

EQUIPMENT

Leasing & Finance

NOVEMBER | DECEMBER 2019

THE MAGAZINE FOR INDUSTRY EXECUTIVES

Doing Business IN California

Legislative intent and lightning response illustrate the value of ELFA's state advocacy program

Meet the New ELFA Members
Annual Convention Highlights
New Horizon Report



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Understanding the Master Lease Agreement

What every equipment finance professional should know!

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For questions or more information, contact Alexa Carnibella at acarnibella@elfaonline.org.

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We Are ELFA



IT WAS TERRIFIC to see so many ELFA members at the Annual Convention in October. During the opening General Session, I talked about the strength of our association community, and noted that members come together as colleagues and friends who form a vibrant and enduring fellowship, even though you are competitors.

ELFA brings us *all* together: Everyone who sits on a committee, speaks on a panel, contacts a lawmaker or networks with peers. Everyone who volunteers and gets involved. We're all engaged for different reasons,

but together, we are ELFA.

We didn't have an "official" theme for the Convention this year, but "We Are ELFA" became the unofficial motto of the event. We are carrying that celebration of our community into this issue of *Equipment Leasing & Finance* magazine.

Our cover story on page 14, "Doing Business in California," underscores the critical role that ELFA members play in our advocacy efforts. Our association is a member-driven organization that depends on active and involved volunteers. Your commitment to working together and making a difference on legislative and other matters is why we are successful.

Our feature story on page 20, "Meet the New ELFA Members," introduces you to some of the newest members of our association community. You'll notice that they are a diverse group, but they share a passion for our industry and a desire to be actively engaged. If you're interested in getting more involved with the association, check out the tips to get started on page 25.

Don't miss the recap of the Annual Convention on page 28. As outgoing Board Chair Jud

Snyder said in his Convention address, we were especially excited to convene the new Equality Committee at the Convention. Learn more about this new group, which is focused on encouraging diversity and inclusion across the association, on page 31 and stay tuned for more information to come.

As 2019 draws to a close, I would like to thank our hard-working professional staff, outgoing Board Chair Jud Snyder, the Board of Directors and all of our member volunteers for a successful year. The ELFA team and I look forward to working with 2020 Board Chair Martha Ahlers and all of you in the year ahead. ☰

Ralph

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

5 THINGS YOU NEED TO KNOW NOW

Watch for the Q4 member video coming in early December featuring Ralph Petta and ELFA Board Chair Martha Ahlers.





Martha Ahlers, 2020 ELFA Board Chair

2020 ELFA Leadership

FOLLOWING THE 2019 ELECTION, ELFA Officers and Directors for 2020 are as follows:

OFFICERS

- Martha Ahlers, President, United Leasing & Finance (*Chair*)
- Jud Snyder, President, BMO Harris Equipment Finance Company (*Immediate Past Chair*)
- Kris Snow, President, Cisco Systems Capital Corporation (*Chair-Elect*)
- Mike DiCecco, President, Huntington Equipment Finance (*Vice Chair*)
- Bob Neagle, President, Merchant Finance, Ascentium Capital, LLC (*Vice Chair*)
- Robert Boyer, President, BB&T Commercial Equipment Capital Corp. (*Treasurer*)
- Ralph Petta, ELFA (*President/CEO*)
- Paul Stilp, ELFA (*Secretary*)

DIRECTORS

- Deb Baker, Head of Worldwide Leasing & Financing, HP, Inc.
- Maureen Carr, Managing Director, Pacific Western Bank
- Jennifer Coyle, Executive Director, Macquarie Corporate and Asset Finance
- Brett Davis, President, CNH Industrial Capital LLC
- Conrad Eimers, President, Vision Financial Group, Inc.
- Dave Fate, President & CEO, Stonebriar Commercial Finance
- Nate Gibbons, COO, Innovation Finance USA LLC
- Willis Kleinjan, Founder and CEO, Northland Capital Equipment Finance
- Daniel Krajewski, President & Chief Executive Officer, Sertant Capital, LLC
- Alan Mogol, Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz PC
- Amy Nelson, US President Healthcare, Clean Technology and Technology Solutions, DLL
- Daniel Nelson, President, Tamarack
- David Normandin, President & Chief Executive Officer, Wintrust Specialty Finance
- Deborah Reuben, President, Reuben Creative, LLC
- Tom Rutherford, President, Crestmark Equipment Finance
- Alan Sikora, CEO, First American Equipment Finance, an RBC/City National Company
- David Walton, President & CEO, Caterpillar Financial Services Corporation

