U.S. automotive industry, Michigan	Electric	Asset-based credit facility	
TAB Bank	Non-bank	**$10 Million**	Staffing company, Arizona	Staffing	Revolving credit facility	

Lender/Participant	Lender Type	Amount	Borrower	Industry	Structure	Service Provider (Type)
TAB Bank	Non-bank	**$4 Million**	The Good Bean	Food	Revolving credit facility	
TCF National Bank and Patriot Capital, LP	Bank and Non-bank	**N/A**	Naprotek, Inc., an electronics manufacturing services (EMS) company and a leading provider of quick turn printed circuit board assembly (PCBA) services for high-reliability (Hi-Rel) applications in the defense, space, medical, semiconductor, and specialty industrial markets, San Jose, CA	Semiconductor	Financing	
Texas Capital Bank	Bank	**N/A**	Pacific Coast Capital, LLC, a non-regulated specialty finance lending firm that provides asset-based lending solutions to lower and middle-market businesses across all industries, Irvine, CA	Specialty finance lending firm	Revolving line of credit	
The Bank of Nova Scotia, National Bank Financial Markets and HSBC Canada Bank	Bank	**$600 Million**	Centerra Gold Inc., a Canadian-based gold mining company	Gold mining	Four-year revolving credit facility	Consists of a $400 million four-year revolving credit facility plus a $200 million accordion feature
Tradecycle Capital	Non-bank	**$500,000**	Precision machining shop that focuses primarily on the automotive industry	Automotive	Revolving accounts payable funding facility	
Tradecycle Capital	Non-bank	**$1 Million**	Canadian manufacturer of precision molds for injection molding of automotive parts	Automotive	Revolving accounts payable funding facility	
Tradewind Finance	Non-bank	**$5 Million**	Meat trading company that is based in the United States and has a subsidiary in Brazil	Food	Export factoring facility	
TradeCap Partners	Non-bank	**$1.2 Million**	An importer of household products, Oregon	Household products	Purchase order finance facility	
Truist Bank	Bank	**$1.4 Billion**	Builders FirstSource, Inc., the largest U.S. supplier of building products, prefabricated components, and value-added services to the professional market segment for new residential construction and repair and remodeling, Dallas, TX	Construction	Increase and extension of revolving credit facility	
Truist Securities, Inc., JPMorgan Chase Bank, N.A. and MUFG Union Bank, N.A.	Bank	**$1.485 Billion**	Sixth Street Specialty Lending, Inc., a specialty finance company focused on lending to middle-market companies	Specialty finance	Revolving credit facility	

COVER STORY

Interview with Mac Fowle,

Global Head of Asset-Based Lending for J.P. Morgan Commercial Banking

BY MICHELE OCEJO

Mac Fowle is the global head of Asset-Based Lending (ABL) for J.P. Morgan Commercial Banking. He is responsible for the end-to-end strategic leadership of the ABL group in supporting the financing needs for clients across Commercial Banking and the Corporate & Investment Bank (CIB).

COVER STORY: MAC FOWLE

From January 2019 to January 2021, Mac was the chief risk officer for ABL, where he was in charge of all aspects of ABL credit risk including field examinations, credit underwriting and ongoing portfolio management. Prior to this role, Mac was a managing director in High Yield and Leveraged Loan Capital Markets in the CIB, where he was responsible for the origination, structuring and distribution of ABL loans, institutional term loans and high yield bonds across a variety of industry sectors.

Mac joined J.P. Morgan in July 2007 and has been involved in leveraged finance and asset-based lending for over 20 years. He holds a B.A. in finance from Indiana University.

Please give us a little bit of background on your career trajectory and how you got into ABL.

I started in ABL right out of school, working for Bankers Trust, which is now a part of Deutsche Bank. I was an ABL analyst and got exposure right away to origination, loan syndication, portfolio management, a little bit of everything as it related to ABL. ABL has always been a very dynamic environment, whether in good times or in bad, and I learned early on that there's always a very important role for ABL to play throughout the stages of a client's life cycle. I was incredibly fortunate to have had two great mentors when I started my career, providing me opportunities at an early stage that allowed me to develop. It's very important to me that I provide the same types of opportunities and mentorship for the next generation of talent on my team.

In 2007, I joined J.P. Morgan's leveraged finance team, and in 2009, I became head of asset-based loan syndications, so right at the height of the financial crisis. Obviously, it was at a very busy, active time in the market but a time that was incredibly rewarding because as a firm, J.P. Morgan was able to step up and make a real difference in helping support our clients and ABL was a big part of that support.

From there, I moved into a more traditional leveraged loan and high-yield bond capital markets role covering retail, consumer and industrial clients around 2014, though I still maintained a strong involvement in ABL. I'd get involved in some of the larger, more complex syndicated deals at the time, but my primary responsibility was overseeing leveraged loans and high-yield bond executions. Then in 2018 I became the chief risk officer for ABL and now, after about two years in that role, I moved to become the head of the ABL business earlier this year.

Please tell us a bit about your short- and long-term goals in the new role.

I've been very fortunate that I'm stepping into an opportunity with a very well-established team that has great leadership in place.

Every day we all think about ways in which we can enhance and grow our business to better serve our clients, who remain at the absolute center of everything we do. And I think for us that really starts with building on the strong partnership that we have with our commercial banking and corporate and investment banking colleagues to help the clients we support meet their goals. We support some very dynamic businesses, so every day there's an opportunity to be better at what we do and how we partner with them to support clients with differentiated advice and tailored solutions during good times and bad. Certainly this past year has offered plenty of challenges, but I'm encouraged by how we stepped up to support our key business partners and, more importantly, our clients through tough times.

As I mentioned earlier, I truly have benefitted from the leaders and mentors that I had along the way, and I want to give everybody on my team the same kind of opportunities that I've had in my career to advance and develop. So I'm very, very focused on building a long-term foundation for the culture of the business to help foster an inclusive environment focused on mentorship and develop a diverse group of talent to lead the business forward. If you do that, everybody is going to have a share in the ownership and execution of the overall plan, which will improve how we support and execute for our clients.

How have you had to pivot due to the pandemic, and what do you think the most significant effects of it have been on your business? And are there any lessons the industry could learn from this?

Like everyone, we've had to make adjustments due to all of the challenges, whether it's the economic pressure that we saw facing a lot of our clients and our portfolio, trying to balance supporting clients while working from home, and all the changes that have come with that. I think everybody's adapted pretty well and at the same time I think we're all very much looking forward to getting back in front of clients and our team in person. I think the challenges we've experienced in the past year really make you appreciate what you have and really highlight some of the things that you miss, such as being with people and just the natural interactions that come from the job.

In this continued time of uncertainty, how do you see the year playing out for the industry? What do you think are the biggest challenges and opportunities right now?

I'm very optimistic. As far as the ABL industry goes, uncertainty around the outlook always tends to lend itself very favorably to ABL due to the flexibility the product can provide to borrowers. In fact, we regularly accommodate companies that have unpredictable, cyclical or seasonal cash flows and

working capital requirements. As we think about beginning to emerge from the crisis and companies focus on growing again, ABL offers very flexible borrowing solutions to help capitalize on growth opportunities. I think there is going to be a tremendous opportunity for ABL to play a key role for many companies this year.

I'm very optimistic. As far as the ABL industry goes, uncertainty around the outlook always tends to lend itself very favorably to ABL due to the flexibility the product can provide to borrowers. In fact, we regularly accommodate companies that have unpredictable, cyclical or seasonal cash flows and working capital requirements.

Are there beneficial changes in your business practice, brought on by the pandemic, which will survive as we return to a more normal business environment?

The pandemic has forced everyone to accelerate the pace at which they're embracing technology. While many may have had the capability to work from home when necessary pre-COVID, we have demonstrated throughout the pandemic a remarkable ability to continue to excel in our jobs and be there for our clients without in-person meetings and many of the other resources on which we were traditionally reliant while in the office. From the pandemic's outset, I have been very impressed with how our technology team has facilitated nearly seamless system access and functionality from home. Though nothing can replace the interpersonal connections that come from in-person team gatherings or client meetings, I do think the widespread adoption of video meetings through applications like Zoom will continue to bring people and groups together when in-person meetings aren't possible or feasible.

How do you spend your time when you're not working?

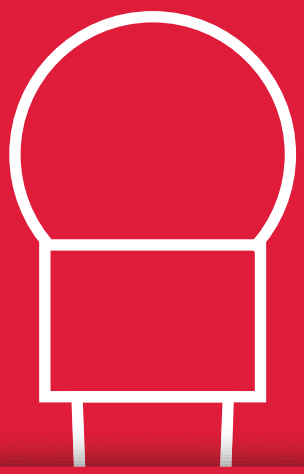
Most of my time is spent with family. I have three teenagers who all are very active. I have two boys that are active in sports and I have a daughter who dances. There are always plenty of activities to keep us busy on a regular basis and I enjoy every minute of it. Over the course of the last year, the silver lining has been that I'm able to spend a lot more quality time with them, things like family dinners that I just would not ordinarily have had the opportunity to be able to do.

I feel fortunate that over the course of the last year I've been able to spend a lot more time with my kids. It won't be long before they're out of the house and I will feel lucky that I got to spend the extra quality time that I did with them this year.

Also, I'm a big sports fan; baseball and skiing are my two favorites. I enjoy traveling, and so that's something that I've desperately missed. Hopefully it's something that we can all look forward to in 2021.

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

Interview with Jennifer Lickteig...



CEO OF TBS FACTORING AND CHAIR OF SFNET'S FACTORING COMMITTEE

BY EILEEN WUBBE

Jennifer Lickteig, CPF, F. SAME, is chief executive officer of TBS Factoring, LLC, and its affiliates, joining the company in 2015. Since 1968, TBS provides receivables financing for small to mid-sized businesses throughout the US and Canada with an emphasis in transportation factoring. TBS employs more than 250 from its headquarters in Oklahoma and is frequently referred to as the Silicon Frontier with its heavy emphasis on technology products designed for the transportation factoring space.

JENNIFER LICKTEIG
TBS Factoring, LLC

Lickteig enjoys an unconventional and unique background with more than 25 years of C-Level tenure leading corporations specializing in construction, advertising, federal contracting, disaster response and finance. In addition, she was COO and an executive coach and Strategic Leadership Consultant for Oklahoma City-based GiANT Partners/Magellan.

In 2014 Lickteig was honored by the Department of Homeland Security with the National Small Business Award for her work with FEMA during the response to Hurricane Sandy. Over her career, Jennifer has overseen more than $10 billion in transactional value, $600 million in federal construction and environmental contracts and has won her companies more than $10 billion in on-going contract capacity. She is a lifetime member and Fellow of the Society of American Military Engineers.

Jennifer currently serves on the Board of Directors for The Bank of Oklahoma, Oklahoma City, The Boys and Girls Club of Oklahoma County, and was named one of Oklahoma's Most Admired CEO's in 2012 and 2020. Lickteig's companies have earned honors many years in a row on the Metro 50 list, Best Places To Work and Inc. 500 Fastest Growing Companies list, as well as being named Oklahoma's Top Small Business of the Year and the SBA's United States Small Business of the Year. She is currently the Chair of SFNet's Factoring Committee.

Here she discusses leadership during COVID and the lessons she's learned along the way.

How are you leading TBS Factoring during COVID? How are you approaching business development this year, given that the new normal continues to limit travel and in-person meetings?

It's all about being adaptable and whatever we think we're doing today is working may not work tomorrow. The COVID environment has taught us all to pivot — that's the new catchword — along with podcasts and Peloton.

It really hammered home the need to be adaptable in our business processes. That has led to some really neat experiences and innovation. When your portfolio is under stress and the marketplace is under stress, and the whole world is feeling the effect, you have to innovate in order to stay alive. So, we have really double-downed on the use of technology so that our product, which is paying people the money they've already earned, is always and already available to them.

We've really invested a lot in technology over the past year. We've hired more developers and technology talent than ever before. I used to like to tell everybody that we had the silicon prairie out here, but now I'm telling everyone we have the silicon frontier, which means we're in exploration mode with our technology and the factoring space is ripe for that.

What is the biggest hurdle that your business faces as 2021 continues?

Helping our employees remain connected. As of March, we are still operating in a work-from-home environment out of an abundance of caution for our workforce. So, a lot of the casual communication that happens on your way to lunch or to the breakroom or walking down the hall to get something off the printer isn't happening. We felt that lack of daily casual communication has led to some communication failures. So, we are also investing more in technologies and processes that allow us to have a better connection to our employees. Everything we're doing is virtual and it's hard to sit in front of your computer for eight hours and talk to people that way.

We're having to innovate around that space by looking at up-and-coming technologies that people are using for virtual meetings. We're also having meetings that are socially distanced, but in the same general area. We've had a lot of parking lot meetings in the last year. We use our parking lot more than I ever could have imagined.

