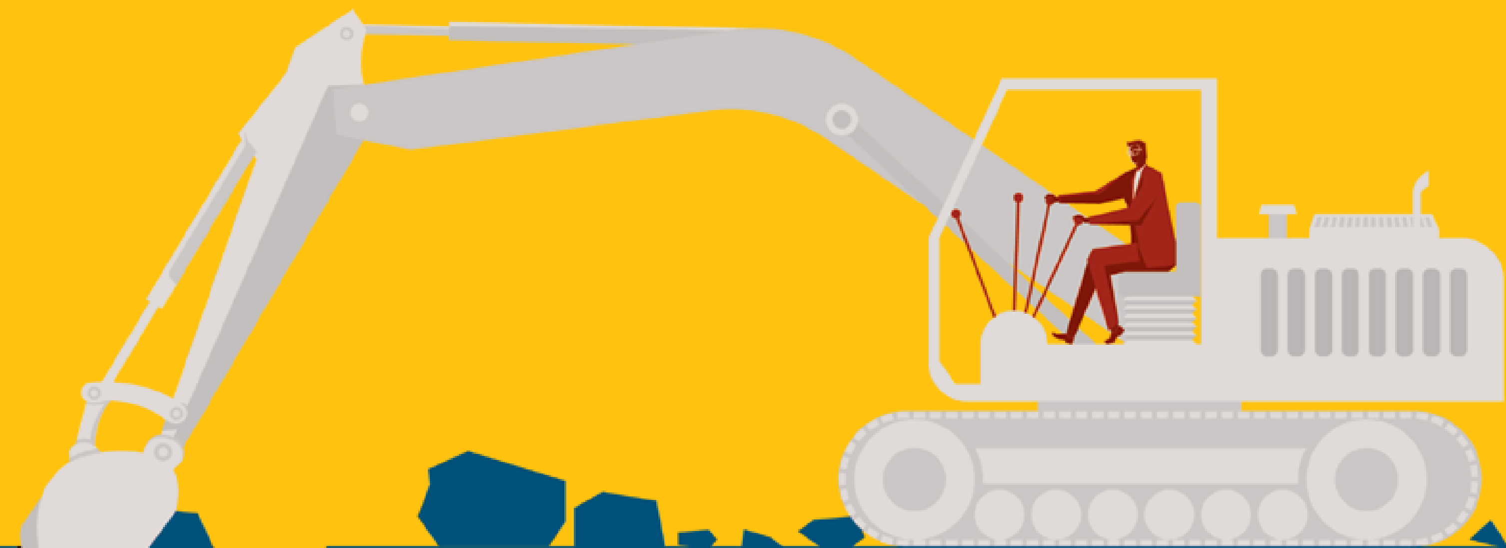
EQUIPMENT
Leasing & Finance
THE MAGAZINE FOR INDUSTRY EXECUTIVES

MARCH|APRIL 2018



State of Funding 2018

Liquidity buys little when deals are scarce

On the Cusp of Change: Women's Council Gets Down to Business

Credit and Collections: Onward Ho!

The Impact of Tax Reform: What You Need to Know

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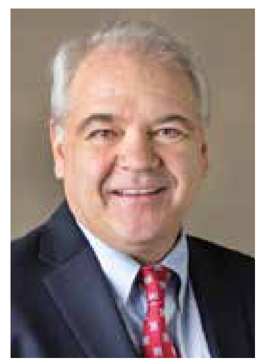

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By Ralph Petta

Discovering New Ideas

AT ELFA HEADQUARTERS we're gearing up for the 2018 ELFA Annual Convention, which will be held Oct. 14–16 in Phoenix. We're pleased to present this year's convention theme, which is all about discovering new ideas to help your business "Evolve, Emerge and Excel."

- **Evolve:** To stay relevant and thrive in today's fast-changing world, it is critical to *evolve* your business operations to tap into new opportunities.
- **Emerge:** You'll have the opportunity to examine and discuss a number of trends facing the industry and position your business to *emerge* stronger than ever.
- **Excel:** Business is revving up. Prepare to win business in a competitive marketplace, deliver value to customers and *excel* at achieving your goals.

Please save the date for this exciting event—we'll let you know when registration opens later this spring.

What's Next

We are also gearing up for a number of spring events designed to help you network with industry leaders and exchange best practices:

Funding Conference, April 10–12 in Chicago. Get a snapshot of the state of funding on p. 16 and get the complete picture by attending this conference. Consider arriving early to attend the Best Practices Roundtables for bank, independent and captive and vendor finance executives on April 10. Future leaders are encouraged to attend the Emerging Talent Networking Event on April 10.

Women's Leadership Forum, April 23–24 in Wayne, Pennsylvania. The ELFA Women's Council will host this inaugural event focused on leadership development for women at all stages of an equipment finance career. Learn more about the initiatives of the Women's Council on p. 20.

Legal Forum, May 6–8 in Washington, D.C. Speaking of legal issues, don't miss our 2018 Legal Buyers Guide on p. 41.

Capitol Connections, May 16–17 in Washington, D.C. Please see p. 36 and watch the video below to learn more about our biggest advocacy event of the year. As we consider the impact of new tax reform legislation on our industry, don't miss the articles on p. 34 and 54.

Credit and Collections Management Conference, June 4–6 in New Orleans. Turn to p. 26 to see what industry execs are saying about the credit and collections cycle.

For a full calendar of upcoming events, please visit *www.elfaonline.org/events*. Thank you as always for your support and participation. ☰

Ralph

RALPH PETTA is the President and CEO of the Equipment Leasing and Finance Association.

Why should you attend Capitol Connections, May 16–17? Watch this video invitation at *www.elfaonline.org/events/2018/CHD/*

Promoting Equipment Finance to the Next Generation

Pay it forward and share your experience by participating in the Equipment Leasing & Finance Foundation's Guest Lecture Program! The Foundation provides a ready-made, fully-customizable presentation developed by industry experts to introduce students to the industry. This past February, Nancy Pistorio, President of Madison Capital, LLC (standing in photo) and Bruce Winter, President of FSG Capital, Inc., presented the Guest Lecture Program at the University of Maryland–Robert H. Smith School of Business. Learn more at *www.leasefoundation.org/academic-programs/guest-lecture-program/*.

Mark Your Calendar for the 2018 Legal Forum

The Legal Committee gathered at ELFA headquarters in January under the leadership of Chair Dustin Lee, VP, Assistant General Counsel at Fifth Third Equipment Finance Company. The group reviewed important committee and subcommittee activities for the year ahead and planned a packed agenda for the 2018 Legal Forum, May 6–8 in Washington, D.C. When it comes to providing you with the timeliest information on legal issues impacting the equipment leasing and finance industry, there is no better place than the ELFA Legal Forum. Learn more and register at *www.elfaonline.org/events/*.

Funding Conference Draws Large Crowd

The ELFA National Funding Conference is the most effective forum for connecting funding sources with some of the finest organizations in the equipment finance industry looking to establish relationships to fulfill their funding needs. Scheduled for April 10–12 at the Swissôtel Hotel in Chicago, this year the conference promises to attract more funding source exhibitors than in previous years, reflecting the optimistic atmosphere surrounding the equipment finance industry. To learn more and to register as a funding source exhibitor or attendee, please go to *www.elfaonline.org/events*.

Membership Minute

The ELFA Membership department is offering a conference call to all member companies to review ELFA's members-only resources. The call is designed to provide an overview of the association's resources for new members or a refresher for existing members. The invitation is open to anyone in your organization and should last approximately 20 minutes. If you are interested in setting up a call between ELFA membership and your staff, please contact membership@elfaonline.org.

Don't Miss the 2018 Emerging Talent Networking Events!

Do you remember when you were first starting out in this industry? You were probably eager to expedite your professional development and increase your exposure to people of influence. ELFA believes that helping emerging talent develop both their business knowledge and networks early in their careers can be enormously beneficial not only to them, but also to your company. We invite senior leaders of ELFA member companies to send two or three (or more!) of your emerging talent to the Emerging Talent Networking Event in Chicago on April 10. Attendees will have the opportunity to learn from and talk with industry leaders and network with their peers. Two more networking events will be held on July 18 in Washington, D.C. and Sept. 17 in Philadelphia. For more information and to register, visit *www.elfaonline.org/events*. For questions, contact Alexa Carnibella at acarnibella@elfaonline.org.

Join the Conversation at the Best Practices Roundtables on April 10 in Chicago

The Bank, Independent and Captive and Vendor Finance Best Practices Roundtables will be held at the Swissôtel on April 10, immediately preceding the National Funding Conference. The roundtables are designed to get groups of like-minded executives together to discuss trends affecting business entities, market segments or areas of responsibility. Attendees will enjoy a joint luncheon and general session, followed by the individual roundtables. In addition, ELFA is again offering bundled pricing for those who wish to attend both the roundtable and the Funding Conference (a $200 savings!). To register for the roundtable only, go to the Events section of *www.elfaonline.org* and select either the Bank, Captive and Vendor or Independent Roundtable. To register for both Funding and a roundtable, you must register via the Funding Conference: *www.elfaonline.org/events/2018/NFC.*

"Laissez Les Bons Temps Rouler!"

Let the good times roll as the 2018 Credit & Collections Management Conference and Exhibition takes you to New Orleans, June 4-6 at the Omni Royal Orleans hotel! Save the date and don't miss this fantastic conference and the "joie de vivre" of New Orleans. More details are available at *www.elfaonline.org/events/2018/CC/.*

Everything Tax Pros Need to Know: Best Practices Roundtable—June 19-20

The Tax Best Practices Roundtable is a two-day forum offered exclusively to tax practitioners of ELFA member companies. The roundtable focuses on federal and state compliance and planning issues, recent developments and sharing of internal best practices. This year's roundtable will be held at the offices of PwC in Minneapolis on the afternoon of June 19 and the morning of June 20. For more information and to register, please visit *www.elfaonline.org/events/2018/TPR.*

New Event Targets Up-and-Comers

Emergence2018 is a new leadership program for emerging talent, developed by the ELFA Emerging Talent Advisory Council. This event will be held July 18 in Washington, D.C., and discussion topics will include: Networking/Connecting; What Every Leader Knows, But Few Leaders Do; Executive Coaching; Career Mapping; The Fate of the Industry—Threats and Opportunities; and Maximizing Performance.
See details this spring at *www.elfaonline.org/events.*

SHUTTERSTOCK

Principles Workshop Off to a Strong Start

The first Principles of Leasing and Finance Workshop of 2018 will be held at the offices of BMO Harris Equipment Finance on April 17-19. Attendees will learn about the benefits of leasing, the types of lease and finance transactions, and fraud detection and prevention and receive an overview of lease accounting. Two additional workshops are scheduled for 2018 in Philadelphia, June 5-7, and in Dallas, September 24-26. For more information and to register, go to *www.elfaonline.org/POL*.

We Bring the Training to You

Join the growing number of ELFA member companies who bring ELFA training to their own offices! Hosting a workshop at your own facility gives you the flexibility and convenience to address the specific learning needs of your employees, establish collective knowledge and a shared skill-set and achieve even your most challenging business goals. Both the Principles of Equipment Leasing and Finance course and the Beyond the Basics courses can be delivered on-site and tailored to your organization's needs. To schedule in-house training, please contact Alexa Carnibella at acarnibella@elfaonline.org.

Executive Roundtable Explores Industry Trends

Top equipment finance executives convened in Miami in mid-March to discuss the latest trends impacting the industry today, to strategize about the future and to create lasting business relationships. At the event, thought leaders shared their insights on tax reform, technology and human capital issues such as inclusion and leadership. Featured speakers included three high-profile keynote speakers: workforce trends expert Seth Mattison, futurist Vivek Wadhwa and economist Robert F. Wescott, Ph.D.

SHUTTERSTOCK

ELFA Forecasts Industry Trends

What are the top trends driving capital acquisition this year? Find out in ELFA's Top 10 Equipment Acquisition Trends for 2018. Designed to help businesses with their strategic equipment acquisition plans, you can find the trends list—along with an infographic and video summarizing the trends—on ELFA's Equipment Finance Advantage website for end-users at *www.equipmentfinanceadvantage.org/rsrcs/articles/10trends.cfm*.

Celebrating Outstanding Service

At the ELFA all-team meeting in February, ELFA President and CEO Ralph Petta recognized staff member Janet Fianko, Manager of Professional Development, for 20 years of outstanding commitment, dedication and service to the association.

Nominations Open for Equipment Finance Hall of Fame

The Equipment Finance Hall of Fame annually recognizes individuals who have made unique, significant or lasting contributions to the industry and/or the association throughout their careers. Nominations for the 2018 Class of the Equipment Finance Hall of Fame are due April 1, 2018. Nominations will only be accepted via online submission at *www.elfaonline.org/hof*. Please contact Ed Rosen, Director of Governance, at erosen@elfaonline.org with any questions.

Equipment Managers Evaluate Market Conditions

OVER 300 EQUIPMENT MANAGERS, REMARKETERS AND APPRAISERS attended the ELFA Equipment Management Conference in February in St. Petersburg, Florida. This conference has become known for its content-rich sessions that provide comprehensive information on a variety of asset classes; off-site equipment tours that allow attendees to see equipment in actual work settings; a first-class exhibition of equipment appraisers, remarketers and others; and unmatched networking opportunities with peers in the industry.


Educational sessions highlighted a variety of asset classes.


A total of 37 companies exhibited.