2020 Dues Renewal Season Is Here!

IT'S THAT TIME OF YEAR AGAIN—the ELFA dues renewal campaign has begun. Renewal invoices for the 2020 membership year were mailed to the key contacts of all ELFA member companies on Nov. 1, 2019. Timely payment of 2020 membership dues will ensure uninterrupted access to indispensable benefits, such as federal and state advocacy updates, targeted industry research, discounted fees for ELFA events and much more. Please contact the ELFA Membership Department at membership@elfaonline.org if you have any questions. We thank you for your continued support!

KEY DATES TO REMEMBER....

NOV. 1, 2019—2020 dues invoices mailed to Key Contacts

DEC. 31, 2019—Deadline to pay 2020 dues

THROUGHOUT 2020—Take advantage of ELFA's many benefits!



Save the Date: 2020 ELFA Events

Take advantage of a wealth of learning and networking opportunities available to you and your staff as part of your ELFA membership. See the 2020 Event Calendar on page 45 and visit www.elfaonline.org/events.

Surveys Reveal Industry Compensation Trends

Wondering about trends in pay in the equipment finance sector? Two new surveys detail the latest data.

- **The 2019 Equipment Leasing and Finance Compensation Survey** from ELFA and McLagan measures compensation rates for more than 90 executive, front-office and support positions reported by more than 75 equipment finance companies from across the sector.
- **The 2019 Small and Medium Enterprise Compensation Survey** from ELFA and Vault Consulting reveals data—including salaries, bonuses, benefits and commission—for 19 specialized revenue and support positions at 51 small and medium-sized equipment finance companies.

Both studies are available at www.elfaonline.org/data/market-trends.

Gass and Wolfert Enter Hall of Fame

ELFA HAS NAMED Paul S. Gass and Frederick E. Wolfert to the 2019 Class of the Equipment Finance Hall of Fame.



Paul S. Gass

Gass was recognized as instrumental in the founding of the Equipment Leasing & Finance Foundation, which is celebrating its 30th anniversary in 2019. He accepted the award at the induction ceremony on Oct. 26 at the Chairman's Dinner preceding the 58th ELFA Annual Convention in Washington, D.C.

Wolfert was recognized as a leader of successful equipment finance businesses and a mentor who was dedicated to giving back. Wolfert passed away in April 2019. His wife Holly, daughter Maggie Brady and son Paul Wolfert accepted the Hall of Fame Award on his behalf.

"We are thrilled to induct two remarkable individuals into the 2019 Class of the Equipment Finance Hall of Fame," said ELFA President and CEO Ralph Petta. "Both Paul and Rick contributed so much to our industry, our association and our Foundation. Their accomplishments leave a lasting legacy that will inspire generations to come."



Frederick E. Wolfert



Event Draws Emerging Talent

THE SEPTEMBER EMERGING TALENT REGIONAL NETWORKING EVENT in Chicago drew more than 50 attendees from more than 18 member companies. Attendees had the opportunity to network and enjoy appetizers and drinks. The event was sponsored by Orion First Financial and the Emerging Talent Advisory Council, whose mission is to encourage industry employees to get involved in ELFA earlier in their careers and to attract the best and brightest to the industry.



Membership Minute

Upload the ELFA Member logo to your company website and show your support of the industry and the association. Details at www.elfaonline.org/about/elfa-logos



Access Conference Recordings and Handouts

ELFA CONFERENCES are full of critical and relevant information presented by some of the most knowledgeable people in the industry. If you missed any events, the ELFA Conference Resource Center lets you become a virtual attendee—providing access to session handouts and recordings for many of these events, including Equipment Management, Legal Forum, Credit and Collections, Operations and Technology, Lease and Finance Accountants and the 58th Annual Convention. To browse the available meetings and purchase access, go to <http://elfa.sclivelearningcenter.com>. Questions? Contact Alexa Carnibella at acarnibella@elfaonline.org or 202.238.3416.



ELFA Abroad

IMMEDIATE PAST ELFA Board Chair Jud Snyder participated in a panel discussion on the state of the U.S. equipment finance marketplace at the Leaseurope Annual Convention in October in Budapest, Hungary. Pictured above (L-R): Patrick Beselaerc, incoming Leaseurope Chair; Morten Guldhaug, outgoing Leaseurope Chair; and Snyder.