In the fall of 2020, when the weather was good, we had tailgate trivia. We had 20 or 30 cars park in a circle in the TBS parking lot, with me standing in the middle with a megaphone and speaker system, and I would read off trivia cards and people would answer by honking their horn and then shouting out the answer. If they got it right, we kept score and it was a lot of fun and everybody stayed in their car and they were socially distanced.

We created our portfolio around our people and our number one asset is actually not the invoices that we buy, but it's the people that we employ. I'm really concerned about long-term mental health effects on the workforce — extroverts that are now having to be introverts and introverts that are now deeply introverted and people who are used to having high social interaction not having that opportunity anymore.

We're just now learning more about the long-term effects of COVID, and this includes the long-term health effects of COVID on a workforce. We have to make that leap to our workforce and make sure we're providing enough resources and support around the mental health challenges that our communities are facing as we go ahead. We want to concern ourselves with that as an employer.

When the pandemic started, the first thing we did was send a video on a Monday at noon to tell everyone 'Hang in there, you've got this, it's okay,' a little bit of entertainment with skits. The reaction was so big that we started doing them every week and we

send it out Mondays at noon. It's a 30-minute variety show that I host, and we'll have guest hosts and pick a theme. Employees submit content, like pictures of their co-workers, (aka their cats and their babies). We do contests, TikTok challenges and bingo every week. For our Mardi Gras theme week, I did a Mardi Gras parade in the building, even though no one was there, where I was throwing beads from my homemade float, made from a bike. This helps provide a sense of security and calmness to our employee base because we need them, and we want them to know we're there for them.

Our portfolio was down sharply by mid-May, but we ended up showing growth by the end of the year; it was really a roller coaster.

Can you provide some background on being a four-time CEO? What were some of your greatest successes during this time? What were some of your failures?

I have had the honor of being a four-time CEO and the way that I see that is, when you look at a traditional org chart, the CEO is at the top, but I like to reverse that and put myself at the bottom. I think that is one of the reasons why I enjoy the role so much. I feel like I'm working for 250 employees right now. There was a period of time where I was too full of myself and definitely crashed my business as a result of it, trying too hard to be "a boss." But I learned a lot along the way and that is truly how I see leadership today — I'm supposed to be serving these people, not having them work for me.

Prior to TBS, my career was mostly in construction. I was the CEO of two different construction companies that were performing military and federal construction work across the U.S. and I really made a name for myself in a very male-dominated industry.

One of my proudest moments was when, in 2012, I was named a fellow of the Society of American Military Engineers. At the time there were only 700 fellows out of a membership that goes back to 1920, and I was among the very first to ever become a fellow without a college education. I wasn't an engineer, had never served in the military and I was an openly gay woman under the age of 50. I dove into the profession and worked hard mainly to be an example to my four daughters by showing them there are no limits if we are willing to do the work.

One of my small businesses was the National Small Business of the Year for the U.S. Small Business Administration. So, I've had really big highs. And then also I have had some pretty significant lows. One of my first businesses that I owned was an advertising agency in Southern California. I crashed and burned that thing to the ground by making a fatal error in my business model and within a six-month period I lost everything, and I almost had to file bankruptcy. In the end I didn't, and I was able to satisfy all of my debtors, but it was really hard, and it changed me. When you go from having a Gucci handbag and driving a BMW to living in your in-law's guestroom with three kids and you're pregnant with your fourth, you get humbled really quickly.

It made me realize that nobody gets here on their own; you're climbing that ladder and you don't even realize that there are a dozen other people that are holding it for you, and so many more before them. I didn't honor that and it's part of the reason why today I honor it so strongly because I do believe that we don't achieve anything without the effort and talent of great people around us.

As the CEO of a factoring company, what are you passionate about?

The things that I'm most passionate about is changing the perception of the F word (factoring) and developing talent. We have such an incredible opportunity to do more of that in the future to attract new talent to the space. I love changing people's perception of what factoring is. It's often very misunderstood.

I lived my whole time prior to TBS in the commercial lending space. I was taught that you go get a loan from the bank if you needed money to grow your business, and it never occurred to me that factoring was a viable option. I always thought, if your business was factoring your receivables, you've done something wrong. It turns out that's not the case at all. I love seeing that epiphany moment for small business owners when we can show them that you don't have to give up the collateral in your house or sign over your vehicles or your first-born to get a business loan because you've already completed the work. Let's just use those invoices to finance the next level of growth for you. The industry has been very eye-opening for me and I hope that they allow me to stay in it for a lot longer. I think we're just getting started.

What are some of the issues/trends challenges facing the factoring industry?

One of the biggest issues we are seeing right now is the start of some of the long-term impacts of working from home. We have long enjoyed a lower cost of living here as compared to the West and East coasts, which also means wages are, in some cases, 30 – 40% less than in Manhattan or Los Angeles. Now that companies are more comfortable with their workforce being remote, it's caused some pressure for us in the Midwest. We are stepping up to that and working on full-scale compensation reviews that hopefully address this, but it is definitely a problem for other companies to get ahead of.

We are also feeling the impacts of the PPP loans to a client's need for alternative lending platforms. When the federal government continues to provide relief to small businesses, and especially when it's a forgivable loan package, that of course, will impact everybody in the financial sector that is offering financing to these same businesses. It definitely reduces the need. We see that as an opportunity to double-down on value-added service offerings to make sure that our suite of client-facing services are providing more than just a transactional value. This has included offering interest-free, deferred advance payment plans, for big-ticket items like deposits on truck insurance, new equipment,

compliance services and more support for back-office functions.

I think longer term into 2022, we will want to keep a close eye on client credit and balance sheets as it pertains to the forgiveness of these PPP loans, probably ask for more information around a client's use of the program and to make sure they complied with all the provisions so that, if there is a repayment at some point, and we are providing factoring services, we are aware of that and mitigating impacts to the overall cashflow of the client.

What advice would you give to other women working in predominately male-dominated fields?

I would say stand on your own merits and stand up for yourself. It is hard for many women to take credit for their work. We're not good at saying 'you're welcome' when someone says, 'thank you,' and we have to do a better job at that. We can and should own our successes; otherwise, we're giving that success away and letting other people own it on our behalf.

It was a hard lesson for me to learn when someone would say 'You did a terrific job.' My instinct was to turn around to the people behind me or to deflect or demure that gratitude to something or someone else or even back to the very person saying thank you. When we do that, we miss the opportunity to recognize our own power and we're devaluing the relationship that is being established by that other person thanking us.

Secondly, I would say no one is going to give you what you need unless you tell them that you need it. That's a difficult thing for a lot of women to do, to stand up and say, 'I need this. This is what I'm doing, and here is why I deserve what I am asking for.'

The last thing that I would say is: never compare yourself to someone else. One of my pet peeves is, when I have young leaders meet with me and say, 'I think that I deserve a payroll increase because Bob or Sue makes more than I do.' I believe that, if you are making a value proposition to the business, that is what you should be paid for. So, if you feel you need more compensation, time off, whatever, start your request with a value proposition of how your efforts benefit the company.

How has mentorship helped you along the way?

Very early on in my career, around 1994, I met an unexpected mentor. I was speaking at a small business administration conference in San Diego about marketing your small business and how every interaction you have is a potential sale, that you are your own brand, so you need to carry yourself like you're ready for action. Keep in mind this was way before people were seen as brands!

I said, 'Rule number one is you've got to have a business card, no matter what you do.' After my speech was done, people were coming up to talk to me and, of course, asking for my business card. At the very end of the line was a man, Don Mitchell, who strategically waited until he was the last person in line. By that time, I was tired and wanted to go home. He came up to the stage and said, 'You know, you did a good job and I'd really like to have one of your business cards'. And, the funny thing was, I was out of them. So, the very piece of advice that I had just been giving, I couldn't follow through on my own.

He chuckled and asked if I had something else to write on. I checked my purse and the only thing that I had to write on was an almost empty box of Junior Mints, so I wrote my cell phone number on the box and handed it to him. He shook the remaining candy out into his hand, and he popped one of the mints into his mouth and handed me the other one. That was how we met. It turned out that he was a small business rep for the SBA in Orange County, California. That man changed my life.

He contacted me a year later from my phone number on that Junior Mints box and, at the time, he called my advertising agency, which was two months into its fatal crash. When I explained how awful it was, he said 'How wonderful' because he had a friend who needed help with marketing construction services to the federal government. That's how I started my career in construction.

When I look back on it now, he would have been the last person I would have picked as a mentor but, if I picked based on what I needed, he was the perfect person to mentor me. He was kind, considerate, thoughtful, and he always put my needs in the right place. He centered me on what I wanted for myself, what was achievable, and he pushed me to reach for things in two cases that I had no experience doing, and it worked out. Many years later, shortly before he passed away, he gave me back the original Junior Mints box. It's framed in my office as a reminder of how we can meet mentors in the strangest ways and places if we are willing to be open to it.

When you're not busy at TBS, what can you be found doing?

I try to stay active in the LGBTQ community. After my 20-year marriage ended, I had a female partner for almost 10 years, while co-parenting our four daughters with my ex-husband. It was actually less messy and traumatic than it sounds, and we used to say we were the original modern family before there was a TV show. My story is more common than you might think and helped me understand the challenges of navigating the business world while living authentically. I try to find ways to encourage other people to just be. Be who you are — be who you want to be — you'll do a better job of it than anyone else can!

So, this is kind of funny. I think people sometimes probably perceive me to be an extrovert and out and about and super busy, but even during non-COVID times, I was home. I'm a serious homebody. My favorite thing to do is to have a cup of coffee or make a cup of tea and read a book. I like to embroider. I like to clean my house. I like to vacuum and do dishes. I'm a serious introvert. My husband (yep, I've come full circle) is also a deep introvert and we have honestly enjoyed the stay-at-home thing. Now I don't have to make excuses for why I don't want to go to somebody's party.

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

FEATURE STORY

Whose A/R Is It, Anyway?

BY KATHY BELL, JENNIFER HILDEBRANDT AND STACY HOPKINS

Financing receivables involves lending against the most liquid and readily collectible asset of a company, but it is not without challenges. Appropriate analysis and diligence are always required.

Takeaways

1. Analysis and diligence regarding ownership of the collateral is critical before financing receivables.
2. Various factors can impact your lien priority in receivables; know the competing interests before financing receivables.
3. Identify your liquidation strategy and what obstacles may arise before financing receivables.
4. Threats to the ownership of the collateral may not be readily apparent.
5. Threats to the priority of a lender's security interest may not be readily apparent

Financing backed by accounts receivables, whether through a secured loan structure, a factoring arrangement, or a securitization structure, is a primary source of working capital for companies seeking a consistent stream of liquidity. From a lender's perspective, financing accounts receivables (or "receivables") involves lending on the most liquid and readily collectible assets of a company. For most borrower companies organized in a jurisdiction within the United States, a lender can obtain a perfected security interest in such company's receivables if the company executes a security agreement in favor of the lender that grants to the lender a security interest in such company's receivables and the lender files a UCC-1 financing statement in the appropriate jurisdiction covering the receivables. Sounds easy, right? Not always. Because sometimes:

- Receivables that the lender believes are a part of its collateral package are actually outside of its reach;
- The lender does not have a first-priority perfected lien in the company's receivables; and/or
- Obstacles exist that impact the lender's ability to realize on the value of the receivables.

KATHY BELL
Paul Hastings

JENNIFER HILDEBRANDT
Paul Hastings

STACY HOPKINS
Paul Hastings

This article highlights some common scenarios, and some not so common scenarios, adversely affecting receivables financing. However, this article does not and cannot describe every situation. Accordingly, before lending on receivables, it is critical for lenders to analyze the following: (1) who owns the receivables? (2) what could impact the priority of the lender's security interest in the receivables?, and (3) are there any impediments to collecting such receivables?

Scenario #1 Medicare/Medicaid Receivables

SCENARIO: Lender provides financing to a healthcare provider, such as a skilled nursing facility or cancer treatment center ("Provider"). Provider is paid for its services from a number of sources (including directly by patients), but the bulk of its revenue is paid by third-party payors, such as insurance companies, Medicare and Medicaid. Those payments are all made directly into one deposit account. Lender obtains a valid and perfected security interest in the Provider's receivables; but, when the lender requests that the Provider sign a three-party deposit account control agreement ("DACA") to perfect the lender's security interest in the deposit account, Provider refuses. Now what?