Attendees participated in off-site tours at BP Construction Group and Tampa Port Authority.


Attendees networked with industry execs from around the nation.

5 Minutes with the Financial Institutions Chair

MIKE ROMANOWSKI, Chair of the Financial Institutions Business Council Steering Committee

WHAT'S HAPPENING with financial institutions in the equipment finance space? *Equipment Leasing & Finance* magazine recently talked to Mike Romanowski, Chair of the Financial Institutions Business Council Steering Committee (BCSC), to take the pulse of this sector. Romanowski, President of Farm Credit Leasing Services Corporation, is currently serving his second year as Chair of the committee, which represents bank-related organizations and other financial institutions involved in single transactions greater than $5 million.

What issues is the Financial Institutions BCSC focused on this year?

For the upcoming Bank Roundtable on April 10 in Chicago, immediately preceding the Funding Conference, the Financial Institutions BCSC will focus on two timely issues: The impact of tax reform on equipment finance and partnering with commercial bankers. These two topics go hand in hand as many of the bank's customers are going to need guidance to determine how best to leverage tax reform and will be looking for creative financing solutions for an anticipated increase in capital expenditures.

In addition to our roundtable discussion, the group will continue to focus on engaging early career professionals with the equipment financing industry by completing 15 Guest Lecture Programs at universities and colleges across the country and engaging our elected officials by completing at least two in-district visits with members of Congress.

What do you like best about serving on a BCSC?

I enjoy working with the other members on the Council and expanding the reach and value of ELFA and our industry. The Council has a great group of diverse leaders. We learn from each other and many times we're able to work together on business opportunities.

Join the Roundtables!

The Captive and Vendor Finance, Financial Institutions and Independent Middle Market BCSCs are planning best practices roundtables, to be held April 10 in Chicago. See details at *www.elfaonline.org/events*.

About the BCSCs

ELFA's Business Council Steering Committees represent ELFA's five key business segments: Captive and Vendor Finance, Financial Institutions, Independent Middle Market, Service Providers and Small Ticket. The committees pursue priorities related to their distinct memberships and integrate their work into the overall goals of the association. Activities include membership recruitment and grassroots political advocacy, contributing to industry research, presenting the Guest Lecture Program, and attending and contributing to the success of Capitol Connections and the Annual Convention. Interested in joining? Contact Ed Rosen at erosen@elfaonline.org.

ELFA

INDUSTRY D

Vermont

Vermont was the fastest growing state in terms of equipment financed, with year-over-year growth of 287.9% from 2015 to 2016. See details in the 2017 Survey of Equipment Finance Activity at *www.elfaonline.org/SEFA*.

Equipment financing volume was off to a strong start in January, with volume up 10% year-over-year. Check out the latest Monthly Leasing and Finance Index at *www.elfaonline.org/data/mlfi*.

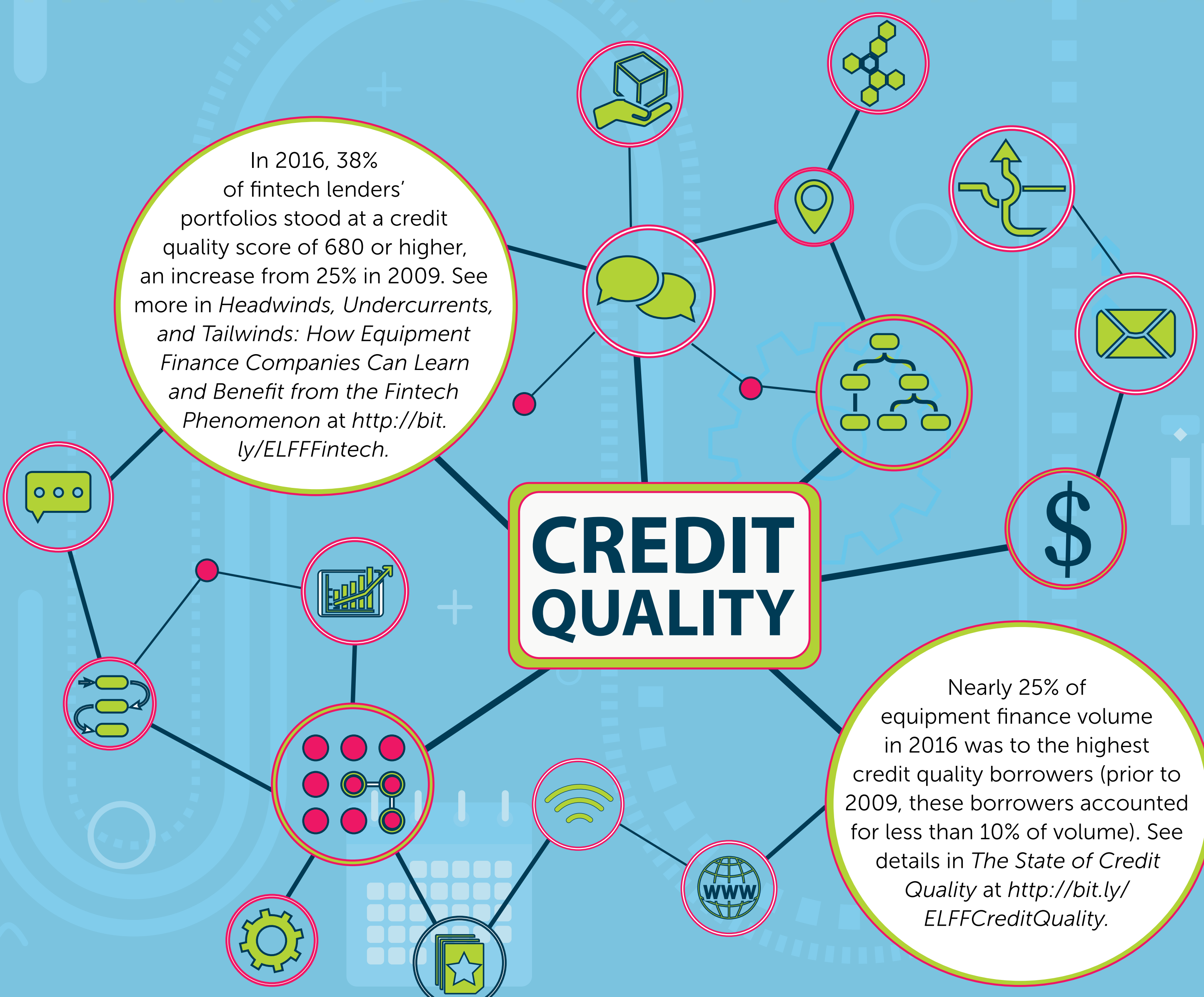
10%

84% of all employees who worked for a small or medium-sized equipment finance company (where new business volume was less than $500M) received a bonus/commission in 2017. Learn more in the Small & Medium Enterprise Compensation Survey at *www.elfaonline.org/data/market-trends.*

ASHBOARD

EQUIPMENT LEASING & FINANCE
FOUNDATION
Your Eye on the Future

Most equipment verticals show investment strengthening over the next 3-6 months in the Equipment Leasing & Finance Foundation's February Equipment & Software Investment Momentum Monitor: *http://bit.ly/ELFFMonitor*



State of

TALK WITH FUNDING EXPERTS WHO WORKED THEIR WAY THROUGH 2017, and you get the feeling they're happy to have escaped with only minor injuries. "It was a free-for-all, a financial food fight," says Henry Frommer, Senior Vice President and Managing Director at Wells Fargo Equipment Finance in New York City. "Anyone who had deals to sell did extremely well, and buyers had a really tough time. And I'm not sure that 2018 will be markedly different."

Not everyone who wanted a piece of the leasing-equipment pie got it in 2017. Of those who did manage to buy transactions, many got fewer than they wanted or settled for lower credits as originators kept the best morsels for themselves. Observes Frommer, "For the deals that were available, the spreads were greatly compressed, and to some extent there were weaker structures in the deal themselves: longer terms, perhaps, or no down payment."

"When we saw a regular deal-flow transaction, buyers jumped all over it," adds Sera Oliver, Vice President, Capital Markets, at Key Equipment Finance in Albany. "I even encountered cases where I went back to a source to say yes, we could do the pricing, and was told that someone got back to them the day before with an offer to do 20 basis points better."

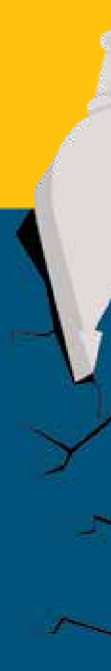
An Improving Landscape

This year's pickings could be equally slim if interest rates remain relatively flat and demand for money doesn't grow. Pricing is also expected to remain extremely competitive as strong originators command top dollar for the deals they choose to sell. But markets change, and therein lies hope—even whispered optimism.

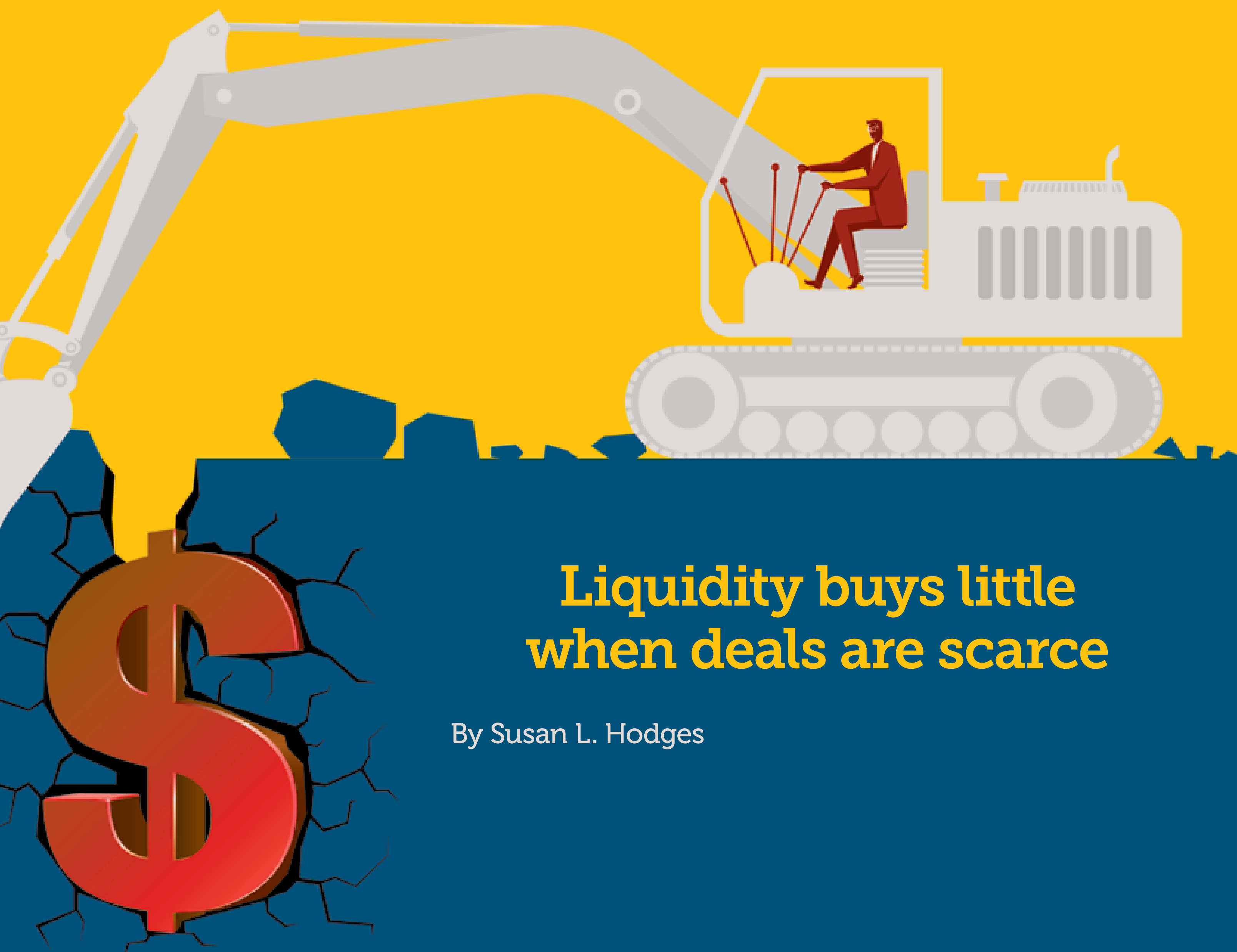
"I think we'll see certain market segments start to rebound, such as energy, with lenders more willing to lend to those companies," says Doug Ducray, Senior Vice President, Capital Markets, at MB Equipment Finance in Hunt Valley, Maryland. If the economy remains healthy, Ducray also expects a continued increase in production-manufacturing equipment. "We're already seeing investment in hard-hit manufacturing areas," he says. "So whether we're looking at automobile manufacturing or food processing, I believe these markets will strengthen. MB Equipment Finance holds particular expertise in these sectors, and we're seeing strong activity."

Frommer looks for yellow iron, rail and commercial air to pick up if Congress passes an infrastructure bill. He also thinks renewable energy could soon stand on its own merits. "You can't rely on a tax credit forever," he says. "At some point there has to be a real reason to buy the equipment, and renewable energy is becoming more efficient and more economical all the time." Because his comments came just days before the Administration announced a 30% tariff on solar panels from China, we went back to Frommer and asked if his thoughts about renewable energy had changed. "I think the tariffs would have a modestly negative effect," he responded.