Get Noticed

ONCE AGAIN ELFA is providing member companies with a variety of opportunities to showcase your products and services. To learn about exhibiting, sponsorship and advertising opportunities for 2020 that fit your needs, please contact Steve Wafalosky at 440.247.1060 or steve@larichadv.com. Also, check out the 2020 Integrated Marketing Guide at www.elfaonline.org/about/advertise.



Women's Council Plans Ahead

The ELFA Women's Council held a strategic planning meeting in Washington, D.C., following the Annual Convention. Attendees discussed the Council's priorities for the year ahead and began planning the 2020 Women's Leadership Forum, April 20–21 in Chicago.

Ask a Leader

DON'T MISS the Emerging Talent Advisory Council's "Ask a Leader" series of interviews with a diverse group of ELFA members. The leaders discuss their formative professional years, their success and challenges and their advice for future leaders in the industry. Check out recent conversations with:

- **David Walton**, President & CEO, Caterpillar Financial Services Corporation
- **Michael DiCecco**, Executive Managing Director, Huntington Asset Finance
- **Darren Fedorowicz**, Vice President, Dell Financial Services Global Channel Sales
- **Danielle Waterworth**, Senior Director, North American Aftermarket Solutions Commercial Sales, CNH Industrial
- **Debbie Devassy Babu**, Attorney at Law and Shareholder at Askounis & Darcy PC.

Read the interviews at www.elfaonline.org/industry-topics/emerging-talent/ask-a-leader.



Dive Into Industry Fundamentals

CONGRATULATIONS to the graduating class of ELFA's September Principles of Equipment Leasing and Finance Workshop. Participants spent three days at the offices of Stonebriar Commercial Finance in Plano, Texas, learning the fundamentals of the business from instructor Gary Anderson. Find out how you or your staff can sign up for this essential training workshop at www.elfaonline.org/POL.

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Members Network in the Lone-Star State

ELFA'S TEXAS NETWORKING EVENT in mid-September drew almost 100 industry professionals to eat, drink and connect. Hosted by Stonebriar Commercial Finance and Toyota Industries Commercial Finance, this event gave members in the Dallas/Ft. Worth area a chance to mix, mingle and make connections.

Councils Take Shape for 2020

ELFA IS PLEASED TO PRESENT the following Business Council Steering Committee (BCSC) rosters for 2020. The BCSCs play an important role representing your interests to the Board of Directors. The asterisks indicate members who were newly elected or re-elected in the September 2019 elections.

CAPTIVE AND VENDOR FINANCE BCSC

Troy Graziani, Toyota Industries Commercial Finance, Inc
(Committee Chair)

Brian Bower,* Bank of America Global Leasing

Garland Brooks, Dell Financial Services *(ETAC liaison)*

Todd Clegg,* TCF Capital Solutions, a division of
TCF National Bank

Mike Elmasry, IBM Global Financing

Dan Hathcoat,* Summit Funding Group, Inc.

Eric Henry, Altec Capital Services

Dominic Janney,* Canon Financial Services, Inc.

Sherrie Kalajian, Presidio Technology Capital LLC

Brian Lowe, Verdant Commercial Capital LLC

Thomas Mariani, CNH Industrial Capital LLC

Chris Meeks, OnPoint Capital, LLC

Vince Mollica, CIT

Kim Montgomery, TIAA Commercial Finance, Inc.

Sarah Palmer,* Key Equipment Finance

Jayma Sandquist,* John Deere Financial

Larry Scherzer, Cisco Systems Capital Corporation

Bruce Trachtenberg,* DLL

Greg Vandewalker, GreatAmerica Financial Services

Jeffrey Walker, CIMC Capital, Inc.

David Walton, Caterpillar Financial Services Corporation
(Board Liaison)

Barabara Zweig,* Raymond Leasing Corporation

ELFA STAFF LIAISON: Bill Choi, bchoi@elfaonline.org



ELFA President and CEO Ralph Petta recognized the five 2019 BCSC Chairs—and all the BCSC members—during the Community Luncheon at the ELFA Annual Convention. Pictured L-R: Petta, Shannon Stangl, Kirk Phillips, Troy Graziani, Brian Eschmann and Debbie Devassy Babu.

FINANCIAL INSTITUTIONS BCSC

David P. Farrell, Bank of America Global Leasing
(Committee Chair)

Chris Bucher,* Hancock Whitney Equipment Finance, LLC

David Coons,* Mitsubishi UFJ Lease and Finance (USA), Inc.

