



International Factoring Association

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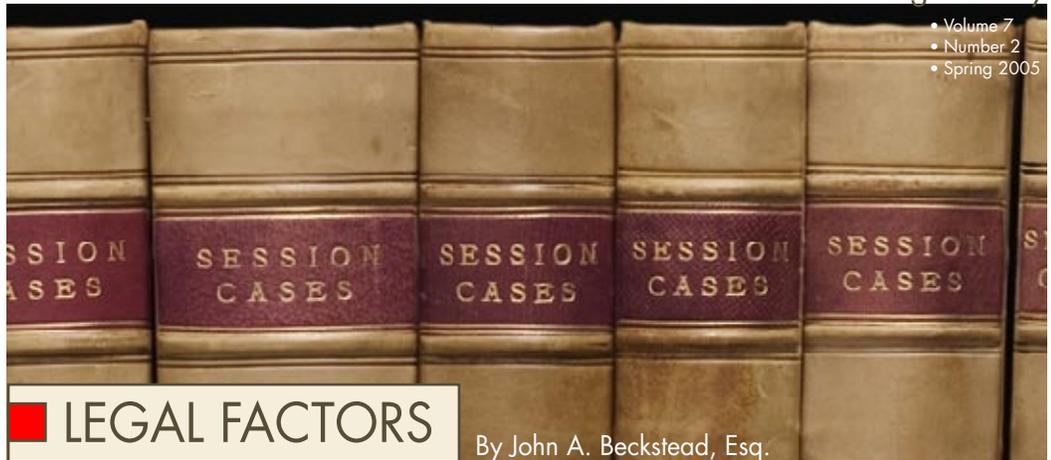
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LEGAL FACTORS

By John A. Beckstead, Esq.



CO-BORROWERS OR GUARANTORS - DOES IT MATTER? FINANCING AFFILIATED COMPANIES

Factors are often asked to finance affiliated companies in a single financing package. Most commonly, the affiliation between the companies consists only of common ownership of the companies by the same person. Sometimes there is a parent-subsidary relationship or sometimes the

companies are sister subsidiaries of the same parent. From a credit standpoint, it is attractive to create a single financing package. A larger pool of collateral is available for the obligation and the aggregate lending limit will be higher than for any individual company. However, there are serious legal risks in this strategy. Proper legal structure of the financing will minimize these risks.

Legal Concepts Involving Multiple Borrowers

Most lenders believe there are two categories of relationships in lending to multiple borrowers: Co-borrowers and guarantors. In fact, the legal concepts are more complicated. The body of law governing these relationships is known as suretyship. "Surety" is a general term that applies to several different relationships. Guarantors and accommodation parties are two types of sureties. A guarantor may be a guarantor of collection (meaning the guarantor is liable only after the assets of the borrower have been exhausted and the lender was not able to collect) or a guarantor of payment (meaning the guarantor is obligated upon default by the borrower).

Article 3 of the Uniform Commercial Code creates the term "accommodation party". An accommodation party signs the instrument, typically as a co-borrower, but is not a direct beneficiary of the value given under the instrument. In other words, the accommodation party does not receive the financing proceeds. The accommodation party is jointly and severally liable with the primary obligor, unless the instrument unambiguously states the accommodation party is only guaranteeing collection, not payment.

The legal principles concerning an accommodation party apply only to a negotiable instrument, such as a promissory note. Most factoring agreements do not involve a promissory note. However, the law of suretyship recognizes similar concepts that would still apply.

A surety has a number of defenses to payment, including release of the primary obligor, grant of an extension of time to the primary obligor, modifications of the primary obligation, impairment of collateral (such as failure to perfect or failure to properly dispose of the collateral), and impairment of the surety's right of recourse against the primary obligor. Any impairment is presumed to equal the amount of the obligation unless the lender proves otherwise.

Both suretyship law and the Uniform Commercial Code allow a surety to waive these defenses in advance.

A Guarantor is Preferable to an Accommodation Party

For several reasons, a guarantor is preferable to an accommodation party. The law concerning guarantors is well developed and clear. Guarantor law has developed over the years in a context of lenders and borrowers. Suretyship law has primarily developed in a context of [CONTINUED ON PAGE 2](#)

insurance and bonding transactions where the public policies and other considerations are different than in a lending context. The defenses available to an accommodation party are codified in § 3-605 of the Uniform Commercial Code. This Section was substantially revised in 2002. While this Section is based on suretyship law, there is little case law interpreting this Section.

Well-drafted guarantees contain waivers of a guarantor's defenses. Promissory notes and factoring agreements rarely contain waivers of the defenses of a surety or accommodation party. Unless special provisions are added to the factoring agreement, the surety will likely not have waived the standard suretyship defenses - and those defenses arise frequently.

The best policy is to use a guarantor relationship rather than co-borrowers. If a co-borrower relationship is used, it is important to add waivers of the suretyship defenses.

Fraudulent Transfer Issues

Fraudulent transfers are voidable under state law and under the Bankruptcy Code. In simple terms, a fraudulent transfer occurs when the obligor does not receive reasonably equivalent value for the transfer and the obligor was insolvent or rendered insolvent by the transfer, left with unreasonably small capital to conduct its business, or incurred debts beyond its ability to pay the debts. Granting a security interest in collateral can constitute a fraudulent transfer. Payments made on an obligation can constitute a fraudulent transfer. A creditor's exercise of remedies, such as execution or garnishment, can constitute a fraudulent transfer. If a surety does not receive a direct and significant benefit from the financing - i.e., the money loaned - the claims against the co-borrower or guarantor are vulnerable to a fraudulent transfer challenge.

How to avoid fraudulent transfer issues:

1. Lend where the assets are. The primary obligor - and the company that receives the money - should be the company with the strongest assets to repay the financing.
2. If you resort to a co-borrower arrangement, recognize that your remedies may be limited to the extent that each co-borrower actually receives the proceeds of the financing.
3. If the guarantor is the owner or parent of the borrower, this relationship alone will almost always constitute reasonable equivalent value. If the parties are sister companies with common ownership or a subsidiary guaranteeing the obligation of a parent, this will almost always be found to lack reasonable equivalent value, unless other factors are present.
4. If other factors are present which create reasonably equivalent

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The International Factoring Association's (IFA) goal is to assist the Factoring community by providing information, training, purchasing power and a resource for Factors. The IFA provides a way for Commercial Factors to get together and discuss a variety of issues and concerns to the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices or other types of accounts receivable.