ISSUE: Despite the fact that the lender may have a valid and perfected security interest in all of the third-party payor receivables[1], including reimbursements from Medicare and Medicaid ("Government Receivables"), pursuant to the regulations promulgated by the Center for Medicare Services ("CMS"), there are restrictions on payments being made to persons other than the Provider. The Government Receivables must be paid directly to the Provider and must be negotiated by and under control of the Provider. These requirements affect several key rights that receivables lenders expect to have. First, after an event of default, a secured lender would expect as a remedy to be able to direct account debtors to pay the lender directly and to negotiate those payment obligations with such account debtors. With respect to Medicare

[1] *Wilson v. First Nat'l Bank*, Lubbock, Tex. (*In re* Missionary Baptist Found. of Am., Inc.), 796 F.2d 752 (5th Cir. 1986).

and Medicaid receivables, this is not a permitted remedy. Additionally, specific guidance has been issued that limits the ability of a lender to have a perfected security interest over a deposit account into which payments owed to a Provider for Governmental Receivables are made. In other words, the Provider cannot enter into a DACA in favor of its lender to perfect a security interest in such deposit account because the Provider is required to retain control over such deposit account.[2] Furthermore, if the depository institution where such deposit account is maintained is also the lender to such Provider, then such lender must expressly waive its right of offset against such deposit account for loan obligations.

Additionally, specific guidance has been issued that limits the ability of a lender to have a perfected security interest over a deposit account into which payments owed to a Provider for Governmental Receivables are made. In other words, the Provider cannot enter into a DACA in favor of its lender to perfect a security interest in such deposit account because the Provider is required to retain control over such deposit account.[2]

SOLUTION: Although the Provider must retain control over the ability to collect and negotiate the Government Receivables, a market-accepted multi-step solution exists to enhance the lender's ability to ultimately realize upon the proceeds of the Government Receivables. First, the Provider will need to bifurcate the deposit account into which receivables are paid into at least two deposit accounts: one Government Receivables deposit account into which Governmental Receivables are paid ("Government Receivables Account") and a non-Government Receivables deposit account into which all other receivables are paid (the "Non-Government Receivables Account"). Second, the Government Receivables Account must be set up to sweep on a daily basis pursuant to a deposit account instruction agreement (sometimes referred to as a "DAISA" or collection account agreement "CAA") to the Non-Government Receivables Account which is subject to a customary DACA in favor of the lender. This arrangement is referred to as the "Double Lockbox Technique", although lockboxes are rarely involved. This allows the lender to obtain a perfected security interest in the deposit account where such proceeds of the receivables ultimately end up, without violating the applicable Medicare and Medicaid rules. Additionally, the loan documents should include a covenant that the Provider will not change these sweep instructions. While this workaround does not provide the lender with ultimate control over the Government Receivables initially and there are other nuances involved, it does provide the lender with some assurance that it will be able to realize upon the proceeds of these Government Receivables because they ultimately end up in a deposit account that is subject to the control of the lender.

Scenario #2 Government Contracts

SCENARIO #2: Lender provides financing to company that supplies goods and services to a United States government agency ("U.S. Agency"). The company grants a security interest in all its receivables to the lender and signs a security agreement and the lender files the appropriate UCC-1 financing statement. When the company defaults on the loan, the lender wants to exercise its secured creditor rights and notify the U.S. Agency to pay the lender instead of the company.

ISSUE: While Article 9 does govern the creation, attachment and perfection of the security interest in the company's receivables, the U.S. government does not recognize the assignment of the receivable to the lender unless and until the lender complies with specified procedures for filing notices with the government under the Assignment of Claims Act and related regulations.[3]

SOLUTION: If a lender wants to collect directly from the United States government, there is no workaround to avoid complying with the federal statutes governing assignment of claims. However, the lender does have several strategies it can employ when lending to a company with receivables due from the

[2] *Medicare Claims Processing Manual*, § 30.2.5—Payment to Bank (July 31, 2020).

[3] *See* 31 U.S.C 3727; 41 U.S.C. 6305; 48 C.F.R. Chapter 1 et seq. (2019).

government so that it not without recourse. Examples include complying with the statutes at closing, capping the amount of such receivables in the borrowing base to limit availability created by government contract receivables in the borrowing base, or establishing a liquidity or availability marker whereby, if liquidity or availability falls below a certain dollar level, then the company must take the necessary steps to comply with the Assignment of Claims Act.

Scenario #3 Accounts Receivable that are Proceeds of Another Creditor's Collateral

SCENARIO #3: Company is in the software business. It generates revenue by licensing its intellectual property to customers in the ordinary course of its business. Company has a loan secured by its intellectual property in favor of lender A. Company contacts lender B seeking a loan secured by company's receivables. Lender B will only lend on receivables that are subject to its first-priority perfected security interest.

ISSUE: Are the receivables unencumbered assets available to secure lender B or are they already subject to lender A's prior perfected security interest as "proceeds" of lender A's collateral? A perfected security interest in a specific item of personal property collateral automatically attaches to the identifiable proceeds of that original collateral if the security interest in the original collateral was property perfected.[4] To the extent that the receivables arise out of licensing the intellectual property, then those receivables likely are proceeds of the intellectual property. If lender A has a valid and perfected security interest in the intellectual property, then the receivables that are proceeds of such collateral are (at least for a period of time) subject to the perfected security interest of lender A.

SOLUTION: If insufficient unencumbered receivables exist to support lender B's loan without including the receivables that are proceeds of lender A's collateral, the best solution may be to have the lenders enter into a split collateral intercreditor agreement. The lenders can agree, by contract, to split the collateral pool up between themselves through a split collateral intercreditor agreement. Split collateral structures are fairly common these days; however, extra care must be taken in drafting the separate collateral buckets in situations like this where proceeds of one lender's collateral will be the priority collateral of another lender. If lender B cannot obtain an intercreditor agreement establishing its priority lien in the receivables, then lender B should not extend credit in reliance on those assets and such receivables should be excluded from any borrowing base. Receivables can constitute proceeds of another creditor's collateral under a variety of different scenarios so it is important that lenders carefully consider competing claims at the outset and structure accordingly.

Scenario #4 Post-Petition Accounts Receivable

SCENARIO #4: Similar to scenario #3 above, the company is in the software business and it generates revenue by licensing its intellectual property to customers in the ordinary course of business. The company has a loan secured only by its receivables. The loan is not secured by intellectual property. Company files for bankruptcy.

ISSUE: Does lender have a lien on the receivables that the Company generates after it files for bankruptcy? While most secured loans are set up so that the security agreement grants a lien on after-acquired assets and proceeds, rather than limiting the lien to specific items in existence at a static moment in time — the rules change upon a bankruptcy filing. One of the primary purposes of the Bankruptcy Code is to provide the debtor with a chance for a fresh start. Accordingly, the Bankruptcy Code contains various provisions designed to further this goal. One primary example of this is section 552 of the Bankruptcy Code, which operates to cut off a pre-petition creditor's liens on property that the debtor acquires after the petition date. There are some exceptions to this rule. The primary exception is that a secured creditor will generally continue to have a lien on the post-petition after acquired assets that constitute proceeds of the lender's prepetition collateral.[5] Unfortunately, that exception will not protect the lender in the scenario described above where the lender was only granted a lien in the receivables and not in the intellectual property.

SOLUTION: In order to ensure that the lender's collateral package includes receivables generated on a post-petition basis from the continued licensing of intellectual property, the lender should also take a security interest in the underlying intellectual property as well. This recommendation holds true for other assets such as receivables generated by inventory.

Scenario #5 Rents vs. Receivables

SCENARIO: Company offers fully furnished apartments, complete with housekeeping and concierge services, on a temporary basis as corporate housing pursuant to a written contract. Company does not own the apartment buildings, but rather offers the housing and services in numerous buildings it leases that are located across the country. Company obtained financing from lender secured by the corporate housing revenue ("Temporary Housing Receivables"). Lender filed a financing statement covering all "accounts". Company files bankruptcy and the unsecured creditors committee claims that the lender is unperfected because it failed to perfect its security interest in the Temporary Housing Receivables under real property law.

ISSUE: How should the lender perfect a security interest in the Temporary Housing Receivables? Article 9 of the UCC expressly excludes from its scope "the creation or transfer of an interest in or lien on real property, including a lease or rents."[6] If the creation of

a security interest or lien involves a lease or rents of real property, then a secured party must create and perfect its lien under applicable state real property law by recording an assignment of rents. The question comes down to whether a company's receivables are "accounts" under the UCC or "rents" under real property law. Unfortunately, the answer is not straightforward and varies depending on the jurisdiction involved and the services to which the payments are related. For example, there are numerous and conflicting court decisions as to whether hotel and motel revenues constitute rents or receivables under Article 9 of the UCC.

SOLUTION: So, even if the Company does not consider itself a landlord, but rather a service provider generating receivables, it is not the company's interpretation of its situation that governs. Before making the loan, it is critical that the lender evaluate whether the Temporary Housing Receivables under the law of each state where the underlying real property is located would be characterized as rents or accounts, and perfect accordingly. Such an initial analysis is warranted whenever a company generates revenue associated with the usage of real property such as extended stays, temporary corporate housing, self-storage facilities, and data center storage sites.

The company has requested that the lender include in its borrowing base the receivables derived from the company's construction projects, which are supported by performance bonds because such receivables will provide the company with significant availability under the line of credit.

Scenario #6 Secret Liens

SCENARIO: Lender is evaluating an asset-based line of credit for a company in the agricultural belt, which has several businesses, including a construction business and a ranching operation that sells meat and meat products to customers. For the company's largest construction projects, the company is typically required to obtain a performance bond from a surety (the "Surety") that guarantees that the company will complete the project according to the contract signed by the company and the owner of the project. The company's ranching operation consists of the purchase and slaughter of cattle and then the sale of the meat and meat products to small grocery chains.

The company has requested that the lender include in its borrowing base the receivables derived from the company's construction projects, which are supported by performance bonds because such receivables will provide the company with significant availability under the line of credit. The company has also requested that the lender include in its borrowing base the receivables arising from the company's sale of meat and meat products to grocery stores. What should the lender include in the borrowing base?

ISSUE: If the surety is required to perform under the performance bond and complete the company's bonded construction project, then the surety will be subrogated to the rights of the company to the receivables from that construction project through its equitable right of subrogation and its contractual right to indemnity, which are typically back-stopped with an assignment of the receivables. The surety's rights to the receivables arising from the bonded construction project will be superior to the lender's security interest in such receivables, and this is the case regardless of whether the surety has a perfected security interest in the receivables. In fact, it is extremely rare for a surety to perfect its security interest in receivables under Article 9 of the UCC. So, a lien search will typically not reveal this issue (hence the issue is "secret" or "hidden").

With respect to the receivables arising from the company's sale of the meat and meat products, the company is likely a packer under the Packers and Stockyards Act of 1921 (the "PSA"). Accordingly, livestock that the company purchases and inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, must be held by the company in trust for the benefit of the unpaid sellers of the relevant livestock until full payment has been received by such unpaid sellers. To preserve its rights in the trust, the seller must provide certain written notice to the company and regulators. The trust assets will not become part of the bankruptcy estate if the company files a bankruptcy petition. Therefore, unpaid sellers will have priority over secured creditors in the assets of the

[6] U.C.C. § 9-109(11).

statutory trust, which include the receivables arising from the sale of meat and meat products. The trust arises by operation of law and no UCC-1 filing is ever made. Another secret lien.

SOLUTION: It is very risky for the lender to advance against receivables arising from bonded construction projects by lenders in light of the surety's superior rights to the receivables arising therefrom if the company fails to finish the project, including because it files bankruptcy. In this case, the lender should ensure that it is receiving periodic reporting from the company as to which of its construction projects are the subject of performance bonds. The receivables arising from such projects really should not be eligible to be in the borrowing base. Some lenders in the market are willing to include receivables arising from bonded construction projects, but they will usually cap the amount at an extremely low percentage of the overall borrowing base. The receivables arising from non-bonded construction projects can be included in the borrowing base, subject to customary eligibility criteria, and the lender and the company can evaluate whether other assets are available that can be included in the borrowing base to provide the company liquidity.

With respect to the receivables arising from the company's sale of the meat and meat products, these can potentially be included in the borrowing base, subject to customary eligibility criteria, if the lender receives adequate reporting from the company as to the unpaid amounts owing by the company to sellers of the livestock and copies of any notices that sellers send under the PSA. The lender should have the unfettered right to impose a reserve against the availability created by the borrowing base in an amount at least equal to the amounts owing to sellers of the livestock by the company.

Please also note that the lender should evaluate whether the company in this case is creating receivables through the sale of perishable agricultural commodities (think vegetables) or products derived therefrom because sellers of such assets have similar protections as livestock sellers under the Perishable Agricultural Commodities Act ("PACA"). Yet another secret lien.

Moreover, sureties' rights and PSA and PACA trusts are just the tip of the iceberg when it comes to secret liens. Other secret liens include, without limitation: tax liens (which can prime a secured lender in certain circumstances) and are often not filed in the borrower's jurisdiction of organization, landlord liens that arise by operation of law and can cover inventory of the borrower, mechanic's liens, the scope of which varies by state, environmental liens and liens in favor of the Pension Benefit Guaranty Corporation. Furthermore, the unsecured trade creditors of a borrower and the U.S. government may in certain circumstances be able to convert their general unsecured claims into what are effectively secured claims if they have valid recoupment or setoff rights.