Jennifer Coyle, Macquarie Corporate and Asset Finance
(Board Liaison)

Thomas G. Forbes,* Wintrust Commercial Finance

Craig George, SunTrust Equipment Finance & Leasing Corp.

Amy M. Gross, Key Equipment Finance

Eric Miller, CIT

William "Keith" Moore,* BB&T Equipment Finance

William C. Perry, III,* Regions Equipment Finance Corporation

Charles Stackhouse,* Wafra Capital Partners Inc.

Sean Svoboda, Farm Credit Leasing

Donald A. Synborski,* Citizens Asset Finance (CAF)

Ernie Tsorvas,* Fifth Third Bank

Kenneth Walters, Investors Bank Equipment Finance

Mike Wiedemer, First American Equipment Finance,
A City National Bank Company

Bonnie Wright, Wells Fargo Equipment Finance

ELFA STAFF LIAISON: Julie Benson, jbenenson@elfaonline.org

INDEPENDENT MIDDLE MARKET BCSC

Ricardo Rios,* Commercial Equipment Finance, Inc.
(Committee Chair)

Mark Duncan, Hitachi Capital America Corp.

Connie Eimers, Vision Financial Group, Inc. (Board Liaison)

Jacob Fahl, Hitachi Capital America Corp. (ETAC liaison)

Roman Gajda,* ENGS Commercial Finance Co.

Don Hansen, Regents Capital Corporation

Rick Matte,* Encina Equipment Finance, LLC

Nancy Pistorio, Madison Capital LLC

Sohini Roy, Nexseer Capital

Howard Shiebler,* Crossroads Equipment Lease & Finance LLC

Julie Simes,* Zealandia Capital Leasing, Inc.

Mark Tomaselli, Innovation Finance USA LLC

Bruce Winter,* FSG Capital, Inc.

ELFA STAFF LIAISON: Amy Vogt, avogt@elfaonline.org

SERVICE PROVIDER BCSC

Debbie Devassy Babu, Askounis & Darcy, PC (Committee Chair)

Todd Anderson, CSC

Nate Cox, PayNet, an Equifax Company (ETAC liaison)

Joe Franco,* FIS

Julia Gavrilov,* Moritt Hock & Hamroff LLP

Jesse Johnson, LTi Technology Solutions

Martin Klotzman, Ivory Consulting Corporation

Shari Lipski, ECS Financial Services, Inc.

Daniel Nelson, Tamarack (Board Liaison)

Brittany Ogden, Quarles & Brady, LLP

Nathan Petrie, PayNet, an Equifax Company

Cody Sanguinetti,* Great American Insurance Group

Ross Taylor, Keating Muething & Klekamp PLL

Wade Whitenburg,* Ritchie Bros.

Doug Williams, JDR Solutions, Inc.

ELFA STAFF LIAISON: Paul Stilp, pstilp@elfaonline.org

SMALL TICKET BCSC

Shannon Stangl, DLL (Committee Chair)

Stephen Brown, Orion First Financial, LLC (ETAC liaison)

Mike Coon, Hanmi Bank

Quentin Cote, CLFP, Mintaka Financial, LLC

Nick Gibbens,* Wintrust Specialty Finance

David Lafferty, Marlin Capital Solutions

Chris Lerma, AP Equipment Financing

Don Link, Hitachi Capital America Corp.

Brient Mills,* JB&B Capital, LLC

Bob Neagle, Ascentium Capital LLC
(Board Liaison)

Brad Peterson, Channel Partners Capital

Ryan Schlenner, US Bancorp Business Equipment Finance

Allen Snelling, Financial Pacific Leasing, Inc.,
an Umpqua Bank Company

John Vande Moore, ENGS Commercial Finance Co.

Todd Wainwright,* Amur Equipment Finance

Adrian Weber,* Entegra Capital LLC

ELFA STAFF LIAISON: Ed Rosen, erosen@elfaonline.org ☰

ELFA INDUSTRY D

Industry Is Hiring!

According to the SEFA Interactive Dashboard, employment is up in the equipment finance sector by 2.1%. Strongest growth was among independents (7.6%), small ticket (4.6%) and companies with annual NBV between \$250M and \$1.0B (7.8%).

Learn more at www.elfaonline.org/interactivesefa.