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value in a transaction where it is not evident, add recitals spelling out in detail what that value is. Have the borrower acknowledge, represent and agree to those facts. Be specific, don't just recite general conclusions. Caveat: Reciting facts that are not true will not carry the day.

5. Limit a surety's liability to an amount that is slightly less than its net worth (called a "net worth limitation"), thereby avoiding the insolvency element of a fraudulent transfer. A similar device, known as a "savings clause", limits the amount not to exceed the amount allowed under fraudulent transfer law.
6. Compensate the surety. Pay a fee for the guarantee. The payment needs to be more than a nominal amount and should be in line with what those in the indemnity industry, such as insurance and bonding companies, would charge to take on a similar risk. Be sure the compensation is actually paid. It is best to have the factor disburse the payment.

Conclusion

Suretyship is a complicated, tricky area. Try to stick with a single borrower and guarantee(s) from the owner(s) of the business. If you venture beyond that, talk to counsel before proceeding. If the financing goes bad, those preventive legal fees will be money well spent.

Information provided in this article is general information only and is not legal advice. Readers are encouraged to consult an attorney for specific legal advice.



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The filing of Uniform Commercial Code Article 9 documents used to be a monotonous paper-intensive task characterized by redundant processes, large numbers of rejections, and large clerical staffs. It is no wonder then, that the ability to file electronically resulting from the confluence of technology and Revised Article 9 (RA 9) has been so widely embraced throughout the secured lending industry. Since 2001 electronic filing has become a reality in over thirty states. Filers are more and more frequently processing information and data versus merely moving paper from one location to another, and this is having a dramatic effect on the way the industry conducts business.

There are many advantages to submitting UCC filings electronically for all stakeholders in the process. Lending and leasing institutions, providers of lending and leasing documentation software, filing offices, and even UCC filing and searching service providers accrue many benefits from utilizing this technology. But making the private and public sectors more efficient, and moving them from a manual business model to an automated business model required a significant rethinking to the way everyone did business, and this took some time.

History

In 1992 when the Drafting Committee at the National Conference of Commissioners of Uniform State Laws (NCCUSL) began defining the revisions to Article 9, it was resolved that technology would play an important role in the new filing systems and that Revised Article 9 would beyond any legal doubt authorize the electronic filing of UCC documents.

To this end a Technology Subcommittee was created and made part of the overall drafting committee. By 1995, a number of UCC Service Companies and technology vendors had worked closely to develop and implement what was hoped to become the Electronic Data Interchange (EDI) standard for electronic filing systems. Unfortunately, this new capability resulted in far fewer electronic filings than was expected due to concerns that electronic submissions of UCC filings were not authorized by the requirements of Article 9 in existence at that time.

Once RA 9 was passed and adopted in all US jurisdictions in 2001, new interest in electronic filing quickly surfaced. Even before then, however, the need to successfully implement electronic filing was being re-evaluated and a committee was formed to revise the old standards. By looking at current technology trends the committee decided that a better solution than EDI was available, thus giving rise to the XML (eXtensible Mark-up Language) filing initiative. Work proceeded throughout late 2000 and early 2001, with the initial XML standard being adopted at the IACA Conference in May 2001.

Since the initial release of the IACA XML standard, states have adopted it in various ways. Some states offer electronic UCC filings by basing their complete system on the XML standard (including Washington, North Carolina, Missouri, Mississippi), while others have chosen to build an XML front end to their existing systems (including Iowa, Nebraska, Delaware, Kansas).

A UCC Service Company Approach

Filers of paper UCC documents always have been able to submit their filings directly to UCC filing offices, yet many filers have long preferred to outsource this process to a service company that specializes in the many issues associated with this work. One such service company, UCC Direct Services, has taken the most active approach toward enabling filers to take advantage of XML technology while still utilizing the experience and expertise of a service company.

UCC Direct Services (UDS) believes that filers should have all the advantages and functionality that were built into its flagship internet filing application, iLienonline.com, and be able to enjoy all the benefits of XML technology as well. To this end UDS became the first UCC services company to offer XML filings to state filing offices through its own internet filing application. Beginning with the state of Missouri, and then followed by the states of North Carolina, Mississippi and Delaware, UDS began offering UCC XML filings through iLienonline.com in June 2002.

Since that time UDS has continued its commitment to providing electronic filing capability for every state that will accept electronic filings. As of October, 2004 UDS can process filings electronically in Alaska, Arkansas, California, Delaware, Indiana, Kentucky, Massachusetts, Maine, Minnesota, Missouri, Mississippi, North Carolina, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming. And in many of these states electronic filers accrue dramatic reductions in statutory filing fees over paper filings as states have created incentives for this transition.

UDS has enjoyed taking this leadership role because there is even more opportunity to provide value to filers in an electronic filing medium than existed where filings were all paper-based. Most large volume filers of UCC documents need to file their documents in a fairly large number of states and filing offices. Using a service company's application to file documents electronically requires a user to learn only one system, and eliminates the need to procure and

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track numerous login information and filing fee payment accounts. Even more importantly, using a service company's application enables customers to effectively manage all of their current filings with such features as expiration alerts, personalization settings, management reporting, one time only data entry for all subsequent filings, in context searching of state UCC databases, and the easy transferring of ongoing responsibilities from one employee in an organization to another.

Further, UDS aggressively pursues working with its customers on improving their workflows in other related ways. An important goal is to help customers use their other internal systems to interface with iLien, thus eliminating duplicate data entry and potential errors. Through such interfaces customers can produce loan documentation and electronic UCC filings at the same time. In this area UDS supports interfaces with Harland LaserPro, Bankers System's TSoft SBA FormMaster, and BakerHill Bank2Business.

In short, service companies will continue to offer users great value whether filings are submitted to filing offices by paper or by electronic means. UDS believes that in order to be a premier service provider today one must provide the best possible means for accomplishing filing related tasks, which now includes the best electronic tools that take full advantage of new technologies and systems integration.