Stronger markets produce more equipment financing, which in turn grows the need for funding and the sale of transactions to produce that funding. Oliver believes new tax legislation could lead to higher prices for oil and gas, which could stimulate a bevy of markets. "In rail and marine, a lot of companies that get syndicated are tied to oil and gas, directly or



Funding 2018



Liquidity buys little when deals are scarce

By Susan L. Hodges

indirectly," she says. "We've been watching that space closely—not just the oil companies, but the suppliers, transporters and other businesses servicing the market, which have also been very tight."

Tom Forbes, Senior Vice President and Group Head, Capital Markets, at Wintrust Commercial Finance in Frisco, Texas, agrees that lenders will slowly return to the energy space after a significant retrenchment. He also thinks the transportation industry will remain strong this year and include continued activity in corporate aircraft. "But I think these deals will continue to be a bit more conservative than before the Recession," he says. "There were some pretty expensive lessons learned."

He is less certain about the healthcare market. "It's always an enigma," Forbes says. "I think large captives in the business will continue to be successful, but we no longer see the specialty lenders we once did. You have to know how reimbursements are made to make good investment decisions, and although the Affordable Care Act has been in place since 2010, tax reform could make a difference. It's always a 'follow the money' game."

Discipline and Survival

When considering 2018 overall, Forbes joins those who believe this year will be much like last, with buyers leaping for the meatiest morsels that sellers offer. But he sees several reasons for concern. "Middle-market companies are leveraging up significantly, consumer debt is at historical highs, lending standards are stretching, and documentation is getting looser," he says. "In fact, information from a Carl Marks Advisor survey indicates that 48% of lenders believe the documents being negotiated today are looser than those negotiated before the financial crisis."

Some of this deterioration in discipline stems from new market entrants. "There are a lot of new entrants in the structured-credit environment, and they're looking for more volume and better returns than they can get in higher-rated credits," says Ducray. "Some have already come and gone. They opened shop thinking they'd get a higher return than on other investments, but then looked at the risk profile of some transactions and realized they couldn't get the returns they needed, so some have pulled back." He sees smaller banks investing more heavily in equipment financing, either by opening buy desks or purchasing equipment finance companies as ways to diversify.

Yet, Oliver says new players have become an important part of the investor pool on Key Equipment Finance's sell side. "A lot of them are small companies with open balance sheets, and they're writing fairly large checks," she says. "They have no exposure issues, their turnaround time is fast and they become repeat customers," she adds. "And while this is all positive on the syndication side, these are also the companies I compete with on the buy side."

Cost-of-Funds Variables

Although sources for this story agree that funding availability should remain strong in 2018, they disagree on cost-of-funds forecasts. "If the economy remains strong, the [Federal Reserve Bank] will continue to increase interest rates throughout the year for fear of rising inflation," says Ducray. "One component of interest cost embedded in the cost of funds is market interest rates, which could increase. I think we'll see an increase in the cost of funds for banks, just because there's more pressure on profitability and due to federal regulation. We're in an environment where the Administration is trying to reduce regulation, but our industry is already subject to new accounting rules and new tax laws, so I don't see the cost of funds staying constant."

Oliver thinks differently. "We don't see anything that will increase our cost of funds," she says. "I do believe interest rates will rise modestly, but because of competitive pressures and the amount of liquidity in the market, I don't think it will translate to a change in the cost of funds."

Frommer agrees but posits a scenario that could add meat to the market: "The Fed is shrinking its balance sheet, which will supposedly take a trillion dollars out of the market. That should dry up some liquidity as the Fed gets rid of bonds, investors buy those bonds and interest rates rise because there's less liquidity." But equipment finance companies still need demand, and a strong infrastructure bill could provide it. Says Frommer, "Then it's possible that spreads will widen and buyers will have better deals."

Accounting Changes and Tax Reform

Meanwhile, equipment finance companies are readying themselves and their customers for changes required under the new lease accounting standard. The new requirements aren't expected to make a difference this year, though, because domestic companies have until 2019 to enter all leases on the balance sheet. "To the extent that we're dealing with international companies, it could make a difference," Frommer qualifies. "But

30th Annual National Funding Conference set for April 10-12

Learn more about the funding landscape at the ELFA National Funding Conference, the annual forum for connecting funding sources with leasing and finance industry organizations looking to establish relationships to fulfill their funding needs. See *www.elfaonline.org/events/2018/NFC/*.

Looking for a Funding Source?

In addition to attending the National Funding Conference, check out ELFA's online Funding-Source Database. Search by type of company, types of lease structures, funding programs, equipment types and/or credit criteria: *https://apps.elfaonline.org/Directories/FundSource/*.

New Foundation Study

Learn more in the new Foundation study *The State of Credit Quality: Where We Have Been and Where We Are Going*, available from *www.LeaseFoundation.org*.

SHUTTERSTOCK/SORBETTO

in reality, the changes simply mean that everyone will now look at leverages differently. The changes will be quite expensive for equipment finance companies to comply with, but in terms of cutting back on demand or not looking at a credit because there's a leasing debt on the balance sheet, I don't see it as a long-term issue."

Forbes concurs. "There's always going to be a need for capital outside of revolving credit and senior debt facilities, and companies will determine which products fit the new standards best," he says. "I think at the end of the day, the lease accounting changes will normalize and our industry will adjust."

Accounting changes notwithstanding, it's much too soon to know how tax reform will affect the industry and how equipment finance companies will adjust. At Key Equipment Finance, Oliver says tax leases show favorably in the company's post–tax reform lease vs. buy analysis. "However, with the lower tax rate and 100% expensing, leasing companies may have less tax capacity overall," she notes. "So we're wondering if we'll see more tax deals in the capital-market space. If equipment finance companies can't hold as much tax business, they'll have to take some of it to market."

Forbes wonders if borrowers will demand lower rates. He also questions whether banks and leasing entities will use state and/or city taxes to increase their rate from 21% and pass along the impact to their customers in the form of lower lease rate factors. Either way, he thinks most leasing companies will respond in ways that take care of their customers and maintain their profitability.

"We ran models on how leasing will be affected and we determined, in our view, that the difference between the old tax methodology and new isn't so great that it will have a major negative or positive impact on leasing," he says. As with lease accounting changes, Forbes believes the market will adjust to tax reform.

Andy Fishburn, ELFA Vice President of Federal Government Relations, sums up the situation: "The tax bill is fresher than some perishable items still on the shelf at the grocery store, and companies are still figuring out how to adapt," he says. "Many are expecting the impact on the capital expenditures marketplace to be overall positive, with equipment leasing and financing experiencing growth as a result, but that doesn't mean that it's positive for all verticals or business models. The impact of the simultaneous, seismic and interconnected changes of 100% bonus depreciation, limitations on interest deductibility and a rate reduction is going to take some time to sort out."

Stay tuned. ☰

SUSAN HODGES writes about equipment finance and other business topics from her office in Wilmette, Ill.

ON THE CUSP OF CHAN

IF YOU WANT TO KNOW WHAT CHANGE IN THE EQUIPMENT FINANCE INDUSTRY LOOKS LIKE, talk to anyone who attended the Women in Leasing Reception at the ELFA Annual Convention last fall. Instead of the small, sedate gathering typical of this event a couple of years ago, more than 100 people crowded into a room designed for about 50 and lit the place up with energy and excitement. The reception was the first event following the official startup of the ELFA Women's Council, and it set the tone for a series of activities designed to help women advance their careers and increase their participation in the association.

Lori Frasier is Senior Vice President of Strategy and Performance Management at Key Equipment Finance in Superior, Colorado, and Chair of the Women's Council. The Council is a 16-member steering committee whose mission is to help achieve gender balance in leadership across all levels of the equipment finance industry and the association. "We hope not to need this Council five to 10 years from now," says Frasier. "Having an inclusive and diverse industry overall is our long-term vision."

It is a vision that includes men, two of whom are members of the Women's Council. "Although our primary focus is on women, the Council values men as partners," says Frasier. "Our goal is to raise awareness among all members of the industry about the challenges women face and the obstacles that can prevent their rise to leadership, and men are an important part of that conversation. Just as we invited men to our reception at last year's convention, we will continue to involve them in dialogue and request their attendance at events that can benefit from their input."

"Organizations with gender-balanced leadership are better positioned to be high-performing," says David Schaefer, ELFA Chairman. "The ELFA Board has made this a priority and established the Women's Council as a way to promote and showcase the talents of the female leaders in our industry." Schaefer says the board is not only focused on gender, but also looks for strategies to increase all facets of diversity. Another

"We're at a point in our nation where women's issues of all kinds are in the headlines, and we believe the time is ripe for change."

—Lori Frasier,
Key Equipment Finance

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GE

ELFA's Women's Council gets down to business

By Susan L. Hodges

example is the Emerging Talent Advisory Council. Says Schaefer, "I personally believe that having diverse leadership teams in our companies and our association will bring about significant value."

A Force for the Future

Next up on the Council's agenda is "Be a Force for the Future," the Women's Leadership Forum scheduled for April 23–24 at DLL's North American headquarters in Wayne, Pennsylvania. Registration is open to 80 women, who will spend the two days focusing on networking, negotiation and communication skills. The conference will also include time for attendee interaction and networking with other industry leaders.

"I personally believe that having diverse leadership teams in our companies and our association will bring about significant value."

—David Schaefer,
ELFA Chairman

"Women who attend should gain new insights and leave with action steps to implement when they return to their offices," says Frasier.

Deb Baker, Senior Director, Global Portfolio Services, for Cisco Systems Capital Corporation in Research Triangle Park, North Carolina, and a Women's Council member, explains why networking is so important: "Networking is a prime opportunity to build professional capital, and women don't do enough of it," she says. She then admits that she could improve her own skills in this area. "In the past if someone asked me about networking, I'd always say I'm pretty good at it," she recalls, chuckling. "But then I started reading about networking and learned that women often leave conferences immediately after a session and return to their rooms to catch up on email. Women also tend to take lunch at their desks instead of going to the cafeteria. I've done both of those things myself! It makes me realize that we women need to network more and work a little less. Because, at times, relationships are more important than anything else."

Baker joined the Council to support an industry she has belonged to for her entire career. She's also eager to increase the number of women in industry leadership positions. "I'm lucky to work for a company that has an incredibly diverse leadership team, and it's not something new," she says. "Cisco's Office of Inclusion and Collaboration thinks about all aspects of diversity, whether that's gender, age or ethnicity. Its work has made a difference in supporting a diverse workplace, maximizing innovation and collaboration and creating a culture where everyone is welcomed, respected, valued and heard."

Jennifer Fanz, U.S. Country Sales Manager for Healthcare at DLL and a Women's Council member, gives a presentation to all new hires at DLL on personal communication styles. "We women tend not to be as vocal, as commanding or as sure of ourselves as men, and this is often perceived in a negative way," she

"Feedback that we received from women at the convention tells us there are a lot more women who are ready to step forward."

—Jennifer Fanz,
DLL

SHUTTERSTOCK/ KHAKIMULLIN ALEKSANDR

> **"Networking is a prime opportunity to build professional capital, and women don't do enough of it."**
>
> —Deb Baker,
> Cisco Systems Capital Corporation

says. "It's important to realize how our words, mannerisms and nonverbal cues come across. Laughing while we talk, for example, can undermine our message and give others a poor impression."

Fanz heads the Women's Network at DLL and credits one of her mentors, DLL President of Global Healthcare & Clean Technology Amy Nelson, for placing Fanz in the position. "Our company started the network and Amy told me I was going to run it," she recalls. "I was hesitant, but in less than four years what we've done is unbelievable. We've created a space where women feel comfortable, enjoy networking, bounce ideas off each other and participate in learning and social events. I've been afforded opportunities that helped me navigate through my own peaks and valleys, and I want to share the same opportunity with other women."

Groups organized to help female employees connect and advance exist at a number of equipment finance companies. Stryker Flex Financial, based in Portage, Michigan, has such a group in which James Cress acts as one of its local executive advisors. He is also one of two male members of ELFA's Women's Council. "I'm married and have two daughters, and my team at the finance company is about 50% women," says Cress, Vice President and General Manager. "I was eager to join the Women's Council because of my positive experiences with the Stryker Women's Network."

Cress says the group has informed policy changes at Stryker, including improved parental leave, more flexible work culture and training and development specific to women who aspire to leadership. "I realize now that women have different challenges and needs when it comes to their career development, and before, this was a blind spot for me," he says. "I think the Women's Council can create awareness and education on the topic at ELFA and develop tools for member companies to use to effect change in their own companies."

Cress looks forward to helping plan Women's Council events that will be warm and inclusive and attract different kinds of people. "There has been feedback that events could be more welcoming and inclusive for women and others," he says. "People want to see others who look like them when they attend events and network within the industry. I joined the ELFA Board for the opportunity to work on initiatives like this. As we seek out and compete for talent, we need to develop new leaders. And it's proven that gender-balanced leadership creates better business results."

The Challenges Ahead

The Women's Leadership Forum is the first Council event planned for 2018 but won't be the last. "We have a lot of work to do," says Frasier. "We're at a point in our nation where women's issues of all kinds are in the headlines, and we believe the time is ripe for change. The equipment finance industry has not achieved gender-balanced leadership, and building awareness is important to get companies to think about this issue. It's not about pointing fingers; it's about getting people to think differently, and it starts by increasing awareness."

"I think the Women's Council can create awareness and education... and develop tools for member companies to use to effect change in their own companies."