Pay Leaders

According to the Small & Medium Enterprise Compensation Survey, the four highest-paid positions at equipment finance companies after CEO are:

- Head of Sales
- CFO
- Team Leader
- Senior Sales Representative

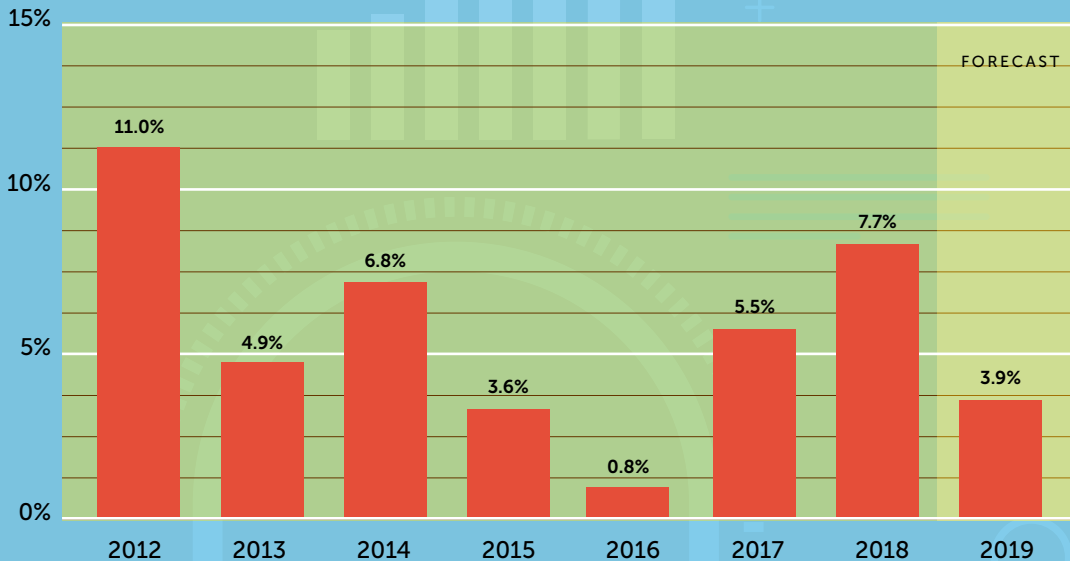
Learn more at www.elfaonline.org/data/market-trends.



ASHBOARD

U.S. Equipment & Software Investment Growth

Annualized Growth



Source: 2019 Equipment Leasing & Finance U.S. Economic Outlook-Q4 Update

The Foundation's 2019 Equipment Leasing & Finance U.S. Economic Outlook – Q4 Update forecasts 3.9% expansion in equipment and software investment and 2.2% GDP growth. Access the full report at <http://bit.ly/ELFFEconomicOutlook>.

60%

According to *Health Affairs*, that's the percentage of health system executives that have expressed interest in acquiring outpatient, retail or home health capabilities to expand their footprint and broaden their access points.

Learn more in the Foundation's Vertical Market Outlook Series: Healthcare at <http://bit.ly/ELFFHealthcare>.





Doing Business IN California

By Susan L. Hodges

What you need to know about legislative developments in the nation's most populous state: A true story of legislative intent and lightning response illustrates the value of ELFA's state advocacy program.

AT ONCE the nation's most populous state and largest economy, California is nothing if not a trend-setter. From tea-flavored ice cream to tie-dyed bucket hats, firsts in food and fashion originate in the Golden State as surely as does world-class information technology.

But California is also known for blazing trails in legislation, and a bill introduced in its state legislature in February 2018 lit fires of concern within ELFA. If made law as written, Senate Bill 1235 (SB 1235) would become the nation's first legislation requiring the disclosure of interest rates and other information on certain commercial finance products. The law would pertain to all such transactions under \$500,000—leases, loans, lines of credit and merchant cash advances included.

A Dangerous Precedent

"The bill exemplified the threat of states taking what have traditionally been consumer protections and bleeding them into commercial transactions," says Scott Riehl, ELFA's Vice President of State Government Relations. "Many times, states draft legislation in such a way that protection of consumers is intended but commercial transactions are inadvertently affected. SB 1235 was the first case in which lawmakers actually intended to establish consumer-like protections over commercial transactions."

Specifically, SB 1235 required the following disclosures on qualifying transactions:

- The total amount of funds provided
- The total dollar cost of the financing
- The term or estimated term
- The method, frequency and amount of payments
- A description of prepayment policies
- The total cost of the financing, expressed as an annualized rate.