The Advantages of Electronic Filings Over Paper Filings

A number of advantages accrue to UCC filing offices through the enabling of XML filings in their jurisdictions. Government filing offices are under constant pressure to contain the costs of their operations especially when downturns in the economy have a negative impact on expected tax revenues.

Providing the ability to file UCC documents electronically means that these offices can file documents with virtually no clerical staff needed to review the filings or to enter the filing data into the filing office information management system. This results in dramatic savings for the operation of a filing office. In fact, one state last year was so anxious to realize this benefits that it even offered an incentive for filers to try this new filing method: for a period of time electronic filings were free of charge as this state waived the jurisdictional filing fee.

Another significant advantage to filing offices is that with the elimination of all filing related clerical staff activities the opportunity for filing office error is reduced to virtually nbpro. The filing office may accept electronic filings only when they meet the requirements for a valid

filing as defined by the applicable electronic standards. Thus, human error is removed from the process, numerous filings can be processed at high speed, and the often inconsistent processing of filings from one filing office employee to another is eliminated. All of these benefits enhance the quality of this government function and results directly in the higher quality of information available from the public record. From a political perspective these filing offices then also can validly claim "Good Government is Good Politics".

A number of equally important advantages accrue to private institutions that file UCC documents in order to perfect their security interests. Like government filing offices private institutions constantly seek more efficient and effective operational practices.

Probably the most significant value of electronic UCC filings to filers is the speed with which these filings can be made to and acknowledged by the filing office. In the typical case electronic filings can be transmitted to filing offices within seconds of the data entry into the filing interface. Electronic acknowledgements are then transmitted back to the filer ordinarily within minutes of the original transmission. That is a radical improvement over the typical turn-around times filers see for paper filings. The resulting impact on the 'credit to cash cycle' for secured lenders is dramatic and immediate, and provides a competitive advantage that everyone in the marketplace is likely to seek.

And, of course, another significant advantage to filers is the flip side of the advantages realized by the filing offices. Electronic filings more accurately reflect the intention of the filer than do paper filings. Filing office error is virtually eliminated from the filing process, and the information placed on the public record is at least in theory, "pristine".

Conclusion

An ever-increasing number of UCC filings nationwide are now made by electronic

means. Some states report that the majority of their UCC filings today are being submitted electronically. UDS already processes over 40% of all its filings throughout the country electronically, and in some states virtually all of its filings. Very shortly, the majority of all UCC filings in the United States will have migrated from paper-based to electronic format.

This migration is radically altering the UCC perfection and filing process for everyone involved. Filing offices are providing higher quality and dramatically faster services. Filers are able to file and receive evidence of their filings within minutes. The resulting impact on the speed and quality of lending decisions and transactions has been very positive. Since we now have recognized standards for the transmission of UCC data that has been embraced by all of the stakeholders in the process, the benefits of electronic filing have been great while the down side is nearly non-existent. It will be exciting to witness the near total adoption of electronic UCC filings in the near future.

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Factoring companies often assume the most risk when they deal with distressed companies that may be losing money. So what is the best process for managing risk and protecting financial interest? How do you ensure that you don't lose your lien position?

It begins with performing dependable due diligence using a system that searches more than just the company's exact legal name. Many incorrect name variations, including misspelled versions, could be overlooked by unsophisticated search technology, meaning that you don't have all the information you need to make an educated decision.

So, you've performed your due diligence, filled out the necessary paperwork and filed it with the jurisdiction. Everything looks correct and you feel confident that your lien position is safe.

Wrong.

In the meantime, the borrower's Good Standing status changed, he secured additional funding from other lenders, changed his business name or, worse yet, he terminated your filing – conveniently “forgetting” to inform you. No big deal if you knew the name change happened, but you didn't and you failed to file

an amendment reflecting the change within the four-month grace period. Welcome to the world of Revised Article 9.

Designed to standardize Uniform Commercial Code requirements nationwide, Revised Article 9 requires that lenders use the exact legal name of the debtor when filing. If changes are made to the corporate record of the debtor, the filing must be amended. No more luxury of simply financing the deal and waiting for payment.

Revised Article 9 states the following:

§ 9-507 (c) [Change in debtor's name.]

If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

How can you keep track of these important details?

If you're focusing entirely on securing new deals or you lack an efficient way to stay informed, you're probably not performing regular searches on your own. Those who recognize the importance have adopted a system that regularly notifies them, via e-mail, of changes to their debtor's name and/or status and gives them an easy way to make the necessary legal amendments without any hassle or paperwork. Accurately and efficiently maintaining the integrity of your lien position will improve the overall outlook of your financing portfolio.

To access Revised Article 9 in its entirety, go to <http://www.law.cornell.edu/ucc/9/> and for more information about Corporate and Debtor Tracking as well as other UCC services, visit www.diligenz.com.



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The inherent flexibility, speed, and effectiveness of factoring are three of its most obvious benefits to factors' clients, but what practices and principles must be followed by a factor to ensure that it is safeguarded against undue risk?

“What are the best practices for factors?” In simplest form, best practices for a factor comes down to one thing: do what they do well, and stick with it. Done right, factoring is a win-win situation for all parties, but only if the factor is focused on good practices from start to finish. Success depends on the ability of the factor to carry through with two prime commitments: the ability to offer reliable factoring services and to perform due diligence in advance.

The foundation for good factoring practices is the factor's IT system. It may seem like common sense, but system capabilities and exception reporting are absolutely essential elements in a

factoring environment. A system needs to have both online and offline reporting capability and track and report transactional activity as well as the history of the client and account debtors.

There is no sense in having just one half of the equation completed: a factor needs to closely monitor receivables, cash receipts, concentration issues and trends. Sure, a client is selling its receivables to a factor, but what sort of assurance does the factor have that there are no bumps in the road ahead for that client? A factor needs to know that an account debtor is remitting on a timely basis and that its purchased receivables are adequately supported. With a solid IT system in place, the factor can see all of this as it happens.

System is a broad label and covers just about everything related to the factor. What are the system's essential components beyond a good IT infrastructure and reporting methodology to

safeguard a lender from undue risk? If we think of the overall system as the “assembly line” that results in a finished product, i.e., a factoring arrangement, imagine the various elements that need to mesh harmoniously for the system to function properly from start to finish.