As noted in the beginning, this article offers just a glimpse of the risks a receivables lender may encounter. The key for any receivables lender is to conduct adequate diligence before making the loan to confirm its collateral package, confirm its lien priority, confirm its liquidation strategy, and include appropriate asset eligibility, reserve provisions, and reporting covenants in the loan documentation governing the loan.

Katherine Bell is a partner in the Finance and Restructuring practice of Paul Hastings and is based in the firm's Orange County office. Her practice focuses on commercial and corporate finance transactions, including cash flow and asset-based loans. Ms. Bell regularly represents direct lenders, banks, BDCs, finance companies, other lenders, and borrowers in asset-based loans, working capital financings, acquisition financings, and other leveraged finance transactions. She has significant experience negotiating intercreditor relationships for creditors from both the senior and junior capital perspectives across a broad range of transaction structures, including unitranche facilities, split collateral arrangements, and first lien/second lien structures. She also has industry experience across a range of business sectors and considerable experience in cross-border transactions.

Jennifer Hildebrandt is a partner in the Finance and Restructuring Group of Paul Hastings and head of the Los Angeles Corporate Department. Ms. Hildebrandt represents banks and other lenders in commercial finance matters (including asset-based loans and cash flow loans), restructurings, workouts, and special situation lending. Ms. Hildebrandt has extensive experience in multi-tranche and multi-lien transactions. In particular, Ms. Hildebrandt has extensive experience representing lenders in two lien deals, split collateral deals and first-out / last-out unitranche transactions. In addition, she has experience in various business sectors including healthcare, software, retail, insurance, media, franchise, restaurants, casinos, manufacturing, and vehicle and airline transportation, and in cross-border transactions.

Stacy Hopkins is of counsel in the Finance and Restructuring practice and is based in the firm's Los Angeles office. Her practice focuses on commercial finance and creditors' rights. Ms. Hopkins advises clients on structuring, negotiating, and documenting cash flow and asset-based transactions across all lifecycles of a loan. In particular, she has deep knowledge of healthcare finance, given her prior business experience. Ms. Hopkins also has industry expertise in other business sectors, such as casinos, restaurants, media, manufacturing, and entertainment. In addition, Ms. Hopkins has extensive experience structuring and documenting unitranche and split collateral deals.

FEATURE STORY

The Secured Finance Foundation: Educating Secured Finance Leaders and Building Industry Recognition

BY MYRA THOMAS

Since its inception 30 years ago, the Secured Finance Foundation has raised nearly $10 million, all devoted to education, benchmarking data, undergraduate scholarships, guest lectures and panels, as well as SFNet event support and community investment. Some of SFFound's key supporters discuss the importance of the Foundation's mission.

The Secured Finance Foundation (SFFound) is celebrating its 30th anniversary this year. During that time, its efforts have grown considerably, but the focus remains on educating professionals in the field and promoting awareness of secured lending and its critical role in the world of finance. It's a major undertaking, backed up by industry leaders who have contributed time and money, generously, to the effort. The experts working in secured finance say their financial commitment and volunteering are an investment in the invaluable resources and training that the Foundation provides to the industry.

According to Rich Gumbrecht, CEO of SFNet and president of the Secured Finance Foundation, "The Foundation is a critical complement to SFNet. It provides crucial funding for educational, next generation and data initiatives for the betterment of our industry." Since its founding, SFFoundation has raised nearly $10 million, all devoted to education, benchmarking data, undergraduate scholarships, guest lectures and panels, as well as SFNet event support and community investment. Charlie Johnson, chairman of SFFoundation and past chairman of SFNet, notes, "The primary initiative has always been and always will be the education of members." But educational materials and classes are not static. The SFNet Education Focus 20/20 initiative reshaped course content to create cutting-edge classes taught by industry experts in multiple discipline tracks.

Broadening Its Mission

Another major push for the Foundation is engaging the next generation of secured lenders by broadening the leadership development program for emerging talent, notes William D. Brewer, partner at Winston & Strawn LLP. He became involved in the association and Foundation in the early 1990s. He held the position of Foundation chair in 2004 and 2005 and currently serves on the Foundation's board and corporate fundraising committee. "We're working hard to target college students and recent college grads and let them know about opportunities in our industry," Brewer says. "There's also a focus on diversity, equity, and inclusion (DEI) in secured lending and the organization."

Brewer has seen many changes in the organization, especially increasing efforts by the Foundation to make the organization a "larger tent" to quote the old cliché. "We are addressing the needs of all constituents—commercial banks, private lenders, factors and equipment leasing companies, law firms, financial advisors, appraisers, and other service providers." Another critical change, says Brewer, is the expansion and increased support for state chapter efforts. And, as new products develop and the industry becomes more global, international secured finance and cross-border finance topics get added to programming and advocacy.

Filling the Gap

It is the Foundation's ability to address current training needs and put time-saving tools at the fingertips of those in the association that make it a critical resource, says Jim Chadwick, partner at Holland & Knight and a strong Foundation supporter. Chadwick's legal career spans 36 years, and his involvement with SFNet began in the late 1980s. He has worked with the Foundation since its start, helping to identify and include advanced legal issues in the curriculum, as well as creating and instructing loan documentation and workout and bankruptcy programming. According to Chadwick, the Foundation provides a very efficient funding mechanism for delivering the standardization of secured lending knowledge to the industry. For instance, the foundation's creation of the 2019 "Secured Finance Market Sizing and Impact Study" contributed to SFNet's ability to advocate on legal, legislative and regulatory matters.

But the ability to bring the next generation of secured lenders into the industry and accelerate their growth and experience remain at the forefront of the Foundation's activities, says Chadwick. He points to the Leadership Development Program for emerging talent, as well as the 40 Under 40 Awards program, as critical components of the Foundation's mentoring work. "The Foundation provides an avenue for outreach to younger and more diverse professionals and a way to bridge the experience gap that exists in some parts of the industry," he adds. Whether it's guest lecture programming or reaching out to college juniors and seniors who are studying finance, the Foundation is always making sure to advance the cause of secured finance.

The inaugural class of 40 Under 40 in 2016 included Bethani Oppenheimer, associate at Greenberg Traurig LLP. She currently serves as a SFFoundation board member, corporate fundraising chair, and foundation liaison to the Executive Committee of SFNet. "I was deeply honored to be on the 40 Under 40 list of honorees," she says. "The recognition truly gave my career a boost." She became involved in Foundation educational events at the start of her legal career seven years ago. Today, Oppenheimer concentrates her efforts on work at the national level by leading the Foundation's corporate fundraising campaign and at the local level by teaching at SFNet's chapter educational events.

SFNet community members who become involved with the SFFoundation often say they get more out of the experience than expected. "It's always great to delve deeper into a topic, as well as see the contributions that the Foundation makes to SFNet firsthand," says Oppenheimer. Even in extreme circumstances, such as the current pandemic, Foundation

leadership managed to "adjust to the new normal and put essential educational programming and industry data online to give SFNet members access to information and people at the forefront dissecting real issues in real time," she adds.

Filling the Training Gap

Many of SFNet's members say they value the resources used and relationships made during their years in the organization, and that's much of the reason why they give back. Michael Sharkey recently retired from his position as president at Fifth Third Business Capital, but he maintains an active role in the SFFoundation and as an avid donor. "Donating to the Foundation is my way of giving back to an industry that has served me and others extremely well," he says. His involvement with SFNet began in 1978, and his participation in the Foundation's efforts go back to its start. "When I started in ABL over 40 years ago, there were large ABL finance companies like Walter Heller and GE Commercial Corporation that basically trained young people in our industry with formal classroom training in all of the disciplines in ABL from field exam to loan officer to sales training—all specific to ABL," he says. "No one does that anymore." Without SFFoundation, a new generation of leaders simply wouldn't be possible.

The SFFoundation classes and publications act as quality and centralized training that the industry benefits from without making a huge investment. "That training is key to maintaining the health, integrity, individuality, and longevity of secured lending," says Sharkey. He points to the industry textbook as a good example of the Foundation's coordinated efforts. "When I got into ABL, there was an old commercial finance textbook written by Monroe Lazere, which needed to be updated or rewritten. The Foundation allowed us to do that."

Charting a New Course

Not only do materials and classes change, so too does the organization's membership, and the SFFoundation is there to make sure they are privy to the latest education content to help in their careers. There are new faces at the helm, taking what may have been an industry that felt more like an insular club to that of a more welcoming and inclusive group, much of that courtesy of the Foundation's efforts. Andrea Petro assumed the role of president of the Secured Finance Network in 2016, the second woman to hold the position. Her participation in SFNet goes back to the 1980s.

Petro is currently a consultant to Waterfall Asset Management LLC and is a member of the board of directors of Ready Capital Corporation and BlackRock TCP Capital Corp., both publicly traded non-bank specialty lenders. She continues to devote herself to foundation work, fundraising from individual contributors, and is currently a member of the Board. "SFFoundation is responsible for connecting people in the industry and, as a result, we do more business," she says. But even more critical, Petro notes, is the "intellectual exchange" that industry leaders provide to one another. On a more practical level, members network and have a way to rapidly provide more credit to their borrowers because of the relationships established though the organization's events, she adds.

Marshall Stoddard, Jr., partner at Morgan Lewis, credits the Foundation with responding to the changing demands of SFNet's membership. He began attending SFNet events in 1980 as a young lawyer, eventually becoming involved in the Foundation in 1991. Stoddard served as the chair of the Foundation for two consecutive terms, starting in 2006. "As chair, my focus was to take some educational offerings digital and to make them more user-friendly," he adds.

Stoddard describes his experience with the Foundation as personally rewarding. "It's one of the most unique organizations in all of the business industries, given the current focus on opportunities for newer members and the work on diversity, equity, and inclusion," he says. "The industry has changed some, but certainly it's still not enough." SFFoundation, he says, can help push the needle in the right direction.

Facing Challenges & Forging Ahead

Change is often a good thing, but 2020 brought about changes that no one could have expected. The past year was certainly a challenging one due to the pandemic, but SFFoundation was able to move coursework and panels virtually. Nearly 200 participants engaged in reformatted and new on-demand classes. And, despite a four-month delay, fundraising continued in 2020, with the Foundation raising 99.3% of its objective. The Foundation also funded the SFNet Quarterly and Annual Data Reports, the Confidence Index, and two Market Pulse Reports.

The 2021 agenda for the Foundation includes an enhancement of data offerings, expansion of educational courses, and possible joint programming with the RMA and ABA. "You could write a book about what I've gotten out of my involvement with the Foundation," says Brewer. It's the reason, he says, that he's willing to give back to the organization. It is through the considerable efforts of committed individuals and their tremendous financial support that sets the Foundation's efforts apart from other finance trade associations

MYRA THOMAS

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

The Secured Finance Foundation would like to thank the following contributors...

Over the Secured Finance Foundation's 30-year history, we've received support from over 600 contributors and we thank each and every one for ensuring the Foundation is able to fulfill its mission. Here, we would like to send a special thank you to the firms whose cumulative contributions have totaled over $100,000.

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FEATURE STORY

Returns, Returns and More Returns

BY JOSEPH MARCHESE

Joseph Marchese of Clear Thinking Group discusses the increased return rates experienced by e-commerce due to the pandemic and what lenders need to know.

The year 2020 brought many challenges to us all. COVID-19 wreaked havoc on almost everything, from social interaction to bottom-line profits. But, because of all the lockdowns and social distancing, online sales grew at unprecedented rates.

JOSEPH MARCHESE
Clear Thinking Group

Per the NRF/Appriss Retail reports, the total U.S. Retail Sales for 2020 came in at $4.04 trillion. This represents an annual increase of 6.8%, up from 4.2% in 2019. Of the $4.04 trillion spent in 2020, U.S. consumers spent $565 billion in online purchases, an annual increase in online shopping of 32%, up from 14.3% in 2019. Today, online sales represent 14.0% of the total annual retail sales, up from 11.3% in 2019.

But while retailers have enjoyed the increase in consumer purchases, they now face the ever-looming threat of merchandise returns.

In 2019, merchandise returns for U.S. retailers totaled $309 billion making the total return rate approximately 8.6% of all retail sales. Included in these numbers were $41 billion of returns from online purchases, making the return rate approximately 9.6% of all online sales.

In 2020, because of the increase in online sales, merchandise returns totaled $428 billion with the total return rate increasing to 10.6% of all retail sales. Online returns included in this number were $102 billion, almost doubling the rate of return for online sales to 18.1%.

The comparison below shows the return rates by major category for 2019 vs. 2020. You can easily identify the changes due to the COVID-19 pandemic. Categories where we assume consumers shopped more, such as home improvements, housewares and sporting goods, are experiencing higher returns. We assume others, like footwear and beauty, experienced lower returns as consumers shopped less in these categories.

Retailers understand that, while returns are a necessary evil, they also offer some good opportunities. Logistics Matter reported that, according to a recent Narvar study, 95% of customers that were satisfied with the return process would shop at the retailer again. And retailers indicated that 82% of shoppers that return items are repeat customers. In fact, their best shoppers usually make the most returns. Returns give the retailer additional interaction with the customers and allow them to provide the customer with a good experience, which has been shown to build customer loyalty for future shopping.