—James Cress,
Stryker Flex Financial

Caroline Turner couldn't have said it better. Turner is Principal of Difference WORKS, LLC, a Colorado-based consultancy that helps leaders improve productivity by cracking the code on diversity, particularly gender diversity. She led the breakout session "Better Leaders, Better Results: Striking a Balance in Individuals, Teams and Organizations" at the ELFA Annual Convention last October and shed light on masculine and feminine ways of communicating and the strengths of each.

"When I did my workshop, the #MeToo Movement had just gotten noisy, and I began by saying that's not our focus," Turner remembers. "I said that we wanted to stay in the attic, to deal with higher-level issues of gender-balanced leadership. But you know, the #MeToo Movement tells us that the basement's not clean yet."

Turner noted in her session that although nearly 47% of the current U.S. workforce is female, just 5% of CEO positions at Standard & Poor's 500 companies are held by women. At the same time, 51% of management, professional and related positions are held by women, according to Catalyst, a global nonprofit that works with leading organizations to build companies that work well for women. "The question is, if 47% of the total workforce is women, where are they going?" asks Turner. "The answer many give is that they leave to have and raise children, but that's not true. Research shows that many women leave because they don't feel valued or heard. They leave to start their own businesses or find a culture where they feel included. Or they stall in their career and so aren't in the leadership pipeline."

Turner herself left a senior-level corporate job to start her own business. "The situation now is that companies want and need women, but often leaders don't know how to attract, develop and retain them," she says. "So what can companies do to create a culture that allows women to stay and do their best work?"

One step is to create a women's network that brings female employees together to discuss issues, support each other and bring potential solutions to management. Another is holding workshops so men and women can learn about masculine and feminine styles of communicating, working and leading and the value of each. Says Turner, "We can all become more gender-intelligent by learning to recognize and appreciate these differences. Men can feel free to be inclusive and collegial when it's appropriate, and women can feel free to be dominant and declarative when appropriate. By appreciating these differences, we all become inclusive and more powerful as leaders."

In that vein, planning is already under way on new content to be featured at this year's ELFA Annual Convention, and more women's events are being discussed. "Feedback that we received from women at the convention tells us there are a lot more women who are ready to step forward," says Fanz. "We want to build a support system that offers them education, networking and opportunities for development."

Frasier says themes and goals from the Women's Council were part of the discussion at the Executive Roundtable in March. "We're really starting to influence a lot of activities and forums in ELFA, and we'll continue to look for ways to do this," she says. "We have to own our careers and development and realize that this is an opportune time for women to raise their voices and look to play bigger roles in their organizations without worrying about how they are viewed."
If women in ELFA and throughout the equipment finance industry can leverage the heightened awareness brought about by the #MeToo Movement, "it can benefit all of us as we experience a groundswell of interest in women's issues," says Frasier, who adds, "It's wonderful that ELFA was already focusing on women's issues before this movement came about." ☰

SUSAN HODGES writes about equipment finance and other business topics from her office in Wilmette, Ill.

On

Smooth sailing expected, credit and collections professionals say

SHUTTERSTOCK/ HERMIN

By Stuart Papavassiliou

ward Ho!

AS CREDIT AND COLLECTIONS PROFESSIONALS PREPARE TO CONVENE IN NEW ORLEANS this June at the ELFA Credit and Collections Management Conference, *Equipment Leasing & Finance* brings four industry leaders together to discuss issues ranging from their thoughts on the current state of delinquencies to the new processes and procedures they are employing to navigate through both known and unforeseen credit risks.

Delinquencies & Losses: Calm Seas, Occasional Whitecaps

Stability. That's the consensus as to the state of things in today's credit and collections environment. Eric McGriff, Chief Credit Officer at EverBank Commercial Finance, says, "If you look at performance trends in a historical context, delinquency and losses are very low even though there have been some increases. Overall, things remain stable."

"Along with everyone else in the industry, we've seen a slight uptick in delinquencies, but it's nothing that causes me alarm. It's the natural ebb and flow of the way the market works. Our default rates and losses are in line with where we expect them to be," observes Robert Fagan, Vice President of Customer Service and Collections at Eastern Funding LLC.

Ben Carlile, Maxim Commercial Capital, LLC's Portfolio Risk Officer, agrees. "From our viewpoint, we expect very little change in delinquency levels this year. At the same time, we expect continued improvement in reducing charge-offs. Sure, there may be increased competition or new imbalances in the economy headed our way that might start to influence our delinquency numbers, but we are optimistic about 2018 and 2019 at this point in time."

But, does that paint the entire picture? McGriff notes, "We've seen some increases in specific industries. For example, transportation went through a mid-cycle downturn at the end of 2015 and into 2016, which impacted smaller operators. Today, that industry is looking more favorable."

He continues, "The retail sector, and in particular brick and mortar retail, has also caused some concern. A number of very large retailers have announced closings scheduled for 2018. That can cause some stress in some markets, particularly commercial real estate. But again, my outlook right now is stable. I'm not anticipating any vast improvements, nor am I anticipating deterioration as far as credit metrics are concerned. I'm also not anticipating rising interest rates having a material impact on credit quality unless rate hikes are extreme. "

"If you look at performance trends in a historical context, delinquency and losses are very low even though there have been some increases. Overall, things remain stable."

—Eric McGriff, EverBank Commercial Finance

To offer a view from the industry's captive segment, Cisco Systems Capital Corporation's Chief Credit Officer Amy Wingate says, "Over the last five years, our loss-given defaults have been fairly stable; and right now looking forward to the macro-environment, we are starting to see some shifts in certain sectors. We see some hiccups in the smaller retail space due to the 'Amazon effect.' We've seen some bankruptcies in that segment as well as some smaller hospital bankruptcies. We are watching trends in both industries closely."

"We're using a new technology that allows us to gather real-time information… It's been a home run so far, and I suspect it's going to be beneficial going forward as well."

—Robert Fagan,
Eastern Funding LLC.

Barometric Reading: The Journey Thus Far

Looking back over the last 12 months, did these industry leaders experience any atmospheric pressures, either internally or externally driven?

Carlile references internal changes at Maxim Commercial Capital. "As a company, we've improved our management, our processes and our training. That's why our delinquencies and charge-offs have really come down. In addition to real estate and other equipment, we finance Class 8 tractors to owner-operators, and that's a tough business. There's a lot of competition in that market. We make sure our customers understand the contract and have enough reserve funds on hand for maintenance and repairs. As of now, things are going well, and every month we get better at managing this business line."

On the technology side and with a broader view, Wingate says, "We've seen a fundamental shift in the way our customers want to consume technology, and that has had an impact on the traditional lease-type structures we're used to seeing. We're moving away from financing the hardware and boxes toward subscription service offerings."

As such, Wingate notes that her firm's customers are asking for increased flexibility. She adds, "Our credit organization is instrumental in crafting structures that fit their needs. As a credit organization, our challenge is to make sure we can scale those solutions in a cost-effective manner. While these solutions have been several years in the making, we've had a lot of success in monetizing managed services. We have some open pay structures that help customers focus on variable usage versus fixed usage, and we're starting to see an uptick in success there. That's how we're maintaining a competitive edge in the current leasing landscape."

For Fagan, the most significant change has come from the outside. He says the biggest change was the Federal Reserve raising the Fed Funds rate three times in 2017. "We have a number of variable rate loans in our portfolio and, as a consequence, those customers have seen their payments increase. That could be a back-breaker for some people. I think we've done a good job from a credit quality standpoint. It starts at the top with our credit committee, and they've done an excellent job in sifting through what we like and what we don't like. All of this shows up in our numbers, and we've been under 1% in over 30-day delinquencies the entire year. Today, we're right in line where we need to be."

EverBank's McGriff tempers his largely positive outlook with only a slight hint of caution. He states, "As I look back to 2017 and going into 2018, I'm able to say that for the very first time, things are looking very good." As for the cautiousness, he adds, "Maybe that should make me a bit nervous … but from today's perspective, that's how I see things. That's the nature of a credit person; when things are looking good, we get a bit nervous."

For the most part, Fagan expresses the views of these credit collections professionals as he contemplates the future. "I see things being business as normal."

4.88% 7% 3.14% 2.23% 4.67%

CREDIT AND COLLECTIONS

By the Numbers

AS DELINQUENCY AND DEFAULT RATES hover at record lows, Thomas Ware, Senior Vice President, Analytics and Product Development at PayNet, Inc., points to four key factors.

"We have seen the weaker borrowers wiped away, the lenders being very conservative, the borrowers being conservative as well and a better economic environment than anyone expected. We saw these four factors come together, and that set the stage for record absolute lows."

While delinquencies and defaults are slightly elevated from those lows, Ware notes, they have flattened out as of late. "It's a nice place to be, but I don't think it's sustainable forever."

The PayNet Small Business Default Index hit a new post-recession peak default rate of 1.89% in April 2017, up 0.25% from a year before, but has since moderated slightly to 1.83%. "At the industry level, agricultural default rates have almost tripled from a low of 0.78% in February 2014 up to 2.12% today, which puts it in the very unusual situation of being higher than the construction industry default rate of 2.07%," notes Ware.

Other findings from the Index? Transportation default rates had a similar run-up, going from 2.18% in August 2014 to 4.67% in May 2017, but have since improved to 4%. Mining, meanwhile, went from 0.99% in April 2014 to 4.88% a year ago, down to 2.7% today. Conversely, information services including telecom, internet and the media are showing the greatest increase in defaults, increasing from 2.23% a year ago to 3.14% today. And defaults in accommodations and food services increased by 0.38% during the year.

As for new business, Ware states that originations in the fourth quarter were up 7% compared to the year before, the largest year-over-year increase in two years, which resulted in the highest level of originations seen in two years, "a good sign for the year to come."

And what about CECL? With implementation dates looming on the not-too-distant horizon, Ware says that the Current Expected Credit Loss FASB standard has moved from a future concern to a top priority. "We're definitely in a ramp-up stage, and I think it's very important to remember that CECL applies to all lenders. It's an accounting standard, and if your institution uses accounting and makes loans, CECL applies to you."

Of course, implementation brings about a new level of compliance. At the same time, Ware sees CECL as a move in the right direction. "Net-net, I think a lot of good things will come out of it. For one, CECL will shift the focus more on loss as opposed to default. Historically, we have focused on defaults because that's what we could measure and yet, it's the losses that we care about," notes Ware.

Ware further explains that total-loss defaults only amount to 12% of all defaults in general. "Total-loss defaults depend on a number of variables, and when you drill down into the specifics, total losses among seven-figure deals are extremely rare whereas total losses among deals $10,000 and under occur in one out of six defaults."

While PayNet is currently rolling out a whole suite of CECL Expected Loss models for equipment finance, Ware notes that CECL rules don't specifically dictate the way a lender calculates expected losses. Some lenders will approach the CECL rules on an overall portfolio basis, or what Ware calls a top-down approach. He says, "Using that approach doesn't give the lender the benefit of understanding the details at the level of the borrower type, asset and transaction size, and other specifics. In my estimation, a bottom-up approach implemented on a deal by deal basis will be more beneficial. My sense is that this will become the preferred approach."

"We've seen a fundamental shift in the way our customers want to consume technology, and that has had an impact on the traditional lease-type structures we're used to seeing."

—Amy Wingate,
Cisco Systems Capital Corporation

Keeping an Even Keel: New Processes and Procedures

While the seascape remains relatively calm, we asked about any new processes and procedures implemented in their operations to ensure continued steadiness as they chart their courses.

Wingate notes changes on both the product offerings side as well as on the operations side of the house. She says, "One of the most innovative things we've done is developed the ability to meter usage and comingle that usage with the lease product. Our partners are looking to us to help match their cash flows in instances where a traditional lease structure doesn't do that. Another offering is our open pay structure, which allows our customers to consume the technology without the complete cost of ownership. It's taking the traditional fair market lease structure and forming a product that fits their needs, but where we take the residual risk on the asset."

Operationally, Wingate explains, systems are becoming more complex. "We've implemented some new technology impacting the way we invoice, the way we collect and the way we approve credit. As with most integration, these things should pay off in the long term. In the shorter term, you simply have to work through the pain points."

McGriff offers, "Achieving greater utilization through technology has always been an industry-wide concern. Today, I think the issue is more about refinement and improvement as opposed to any radical changes. One thing I hear a lot about these days is machine learning. There's a great deal of focus on the ways machine learning can be incorporated into credit scoring and the credit process to enhance credit results."

In essence, McGriff explains, machine learning introduces other parameters that go beyond an institution's credit scoring model and, in theory, combines those correlations with a given score to improve results. Yet, he notes, there could be implicit problems in taking advantage of these enhancements.

"I'm at the early stage of exploring machine learning, but one area I see where this can run afoul is with the regulators. You might wind up pulling in factors that build certain biases that aren't suitable in a banking environment."

Fagan shares the biggest change that has occurred in Eastern Funding's collections and legal operations. "We're using a new technology that allows us to gather real-time information. As we all know in collections, you wind up with people who don't want to speak with you. This technology has enabled us to locate these people through secondary numbers and other businesses they own. It's been a home run so far, and I suspect it's going to be beneficial going forward as well."

In summation, and as Carlile notes, "Every company has to look for ways to continually improve their processes. Our company is not different in that regard. We are always looking for better ways to do things and new practices that can be integrated into our business lines. But we need to be disciplined in this approach so that what we have remains organized and efficient overall."

Regulatory Matters: Red Sky at Night, Lessor's Delight?