"We hope to achieve an exemption [in New York] similar to those in California and New Jersey."

Scott Riehl, ELFA

If passed, the legislation would not only adversely affect equipment finance companies doing business in California; it might also influence lawmakers in other states to pass similar bills and grow the problem. SB 1235 quickly became ELFA's hottest state issue.

Eight months of effort followed as members of ELFA's State Government Relations team traveled repeatedly to California, sought and obtained an audience with the bill's sponsor, testified before multiple legislative committees on the bill's potential impact to equipment finance companies, and worked with the sponsor's staff to make necessary changes. ELFA's California members played a critical role in developing and advancing alternative legislative provisions.

"We convinced legislators we were not an industry sector they were trying to protect against," says Riehl. The bill was subsequently amended to exempt true leases as well as depository banking and made law in September 2018.

But in several ways, the story was just beginning. The California Department of Business Oversight (DBO) was charged with drafting regulations for enforcement and compliance of SB 1235 and twice asked for comments. ELFA twice responded, both times submitting extensive information and suggestions to address gaps and vagaries still present in the law. Furthermore, legislation similar to SB 1235 was filed in New Jersey and New York.

Guiding Principles

ELFA President and CEO Ralph Petta adds helpful perspective. “Underlying ELFA’s position on SB 1235—and any legislation placing consumer-like protections on equipment finance companies—are two principles to which we subscribe,” says Petta. “The first is a level playing field. The law considers you an owner-user if you purchase equipment or use it, and we believe our members should be treated the same as other owner-users. Companies in our industry purchase equipment, but because they are passive finance entities, their users are other people. Yet, equipment finance companies own the equipment and have taken the risk of ownership, so we always want to be sure we’re guided by the same rules that govern other owner-operators.”

The second principle guiding ELFA’s advocacy work is that consumers and businesses are different, and laws pertaining to each should be kept completely separate. “States, in their zeal to protect consumers, sometimes overreach and apply consumer protections to commercial transactions,” says Petta. “There is a dangerous trend by some public policy makers to treat small businesses as consumers. But they are not consumers; instead, they are commercial entities entering into arms-length contracts with equipment finance companies—ELFA members. As such, we believe both parties in these commercial settings are—or should be—sophisticated enough to understand the documents they’re signing and the rights and responsibilities contained in them.”



“States, in their zeal to protect consumers, sometimes overreach and apply consumer protections to commercial transactions.”

Ralph Petta, ELFA

rates, but because the rates were not specifically disclosed in the lease or loan documents, after signing the documents the lessee/borrower learns that the rates are higher than were represented, and the lessee/borrower and lessor/lender then have a dispute. “The lessee or borrower then involves the state Department of Business Oversight (DBO) and contacts its legislators to ensure that others are not ‘hoodwinked’ by another lender or lessor,” Alper relates. “The legislator then begins writing a bill, having no concept of provisions in the California version of the Uniform Commercial Code, the business of lending and leasing, or what impact the new law might have on the leasing/financing and lending industry.”

Causes and Continuing Concerns

Andrew Alper is Vice President and Shareholder of Frandzel Robins Bloom & Csato, L.C., in Los Angeles. He is also a long-time contributor and advisor to ELFA’s state government relations program and was a co-winner of ELFA’s 2019 Edward A. Groobert Award for Legal Excellence. Alper says legislation like SB 1235 often gets its start when constituents bring issues like evergreen clauses to their lawmakers.

“I have seen disputes arise when the lessee has not timely exercised its right to purchase equipment and because of the evergreen clause, the lease term rolls over for a year or other period, causing a dispute between the lessee and lessor,” Alper says. He has also seen contentions by a lessee in which the lessor/lender quoted



“[California] is not an easy place do business.... But it’s a huge economy, and lenders want entrance into the business environment.”

Andrew Alper,
Frandzel Robins Bloom
& Csato, L.C.

“Make sure you are complying with all finance lender laws—the fines can be huge for non-compliance.”

**Chris Enbom,
AP Equipment Financing**

Alper says legislators and courts also blend consumer laws with commercial laws, even though the two types of law are quite different and the protections consumers need are not the same for business and commercial concerns. “Such is the case with SB 1235, where loans under \$500,000 are being treated the same way as consumer transactions and contain disclosures that may not be appropriate under the circumstances,” he says, adding, “This is how consumer law is bleeding into the commercial world. In California, I do not see an end to the blurring of these lines.”