Return Rate By Category*

	Blended Return Rate	
	2020	2019
Apparel	12.2%	12.5%
Auto Parts	19.4%	19.9%
Beauty	4.3%	5.3%
Department Stores	11.4%	12.6%
Footwear	9.1%	15.8%
Home Improvements	11.5%	10.3%
Housewares	11.5%	10.9%
Sporting Goods	7.6%	6.8%

*- NRF/Appriss Retail 2019/2020

After handling approximately three billion packages during the holiday season, delivery companies are receiving boxes of goods that need to go back to the retailer. Considering that approximately two million holiday shipments arrived after Christmas, retailers anticipate the number of returns to be much greater and are concerned not only about the volume of returned merchandise, but the costs incurred to handle these returns.

Some retailers are trying to reduce handling costs by moving to a field-destroy mentality. They will review their customers' purchase history, the value of the products and the cost of processing the return and determine whether to allow the customer to keep the old item. If the customer qualifies, the retailer has the option to either refund the customer or ship a new item to them without having them return the old item. This option is especially beneficial for merchandise that the retailer doesn't plan to resell.

Retailers have also made it easier for shoppers to buy online and return in-store. They worked with delivery companies so that customers would have scannable codes to bring to the stores to speed along the return process. But even with these codes, retailers have had to increase staffing in their stores to handle the increased volume of in-store returns so as not to affect the day-to-day operations of the business.

While retailers are scrambling to mitigate these costs, lenders should be keeping a watchful eye on the retail companies in their portfolio. Any large increase in returns could severely impact the borrowers' liquidity position and cause defaults in a myriad of financial covenants. Depending on the credit agreement, these default issues could include failing to notify the lender of any material adverse effects, borrowers' inability to maintain the minimum excess availability, unable to make timely payments to vendors/landlords or having material variances to their 13-week cash flow forecast or financial budgets.

Large returns will be readily visible in the borrowing base calculations, which may be required by the lender. These reports may show large drops in liquidity due to higher-than-normal return rates. By stepping up the frequency of the borrowing base reporting, lenders could get more visibility to what is happening with returns.

Lenders will need to be extremely diligent in their collateral reviews and audits to ensure that all returns are accounted for properly and financial forecasts have taken a more conservative approach to the anticipated return rates. In many instances, when a lender sees a deterioration of their collateral, it may be advantageous for them to recommend that the borrower retain a professional to help them navigate the evolving retail environment and assist with handling returns. Consultants can provide a great service to both the borrower and the lender. With a consultant in place, they can work with the borrower to create or update their business plan and assist them in implementing the changes necessary to achieve their plan. Lenders will feel more confident about the information being reported and the financial projections being provided.

Large returns will be readily visible in the borrowing base calculations, which may be required by the lender. These reports may show large drops in liquidity due to higher-than-normal return rates. By stepping up the frequency of the borrowing base reporting, lenders could get more visibility to what is happening with returns.

Joseph Marchese is a partner at Clear Thinking Group, an award-winning management consulting firm that works in a wide variety of industries with a focus on the consumer product and retail industries. He has over 20 years of experience in business consulting and is a member of the Value Preservation Practice at Clear Thinking Group, specializing in financial advisory, bankruptcy and restructuring. His assignments have included positions as Interim CFO, CRO and VP of Finance. He holds BSBA in accounting and is a certified turnaround professional (CTP).

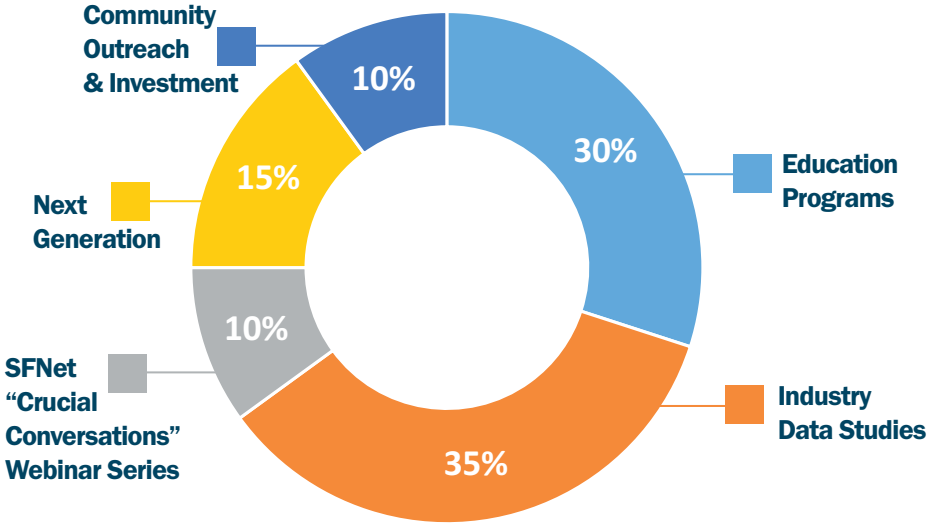
The Secured Finance Foundation's Campaign 2021 Is Underway

This year's goal is $350,000 – your support can get us there.

Networking, Industry data, Education, NextGen, Community and Webinars/ Roundtables

When faced with unprecedented challenges, SFFound is there to help
A strong network is more important than ever in times of uncertainty. That's why the Secured Finance Foundation helps unite our industry for crucial conversations, delivers actionable data to inform smart business decisions and prepares individuals for what comes next with our Education Focus 20/20 initiative. But none of this is possible without your support.

Where does your money go?



For more information or to make a donation, please visit SFFound.org

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FEATURE STORY

Executives from the accounts receivable financing space discuss the effects of the pandemic, PPP loans and current trends.

Accounts Receivable Roundtable

BY EILEEN WUBBE

How are you approaching business development this year, given that the new normal continues to limit travel and in-person meetings?

Tina Capobianco: We've really done fairly well on new business because we have a pretty mature market in Toronto and my BDOs are well established, so their network was still referring a significant number of deals. We changed how we sign documents and went to DocuSign, and that really helped because you're not concerned about meeting the client to get them to sign the documents or arrange notaries to have them sign or a lawyer to witness it. I think we're going to have to focus on maintaining relationships with our network, however we can, to keep the deal flow going. Canada has taken a very strict approach to this pandemic. You can travel domestically, but a lot of the provinces have quarantine rules. So, if I go to another province, I have to stay quarantined for two weeks before I can do any business. So, essentially, it's making it impossible. As soon as we can get back to normal, I think my entire team is anxious to get back on the road. We just have to make sure we can do it when it's safe.

TINA CAPOBIANCO
JD Factors Corporation

CASEY CONLON
Dare Capital

OSCAR ROMBOLA
eCapital

Casey Conlon: I'll never forget the look my wife gave me in May last year when I said I was attending a virtual happy hour networking event. She scrunched up her nose and was like 'Is that a thing?' And I was like, 'I guess it is.' I did that for a lot of networking events through SFNet, ACG and the TMA.

Even though Texas is "open", you're not going into people's offices; it's more meeting for outdoor coffee on a limited basis. People are doing that if they know you well and use Zoom to screen to see if it's worth going past that. For the most part, I'm doing everything over Zoom and working out of the house, with a little bit of in-person and very limited travel within Texas. I've actually developed pretty good relationships with people through other chapters of professional organizations because you can sign in virtually for something in Chicago or Cleveland, and I've just been trying to meet as many new people as I can.

KEVIN LABORDE
Cash Flow Resources, LLC

TOM FEVOLA
LSQ

Kevin Laborde: Cash Flow Resources is a small business factor dealing mostly with companies in our community, so travel is already limited. We continue to reach out to referral sources as they have been most productive in years past. When the opportunity presents itself, we are more than happy to arrange an in-person meeting at the prospect's choice of venue.

Oscar Rombola: I have not been on a plane since February 2020. I have devoted myself to reaching out to colleagues and referral sources to deepen our business relationship. Ongoing "virtual coffees and casual chats" have allowed my relationships to be viewed as closer and more human. We talk about personal things, never discussed before. We end up doing business with people we like and trust. In that sense, not much has changed.

What is the biggest hurdle that your business faces right now?

Capobianco: I think it's the fact that we are still remote. I think the biggest hurdle is going to be employee disengagement and lack of motivation on their part. Relationships are going to dwindle. The

more we stay away from others, it's going to be more challenging.

Tom Fevola: I believe balancing risk appetite with evolving market conditions to meet new business-growth projections will be a top hurdle for LSQ this year. We expect to see a variety of transactions. Being able to appropriately structure those deals and create tailored risk solutions through the anticipated cycles of PPP 2.0, projected increases in commercial Chapter 11 bankruptcies, and cleaning out troubled portfolios by institutions will undoubtedly keep our teams busy in 2021.

Laborde: The biggest hurdle has to be government involvement in the private sector. We are all for helping people and companies that need it, but the flood of financial support has truly crowded us out, especially when combined with the uncertainties businesses face in this lockdown environment. Once the small businesses we serve feel like re-engaging, we will be there to help them, but that may take a long time if lockdown philosophies persist.

I have not been on a plane since February 2020. I have devoted myself to reaching out to colleagues and referral sources to deepen our business relationship. Ongoing "virtual coffees and casual chats" have allowed my relationships to be viewed as closer and more human. We talk about personal things, never discussed before.

Rombola: As we move into 2021 the opportunities for business defy the traditional way of business development. To keep up with new ideas, a creative spirit is required. The old adage: 'thinking outside the box' is no longer applicable. There is no box anymore.

I think we need to take a hard look at technology and how we are processing invoices and confirming invoices. Factors have to make sure that they meet the demands of the market in terms of clients when it comes to confirming invoices via portals or processing invoices electronically. I truly think that as, things continue to change and progress, things that you would have seen take five years to develop in terms of technology, are already here. If factoring companies or companies in general are not looking into improving their service by using technology, they're going to be in trouble. My freight broker clients, especially when they're dealing with larger corporations, are being asked to use electronic means to post loads, making sure that they're able to process everything electronic in terms of telematics and telemetry and software. Before it wasn't needed; most of the communications were done by e-mails and phone calls. So, they wouldn't be able to even bid for loads and routes that they normally would do if they don't have a minimal level of technology included in their companies.

We've all been pushed forward in terms of what we offer and, if you're not at the forefront, you're going to be losing deals. It's not just about competitive pricing it's about service, and everything else that you're offering to your clients; it is now a must. We devote a lot of time to this, and we are developing our own software. In some cases, we are buying off-the-shelf software, but we are paying a lot of attention and we understand it well. We've always been technologically advanced, but now more than ever that's where we are putting a lot of our energy and our resources.

What are the hottest new business niches in 2021? Does it still include PPE providers? What trends are you noticing in the various industries you provide factoring services to?

Capobianco: We didn't do a lot of PPE because they were so complicated. We found a lot of success during the pandemic and we're seeing it going forward, in factoring nurse staffing companies. There's such a demand on the health system and there are long-term care homes that are short-staffed. We funded a number of staffing companies that deal only with nurses and personal care workers.

Conlon: The niche that we typically leverage is commercial construction. Subcontractors, progress billing and milestone billing is the niche that we know and so that's the one that we go after.

From a more macro perspective, I've seen a lot of businesses really trying to do some sort of consumer aspect for e-commerce businesses, either from an AR or inventory perspective. Dare hasn't tapped into it yet, but I feel like that's a growing niche that people are starting to promote.

Laborde: The honest answer for CFR is "we don't know." Time will tell when companies have the courage to make things happen again and need growth capital. For now, the government is meeting that need. We have had several PPE-related opportunities come up, but they never materialized. I doubt that is where we will see much activity. As soon as it becomes a hot niche, it is barely worth pursuing anymore.

Rombola: When it comes to freight factoring, we've seen many of the small transportation company owner-operators decide to go on their own as they see opportunities in the market for transportation. Some of them used to be leased to a larger company and then they decided to get their authorities and insurance and open their own companies. Freight factoring is not only about having same-day funds, but also the sophisticated administration, monitoring and professional service we bring to our clients and their payers. They realize that they have the knowledge of the market, of how to run their loads, but, when it comes to the back office, they may be a little faulty. They look at factoring not just as a cash flow solution, but as a source of administration and efficiencies. We also provide them with fuel cards and other solutions that will be good for them as they grow. It's a win-win situation for the industry and we continue to see that trend in 2021. Hopefully, when more settled, the small companies will really go into an expansion mode.

How does PPP 2.0 impact your expectations of client and debtor credit quality? How long do you think purchase volume will remain soft following PPP 2.0 funding?

Capobianco: The first round of government assistance in Canada hurt us. We saw about a 30 percent decline in purchase volume because businesses lived on the government loans. There is no mention of another round of that in Canada. We're hoping the economy is going to kick start. Should there be a second round, the same thing is going to happen; businesses are going to use that government funding to sit tight and wait this out. I think the retail industry is probably the hardest hit right now. That's still not going to change because it's going to be hard to get that started again.