There's an old sailing adage, "Red sky at night, sailor's delight. Red sky in morning, sailors take warning." Paraphrased, this could apply handily to the current state of regulatory and compliance matters. McGriff points out the following: "As far as the regulatory environment is concerned, I'm unaware of anything on the horizon. In fact, I was recently at a session with the ELFA Credit and Collections Planning Committee. In years past, the conversation has been focused heavily on regulatory issues, and that wasn't quite the case this year."

He adds, "Of course, that could change by midyear, but nothing new is showing up at this point."

Carlile, on the other hand, eyes some potential billows on the horizon. "We're not a bank, so we're not on the front lines of regulatory battles. But there are things that concern us. For example, the regulations are becoming more complex, and that is trickling down to the independents as well. There is also the encroachment of consumer protection laws into the small business finance segment. That's something we don't like. We want to comply, but we don't want these things to hamper our ability to compete."

For her part, Wingate states, "Regulatory and compliance are a challenge for us even though we're not a bank. In my group, we work with our external accounting firm and our controllers who monitor new regulations, laws and accounting changes. With our new product offerings, we have to find ways for our teams to collaborate to get these products to market, while making sure we stay compliant and above board with all of our financial reporting."

One thing is for certain: Compliance and all that comes with it is here to stay. Therefore, all concur that a high degree of internal and external collaboration is key when it comes to dealing effectively with such matters.

On a related topic, we asked these professionals to comment on their level of involvement regarding the implementation of the Current Expected Credit Loss (CECL) standard scheduled in early 2019. Here again, the responses were consistent.

For the bank-affiliated equipment leasing and finance companies—Eastern Funding and EverBank Commercial Finance—both note that CECL implementation is being addressed at the highest levels of their respective institutions. In short, both Fagan and McGriff are awaiting their marching orders. Still, both expect to become involved in the not-so-far-off future. Similarly, Wingate says, "That one hasn't come across my desk yet."

Carlile has a bit more to offer on the topic. He explains, "As a privately held small financial entity, we maintain and improve our own forecasts for expected credit losses, and they are reviewed and audited. We are looking at the FASB CECL regulation, but our compliance deadline is not imminent. However, even though compliance is not on the front burner for 2018, we are always striving to improve our own risk analysis, and bring in new ideas and analytical tools."

Challenges and Opportunities: Westward Ho!

To wrap up the discussion, we asked these professionals to weigh in on the key challenges and opportunities as they see them. Fagan notes, "Overall we've experienced unbelievable growth, and we've set a record this year as far as originations go. We've also set a record regarding the collection of fees on our end. That, of course, goes to the bottom line. At Eastern Funding, we're in the process of exploring other markets to bring greater diversity to our portfolio. The question before us is, 'What's next?'"

Carlile senses things similarly. "As an opportunistic firm, we see many opportunities available to us. Of course, we can't take them all on at once, and we are sometimes challenged to find the right people to fit the right roles in our business lines. We have to keep this in mind as we chart our growth plans."

From where she sits, Wingate explains that her focus lies as follows: "I think the biggest challenge is to stay in front of the problems before they become problems. Any risk manager is going to tell you that. We've been able to automate some metrics within our portfolio, and we're very focused on yellow-flag reviews and red-flag reviews to make sure these periodic reviews are automated for our credit managers. With our portfolio management function, we're trying to be as proactive as possible. If we do detect areas of softness, we can respond quickly."

For McGriff, such challenges and opportunities are more likely to be realized at the organizational level rather than at the level of the industry as a whole. "Issues like effectively delivering your products to your clients or using technology to enhance your ties to your customers all continue to be important, but they aren't new. My sense is that everyone in the industry will continue working on these goals.

"However," McGriff adds, "When it comes to staffing, it seems the heat has been turned up a bit. It's a more competitive marketplace and we're starting to see movement there. Perhaps it's a sign that the marketplace for talent is getting more intense. We've been fortunate in terms of our credit people, and we've had a very stable environment in that regard."

As current conditions point to stability in the marketplace, these credit and collections leaders expect relatively safe and uneventful passages, at least for now. ☰

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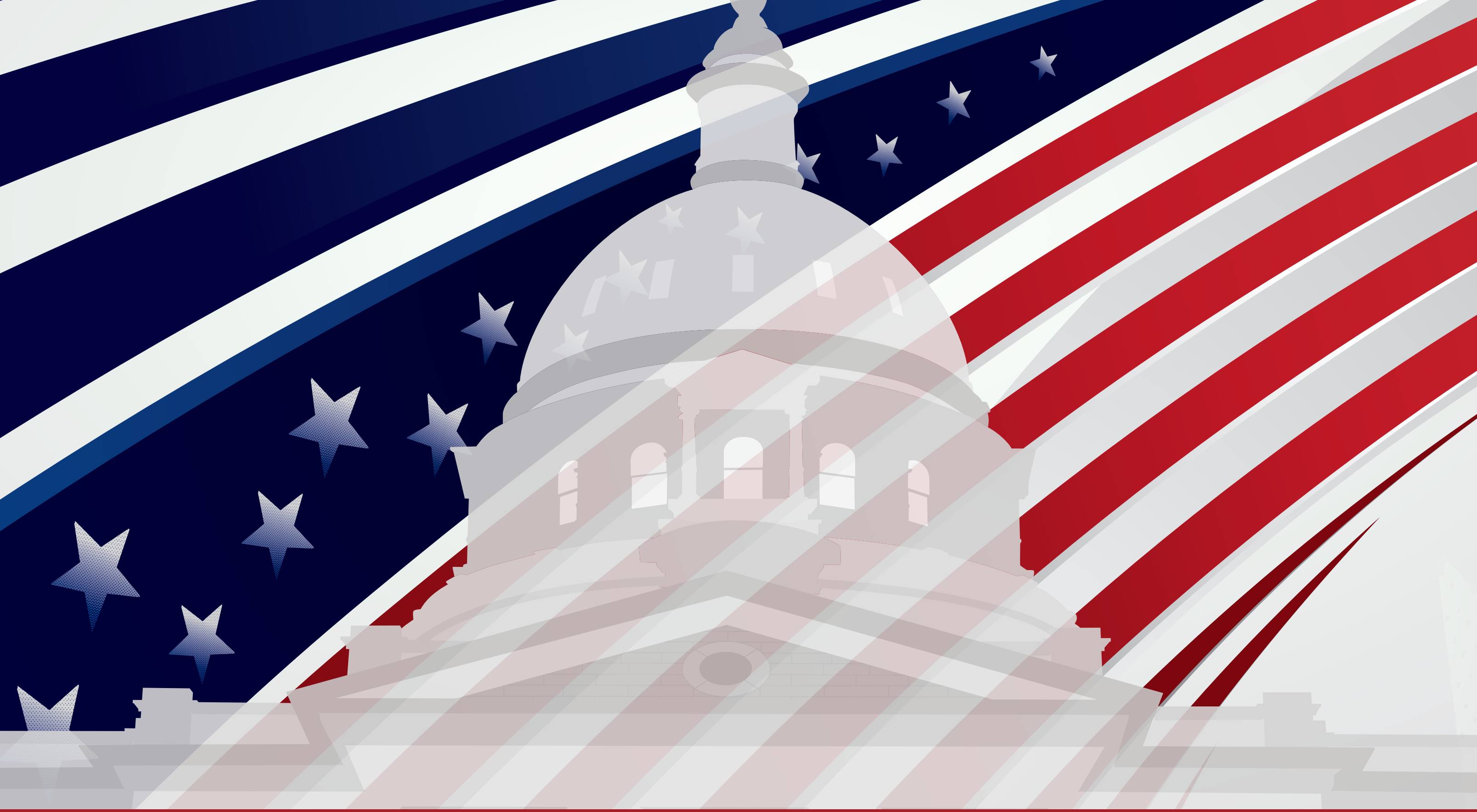
SHUTTERSTOCK/ MJ GRAPHICS



Capitol Connections: *Uniting the Industry's Voice!*

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Changes to law will impact how your business works.

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The 2-day program includes

- Advocacy training for ELFA members
- Briefing on the latest public policy developments
- Meetings on Capitol Hill and at select federal agencies
- LeasePAC event*
- FREE for ELFA members to attend

Visit the ELFA website for conference details and online registration
www.elfaonline.org/events/2018/CHD/

To research ELFA public policy issues, visit the ELFA Advocacy Info Center at **www.elfaonline.org/advocacy**. To find out more about participating in ELFA's grassroots program please contact Chelsea Neil at cneil@elfaonline.org.

*LeasePAC is the ONLY political action committee dedicated to supporting candidates running for federal office that support the interests of the equipment leasing and finance industry. To find out more about LeasePAC, please visit the LeasePAC website at **www.elfaonline.org/advocacy/leasepac** (member log-in required) or contact Chelsea Neil at 202-238-3426 or cneil@elfaonline.org.

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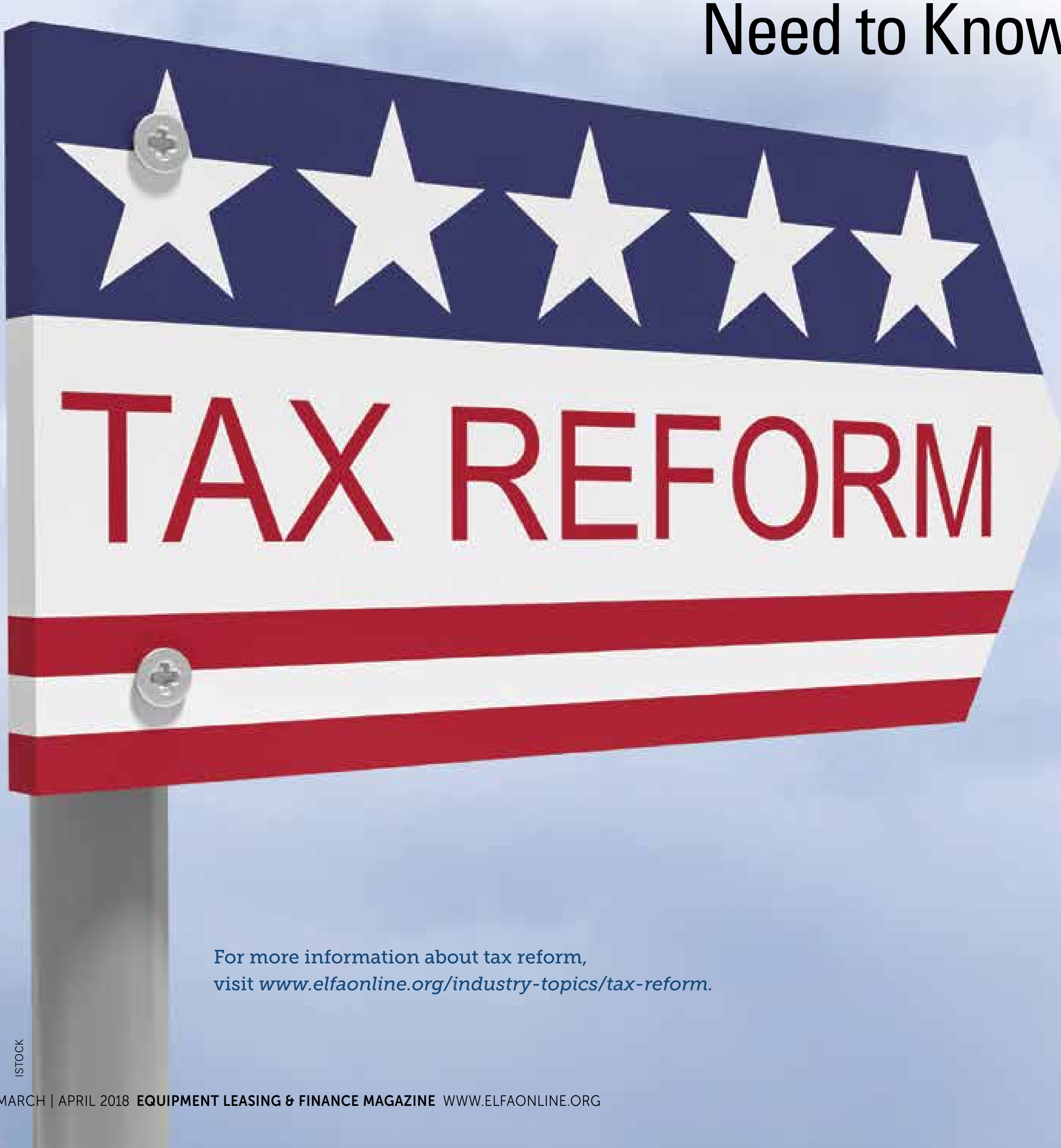

What Equipment Finance Companies Need to Know

For more information about tax reform,
visit *www.elfaonline.org/industry-topics/tax-reform*.

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Tax Reform

By David Burton & Anne Levin-Nussbaum

The equipment leasing and finance industry faces a new tax landscape following the enactment of H.R. 1 (known as the Tax Cuts and Jobs Act) at the end of 2017. The headline accomplishment of tax reform is decreasing the federal corporate tax rate from 35% to 21%; however, that is a mixed blessing for the leasing industry depending on the term and tax intensity of particular leases.

Tax reform added limitations on interest deductions, which could affect the industry's ability to rely on existing securitization structures for economical capital funding. In addition, tax deferral using like-kind exchanges is no longer available for equipment. But, the news is not all bad. The ability to expense 100% of the cost of equipment purchases presents other opportunities and tax reform has introduced new motivations for equipment users to lease.