Establishing a lockbox account for cash receipts; performing an investigation of a debtor's credit history; having a clear understanding of state and federal regulatory issues; for initial clients, adequate lien searches; a viable notification process; and verification procedures are all important elements that make any good factoring system what it should be.



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I once heard insanity described as doing the exact same thing over and over again, yet expecting a different result. Sounds like my golf swing, I do the same swing expecting it to go straight down the middle and then it does a slow banana peel to the right. Perhaps this could also describe how your business plan has evolved. You know what has worked in the past and tend to stick within your comfort zone.

Now the question is, How can you generate a higher level of growth, perhaps more than you have at any other time in your company's history? Or, perhaps you need to control operating costs to a level that is more in line with your peers, or better yet, exceeding peer performance. The question I have for you is, What are you going to do differently? Most companies focus on target marketing, or perhaps cutting overhead, but these are not long-term strategic solutions.

There is a strategic solution that many factoring companies are starting to recognize as a true sales and operational enhancement. That solution is the risk transfer of a portion of your portfolio. Transferring some of the risk out of your portfolio drives two key metrics - lowering your potential bad debt and increasing the sales opportunity to existing clients and new clients. Additional benefits include protecting against catastrophic loss, eliminating concentration issues and enhancing your position to finance operating cost effectively.

How many times do you feel isolated in a decision to extend additional credit on a debtor? Do you have sales staff at your door daily about the same client? Or, perhaps, you constantly hear that someone could have made their numbers if your credit department wasn't such tight *\$%&*. Well, you can fill in the blank. Here's a thought, do something about it, today! Hedge the portfolio, transfer some of the risk and start to see how the sales will grow.

Allen Fredrick, President of Gulf Coast Business Credit, has used credit insurance for several years. "We looked at credit insurance many times in the past but found it to be cost prohibitive. ARI Global heard, listened and understood our wants and needs and crafted a custom solution that has allowed Gulf Coast to expand our business in a cost effective manner leveraging a credit insurance policy."

Claims

Hedging a portfolio can be completed with the assistance of a knowledgeable accounts

receivable insurance broker, like ARI Global, Inc., for example. The benefit of using a broker to assist with structuring a credit insurance program is their expertise and knowledge of the policies and structures available to factors. Additionally, brokers may be able to assist with compliance under your policy, which, in turn, means if and when you have a valid claim, it will be honored.

Insurance carriers pay a tremendous amount of bankruptcy claims each year. When Kmart went bankrupt, for example, the insurance carriers were one of the top creditors listed in the bankruptcy schedules. Additionally, as a veteran of the credit and insurance industry, I have seen many claims paid and a very few which were not paid. The reason for non-payment is typically because the policyholder did not comply with the terms of the policy.

Mr. Jon Carmel, from J&D Financial, is one factor who has been on the receiving end of a couple of claim events over the past several years as a policyholder. "We were paid in excess of six figures for two claims within the same policy year. The bottom line was that we were pleased with the timely payments, which was within the terms of the policy." Jon has been a fan of credit insurance for many years and has used a variety of carriers over the years, partially due to changes in the unique quality of the credit, or the underwriting appetites of the carriers.

The reason, however, for the insurance is not purely to get paid when a debtor defaults. The

key, as Jon mentions, "is to increase sales. We do our own credit check and we work with good clients with quality debtors, but we are relatively conservative. The insurance program permits us to go the extra mile that our clients are seeking. These are not poor credits, but they do need more credit than we might be willing to extend, so the credit insurance program permits us to capture business we might lose otherwise."

Sales Expansion

The other key metric or function of credit insurance is to provide a tool to expand sales. There are three ways credit insurance expands a sales base. The first is when you are extending credit to a client and have extended to a level at which you are comfortable. The credit department has drawn a line in the sand and the debtor is "maxed out" as they say. A credit insurance program transfers a portion of the client's risk and you can, therefore, increase sales or financing levels in tandem with the extension of coverage afforded by the carrier.

The second method of expanding sales is to extend terms to a debtor that you may not have any experience with but has been covered by the carrier. Several of the carriers have extensive databases on both domestic and international debtors and can provide a true value add with this information. Additionally, since they can provide coverage on international debtors, you may be able to expand financing options internally.

Some factors sense an opportunity in certain

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industries and yet, tend not to extend themselves due to a lack of knowledge within that particular industry. Again, a credit insurance program may assist with this expansion. Several of the carriers have extensive underwriting staffs and can provide expertise from an industry standpoint. They provide not only coverage on the better debtors, but will advise if an account appears to have a poor Z-score or has a high potential for default. Many companies tend to think that the only value of the carrier is to cover risky accounts, yet a major value add is to provide an adjunct service to the credit department on reducing risk in the portfolio. As one of my peers has stated – “avoidance of an accident, before you get to the intersection.” How much more would we pay our car insurance companies if they could protect our family from that fender bender, or in avoiding that drunk driver?

Mr. Jay Atkins, from Bibby Financial, has been an advocate and user of credit insurance for over a decade. Over the past ten years he has completed many programs with the assistance of a credit insurance enhancement that he may have otherwise passed on, either due to their size or perceived risk. Mr. Atkins stated “we use

credit insurance to cover our concentrations and sell up to the client. This not only permits us to increase our sales volume, but we also enhance the client relationship.” “There are essentially three parties of concern: first is the debtor’s financial ability, then the client’s financial ability to cover a potential loss and then the factor’s financial ability to cover a loss from a bankruptcy. When we turn to the carrier to cover a debtor, its generally as a last resort and is considered a back-up in a worst case scenario.”

Sounds like a strategy that has worked well for us over the years!

Financing

When a factor becomes large enough they may seek to securitize their portfolio or seek additional capital through traditional channels. In both cases, accounts receivables insurance may lower your borrowing costs significantly.

In a securitization situation, you can raise the quality of the paper up to investment grade, simply by insuring the assets. In some cases, you may use a double default policy that protects the conduit from an insolvency default on the paper, lowering the costs basis below 25 basis points for most quality credits.

Concentration issues are also redlined with both securitization and traditional lines of credit. Again the credit insurance hedge can reduce or eliminated this issue with the lender or conduit. By insuring a large block of receivables, the conduit becomes protected and therefore provides more financing per asset dollar, lowering the average cost of financing per asset dollar.