Conlon: I think compared to 1.0 the impact will be a lot more minimal. We have actually booked several deals since round two had started. I think purchase volume may dip, but I don't have that kind of visibility in my role. But I know from net new clients coming on board we haven't seen the dip that we saw in terms of what we track on the outbound side in March, April or May of 2020. I think the guardrails have helped kind of keep us moving forward, which is good.

Fevola: We do not believe it will have a material effect on future opportunities. Given LSQ's new Q1 business model and projections, we are less concerned about client and debtor creditworthiness as a direct impact of PPP 2.0. However, we project a decrease in purchase volume within Q2 and perhaps the beginning of Q3 from our client portfolio. We've received mixed signals but, overall, we have observed less enthusiasm from our client portfolio for PPP 2.0 than for the original program.

Laborde: PPP did adversely affect our volume in a big way, and we do not see a quick turnaround as people wait to see what additional goodies the government has in store for them. I would not be surprised to see adverse impacts on our company for another 6-9 months after the programs are enacted. For clients playing in the food space, it has been a really rough time given, restaurants have been shut down. How other food operations have reimagined themselves remains to be seen. That said, we remain confident that many of the small companies we serve will remain viable because of that support, so there are two sides to that tale.

How is the MCA product affecting other forms of finance during the pandemic and what do you expect as we return to more normal levels?

Capobianco: We saw MCAs pretty much go away during the pandemic. There wasn't a lot of extra activity and we haven't seen that at all up here, not so much in terms of new business. We always see 50 percent of our new files with some MCA registered against it. We saw almost none of that.

Conlon: For us, we need to be in first-lien position on accounts receivable so, if there's an MCA who is in front of us, we're looking to either use the first funding to pay them off completely and find some sort of subordination or payoff strategy. I haven't noticed now if it's more or less than it was in 2020, but I see a lot of businesses still tapping into them and then looking for factoring as a way to potentially get out of the MCA decisions that they made previously.

Fevola: LSQ has been fortunate in that a large part of our client portfolio and new business opportunities have been in surprisingly good shape as it relates to MCAs. Our approach has been and continues to be fully understanding clients' cash flow needs and accommodating these needs directly. As such, LSQ has remained flexible regarding over advances or allowing short-term, unconventional positions to support existing clients and new business.

Our client-centric culture ensures LSQ's staff are well-versed in the liquidity needs of our businesses. Subsequently, the client teams we work with are comfortable discussing when they may require additional funds than initially proposed. This approach allows us to serve clients more effectively and efficiently and prevents the need to seek out an MCA.

Laborde: We have only had a couple of clients obtain MCAs over the last year or so and they regret going down that road. It is really up to us to understand what clients need and how we might better assist them before they look to an MCA. Based on what I have read, the MCAs may not be as aggressive going forward, but they will definitely be there and factors large and small have to take that into account.

Rombola: Our company will not take a second position to the MCAs. If we see the client is in search of extra cash, we make sure we find ways to provide.

What is your outlook for the remainder of the year?

Capobianco: I think if we can keep the pace that we're at right now, for the rest of 2021, I would be super happy. If my clients stay as they are, and we have some new clients to obviously replenish who leaves but, if everything just stays status quo for this year, and everybody gets immunized, so that in 2022 we can return to normal, that would be my goal for this year.

I'm just worried about the economy in general because the businesses that we factor are still going to be around, like transportation and staffing. All of our distribution wholesale company clients are pretty much not in business anymore because they would service retailers. I haven't had to take any government assistance, I haven't laid off anyone, and everyone's received bonuses and increases for 2020. So, if I can do the same for 2021, I'm happy.

We saw MCAs pretty much go away during the pandemic. There wasn't a lot of extra activity and we haven't seen that at all up here, not so much in terms of new business. We always see 50 percent of our new files with some MCA registered against it. We saw almost none of that.

Conlon: I'm pretty bullish on the remainder of the year. In January and February, we booked a number of deals as a company. With PPP round two going on during this period, we didn't expect this volume of new business and view it as overwhelmingly positive of things to come. I was fearful in December that it would be kind of like April or May of 2020, but it hasn't, so I think that bodes well for the rest of the year when things start to pick back up. If we're able to book deals now, then I think it will continue to be the case throughout the year.

Fevola: I expected 2021 to start with headwinds for the factoring industry, given the impacts of PPP 2.0, the ongoing economic pandemic impacts, and our navigating through the vaccination process. As 2021 progresses, I expect there to be much less headwind to close out the year. PPP 2.0 should wrap up, and more clarity around the vaccination program's efficacy will be helpful. Hopefully, this should drive a return to some sense of normalcy, and I suspect we will finally see the purge of non-performing clients from institutional lenders. Along with new opportunities, this should equate to growth trends for the factoring industry.

Laborde: We are cautiously optimistic right now. More and more we are seeing signs that people are wanting to put 2020 behind them for good. That includes the timid! As long as local governments allow businesses to operate, they will figure out how to safely re-engage. We look forward to that day.

Rombola: I expect continuous growth of our freight factoring portfolio as banks may restrict credit for transportation companies and opportunities for M&A and organic growth of our portfolio by offering complementary financial products to our clients.

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

Because things aren't always as they seem

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HEALTHCARE IMPACT

COVID-19 Relief And Its Impact On Secured Healthcare Lenders

BY DOUG NAIL AND KEITH TAYLOR

Like so many other sectors of the economy, the healthcare industry faced unprecedented challenges over the past year due to the COVID-19 pandemic. For secured lenders, the months ahead will create new and unique issues to focus on when assessing healthcare borrowers post-COVID.

While the news cycle often has focused on how hospitals have handled the challenges of surging patient volume during the pandemic, COVID-19 has wreaked havoc on other healthcare providers in a very different way. Among others, skilled nursing facilities faced significant economic challenges and providers of elective surgeries and preventative care also saw sharp reductions in demand. As the federal government offered COVID relief to the broader economy, it expanded existing programs and implemented new ones focused on the healthcare sector. As a result, a significant amount of federal aid to healthcare providers during COVID has come through one of the following five categories of relief channels:[1]

- **Paycheck Protection Program ("PPP") loans –** These loans have impacted a broad range of borrowers across all industries, and lenders to the healthcare sector will typically assess them in the same manner as non-healthcare lenders. Because the loans are forgivable if used for permitted purposes under the CARES Act, lenders desire assurances that borrowers will use the proceeds of these loans in a manner that should ensure forgiveness under the Act.
- **Deferral of payroll taxes –** The CARES Act also permitted employers to defer deposit and payment of the employer's portion of Social Security taxes for the period beginning March 27, 2020, through December 31, 2020. This relief channel is not unique to the healthcare industry, but has been frequently utilized by healthcare providers. Because this program is a payment deferral, the taxes are ultimately required to be paid. Currently, 50 percent of any eligible deferred amount is required to be paid by December 31, 2021, with the remainder to be paid by December 31, 2022.
- **Provider Relief Fund Program –** Established by the CARES Act and subsequently expanded, the Provider Relief Fund Program acts largely as a grant program to healthcare providers to defray COVID-related expenses and account for lost revenue as a result of COVID. To date, it has provided for the distribution of up to $178 billion in funds to various healthcare providers in a series of general distribution phases as well as targeted distributions to certain specific portions of the healthcare industry (including hospitals heavily impacted by COVID, certain rural and tribal providers, safety net hospitals, skilled nursing facilities and other long-term care providers). Healthcare providers that receive Provider Relief Funds are required to use those funds for expenses attributable to COVID-19 and then for lost revenues attributable to COVID-19. Under the program, providers are required to submit reporting to the U.S. Department of Health and Human Services ("HHS") in order to help verify that funds are properly used. However, the specific timeline and requirements for that reporting have been repeatedly updated and refined, so healthcare providers still face some uncertainty about the specific reporting they will need to provide and how they will need to determine the amount of expenses and lost revenues that are applicable. To the extent that a provider receives

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[1] Although the federal government utilized other methods for infusing COVID relief funds into the economy (including the healthcare sector) and healthcare providers received additional liquidity from state Medicaid funding, this article concentrates on the five categories described herein.

funds under this program in excess of the COVID-attributable expenses and revenue losses that it can identify in its reporting to HHS, it is required to return that excess.

- **Accelerated Medicare Payments –** Through the Accelerated and Advance Payment Program for Medicare Part A and Part B providers and suppliers, healthcare providers had the ability before the pandemic to receive certain Medicare payments from the Centers for Medicare & Medicaid Services ("CMS") prior to the date on which they would typically be paid. The CARES Act expanded this program to help utilize it as a COVID relief channel that CMS deployed in the early stages of the pandemic to issue approximately $106 billion in accelerated payments. These accelerated payments functioned as an advance to the providers, and the program then provides that CMS can use recoupment[2] powers to obtain repayment of those funds. The current recoupment provisions would begin a phased recoupment process one year after the applicable accelerated payment was made, although providers have been lobbying for changes to the program to forgive accelerated payments made due to COVID.
- **FEMA Public Assistance Funds –** In response to COVID, the Federal Emergency Management Agency has deployed substantial funds to providers through its pre-existing public assistance program. Providers must apply to receive those funds, which operate as a grant to be used for reimbursement of COVID-related expenses already incurred by the provider.

Because of the extensive governmental relief deployed through these channels, many healthcare providers have been less reliant on traditional commercial loans over the past year, resulting in decreased loan utilization and reduced refinancing efforts. Given the importance of the healthcare industry to the pandemic fight and the U.S. economy, it seems likely that additional potential relief under the Biden administration could further enhance providers' liquidity during the pandemic and reduce traditional financing demand. While there is no way to be sure, we believe it is most likely that any additional relief under the new administration would utilize and extend the structure of one or more of the existing relief channels described above.

At some point, however, the channels of COVID relief will begin to dry up as the pandemic situation improves. As that happens, healthcare providers may face new challenges dealing with the lingering effects of the existing relief framework. In particular, the existing framework could require providers that have benefited from these relief channels to deal with cash flow disruptions beginning in 2021 as well as compliance concerns related to required reporting. The cash flow concerns stem primarily from the current requirements for repayment, recoupment or setoff of deferred payroll taxes and accelerated Medicare payments (as well as possible repayment obligations that could arise due to excess Provider Relief Fund payments), while the compliance concerns relate primarily to uncertainty regarding reporting about how providers have utilized funds under the Provider Relief Fund Program (and the related impact on the ability of providers to properly repay any excess funds received).

Takeaways

1. **COVID-related relief funds disbursed in 2020 stabilized liquidity for the healthcare sector, but obligations relating to those funds could constrain liquidity in the months ahead.**
2. **Understand and analyze all of the types of relief funds that your borrowers have received, as unique issues apply to each relief channel.**
3. **Anticipate your healthcare borrowers' liquidity issues that might arise from COVID relief repayment obligations (including related governmental setoff and recoupment rights), and monitor related legal and regulatory developments in order to take such proactive measures (including, if applicable, availability reserves) as you determine may be advisable.**
4. **Healthcare providers need to maintain adequate records to demonstrate that COVID relief funds are used for permitted purposes (or otherwise lawfully received and retained), or else they could face false claims liability that could result in financial harm and even exclusion from governmental healthcare reimbursement programs.**
5. **Take steps to ensure that your healthcare borrowers are maintaining robust records of how they use COVID relief funds and monitor HHS guidance about reporting standards for those funds.**

Repayment and Recoupment/Setoff Concerns

As noted above, CMS possesses broad rights of setoff and recoupment against Medicare payments. Those rights are extremely powerful tools and some of the most significant concerns for healthcare lenders, even in non-pandemic times. While lenders to non-healthcare borrowers are attentive to payment of taxes and similar governmental obligations, they also benefit from a grace period that typically applies before the government can obtain a priming lien for those unpaid obligations, as well as from the fact that the government's lien priority typically does not apply to advances made prior to expiration of that grace period. Healthcare lenders may not be so lucky – in certain circumstances CMS may be able to exercise its rights of recoupment and setoff as soon as the government obligation becomes due, reducing collections that would otherwise repay prior loan advances. In the context of the COVID-related relief channels discussed above, this means that providers could see their Medicare payments quickly decrease if the provider fails to pay deferred payroll taxes when due, if it fails to return excess Provider Relief Fund payments (as discussed below), or due to phased recoupment of accelerated Medicare payments. Consequently, even if a provider's business returns to pre-COVID levels after the

[2] This article discusses both recoupment powers (i.e., CMS' ability to reduce payments by netting two related claims under a single transaction, such as the payment or overpayment of Medicare claims), and setoff powers (i.e., CMS' ability to reduce payments by netting obligations that are owed between the parties under unrelated transactions). Under the "unitary creditor" doctrine, courts have frequently viewed all branches of the federal government as a single creditor, which creates a broad right for CMS to set off payments due the federal government against Medicare payments.

pandemic, it could face liquidity issues due to setoffs or recoupments. Accordingly, lenders may want to anticipate those concerns in order to implement availability reserves and other measures in a manner that balances the lender's interests with the provider's liquidity needs.