100% Expensing

For the first time, tax reform enacted broad 100% expensing (also known as 100% bonus deprecation) for equipment. The new provision is particularly groundbreaking in that it applies to "used" equipment. The expensing rules have many technical nuances. Here are some of the key ones for equipment leasing:

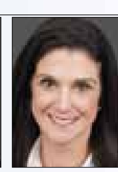
1. This provision is not permanent and eventually only old-MACRS will be available.
2. Equipment can be "used" but must be *new to you*.
3. No expensing for foreign and tax-exempt lessees—the "Pickle Rule" still applies.
4. Regulated utilities should lease.
5. It is the "green light" for sale-leasebacks of new and used equipment.
6. Watch out for contracts binding on or before Sept. 27, 2017 (i.e., before the effective date of 100% expensing) to acquire equipment.

Leasing in Vogue Again

We expect to see many companies preferring leasing to borrowing as a consequence of the limit on interest deductions; hence an uptick in leasing. The tried and true method of using securitization funding for capital funding may give way to leasing; that is leasing companies opting to use sale-leaseback structures to fund their portfolios. Further, a sale-leaseback could be combined with leverage being provided through equipment trust certificates issued by the lessor in the sale-leaseback in which the leasing company is the lessee (and the equipment users are the sublessees).

Read about each of these, and more details about the impact of tax reform on equipment leasing and finance—including repeal of like-kind exchange for equipment, the 80% annual limitation on NOLs, and other funding structures to mitigate the impact of tax reform, including using a Section 467 Loan—in the full version of this article on the ELFA website at *www.elfaonline.org/industry-topics/tax-reform*.

The equipment leasing and finance industry has traveled the road of tax changes many times before and that experience positions it well to adapt its business model to allow it to thrive following the enactment of tax reform.

DAVID BURTON is a Partner at Mayer Brown LLP and a member of the ELFA Federal Tax Committee. **ANNE LEVIN-NUSSBAUM** is a Counsel at Mayer Brown LLP. The information in this article does not constitute legal or tax advice. Readers should obtain their own independent advice.

A Stronger, United Voice

Member involvement is critical to ELFA's government relations strategy

SHUTTERSTOCK

ELFA IS THE PLATFORM for the equipment finance industry to advocate for public policy issues at the federal and state levels. This platform effectively takes the interests of more than 575 member companies and creates one strong voice that strengthens our impact on policy issues. At Capitol Connections, May 16–17 in Washington, D.C., members will advocate on behalf of the industry. Capitol Connections is just one component of the association's government relations strategy, which is like a three-legged stool balancing lobbying, grassroots mobilization and political involvement in the formation of the industry's voice. By merging all three into our government relations strategy, we create a united voice.

Lobbying

Lobbying is the education of government officials on the effects of a policy on our industry. Elected officials come from a wide variety of backgrounds, and most of them are not from the equipment finance sector. Because of this variety, they do not always know the subtle details essential to operating an equipment finance company. ELFA legislative staff monitor proposed laws and rules, know the impact of the financial standing of our industry, and then tell elected and administrative officials, as well as their staffs, how a proposed law could be interpreted. As we saw during the debate on tax changes last year, being a strong, united voice is essential to provide the industry's perspective on policy changes.

United Voice

Grassroots Mobilization

Sometimes lobbying by ELFA staff isn't enough to convince a government official that a policy is right or wrong for the industry and country. It takes a local voice, or industry expert, to relay the message. This is where ELFA's Online Advocacy Information Center, Capitol Connections and district-level visit programs create the next leg on our stool. The Online Advocacy Information Center provides member companies' employees with information about the people and policies that impact their jobs and the broader industry as well as tools to inform employees about upcoming elections and how to cast your voice via the ballot box.

Both the Capitol Connections and district-level visit programs are geared toward bringing the voice of our industry to elected officials, giving firsthand accounts to policymakers on regulations that affect the everyday lives of member companies' employees. Elected officials like and need to hear from those who man the front lines of our economy each day. Sharing your voice, introducing them to the employees who work within their states and partnering that with all the other voices from our industry companies increases the volume and helps us stand out.

Political Involvement

Political involvement at the minimum is knowing which candidates running for office understand and support the industry and then voting for those candidates. Political involvement can go further than just voting. Running a campaign takes volunteers. Perhaps a candidate in your area needs someone to help introduce him or her to other community members. Or the candidate may need help walking your neighborhood and meeting your neighbors. These activities can help push an industry candidate into an elected position and make you a valuable resource to them when they need to know how a policy will affect your company.

Running a campaign also takes money to pay top staffers, run political ads and travel around a district. To help create that stronger, united voice, ELFA formed its own political action committee, LeasePAC, to collect voluntary contributions from hundreds of employees at ELFA member companies and pool those funds to make contributions to candidates who share our values.

The LeasePAC Committee, composed of employees from ELFA companies and chaired this year by James Cress, oversees all LeasePAC activities. To find out more about LeasePAC, please visit the LeasePAC website at *www.elfaonline.org/advocacy/leasepac.*

How You Can Get Involved

Visit the Online Advocacy Information Center at *www.elfaonline.org/advocacy* to read issue briefs and talking points. The Information Center also provides employees with information on registering to vote, polling places and election dates. You can find tools to locate and contact your legislators at both the state and federal levels. We encourage member companies to share these resource tools with their employees to broaden the base of knowledge and empower them to be active in the political process.

Participate in Outreach: Sign up for Capitol Connections by April 13 at *www.elfaonline.org/events* or offer to host a legislator at your offices. Working to develop relationships now with those who make policy decisions helps us to be a stronger voice when we need to find advocates to hear our side in the debate. Perhaps you know your state or federal representative and are willing to contact that person when issues arise. Having assistance from a local ELFA volunteer, especially for issues at the state level, can translate into a victory for our industry. As ELFA continues to build relationships with targeted elected officials, knowing that you are a neighbor or friend, serve on similar boards or go to religious services with one of those officials can help as we build our grassroots plan.

Sign up for Capitol Connections by April 13

To be a stronger, united voice, it is imperative that we engage those who represent us so our policy issues are heard and acted on in a manner that helps us provide economic growth to our country. An informed and engaged membership is the core of ELFA and its government relations strategy. ELFA works to provide a variety of resources to our members to keep you current on policy issues and events. We need you to carry the message on critical issues to policymakers at the federal and state levels. Together we can make a difference. ☰

By Edward K. Gross and Erich P. Dylus

Syndications and Capital Markets: Recent Highlights

EQUIPMENT FINANCING PROVIDERS AND INVESTORS continue to rely upon syndications and capital markets transactions to create liquidity, facilitate capital equipment acquisitions and offer investment opportunities. Because these transactions play such an essential role in our industry, ELFA's Legal Committee established the ELFA Capital Markets Legal Subcommittee in 2017 to follow legal issues relating to this market segment. Over the past few months there have been a few developments and topics considered by our Subcommittee, some of which are discussed herein, together with some Subcommittee details.

2017 Cases

One of the few 2017 reported syndication-related cases[1] involved a suit against an assignor by an assignee to recover its investment after the assigned lease was in default and the assignee's enforcement efforts were thwarted by the guarantor's bankruptcy.

Pursuant to the Master Discounting Agreement (the "MDA"), the assignee agreed that it would have no recourse to the assignor relating to the creditworthiness of the obligors, with some exceptions, including if relating to the assignor's breaches of representations or warranties to the assignee. The MDA included a representation by the assignor that "*all written information furnished by Assignor is…true and correct in all respects as of the date of sale.*"[2] The assignee sued the assignor for breach of this representation based on testimony allegedly made by the guarantor at a bankruptcy hearing that his financial statements were "false in significant and material respects."[3] The assignor's defense was that any such representation was qualified by a "*to [assignor's] knowledge*" qualifier. The assignee's argument that this qualifier was ambiguous was unpersuasive to the court because the assignee drafted the MDA and applicable contract law provided that ambiguities in a contract are to be construed against the drafter. The court also considered other MDA terms including the assignor's collectibility disclaimer, the assignee's responsibility to conduct its own credit review and (especially) the non-recourse basis of the assignment. Ultimately, the court granted the assignor's motion to dismiss the assignee's warranty claim because the assignee never alleged that the assignor had actual knowledge of the guarantor's financial condition.

Practical Note: Careful drafting is important. Among other things, although the assignor was able to avoid liability by relying on the knowledge qualifier and other terms, it might have avoided this dispute if its "written information" representation pertained exclusively to information prepared by the assignor, or on its behalf.

SUBCOMMITTEE TOPICS

Fiscal Agency Matters. Many syndication documents contemplate that the assigning party, or its controlled entity, will serve as assignee's fiscal agent to bill and collect the rent or financing payments from the customer.

In that context the Subcommittee considered the licensing requirements imposed by certain states on businesses that are engaged to collect amounts due

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to another party, including Delaware, North Dakota and West Virginia. Of the states that have licensing statutes, the legislative intent appears to be to protect debtors from debt collection companies, especially of a harassing nature, and not typical fiscal agent collections, but that distinction is not sufficiently clear in some of these statutes. Common exemptions applicable to our industry include (i) servicing on behalf of affiliates or where banks or mortgage companies are acting as the collecting agent, or (ii) application only to consumer transactions, to debt that is "delinquent" or "past due," or to debt collection by a company as its "primary or secondary business."

Practical Note: Although further review is required, many of these statutes are likely to be inapplicable to the billing and collection aspects of a fiscal agent. Assignors should be aware that these statutes exist and a license might be required, and determine, with legal counsel's assistance, the best approach to this matter.

The ELFA Legal Committee has formed a group to track issues relating to syndications and capital markets transactions.

Insurance. Many assignees require, either prior to funding or on a post-closing basis, a new insurance certificate from the customer, naming the assignee as an additional insured and loss payee. Some assignors, especially if the parties are effecting the syndication on a non-notification ("*blind*") basis, insist that the assignee accept the existing insurance certificate naming only the assignor in these capacities, together with "its successors and assigns."

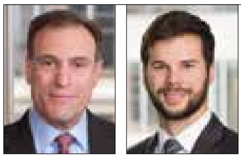
Practical Note: Although some assignees do not require a new certificate, it is prudent for the assignee to determine whether the subject insurance policy and related endorsement provisions will cover the assignee after giving effect to the assignment, without prior notice or other conditions. Many assignees require new certificates, especially if the assigned transaction involves expensive assets or more significant liability risks.

Risk Allocations and Protections. Risks typically allocated in syndication transactions include (i) taxes relating to the conveyance of the transaction and related equipment and (ii) third-party, tax or other liability claims associated with the periods either prior to or after the assignment. This allocation can be accomplished by a clear statement in the assignment documents of the allocated responsibilities among the parties. In addition, parties sometimes include indemnifications regarding breaches by that party of its representations or promises in the assignment documents. Such indemnification by the assignor can afford the assignee recourse in the event that the assigned transaction is not as represented. In some transactions an assignee may have the right to require that the assignor repurchase the transaction after such a breach by paying a "make whole" repurchase price, but assignors should consider any true sale implications.

Practical Note: Assignees considering these protections must also take into account the assignor's bargaining leverage and the various practicalities involving the customer or potential adverse accounting treatment for the assignor.

About the Subcommittee

The Subcommittee is co-chaired by Eric Gazin of GE Capital and Dustin Lee of Fifth Third Equipment Finance Company. The Subcommittee's goal is to consider pertinent legal issues and questions and to highlight them to the ELFA membership as necessary, including by tracking and reporting on cases and state and local statutes that may affect syndications and capital markets transactions. The Subcommittee kicked off 2017 with several meetings and has already undertaken a few projects including the writing of this article and other articles for publication in trade journals, preparing resources for ELFA's Legal Resources webpage and exploring possibilities for webinars through ELFA.



EDWARD K. GROSS is Shareholder at Vedder Price PC and **ERICH P. DYLUS** is Associate at Vedder Price PC.

Endnotes:

[1] *United Leasing, Inc. v. Balboa Capital Corp.*, 2017 WL 3674926 (S.D.Ind. Aug. 25, 2017).

[2] *See id.*

[3] *See id.*

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Hot Legal Issues in

What are the latest developments and trends in the law affecting equipment finance? Here's a list of some of the top legal issues facing ELFA members.

Tarnishing the Golden Share

Bankruptcy decisions limit the ability of lenders to acquire LLC membership interests in order to prohibit a voluntary bankruptcy filing. Learn what a golden share is and whether there are limits to a golden share, and review cases that a lender considering a golden share should consider in deciding the merits of pursuing a golden share, in the March/April 2017 Leasing Law column by Robert Downey.

Electronic Chattel Paper: Recent Developments and Headlines

In the nearly two decades since e-leasing laws were enacted, there have been no reported decisions directly analyzing electronic equipment leasing under the Uniform Commercial Code. However, there have been very supportive cases in other financing industries. Unfortunately, there have also been several headlines flowing from a recent California bankruptcy case that have raised unfounded concerns. Should the equipment leasing industry be concerned? No! Learn more in the May/June Leasing Law column by Dominic A. Liberatore.

The "As-Is, Where-Is" Disclaimer: How Strong Is It?