Remember the key to a successful credit insurance program is to utilize the right tool for your unique business profile. ARI Global provides the guidance and competitive advantage you are seeking, so feel free to check out our website, www.ariglobal.com and contact your local ARI representative to start hedging your receivables!



A special “thank you” goes out to Steven Schrull and Joel Freedman of our office for their input.

Gene Goudy is Vice President-ARI Global, Inc. He can be reached at 609-275-9398 or email him at gene@ariglobal.com

CEO POSITION AVAILABLE

We, a trade-financing firm, are looking for a **CEO** for our Los Angeles office. Annual package will range from 80K to 120K depending on experience and qualification. CEO, reporting to group president in Hong Kong, will support our greater China exports to and develop new trade business in USA. Candidates should be very strong with:

- **Factoring and refactoring experience.**
- **Credit underwriting and risks evaluation experience.**
- **Experience with commercial banks for credit facilities.**
- **Good contact with major US importers & factors.**
- **Good knowledge of US capital market and familiar with securitization to raise long term funds.**

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The International Factoring Association is the largest association for Factors in the world. Members of the IFA have agreed to abide by a Code of Ethics which help sets guidelines on how members should act in relation to their clients and constituents.

This code was originally developed by the Advisory Board in 2000. It has been very useful in averting potential disputes and disagreements.

Below is the Code of Ethics. Please take a few minutes to review the items and think about how it pertains to your company.

Code of Ethics

The International Factoring Association (IFA) is an organization comprised of lenders and factors engaged in providing funds to businesses primarily through the purchase of commercial accounts.

The IFA's goals and objectives are:

1. To promote the growth of the factoring industry by educating the general business community as to the nature and benefits of factoring.
2. To provide education and training to the industry through courses and seminars.
3. To encourage cooperation, communication and interaction between factors.
4. To maintain a code of ethics to which members will adhere.

THE INTERNATIONAL FACTORING ASSOCIATION CODE OF ETHICS

1. Members will aspire to the highest level of professional ethics, as generally expected by the business community.
2. Members will aspire to the highest level of industry competence through continued education, and by sharing ideas and experiences with other IFA members.
3. Members shall be honest and thorough in all business dealings, including dealings with clients, clients' customers, lenders, and others in our industry.
4. Members shall utilize and maintain accurate accounting systems to track each client's transactions.
5. Members shall treat all client information as confidential. This information shall not be disclosed to any person or entity, other than

at the client's direction or by court order.

6. Members will facilitate the move from one factor to another, should a company wish to make a change.

7. Members shall abide by all local, state, and federal laws.

8. No member shall engage in any activity constituting or leading up to a conflict of interest.

9. Members shall treat all persons fairly and equally, regardless of race, religion, gender, disability, age or national origin.

10. Members shall assist one another in all industry aspects, except for proprietary information. Members shall not use or take advantage of information which may have been obtained in the process.

11. Members shall subscribe to truth in advertising standards.

12. Members shall strive to promote the International Factoring Association and its goals and objectives, as well as the commercial finance industry as a whole, through educational venues, public relations opportunities, and member advertising media.

13. Members shall communicate non-confidential information relating another member's violation of this Code of Ethics to the IFA Board of Directors. In the event of such a violation, the member will be required to change their behavior.

IFA CONTINUES SEPARATION

The IFA has relocated to new offices. Our new address is:

**2665 Shell Beach Road, Suite 3,
Pismo Beach, CA 93449-1778**

Phone: **800-563-1895**
805-773-0011

Fax: **805-773-0021**

The IFA will continue its separation from Distinctive Solutions. This will enable the IFA to better serve the Factoring community. If you have any questions, please contact Bert Goldberg at bert@factoring.org



TRAINING COURSES

SALES / MARKETING TRAINING FOR FACTORS

MONTE CARLO RESORT & CASINO, LAS VEGAS

Thursday & Friday
May 12-13, 2005

Cost: \$995
(\$1045 for Non-IFA Members)

ACCOUNT EXECUTIVE / LOAN OFFICER TRAINING

MONTE CARLO RESORT & CASINO, LAS VEGAS

Thursday & Friday
June 9-10, 2005

Cost: \$795
(\$845 for Non-IFA Members)

CASE STUDY WORKSHOP

MONTE CARLO RESORT & CASINO, LAS VEGAS

Monday & Tuesday
June 13-14, 2005

Cost: \$995
(\$1045 for Non-IFA Members)

CREDIT EVALUATION TRAINING

MONTE CARLO RESORT & CASINO, LAS VEGAS

Thursday & Friday
June 16-17, 2005

Cost: \$945
(\$995 for Non-IFA Members)

PRESIDENTS & SENIOR EXECUTIVES MEETING

MARRIOTT RESORT, SAN JOSE, COSTA RICA

Thursday & Friday
August 25-26, 2005

Cost: \$995
(\$1045 for Non-IFA Members)

H Healthcare accounts receivable financing is a complex niche. Highly segmented and regulated, the healthcare industry can be difficult to get your arms around. Not only do you have to understand the needs of the individual industry segments, such as hospitals and durable medical equipment providers, you have to keep current with the ever-changing government regulations, which place strong demands on providers and often affect insurance reimbursement rates. Although healthcare finance comes with a significant learning curve, it will always be here, making it a pillar of the factoring industry.

The medical accounts receivable industry holds great business opportunity. Each day, a healthcare provider's time spent with patients is squeezed by the bureaucracy of dealing with third-party payors. They also face increasing challenges brought on by Federal legislation, regulatory issues, changes in care, and more. Accounts receivable financing is a viable solution for helping providers spend more time on their core business.

What follows is a primer on the most important segments of the medical accounts receivable industry. If you interact with healthcare providers, this can help you understand their needs.

Hospitals: The roughly 6,000 U.S. hospitals have revenues totaling more than \$500 billion, according to the U.S. Census. Hospitals face many challenges such as small operating margins and demands for expensive new capital equipment, which can include computerized order entry, bar coding, and electronic medical records. Tight resources and increasing demands make this a prime candidate for medical accounts receivable financing.