Compliance and Reporting Concerns

Lenders also should be attentive to steps that borrowers are taking to reduce the potential for liability under the False Claims Act as a result of the use of relief funds. The False Claims Act was enacted in 1863 to reduce efforts to defraud the government. Although it is not healthcare-specific, it is particularly important to healthcare providers and their lenders due to heavy dependence on governmental reimbursements. Among other things, the Act prohibits both (i) knowing submission of a false claim for payment to the government,[3] and (ii) knowing concealment and improper avoidance of payment of obligations to pay or transmit funds to the government.[4] This second element is sometimes referred to as a "reverse false claims" provision. The penalties for violations of the False Claims Act can be severe for providers, including an obligation to pay three times the amount of the government's damages, and potential exclusion of the provider from participating in federal healthcare programs[5] (effectively ending its ability to receive governmental reimbursements and often threatening the provider's survival).

Reverse false claims concerns are particularly meaningful in the context of the Provider Relief Fund Program. Under that program, providers may receive funds based upon various formulas, depending on the provider's distribution category. In an effort to streamline distribution of those funds, most of the formulas are based on identifiable factors, including prior revenue and COVID-19 admission numbers. However, the funds may only be used for expenses and lost revenues related to COVID. Consequently, the amount of funds a provider receives under the program inherently differs from the amount of funds that the provider is entitled to use under the program. To the extent that a provider actually receives funds exceeding what it is entitled to use, it may be obligated to return that excess to HHS and failure to do so could result in reverse false claims liability for retaining such excess. This creates a need for providers to report to HHS the amount of those expenses and losses as required by the CARES Act, in order to determine whether any obligation to return excess funds exists. Reporting can be further complicated if the provider has received funds from FEMA for COVID relief, because any expenses that were reimbursed by those FEMA funds should not be considered as COVID-related expenses for purposes of determining a provider's entitlement to Provider Relief Funds.

Unfortunately for providers and their lenders, HHS guidance on the reporting requirements and standards for calculating COVID-related expenses and losses is anything but settled. Therefore, providers would be well-advised to maintain robust recordkeeping related to COVID expenses and losses until the standards are fully established and the provider has determined whether it is obligated to return any excess funds. Similarly, healthcare lenders should take steps to ensure that their borrowers are maintaining records consistent with that approach.

Looking Ahead

While the healthcare industry faced tremendous challenges with the onset of COVID-19, federal relief efforts have infused substantial liquidity into this sector over the past year and, as a result, many providers have been less dependent on their traditional financing sources during the pandemic. However, the nature of those relief efforts includes some components that will almost certainly constrain providers' cash flow later in 2021 and beyond, creating new liquidity challenges for providers and potential opportunities for lenders to the healthcare industry. Whether dealing with existing borrowers or new prospects, the COVID landscape necessitates that prudent lenders conduct focused diligence efforts in order to understand the specific circumstances of each borrower and to thoroughly assess the scale of COVID-related offsets and recoupments, as well as other potential liability under the False Claims Act.

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[3] 31 U.S.C. § 3729(a)(1)
[4] 31 U.S.C. § 3730(a)(1)(G)
[5] 42 U.S.C. § 1320a-7

HIRING CORNER

Data-Driven Hiring Is Coming

BY JOE ACCARDI

Technology has in some way disrupted nearly every aspect of the business world, and it is likely to do so with the hiring process. The traditional way of building teams will give way to a far more scientific and data-based approach.

JAPANESE PROVERB: WE EACH HAVE THREE FACES. THE FIRST FACE, YOU SHOW THE WORLD. THE SECOND FACE, YOU SHOW YOUR FAMILY AND CLOSE FRIENDS. THE THIRD FACE, YOU SHOW NO ONE; IT IS THE TRUE YOU.

A lot of perception management is going on in our lives.

Data and Probability

Marketing-oriented data analysts can determine, with some degree of certainty, if you are a prospect for the purchase of a high-end luxury sedan based on one bit of data: your zip code. When that data is cross-referenced with a few additional bits of data, such as your education level, age, and employment history, the probability that you're an attractive prospect can go up substantially. Marketing professionals have been doing this kind of simple analysis for many decades.

Let's go much deeper with this concept.

There's a massive quantity of data out there about each of us...unimaginably massive. What podcasts and apps you've downloaded; what you've searched for on Amazon and Google; what you've liked on Twitter, Facebook, and Instagram; what you've watched on cable TV, Netflix, Prime Video, and YouTube; what websites you've visited; what you earn; what online courses you've taken; your phone call activity; what clubs and groups you belong to; what music you listen to; how you engage, and to whom you're connected, on social media; what Ted Talks you've watched; what periodicals you've subscribed to; where you shop; what you buy; what you eat; what car you drive; where you travel...you get the picture. We could fill many pages with all kinds of data.

Insights into Who We Are

It will be remarkably easy, in the near future, for advanced artificial intelligence algorithms to take all this otherwise useless data and make it useful by correlating it, with varying degrees of probability, to personal characteristics: adaptable, decisive, positive, resilient, considerate, analytical, driven, trustworthy, stubborn, eager to learn and grow, confident, realistic, pragmatic, kind, deliberate, chaotic, detail-oriented, self-centered, tactful, erratic, open-minded, impatient...and on and on.

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Everything we do is reflective of who we are. Data analysts, with access to all the data out there about you and with the technologically enhanced ability to analyze it, will be able to paint a very accurate picture of who you are, and this will be done with increasing sophistication over time. As an example, after analysis of much data on activity over many years, it could be concluded with an 83 percent (this number used simply as an illustration) degree of certainty, that someone is not at all innovative, is a conformist, and is uncomfortable challenging the status quo. Since so many personal characteristics will be easily identified and measured with data analysis, there will be much less reliance on "gut feels", which are vulnerable to biases and irrationality. (Many bad decisions are made by people in casinos relying on "gut feels.")

Traditional Hiring

The typical hiring process has involved job candidates presenting themselves on resumes and with well-prepared answers to common interview questions. Some misrepresentations are possible and may be the result of a candidate having a blind spot about their strengths and weaknesses. Nevertheless, hiring managers make judgments on those presentations, as well as a candidate's education and work experience. Decisions are then made based on hiring managers' intuition and "people-reading" skills, and their ability to determine certain personal characteristics. If you're lucky, some current teammates have some prior work experience with the candidate and can weigh in on past professional interactions. This self-presentation, resume- and interview-based approach is not the most effective method when plentiful data is available for analysis.

Tim Knight, vice president of Thinking Ahead Executive Search, shared information about studies that find up to 80% of employee turnover is due to a bad hiring decision. "According to the U.S. Bureau of Labor, the price of a bad hire is at least 30% of the employee's first year earnings, and for

more senior roles, it's much higher." Knight also commented that this does not include the overall negative effect of a bad hiring decision, which is far greater when you think of the additional morale and productivity impact to an organization. "The truth is that relying only on human judgment to accurately evaluate personal characteristics is a less-than-ideal way to go about it. There is a lot of variation with hiring managers in experience and skill in interviewing job seekers; the very best do a good job, but with others, not so much."

What I have described above is largely inconsequential when hiring people for routine, task-oriented jobs. For these positions, motivation is heavily weighted on output and corresponding pay. The people being hired for other work are, of course, quite different. Their value is to some significant degree, "who they are." But you really don't know "who" you're hiring in many cases. With data-based confirmation of who you are hiring, intra-team dysfunction can be minimized, and effective collaboration and corresponding productivity can be maximized.

This is especially important when hiring people for leadership positions. Here is where the benefit of data-driven hiring can be the most beneficial, given the individual qualities necessary for a strong and effective leader. Imagine being able to spot future talent that will be needed to build and sustain a company culture for the long haul. Historically, firms have relied on personality profile tests like Meyers-Briggs and others to help select the best candidate. While tests like these measure how one responds to specific questions, test results could be correlated with data about past activity to bring about much more successful targeted hiring.

The typical hiring process involves job candidates presenting themselves on resumes and with well-prepared answers to common interview questions. Some misrepresentations are possible and may be the result of a candidate having a blind spot about their strengths and weaknesses. Nevertheless, hiring managers make judgments on those presentations, as well as a candidate's education and work experience.

Seeing the Future

The problem that some people have when picturing the future is that it looks too much like the present and their own current world, with which they are familiar and in which they are comfortable. They underestimate the pace of change; change has never been this fast, and it will never again be this slow. (Kind of like, "this is the oldest I have ever been, and the youngest I will ever be.") But make no mistake, with yet another inevitable wave of technological innovation, and with the amount of personal data growing exponentially, the use of personal data for hiring decisions is coming. Data analytics and decision science are all about insights leading to better decisions, including decisions about hiring people.

I understand that it may be hard to imagine today, and both frightening and fascinating to ponder. Admittedly, what I have put forth above is futuristic. Predicting with precision how data-driven hiring will unfold is difficult, especially when considering potential legislation on data-privacy issues. But within ten years, to some degree, in some way, data gathered from a wide variety of sources will be correlated, via highly sophisticated artificial intelligence algorithms, to our true selves — our third face. *What we do is who we are*, and harnessing individuals' activity data to better understand them will be useful not only to marketers of products and services, but to employers as well.

Joe Accardi is the head of new business development for the ABL Division of People's United Bank. Feedback is welcomed: joseph.accardi@peoples.com.

APPRAISER'S INSIGHTS

How to Manage and Work With Outside Appraisers

BY CHRIS NUGENT

Chris Nugent of Bluechip Asset Management provides tips for partnering with outside appraisers to ensure the best outcome for your organization.

Investors, asset-based lenders, bank commercial lenders, equipment leasing companies, bankruptcy attorneys, and many other constituencies often have a need to retain outside appraisers to support underwriting and otherwise participating in their transactions. To ensure the success of your transaction, and to keep costs low, you want to do this as effectively and efficiently as possible. Following are best practices employed by smart users of outside appraisers.

Hire Smartly

Step one: hire smartly. Selection of the right appraiser is the most important determinant of a successful appraisal that will be accurate, credible, and done on time. Inquire about industry experience and knowledge of the subject asset class. Know the appraiser's credentials, to allow credibility and saleability to third-party investors. Ask about confidentiality practices to ensure the confidentiality you require.

Ask "who exactly will do my appraisal?" If a large appraisal firm, they may put a new, junior appraiser on your project who may not have much experience with your collateral type. Ask for examples of appraisals in the relevant industry. Maintain a list of qualified appraiser indexed by experience and expertise in different equipment types — mining, transportation, medical, etc. Ask for a specific list of engagements documenting experience. Ask for credentials — the number one credential for machinery and equipment appraisal is American Society of Appraisers, Accredited Senior Appraiser designation. Other acceptable accrediting appraisal entities include AMEA, RICS and Chartered Surveyor (Canada).

Vet appraiser qualifications. You can quiz on subject matter knowledge and methodology even if you don't know it that well yourself: Who are the three leading batch plant makers in the US.? What are the most popular process chambers in the Applied Materials Endura PVD tool? How does a CAT scanner work and what are the latest government regulations? Ask your investors and syndication partners which appraisers they accept. Negotiate the price — it's a very fee-driven market for appraisers on the "bank list." Once you have a trusted appraiser, sign a master services agreement with prices for recurring work spelled out.

CHRIS NUGENT
Bluechip Asset Management

Appraiser Certification

There are a number of certifying and regulating entities governing machinery and equipment appraisers in the U.S. and internationally. We will focus mostly on the U.S. market, but here define and describe all of these organizations. When conducting or commissioning an appraisal, you want the appraisal to be credible, acceptable to investors and counterparties, even to hold up in court when necessary. This is why it is critically important when sponsoring an appraisal to ensure that the appraiser holds the correct credentials.

How to Conduct an Appraisal That Will be Acceptable to Investors and Banks

In the U.S., the gold standard for certified appraisals is ASA certification by an Accredited Senior Appraiser of the American Society of Appraisers. Having said that, there are thousands of different equipment types, from swamp buggies to CNC machine tools to medical imaging MRI scanners, so the most important feature of a high-quality appraisal is to get a qualified individual to conduct the appraisal, whatever his/her membership or affiliation. ASA certification is the usual way to accomplish this, as this organization strictly governs who is designated as an Accredited Senior Appraiser by virtue of experience and education. ASA appraisers agree to conform with a code of ethics and to conduct all appraisals in compliance with the Uniform Standards of Professional Appraisal Practice.

When selling an investment "paper" to a bank or private equity or other financial institution, that counterparty will need to be sold on the value of the equipment, the value of the collateral underlying the investment, usually by asserting an appraisal conducted by an appraiser who is certified by ASA. You need the investor buying the paper to "buy into" the level of collateral coverage needed to make the transaction work. This safety is generally accomplished by asserting an appraisal conducted by an ASA certified appraiser.