A bank is planning to sell equipment collateral, either repossessed equipment taken after a borrower's default or leased equipment that has been returned by a lessee at the end of the lease term. The proposed sale agreement includes the standard disclaimer that the bank is selling the equipment "as-is, where-is" and the bank feels confident that it does not have to worry about any mechanical or other problems with the condition of the equipment once the buyer pays the purchase price. However, two cases dealing with aircraft may give the seller reason to question its confidence. Learn why equipment finance providers should review and update their equipment sale documents to include strong warranty disclaimers, express equipment acceptance terms and limit the effect of condition provisions in the July/August/September 2017 Leasing Law column by Andrew J. Kalgreen.

Fair Finance: Boiled by Boilerplate

It used to be so easy. The borrower and lender would enter into a loan and security agreement, fund the loan and perfect the security interest in the collateral. A year or two later the borrower might want an additional funding, perhaps providing supplemental collateral, and the parties would enter into an amended and restated loan and security agreement. This simplified the documentation and saved on legal fees. Not so fast. A federal court of appeals decision, *In re: Fair Finance Company,* declared that the borrower's bankruptcy trustee had established that refinancing loan documents were ambiguous as to whether the parties clearly intended an amended and restated loan agreement to extinguish the original loan agreement and the security interest that it had created. The lender hence was forced to litigate whether it had lost its security interest in the collateral. Learn how lenders and finance lessors can cope with this judicial decision in the October 2017 Leasing Law column by Stephen T. Whelan.

Collateral's A Walk'n

Dicey choices await a lessor when a lessee transfers the lessor's collateral without consent. Often the lessor learns of the transfer long after the collateral disappears, but what should the lessor do when it is fortunate enough to learn of the transfer? Because of potential traps, a lessor should consult carefully with its counsel before determining whether to file a UCC-1 against an unauthorized buyer, recognizing that the lessor may be compelled to rely on the stick of litigation to win compensation for the lessee's and the unauthorized buyer's collective bad faith. Learn more

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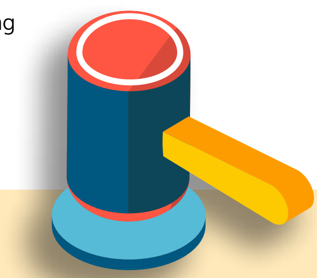
about this topic—including conversion and non-dischargeability claims, recent case law and a quirk in the law—in the November/December 2017 Leasing Law column by Alex Darcy.

How to Move Beyond NDA Negotiations and Start Doing Deals

In years past, most funders had unique forms of nondisclosure agreements (NDAs). Funders would find themselves negotiating before a business relationship even started and the routine process of getting NDAs signed became more difficult. A decade or so ago, the industry moved to some very common provisions and NDA forms. Recently, a number of challenging provisions have resurfaced. The January/February 2018 Leasing Law column by Dominic A. Liberatore and Jane He identifies a few of the more material issues and suggests solutions. The goal is to efficiently conclude NDA negotiations so the parties can move on to the important thing: doing business together. Topics include NDA terms, scope, destruction of information, trade secrets, specific performance, non-solicitation of employees, binding on employees/agents versus personal liability and disclosure to governmental agencies. By keeping an open dialogue, there is no reason why the parties cannot come to terms with the NDA in a mutually beneficial manner and move on to getting deals done.

Note: Access the articles referenced here at *www.elfaonline.org/Magazine-Archive*



ELFA Legal Resources

Are you looking for information about legal issues pertaining to the equipment leasing and finance business? Visit our Legal Issues page at *www.elfaonline.org/industry-topics/legal-resources*. Don't miss these resources:

2018 LEGAL FORUM—The premier event for attorneys serving the equipment finance industry, May 6–8 in Washington, D.C.

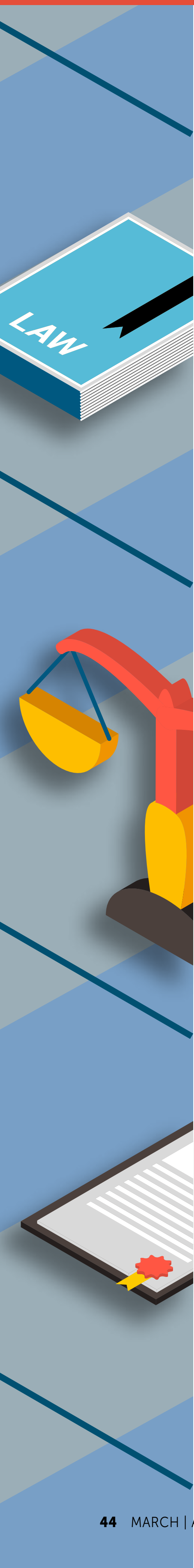
STATE TAX MANUAL—Reference guide designed to aid equipment finance companies in tax compliance and planning. Provides state-by-state analysis of sales and property taxes.

STATE LAW COMPENDIUM—50-state guide to compliance with selected state statutes and regulations.

WHAT'S NEW IN THE LAW—Summary of recent case law impacting the leasing and finance industry.

LEGALTALK—An e-mail discussion group focused on legal subjects.

LEGAL COMMITTEE—A member and staff resource on legal issues impacting the leasing and finance industry. For more information, contact Ed Rosen at erosen@elfaonline.org.



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Information was provided by each law firm.

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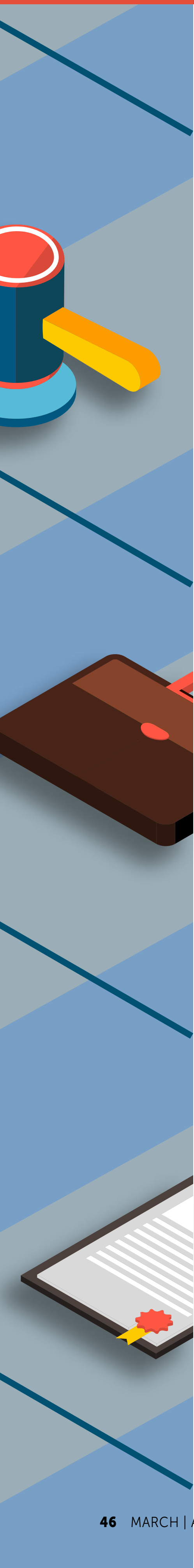

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Robbins, Salomon & Patt, Ltd. is a full-service business law firm. We represent equipment lessors, banks and other financial institutions in lease and loan documentation, litigation, workouts and restructurings. We represent our clients in commercial litigation, in state and federal courts, at the trial and appellate levels, on a national basis. We also represent our creditor clients in bankruptcy court matters on a routine basis. Innovation, efficiency and attention to detail are RSP's hallmarks.

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ELFA MEMBER Stinson Leonard Street is a full-service firm with 13 U.S. locations. Our 450 attorneys provide corporate, litigation, financing, tax and bankruptcy solutions to equipment lessors and financial institutions. We have significant experience documenting lease and loan transactions for independent, captive, and bank-affiliated finance companies and routinely enforce the rights of lessors and secured creditors. We blend a collaborative environment, innovative project management, and deep legal knowledge to deliver premium value and a distinctive experience.

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ELFA MEMBER Thompson Coburn attorneys understand the complexities of equipment leasing and finance and help clients find workable solutions to their challenges. From structuring, negotiating and documenting to handling tax issues, closings, workouts, litigation and bankruptcy, we provide a full spectrum of services. We represent lenders and lessors in various industries, including motor vehicle, industrial, commercial and manufacturing equipment. We also have a niche practice in transportation with a nationally recognized maritime practice. The firm has been named by BTI Consulting as one of the top 25 firms most recommended by general counsel and among the top 30 firms for client service.

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By John Bober

What's Changing with Lessor Accounting?

The New Leasing Standard, Lessors and the Puzzle of Lease and Non-Lease Components

WHEN ACCOUNTING STANDARDS UPDATE (ASU) No. 2016-02, *Leases* (Topic 842) was issued in February 2016 the often-repeated headline was that lessor accounting would not change under the new standard. While the broad lessor models did not change, there are indeed several changes that will impact how a lessor accounts for a lease.

One change that is receiving attention is the accounting for costs paid directly by the lessee that are an obligation of or, in the words of the model, benefit the lessor. Recent interpretations of the standard have drawn attention to the requirement that lessors record income and expense for these costs even if the lessor is not paying them directly. This is a significant shift from current practice. It is hoped this summary will help you correctly apply the new standard.

What's Different?

Lease accounting under SFAS 13/ASC 840 included concepts that were applied when separating lease elements from any substantial services bundled with the lease. Only the lease element was subject to lease accounting, and the lease components were dealt with in a set manner. Rental payments, executory costs and minimum lease payments are all significant parts of this puzzle.

Taken together, lease accounting in ASC 840 worked in the following manner:

- Lease and substantial service elements were separated, and payments and other considerations in the arrangement were allocated to those elements on a relative fair value basis; and
- Those amounts within lease accounting that were not part of minimum lease payments, such as executory costs like property taxes, insurance and maintenance, were removed from minimum lease payments and lease accounting using a residual approach, subtracting them so that the remainder is subject to lease accounting.

ASC 842 takes a different path. It takes all the payments a lessee makes to the lessor and allocates them to the lease and non-lease components based on their relative standalone selling prices—using the guidance in the new revenue recognition standard (ASC 606). "Components" are only items that transfer a good or provide a service to the lessee.

Under this approach the former executory costs related to property tax and insurance are not components, and payments of those costs by the lessee are allocated to the lease and non-lease components; for leases without non-lease components—entirely to the lease. The rationale behind this approach is those payments are no different than other contractual payments where the lessee is paying for costs that reimburse the lessor for costs they are obligated to or benefit the lessor.

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For more information on lease and non-lease components, please review the series of Financial Watch articles on the new lease accounting standards published in 2016 at *www.elfaonline.org/LeaseAccountingTools*.

In a lease the lessor may pay property taxes and insurance directly. Then the business would bill the lessee for the items or include them into their rent payment without itemizing it. Alternatively, the lessee may pay these taxes and insurance directly.

The ELFA Financial Accounting Committee is committed to helping businesses complete their own lease accounting puzzle. As we get closer to the official adoption date—Jan. 1, 2019 for most companies—look out for further information, guides and discussions.

Under today's ASC 840 there is no accounting required for these items in the lessor's financial statements because the costs and lessee's payments are recorded on a net basis. However, when the new standard is adopted, the lessor will need to account for these items on a gross basis, and record income and expenses related to the lessee's paid costs for all leases that start on or after the effective adoption date. The lessor's accounting would then mirror the lessee's. If the lessor had an operating lease the entry to recognize the lessee paid costs might be Dr. Insurance Expense, Cr. Lease Revenues. In the case of a sales-type or direct financing lease, the accounting might be more complex as indicated below.

This represents a significant change from current practices, and it has been the subject of a lot of discussion over the past six months. FASB staff confirmed this is the correct way to interpret the standard.

Practice Questions and Issues

The operational aspects of this new accounting standard are complex and should not be minimized. You may even have a few questions, such as:

- **Insurance:** Which costs incurred by the lessee should be subject to this accounting presentation? When considering insurance, is it an appropriate question to ask if insurance directly benefits the lessor or if it covers the lessee's asset-related risks during the term of the lease? Your response may impact the answer. How do practical measurement issues impact the accounting? For example, a lessee may add a leased asset to their policy with little to no change to the premium. In that case, what amount would the lessor consider accounting for?
- **Taxes:** Which taxes are subject to the accounting practices and under what conditions? The asset may or not be subject to property tax or it may be subject to another form of asset tax that is the responsibility of the party using the asset.
- **Costs:** How will the lease model accommodate these costs? While these costs appear to be variable lease payments and not part of lease payments for classification and booking purposes, they may not always be. If the lease was a sales type or direct finance lease this will complicate the lessor's accounting for its investment in the lease.

In addition to these questions, there are other operational issues a lessor may encounter, including:

- How will the lessor obtain this information from the lessee?
- Is the lessor entitled to receive this information?
- What support would the lessor need for the amount? Would the lessor be able to obtain it?
- Does the lessor's accounting system accommodate these data and is it programmed to account for them?

The operational aspects of this accounting practice should not be minimized. Given the nature of lease portfolios, applying this accounting to large numbers of transactions is likely to be a challenge.

Next Steps

This is the approach set forth in the new standard. The ELFA Financial Accounting Committee is committed to helping businesses complete their own lease accounting puzzle. As we get closer to the official adoption date—Jan. 1, 2019 for most companies—look out for further information, guides and discussions. In the meantime, visit ELFA's Lease Accounting page at *www.elfaonline.org/LeaseAccountingTools* or the FASB's Implementing New Standards page at *http://bit.ly/2rV7R9s*. ☰

JOHN BOBER is Managing Director and Global Technical Controller for GE Capital and is the Chair of the ELFA Financial Accounting Committee.

By Andy Fishburn

Adapting to the New Tax Environment

2018 IS SHAPING UP TO BE A YEAR OF IMPLEMENTATION rather than major changes in the legal and regulatory landscape, but that doesn't mean that it's going to be dull.

Tax Reform

Late last year, the Congress passed, and the President signed into law, the most sweeping changes to the tax code in a generation. In light of these changes, 2018 is going to be a year of adaptation and clarification.

It is possible, and perhaps even more likely than not, that Congress will pass some "technical" changes to the law, as it is nearly impossible that a bill this large, that moved as quickly as it did, will not have unintended consequences. One area that ELFA is already focused on is the application of 100% bonus depreciation and its expansion to include used equipment.

ELFA has already begun engaging with Washington decision makers on some of the unintended consequences of the new tax law.