Durable Medical Equipment (DME) Providers: Durable medical equipment is equipment that serves a medical purpose, is used repeatedly, and can be used in the home. These products include wheelchairs, scooters, shower chairs, specialty beds, and other similar items. Estimated as a \$1.8 billion market, this segment holds great opportunity for cash flow consultants. DME products are often reimbursed by third-party payors, which makes it a great fit for accounts receivable financing. For example, Medicare will cover DME if it is necessary and reasonable for medical treatment.

Physicians Groups: Making payroll, purchasing inventory, and implementing marketing initiatives are just a few of the ongoing cash flow strains physicians groups tackle. Waiting 60, 90, or 120 days for accounts receivable can flat line operations. Many physicians groups don't know the advantages financing accounts receivable can yield.

Radiology Centers: The U.S. radiology market is estimated at \$69 billion dollars, of which image analysis, reporting, billing and distribution comprise a \$16 billion market segment. Technology changes are demanding that radiologists invest in new, more efficient equipment. These investments require capital and clients can't afford to wait for delayed third-party payment. This is just one reason why medical receivable funding is a practical solution for these providers.

Note: These are only a few important segments of the medical accounts receivable industry. Any medical provider with traditional third-party insurance claims can be a candidate for financing. Other segments include skilled nursing facilities, ambulance companies, psychiatrists,

home health, and more.

For government healthcare information, two web sites can be helpful:

- Center for Medicare/Medicaid Services <http://www.cms.hhs.gov>
- United States Department of Health and Human Services <http://www.hhs.gov>

Because of the learning curve and intricacies of the niche, the healthcare finance business isn't for everyone. Find the right funding source to fit your customers' needs that understands accounts receivable financing in the medical market. Partnering with industry experts is a great way to maintain your client relationships.

Know your customers better than any one else, and you will create loyal relationships that will help you grow your business network. Of all the selling tools in your arsenal, your familiarity with the industry and reliable partner network can be the most beneficial.



Rick Muckelrath is Vice President of Origination at Medical Capital Corporation. He can be reached at 800-417-1299 or e-mail him at RickM@MedicalCapital.com.



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KNOW "WHO & WHAT" YOU ARE NOT

There is the Yin and the Yang. The Good and the Bad. The Positive and the Negative. Polar opposites that must exist together, or else the other ceases to exist as well. Without "bad", everything would be "good", and therefore discernable, rendering the descriptive term "good" useless. In the last issue, I discussed the necessity to KNOW WHO AND WHAT YOU ARE. In other words, identify, understand, embrace and focus on your 'strategic advantages'. As pointed out above, one cannot truly effectuate a plan based on 'advantages' unless one also examines and plans based on one's 'disadvantages'. In sales speak, this means understanding how and when to say "NO".

Clear and Concise Message To the Market

As a firm offering only Factoring, to state that you are the Premiere Commercial Lender would be outright wrong. Factoring is but one form of commercial lending, and by far not the largest segment. To state that you are the Premiere Working Capital Lender is better. Again, however, working capital lending encompasses more than just accounts receivable; it also refers to inventory lending. It would be much better to state that you are the Premiere Accounts Receivable Lender. At least your message is getting to the point. But today, the best message you can send is that you feel that you are the Premiere Factoring Company. There. I said it. The "F" word.

Many years ago, you would not have seen the word 'Factoring' in the title or main message line of any advertising, promotion or brochure I designed. It wasn't that I was ashamed. It was that Factoring still was not a universally known or understood concept. Most businesses in need of money that had nothing to pledge as collateral except their accounts receivable didn't even know what the word 'factoring' meant. In fact, only about one in a hundred referral sources (bankers, accountants, etc) even knew what it was. And the ones that did would say, "...but I'm not in the garment business". Today, most everyone knows what Factoring is and both borrowers & referral sources alike know when the need is for Factoring and not an asset-based line of credit. By 'telling it like it is', the people who need you can find you, and you can stop wasting precious time and resources fielding unqualified calls. Just as important in this 21st Century, when a small business in Portland tries to find you by Googling the words Oregon and Factoring, the F word had better be there for them to find, or you lose the lead.

Understanding the "Medium"

Medium is defined as "the communication vehicle" (such as a brochure, print ad, mailer, seminar, etc.). At most firms I worked at in the past, we advertised:

Factoring from \$20,000 to \$2,000,000

While there was nothing misleading about it, it became the battle cry in all forms of communication. Bad idea. It was perfectly acceptable as a broad generalization for mass media forms of communication (brochures, website, advertising, mailers, etc). After all, we were capable of funding balances in that range and why would we want to miss out on any possibilities? The problem came when our marketing efforts became more targeted. Our message needed to be more targeted too. We were once invited to present as part of a panel on 'alternative financing'. The audience was CPAs from large accounting firms. Shortly afterwards, leads started coming in (Yeah!). The first deal was for \$1.5MM. The company had a \$1MM line at its local bank but had outgrown their legal lending limit. The next deal was for \$2MM. The firm lost a little money as the economy sputtered, but had positive cash flow. The bank wanted them out nonetheless. The third one was a healthy Garment company who was not happy at their present Factor, CIT.

Needless to say, we did not fund a single transaction. Not even close. Worse, the CPAs communicated their unhappiness to the firm that arranged the panel. Naturally, that firm was an excellent referral source (at the time, anyway). The lesson here is to not only communicate what you are, but what you're not. Had we specifically told the audience that we were not a first tier alternative to a bank and that we were not very competitive rate wise over \$1 million in loan size, then the worst that would have happened would have been us wasting our time. Instead we managed to waste our time while hurting ourselves and damaging our standing with an important referral source. Pretty hard to accomplish all that in just one panel session!

Focus on that "Sweet Spot"

It used to be if you got a Proposal signed, you were home free! Today, it's barely half the battle. Given that more time and effort goes into funding deals today, it is more critical than ever to pursue those opportunities that give you the best chance to close. This starts with focusing on your strategic advantages, and ends with not focusing on transactions with low probability to close. In other words, "Just say NO".