RICS is the certifying body that is important for European transactions. RICS can be sold in the U.S. — a valid collateral value assessed by a Chartered Surveyor — but is primarily European in history and prestige and noteworthiness.

AMEA and EAANA organization memberships are less well-known, but many banks and financial institutions will accept these designations/certifications as valid representations of collateral value in machinery and equipment appraisals. They just are not as well known as ASA and RICS. And, depending on the exact equipment under valuation, you may find the expert you know and trust the best out of one of these groups.

Get the Contract Right

Define clear expectations:

- purpose of appraisal – lease residual, bank loan collateral, SBA loan, property tax valuation
- inspection vs. desktop – will onsite inspection be needed; is the equipment new or used?
- premise of value – fair market value, orderly liquidation value, fit for the purpose
- intended user – must list approved users, which may include the SBA or third parties
- fee/cost of appraisal – generally paid on report delivery, not contingent on appraised value
- as/of date – could be past, present, future, appropriate for the purpose
- deadline for report delivery – can change, depending on arrangement of inspection
- assumptions – extraordinary, hypothetical
- confidentiality – standard USPAP appraisal methodology requires confidentiality.

Develop Long-Term Relationships With Preferred Appraisers

Set expectations of format, turnaround time and fees. Many appraisals require annual updates. Many users of appraisals, such as banks and equipment leasing companies, want appraisers who can assist in remarketing.

Monitoring and Managing the Project

Good communications, regular updates, interim results make everyone happy and avoid surprises. Typical appraisal engagements may span on the order of a few weeks. Define project milestones and deliverables, final report delivery date. Aftermath of the appraisal may include remarketing and auction, court deposition or testimony, other follow-up work. The appraisal work and inspection must be coordinated with third parties on site at the target asset/plant/facility.

When selling an investment – "paper" – to a bank or private equity or other financial institution, that counterparty will need to be sold on the value of the equipment, the value of the collateral underlying the investment, usually by asserting an appraisal conducted by an appraiser who is certified by ASA.

Confidentiality

Large lenders generally require appraisers to enter into Master Service Agreements, which spell out confidentiality requirements. Information requiring confidentiality protection may include secure emails and attachments, storage and retention of data. Specify confidentiality requirements of appraiser subcontractors and sources. Keep in mind that the client is generally the only party who can get a copy of the appraisal report – there may be attorneys and other stakeholders who want to see the results.

Chris Nugent is managing director of Bluechip Asset Management, an appraisal and asset management services company. He has over 25 years of experience in valuation, leasing, and financial services, focusing on equipment appraisal, residual management, asset remarketing, and portfolio management. He is an Accredited Senior Appraiser of the American Society of Appraisers. He holds a BA in Statistics from the University of California, Berkeley, and an MBA from Santa Clara University.

CFO INSIGHTS

Prioritizing Cost Optimization in 2021 and Beyond

BY JOHN KRUPAR AND JAMES J. LOUGHLIN, JR.

The COVID-19 pandemic has caused widespread business interruption and revenue challenges for a broad range of industries and service providers, so companies are taking active measures to prepare for the road ahead. Even as the vaccine rollout ramps up, the economic impacts of the pandemic will continue to have significant downstream effects. For many industries, consumer behavior has shifted and may be slow to return, even after some sense of normalcy is restored. Cost optimization is more important now than ever, and the months ahead present an opportunity for all businesses to assess their organization and adapt for the future to increase agility and resilience.

CFOs Plot Their Cost Optimization Strategies

Middle-market CFOs are focused on essentialism and reassessing amid a new business environment. According to the 2021 BDO Middle Market CFO Outlook Survey, more than one-quarter of CFOs at U.S. middle-market companies (27%) plan to decrease spending on operations in 2021, and 13% say cutting costs is their top business priority. Specifically, almost a third of companies (32%) are reevaluating their real estate footprint.

Developing a more agile cost base can help organizations focus on their core business and increase flexibility to leverage cost efficiencies during economic uncertainty. Cost optimization should still support current operations while laying the groundwork for longer-term objectives. This approach includes targeting strategic initiatives and impactful operational improvements that can help pave the way to future success. Zero-based budgeting can identify which costs are critical to operations and help guide planning for organic growth. By fostering collaboration and organizational alignment, companies can better avoid changes or cuts that would diminish the capacity or infrastructure in critical areas.

By now, most organizations have reviewed their operations to define the profitable core business and focus their resources. The revenue forecast for the next 12-18 months should be tied to key business drivers, which helps to inform capital expenditure plans and align the expense structure accordingly. That revenue forecast should also consider an industry-specific timeline for the expected return of revenue to pre-pandemic levels. And, if necessary, internal capital can be enhanced by redeploying or selling underused assets.

JOHN KRUPAR
BDO Consulting Group, LLC

Organizations should review the levers they've pulled to date and assess how those tactics have helped manage cash flow and liquidity. Previous cost reductions will have yielded some value, but the next phase requires a strategic approach to improve the health of the business without detracting from operations or blocking new opportunities.

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Companies can target improvements in any areas of the business where demand and long-term revenue potential have been undercut by pandemic-driven shifts. They can also consider using an "80/20" approach, which helps focus on the most profitable customers and products/services, while identifying unprofitable areas. Additionally, reducing complexity and standardizing processes can help to eliminate repetitive manual tasks that could be automated or outsourced, allowing the organization to free up precious internal resources for other high-value tasks.

Cost optimization should set up long-term cost efficiencies rather than simply reducing recurring costs across the board. All cost reductions should be tied to realistic, achievable targets that still enable organizational success. It's also important to communicate organizational and operational changes to staff and other stakeholders to explain that an adjusted approach can deliver long-term, firm-wide benefits for all.

Risk Reduction

Companies should be wary of any areas where cutting costs could introduce unnecessary or unexpected risk. For example, reducing customer service capabilities can hamper retention and increase churn; diminished sales capacity could prevent opportunities to cross-

sell or up-sell; and insufficient resources for cybersecurity, internal audit or compliance could reduce resilience and potentially lead to additional costs downstream.

In terms of the digital strategy, organizations also need the resources and bandwidth to support innovation. In BDO's survey, 13% of CFOs say that falling behind on technology innovation is the greatest threat to their business in 2021. The pandemic has highlighted many ways in which technology can enable greater agility and resilience—such as through improved tools for remote working; efficiencies gained from expanded automation; revenues generated by new e-commerce initiatives; or labor shortages mitigated by supply chain technology. Many organizations have accelerated their digital strategies accordingly, so it's important to maintain collaboration and devote adequate resources to innovation, which helps lay the groundwork for successful digital initiatives.

Supply Chain Issues

The landscape created by the pandemic in 2020 also highlighted the importance of supply chain diversification and third-party risk monitoring, so it's not surprising that 13% of CFOs say supply chain disruption is the single biggest threat to their business in the year ahead. There are many areas to apply cost optimization and risk mitigation to the supply chain, so it helps to take a holistic view that evaluates all applicable aspects, including strategic sourcing, inventory management, manufacturing strategy, distribution and warehousing, and transportation and logistics.

Managing supplier relationships and ensuring the network is aligned with business goals can help to identify efficiencies, such as more accurate demand forecasting and replenishment planning. Ensuring that inventory matches service levels also helps optimize working capital. Diversifying the supply base can reduce disruptions, and leveraging digital tools where possible helps provide end-to-end visibility and unlock value.

Additionally, some industries face more acute supply chain challenges than others. Among manufacturing CFOs, 28% say meeting rising customer expectations will be their biggest supply chain management challenge for 2021. This concern was growing before the pandemic, and it has become even more of an issue. Companies are recognizing that they may have to be aggressive with their supply chain and, in some cases, actually sub-optimize to ensure faster delivery to customers while absorbing more costs to make it happen.

Pandemic-related shifts have also prompted some businesses to pursue new products or services, moving away from a common approach to streamline or implement centers of excellence that focus on core competencies. However, companies may lack the experience with investing in those new products or services that would help equip them to effectively benchmark costs or measure value. Companies should identify KPIs for new products or services and leverage data to inform decisions, which helps provide the necessary visibility into which direction they want to go with their supply chain and, ultimately, with their business operating model.

Restructuring and Deal Considerations

As businesses focus on strategies to improve outcomes and increase agility, that includes assessing the M&A landscape and restructuring options. BDO's survey found that more than one-third of middle-market CFOs (37%) plan to pursue a debt restructuring or reorganization of the business in the next 12 months, and 21% are exploring a carve-out or divestiture. Restructuring objectives and initiatives vary from company to company, and those may range from amending credit agreements to extend the "recovery runway" to having debt conversions to address woefully overleveraged balance sheets. Although some restructuring and divestiture plans come from efforts to shed unprofitable or non-core business units, they can also help to refocus available resources to realize and fund positive new growth opportunities.

For businesses that acknowledge they are currently struggling, their outlook for the next 12 months has a notable influence on planning. In comparison to struggling organizations that expect to be thriving a year from now, those that expect to still be struggling in a year are nearly three times more likely to plan a restructuring or reorganization, and they're also more likely to pursue PE investment or a carve-out or divestiture.

The technology sector in particular has been an area of M&A hyperactivity. As companies weigh their options for developing new tech capabilities on a compressed timescale, partnerships or add-on acquisitions can expand in-demand technology solutions and, in some cases, these can be less costly and less time-consuming than building solutions in-house.

Cost Optimization as a Competitive Advantage

The road ahead requires prioritization and optimization, but it should be done strategically to support the overall health of a business in both the near and long terms. In addition to identifying areas for cost reduction, successful cost optimization can improve performance, reduce risk and increase agility, better enabling organizations to capture more value and seize new opportunities in an increasingly competitive environment.

John Krupar, Managing Director; operational value creation practice leader; BDO Consulting Group, LLC, has more than three decades of military, industry, and consulting experience focused on assisting U.S. manufacturing and service companies with reaching their potential. John has led more than 90 engagements and delivered more than $25 billion in benefits.

James J. Loughlin, Jr., managing director; business restructuring & turnaround services national leader; BDO Consulting Group, LLC, has 30 years of financial and operational restructuring experience working with distressed companies, senior lenders, and other creditors. He has led nearly 200 engagements and has successfully restructured more than $75 billion of debt, including several large and complex cases in a variety of industry sectors.

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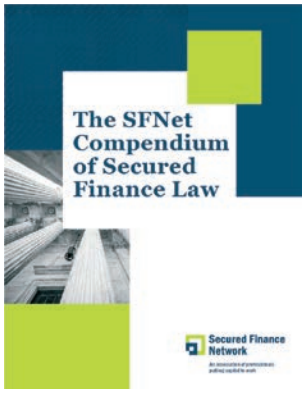

In 2019/2020, 15 of the most active states were updated and additional states are being updated. Covered topics include:

- Lending Licenses
- Wage Liens
- Environmental Liens
- Processors' and Repairmen's Liens
- Corporate Guarantees
- Liens Against Personal Property
- Landlords' Liens
- Usury
- Insolvency Laws
- UCC
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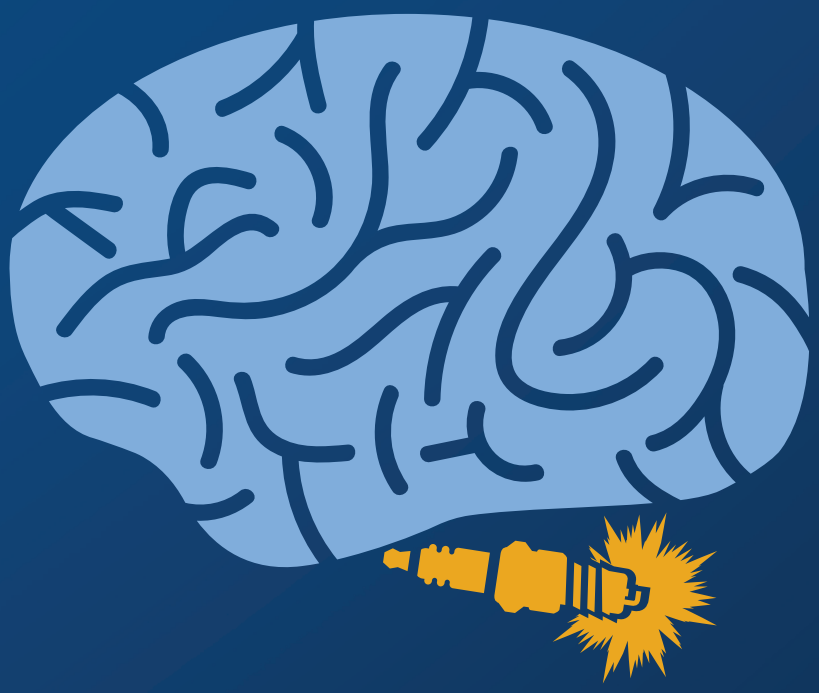

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