Equipment lessors and financiers, as well as their customers, are likely to make behavioral changes in 2018 to adapt to the new tax environment. Many of these changes, including 100% bonus depreciation, the limitations on interest deductibility and the loss of like-kind exchanges, will inevitably cause changes in the way that equipment is acquired. These changes are unlikely to be all in one direction. For example, 100% bonus depreciation could cause some transactions to shift from leasing to financing or buying outright. But at the same time, limitations on interest deductibility could cause transactions to shift from financing toward true leasing.

ELFA has already begun engaging with Washington decision makers on some of the unintended consequences and has created a new page on our website at *www.elfaonline.org/industry-topics/tax-reform* to act as a clearinghouse for information about how the industry is likely to adapt and is actually adapting. If you have information you would like to have included on this page, please let us know.

Regulatory Environment

In May of 2018 the new rules for determining beneficial ownership are scheduled to come into effect. ELFA is hopeful that FinCEN will issue clarifying guidance well in advance of the effective date that will make it easier for affected ELFA members to comply with these requirements.

On ELFA's perennial issue of Section 1071 of Dodd-Frank, which when brought into effect through regulatory action will change fair lending rules to require commercial finance companies to collect certain demographic information about their customers, 2018 is expected to be another year of waiting. Due to a variety of factors, including leadership changes at the Consumer Financial Protection Bureau and the difficulty of regulating in this arena, action on implementing regulations is not expected to come in 2018. Considering the political environment, it is unlikely that any legislative relief is forthcoming. Accordingly, ELFA is still advocating that any regulatory efforts should be conducted with an eye toward making sure that any final regulations are minimally disruptive to the equipment leasing and finance industry.

Political Environment

There is a lot of discussion about changes in the partisan control of the House, and to a lesser degree the Senate. Regardless of which party is in control of the House and Senate, next year's Congress will look very different due to an overwhelming slate of more than 50 retirements. And these aren't just back benchers who are retiring. As of the writing of this column, 9 full committee chairmen and two subcommittee chairmen are not running for reelection, and that's not including one powerful subcommittee chairman who has already retired this Congress. Imagine what would happen in your company if 12% of your workforce, including almost 40% of your C-suite leadership, changed over on the same day!

2018 is shaping up to be an interesting year to say the least. Be sure to stay engaged to ensure that you stay abreast of how all of these developments will affect your company, and stay engaged with your current (and possibly future) elected representatives so that they know the importance of our industry to the nation's economy.

For more information, contact **ANDY FISHBURN**, ELFA Vice President of Federal Government Relations, at afishburn@elfaonline.org.

By Scott Riehl

State Legislatures Have Returned

THE ELFA STATE RELATIONS TEAM tracked, monitored and—where needed—weighed in on more than 2,375 state bills in 49 states in 2017. We expect that number to remain steady in 2018. By early March, every state legislature was in session except North Carolina, which will convene in May, and Montana, Nevada, North Dakota and Texas, which will not meet in 2018. With most states currently in session, your team at ELFA is working to review and—where needed—address all early and prefiled bills. ELFA's efforts are focused on identifying any and all measures that would wrongly infringe on the operations of ELFA members in the commercial sector. Highlighted below are a couple pieces of proposed legislation and state activity that have raised ELFA concern.

Blocking Software on Equipment Proposed

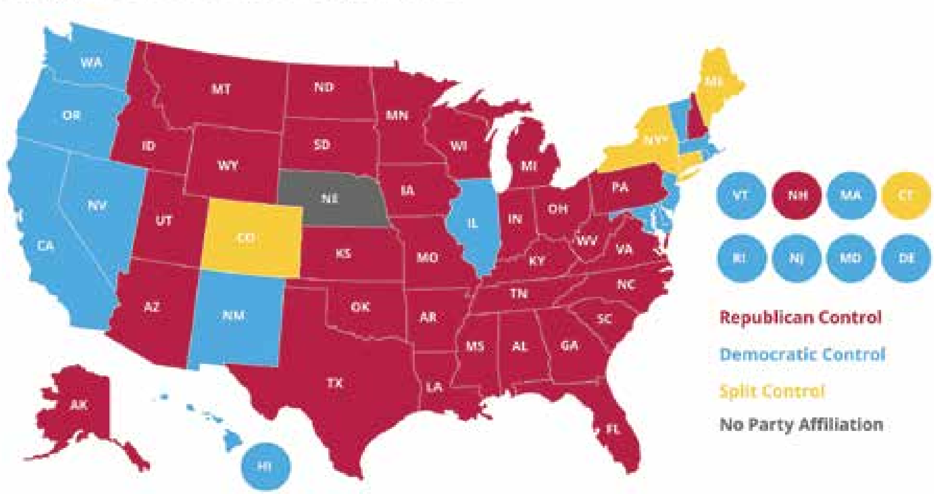
Commonly titled the Human Trafficking and Child Exploitation Prevention Act, 16 bills proposed in Georgia, Hawaii (two), Illinois, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Mexico, New Jersey (two), New York, Rhode Island, Virginia and West Virginia were drafted from model legislation seeking to make it unlawful to manufacture, sell, offer for sale, lease or distribute a product that makes content accessible on the Internet unless it contains active and properly operating digital blocking capability that renders obscene material inaccessible in some instances coupled with ongoing efforts to ensure the blocking capability functions properly. ELFA members are asked to forward bullet points explaining why responsibility for placement of blocking software on commercial equipment finance lessors will not work. Your practical marketplace examples should be sent to ELFA Vice President of State Government Relations Scott Riehl at sriehl@elfaonline.org.

Although consumers are at times cited as those to be protected, cursory bill text definitions and the breadth of intent give these bills broad application in the commercial and consumer marketplace. The New York bill includes a section that offers a rationalization for introduction that likely would apply in all these states. It reads in part: *"The state's version of the bill mainly regulates the retailers and the Federal bill mainly focuses on the manufacturers of products that distribute [on] the internet and make the content accessible. The state's version of the bill is just the digital version of the physical display statute which all 50 states already have. Just as newsstands have to put obscene content behind a physical blinder rack that can only be removed by the retailer, if the consumer is over 18 and wants to have access to the material, the retailers and manufacturers of products that distribute [on] the internet, going forward, have to ensure that obscenity and prostitution hubs are placed behind digital blinder racks that can only be removed by the retailer if the consumer is over 18 and undertakes the steps to have the filter removed."*

*Please note that at time of writing, ELFA has not identified any federal legislation modeling this legislation.

Did You Know?

Party Control of State Legislatures



Arizona Electronic Recycling Fee Legislation Gains Interest

Arizona Senate Bill 1369 initially follows the manufacturer responsibility electronic recycling concept supported by ELFA that does not require fee collection by lessors but instead payment of a fee by manufacturers. However, unique definitions in the bill would allow a recycling fee to be charged to a "covered entity" defined as "any household or business" for "premium service" of collection, transportation or recycling of covered electronic equipment. Premium service is not defined. Please send your perspective on the manner in which this undefined premium recycling service fee might be implemented on equipment lease finance transactions in comments to ELFA Vice President of State Government Relations Scott Riehl at sriehl@elfaonline.org.

In electronic recycling legislation ELFA members must follow mandates placed on retailers, which Senate Bill 1369 describes as "a person that sells, rents or leases through sales outlets, catalogs or Internet covered electronic devices," which is defined as "a computer monitor of any type having a viewable area greater than four inches measured diagonally, a desktop computer or portable computer or a television of any type having a viewable area greater than four inches measured diagonally." The "covered entity" to which the premium recycling fee may be charged is defined as "any household or business" with "household" meaning an occupant of a dwelling "who used a covered electronic device at a dwelling unit primarily for personal use" but there is no definition for business. ☰

For more information, please contact ELFA Vice President of State Government Relations **SCOTT RIEHL** at sriehl@elfaonline.org.

By Anneliese DeDiemar

Get to Know Foundation Research Committee Chairman Thomas Ware

EACH YEAR the Equipment Leasing & Finance Foundation produces a variety of resources on the equipment leasing and finance industry to help you navigate critical issues and stay up-to-date on current trends. At the helm of 2018 research is Thomas Ware, Senior Vice President, Analytics and Product Development, at PayNet, Inc. The following is an interview delving into Ware's history with the Foundation and what we can look forward to this year.

"I am interested in knowing more about the future, where the industry and its participants are headed, and how doing business will be different."

1 Why did you become involved with the Foundation, and how has your contribution evolved?

I became involved because I am interested in knowing more about the future, where the industry and its participants are headed, and how doing business will be different. Having this information (and acting on it) can materially affect long-term success. I also very much enjoy trying to look at things from a 50,000-foot level, seeing the big picture and getting involved with in-depth research that is academic but also practical.

I have worked with the Foundation for many years, helping to provide PayNet data for a number of Foundation studies. I joined the Research Committee in 2014 and tried to be an active participant. Late last year I was both surprised and flattered to be asked to be Chairman of the Research Committee. The Foundation has produced a great volume of substantive studies over the years and has a well-established and effective process for shepherding researchers and their studies. Carrying on that tradition, and trying to build on it, will be a significant task.

2 What impact on the industry does the Foundation Research Committee have?

I think the Foundation Research Committee has a material impact on the industry, as it is the industry's "Eye on the Future" and has the mission, resources and scale to take an in-depth look into issues to an extent almost no individual lender could afford. The outcome of the studies affects many lenders' plans and initiatives and supports ELFA's advocacy efforts.

3 What upcoming projects of the Foundation Research Committee are you most looking forward to?

I am particularly looking forward to two studies that were the direct result of brainstorming by the ELFA Credit & Collections Committee's planning for its upcoming conference (the ideas of Dana Pace of PNC in particular), which are (1) "The Impact of Self-Driving Vehicles on Equipment Finance" and (2) "The Impact of New Energy Production Technologies on Equipment Finance." An integral aspect of the equipment leasing and finance industry is the equipment itself. Ensuring that we take likely changes in the equipment into account is essential.

4 What value does the Foundation provide that keeps generous corporate and individual donors pledging year after year?

I think both corporate and individual donors recognize that *without* their contributions, the research the Foundation commissions, manages and distributes simply would not exist. The benefits they derive for their companies and themselves from Foundation research would also not exist. ☰

Access free industry research studies and reports via the Foundation's digital library at *www.leasefoundation.org/industry-resources*.

ANNELIESE DeDIEMAR is the Equipment Leasing & Finance Foundation's Director of Marketing & Communications.

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EQUIPMENT OUTLOOK 2018

By Carl C. Chrappa

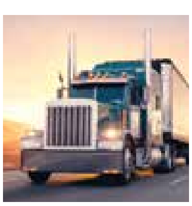
Construction Equipment Repeats as the Winner, Containers/Chassis Breaks into the Top 5

WHAT ARE THE HOTTEST EQUIPMENT SECTORS in 2018? The answer is construction, machine tools, trucks/trailers, IT, containers/chassis and medical equipment, according to a new survey of ELFA member asset managers and consultants.

The 2018 "What's Hot/What's Not" Equipment Leasing Trends Report reveals industry perceptions of 15 equipment markets based on a survey of ELFA members. The following are the top equipment types from the survey:

Construction equipment was the big winner for the fifth year in a row. The equipment finance industry seems to be very comfortable with this segment, due to its rather standard equipment designs, broad demand in domestic and global markets and its vast and transparent secondary market. The outlook for construction remains solid, pinned to the continued improving health of the economy propelled by relatively low interest rates. The infrastructure bill, if passed, would be a huge plus to this already hot segment.

Machine tools tied for second place due to the strong domestic automotive and allied industries, along with the now improving oil exploration sector. In the primary market, sales for metal cutting equipment rose by 8% in 2017. This positive trend is expected to continue through 2018, aided by the new tax law and strong consumer sentiment



Trucks/trailers tied for second place. New class 8 truck sales fell by 0.2% last year, and the driver shortage is limiting demand. New trailer shipments increased to over 300,000 for the year, the third highest ever. Sales of used trucks and trailers remain good—this sector has greatly benefited from low fuel prices and interest rates.

Hi-tech/computers tied for fourth place. This industry continues to operate on very low margins but has a vast secondary market. After 12 consecutive quarters of declining unit sales, PC shipments are forecast to continue to fall in 2018. In contrast, server shipments grew 1% in 2017, with growth forecast to continue into 2018. Declining primary market PC sales reflect a growing preference for phablets and wearables, which could have positive implications for the secondary market.

Containers/chassis tied for fourth place. Over the past year, due to strengthening global trade, primary market sales for ISO containers increased sharply by about 55%. This demand also caused an increase in new container prices of around 25%. Used container prices increased somewhat and remain relatively high by historical standards. For 2018, global trade is expected to increase again, which bodes well for the continued strength of this market.

Medical equipment tied for fourth place, down from second last year. This decline in rank is likely linked to confusion regarding the future of healthcare finance and the Affordable Care Act, and its effect on hospitals and clinics. This industry has a preference for leased equipment, which continues unabated, driven by demographics linked to the increasing health care needs of the "baby-boom" generation. However, various Deductible Reimbursement Account (DRA) cuts, rules, etc., aimed at the industry are weakening the equipment markets. The medical equipment secondary market is robust.

View the results for all 15 equipment categories on the ELFA website at *www.elfaonline.org/data/market-trends*. ☰

CARL C. CHRAPPA is Senior Managing Director–Asset Management Practice Leader at the Alta Group, LLC.

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Bank Best Practices Roundtable
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To register, go to: **www.elfaonline.org/Events/Calendar/**

For more information, please contact Alexa Carnibella at *acarnibella@elfaonline.org*

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