There is so much competition that you need to make sure your sources understand how your firm compares vis-à-vis all the other factors that they deal with (no need to voluntarily educate them on all of your competitors). Even if your firm can service A, B & C type clients, you want to focus the market's attention on your "sweet spot". The reasons for this are many:

- You risk being viewed as non-competitive - If your sweet spot is B type clients, and a key source refers you A & C type prospects, you are now at a disadvantage if there is competition on the deals. Your source will view your firm as less than competitive if the first couple of referrals are lost to the competition.
- You risk your valuable time by electing to put yourself at a disadvantage - Today, it is rare for a Factor to not be in competition over a Prospect. Since you can count on competition almost 100% of the time, you should only seek those higher probability situations (your 'sweet spot') where you're in a 'fair fight'.
- You risk being 'out of the market' when a better Prospect comes along - While you're fighting losing battles, your competition is on the street able to pick up that next, possibly better lead.
- You risk losing referral sources - If you are receiving leads but your competitors are the ones booking them, or worse, you receive the leads under the pretense that you can deliver X but must really propose Y (bait & switch), then you risk losing not only deals, but the Referral Sources behind those deals.

Conclusion

Always try to operate in your firm's "Sweet Spot". If, during the application and approval process, you hit a bump in the road (and there are usually bumps in the road) then you should have plenty of room to maneuver if you're solidly within your "sweet spot". Conversely, if the majority of your deals 'push the edge of the envelope', what you are really doing is hoping for success. You're hoping that your firm will get comfortable with the deal. You're further hoping that the deal will stay comfortable with you. Finally, you're hoping that nothing else comes up during the approval and funding process. This last hope is the wildest one of all. Very few deals are standard, in-the-box transactions. Almost every deal has challenges. And remember...

While you're inside chasing rainbows hoping for success, your competition is out on the street making it happen.

- Make sure your Message is appropriate for the Medium.
- Don't "Oversell".
- Set realistic expectations with your Referral Sources.
- Communicate your firm's true capabilities.
- Know who/what you're up against.
- Walk away if your competition on the deal is better suited for the

transaction than you are. If they fumble, you'll be there to pick up the ball and run with it.

Time forever marches on. This you cannot control. You have to make the most of the time you have. Kind of like life itself!



Thomas G. Siska is the Managing Director of FactorHelp, Inc. He can be reached at tsiska@factorhelp.com or 847-498-9136.



FACTORING NEWS FLASHES

A North Little Rock-based factoring company filed a civil suit Wednesday in U.S. District Court for the Eastern District of Arkansas claiming that a Tennessee company and several of its employees violated the federal Racketeer Influenced and Corrupt Organizations Act, or RICO. Comfac Corp. alleges that The Bradley Factor Inc., a Cleveland, Tenn.-based factor, "hijacked control" of an ongoing scheme that involved "factoring phony invoices and kiting money back and forth" in order "to recoup its own losses." In its complaint, Comfac says it advanced more than \$1.8 million based upon phony invoices and is entitled, under RICO, to triple damages of approximately \$5.7 million.

Arkansas Democrat-Gazette (Little Rock)
February 11, 2005 Friday

Recruitment company Shorterm Group appealed against two penalties imposed by Customs & Excise for late payments. First, that the debt factoring company it used had released payment seven minutes too late for the bank to transfer the money to Customs & Excise by the deadline. Second, that the director responsible for the VAT liability was distracted at the time because his son was in a coma following major heart surgery. Customs and Excise refused to back down, claiming that the seven minute delay wasn't their fault and that the company should have ensured that the payment had been made on time. More alarmingly, they argued that the director had known about his son's heart operation for some time and had

had enough time to prepare for it without it adversely affecting his responsibilities.

Birmingham Post
February 11, 2005

Repayment to investors in the failed MX Factors firm is expected to come in at around 10 cents for every missing dollar. The receiver has rounded up almost \$3 million, mostly by selling homes. A warrant was issued for the President of MX Factor, Richard Harkless', arrest in July after he failed to appear at a contempt hearing requested by the SEC. His attorney, Pat Swan, couldn't be reached Tuesday but said at the time he believed Harkless was in Mexico.

Press Enterprise (Riverside, CA)
February 16, 2005, Wednesday

Fraudulent invoice can still bind a party to defend a lawsuit in a court of the plaintiff's choosing. According to the lender, Comerica, debtor A&J Cheese Co. created a false invoice scheme to increase the amount of its loans and avoid caps that the lenders had placed on sales to single customers. The debtor purportedly sold cheese to customers through Whitehall Specialties Inc., a Wisconsin-based cheese manufacturer. The lenders claimed that after A&J billed Whitehall for the cheese, Whitehall would increase the sale price by one penny per pound and send a new invoice to the customer. A&J allegedly submitted the Whitehall invoices to the lenders to increase advances on its receivables. The lenders maintained they lost \$46 million as a result of the scheme.

Commercial Lending Litigation News
February 17, 2005

The State Bank of Vietnam (SBV), Vietnam's central bank, has allowed the US Far East National Bank (FENB) to provide factoring services, becoming only the second foreign bank to offer factoring after German Deutsche Bank.

Vietnam News Briefs
February 17, 2005

In the case of Quantum Corporate Funding Ltd., v. Westway Industries, Inc., the New York appeals court held that State Finance Law §137 allows subcontractors' assignees to recover payment from bond sureties. The statute requires general contractors on public works projects to purchase payment bonds, which work like insurance policies designed to guarantee payment to the general contractor's suppliers, employees and subcontractors. The statute is silent, however, on who may sue on the bond. In their findings, section 137 should be read to allow suit by the subcontractor's assignee

New York Law Journal
February 18, 2005

Accord Financial Corp. (TSX - ACD) announced Record Fourth Quarter and Annual Earnings for Fiscal 2004. Net earnings for 2004 increased by 31% to a record \$7,624,000, while diluted earnings per share increased by 25% to 76 cents. Factoring volume in 2004 increased by 3% to a record \$1,489 million compared to \$1,439 million in 2003

Canada NewsWire
February 23, 2005



STOP THE BLEEDING

By Dr. Ron

P13

LESSONS FROM THE LEARNED

Over the years I have tried to provide useful suggestions to improve operations, save money, and reduce losses by "stopping the bleeding". I think it is time to write at least one article on how to improve your "top line" by increasing your deal flow. Let's face it - without a flow of new business we would all soon be out of business.

A marketing plan that works for one factor may not work for another; we all know that. A marketing plan that works in the northeast may not work in the southwest. Similarly, what works for one industry might be a waste of time and money in a different industry. Our major problem, in my opinion, is that nobody wants to talk about the specifics of a marketing program that does work for them regardless of industry, location or penchant for risk. Nobody wants to reveal their secrets.

Unlike CARNAC the MAGNIFICENT, may he rest in peace, I do not hold the answers to what constitutes a good marketing program in a hermetically sealed envelope kept in a pickle jar on someone's porch. BUT YOU ALL DO! All we need to do is to get people talking about them. We just might have the right format for such an open and frank discussion at the upcoming IFA convention.

Which marketing schemes really work for our industry and which ones will waste your time and money? This will be the main topic of Dr. Ron's FACTORING 102 PRESENTATION to be held Thursday March 17, 2005 at 4 PM in Vancouver, B.C. at the International Factoring Association's annual convention. How will we uncover these pearls of wisdom? All in attendance will be asked to anonymously complete a simple questionnaire. The answers will be tabulated on the spot and the answers will be revealed and discussed. Nobody will be able to learn which company is using which technique, but we will all learn which techniques work in general and how to apply them.

Should you snail mail? Email? Both? Neither? If you snail mail, should you send a letter or a postcard? Should it be addressed to a particular person? A particular title? How often should you make contact?

You can obviously reach more referral sources with phone calls compared to visits, but we all know a visit is much better. Or is it? Can you snail mail or email a referral source and still get good results?

If you believe that calling on referral sources is the way to go, should you spend more time calling on bankers or non-bankers? Who, other than bankers, are good referral sources?

Do strategic partnerships work? Internet strategies? Media advertising?

These questions and others will be answered in the Factoring 102 seminar. For those of you planning to attend, I have printed below the actual survey we will be using. Remember that your answers will be submitted on an anonymous basis and tabulated right on the spot. A lively discussion will then ensue. Please think about these questions now so that you can quickly complete the survey when you get the form. It will give us more time to discuss the answers.

DON'T MISS IT!

THE FACTORING 102 MARKETING SURVEY

1. How many years have you been in the factoring industry? _____
Your company? _____
2. For the calendar year 2005, what was your company's average net funds employed (in millions) \$ _____
3. For the entire calendar year 2005 what was your company's volume of invoices purchased for the year (in millions) \$ _____
4. What size is your average factoring account (invoices submitted monthly) \$ _____

Now comes the hard part, you marketing types will need to count to 100%. But the good part is that guessing is permitted.

How much of your annual volume comes from the following types of marketing activities? Feel free to guess if you are not sure.

Bank referral sources	_____	%
Referral sources other than banks	_____	%
Strategic partnerships	_____	%
Internet	_____	%
Client referrals	_____	%
Snail mail	_____	%
E-mail	_____	%
Targeted media advertising	_____	%
Total	<u>100</u>	%

PLEASE BRING THESE ANSWERS WITH YOU AND WE'LL SEE YOU IN VANCOUVER.

 To contact Ron Winicour, a/k/a Dr. Ron, or to request copies of documentation, past articles, etc., please send an e-mail to: rwinicour@gibraltarfinancial.com. In the alternative, snail mail your request to Dr. Ron at Gibraltar Financial Corporation, 60 Revere Drive, Suite 840, Northbrook, IL 60062.



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■ ■ ■ IFA MEMBERSHIP APPLICATION FORM

Company Name (IFA Membership will be per company)

Contact(s):

Address:

City/State/Zip

Country

Phone

Fax

Website

E-mail

SPECIALIZATION: (check all that apply) Agriculture Apparel Construction Consumer Foreign Government

Intellectual Property Medical P.O. Financing Temporary Agencies Trucking Other:

Approximate Outstandings _____ Number of Employees: _____ Year Founded: _____

PAYMENT METHOD:

Please charge the \$200 membership fee to my: Check Enclosed VISA Mastercard American Express

Card Number

Exp. Date

Name on Card

Signature

Company Name

Please return this form via e-mail to: info@factoring.org, or via fax to: 805-773-0021

or mail to: 2665 Shell Beach Road, Suite 3, Pismo Beach, CA 93449-1778

Membership must be approved by the International Factoring Association.

Bob Zadek, Esq. - Buchalter, Nemer, Fields & Younger
 • *The Law of Factoring – In Depth & Dirty*

Dr. David Henderson - Research Fellow
 • *Economic Projections that affect the Factoring Industry*

Cary Mullen - The Cary Mullen Companies
 • *Achieving ULTI-mate Targets*
 • *Mastering Momentum*
 • *Executing with Seed*

Martin Fingerhut, Esq. - Blake, Cassels & Graydon, LLP
 • *Factoring Canadian Receivables*

Patti Wood - Body Language Expert
 • *Reading Body Language for Business*

Gail Schulte Coulthred - Abingdon Business Finance
 • *Factoring 101*

Ron Winicour - Gibraltar Finance
 • *Factoring 102*

Jay Atkins - Bibby Financial Services
Darla Auchinachie - Liquid Capital Corp.
 • *Operations*

Allen Frederic - Gulf Coast Business Credit

Pat Haney - Commercial Capital Lending, LLC
 • *Case Study Analysis*

Debra Wilson - Vertex Financial

Wade Hladky - Gulf Coast Business Credit
 • *Client Evaluation*

Tom Siska - FactorHelp

Peter Aransky - The Hamilgon Group
 • *Marketing Your Factoring Service*

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Steven Kurtz, Esq. - Levinson, Kaplan, Arshonsky & Kurtz

Mike Ullman, Esq. - Ullman, Ullman & Vazquez, P.A.

Brian Van Nevel - Spectrum Commercial Services

Deal Analysis Panel

• *Thinking outside the Box*

Roger Allen - LSQ Funding Group

Kathleen Dasal - Orange Commercial Credit

Lew Faber - Yale Capital, Inc.

Jason Floyd - Amerisource Funding, Inc.

The full set of Speaker CD's is available for **\$300**. You may also order individual CD's for **\$25 each (Bob Zadek's CD set is \$45)**. California orders, please include sales tax (7.25%)

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| <input type="checkbox"/> Patti Wood | <input type="checkbox"/> Legal Issues Panel |
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