Nor do others at ELFA. Barely a month after SB 1235 was introduced in California, similar legislation was filed in New Jersey. The New Jersey bill not only sought consumer disclosure requirements for loans under \$500,000 (sound familiar?); it extended those requirements to brokers and any other third parties involved in the loans. The bill sat quietly in the state Senate until October 2018, when it was amended with a partial exemption for banks that earned it fresh attention. ELFA again sprang into action.

“While at the ELFA Convention, we were alerted of a hearing on the legislation the following Monday,” recalls Riehl. He quickly returned to Washington to plan the association’s response. In the days that followed, ELFA’s Membership and Research divisions, along with the Equipment Leasing & Finance Foundation, teamed to gather and prepare for presentation specific data showing a large presence of ELFA-member companies in New Jersey. More than 70 ELFA-member companies do business in the Garden State, financing nearly \$33 billion annually in capital equipment. Armed with this information and more, Riehl flew to Trenton. He summarizes, “ELFA was able to express our



concerns in such a way that we were exempted from the legislation before the hearing began.”

But the movement to place consumer-like protections on commercial transactions continued. A bill introduced in New York in early 2019 sought to allow consumers to cancel contracts with businesses “the same way they entered” those contracts. ELFA, concerned that the legislation too loosely defined “Consumer,” stepped up to offer a more specific definition that would completely exempt ELFA-member commercial contracts. Says Riehl, “We had conversations with lawmakers and are now working with them to make changes to the legislation. We hope to achieve an exemption similar to those in California and New Jersey.”

Additional Complexities

Compliance with SB 1235 won’t be required until final regulations are submitted to and approved by California’s Office of Administrative Law. ELFA estimates mid-2020 as the earliest date this will occur. In the meantime, however, the ELFA Legal Committee’s DBO Work Group stands ready to provide any additional guidance the agency requires.

Chris Enbom, CEO & Chairman of Bend, Oregon-based AP Equipment Financing, also known as Allegiant Partners, is upset that some equipment

finance companies are still disadvantaged against banks, owing to federal pre-emption rules governing many banks. “Banks are not subject to [SB 1235] and have no requirement to disclose rates on commercial transactions,” he says. “We already have a funding disadvantage, and legislation like this presents an increasingly uneven playing field.”

Enbom believes the net result will be less funding for small businesses in California as some companies stop providing non-lease offerings, pull out of the state or “stop funding better credits who are highly rate sensitive and do not see the value in the services independent finance companies provide.”

Alper worries how finance companies will disclose information that until now hasn’t been calculated. “There are still many gaps in SB 1235, such as how annualized interest rates are to be calculated, much less disclosed, for lines of credit or factoring,” he says. “What do you do with transactions that approve a credit line of \$2 million, but only advance \$400,000? Do you have to make the disclosures or not, since the amount initially advanced is \$400,000, but the lender will have to advance more than the \$500,000 disclosure limitation?”

How the disclosure laws will pertain to factoring is another concern, since companies that factor invoice their customers on a rolling basis, depending on the amount loaned. Says Alper, “How do you calculate and disclose annualized interest and costs for those types of transactions?”

Information Privacy Laws

Marshall Goldberg, Partner at Glass & Goldberg, A Law Corporation, in Woodland Hills, California, says information-privacy laws being passed in several states are part of the same trend that produced SB 1235. The California Consumer Privacy Act (CCPA) takes effect Jan. 1, 2020 and restricts how, what and for whom private consumer information can be collected, disclosed



“Lenders and lessors will be required to analyze whether SB 1235 or the CCPA applies on a case-by-case basis.”

**Marshall Goldberg,
Glass & Goldberg, A Law Corporation**

and sold by businesses. The legislation became law a mere six days after being introduced in mid-2018 and since then, similar bills have been introduced in 11 states.

“The CCPA primarily deals with consumers, and a consumer is defined in the CCPA as ‘a natural person who is a California resident,’” says Goldberg. “But businesses must be cautious because a ‘natural person’ may encompass individuals included as part of a business transaction. What happens when a loan or lease is made to a sole proprietor or it includes an individual guarantor?”

Goldberg says the California legislature temporarily plugged one hole in the CCPA this past September by creating a narrow exemption for “personal information reflecting a written or

verbal communication or a transaction between the business and the consumer, where the consumer is a natural person who is acting as an employee, owner, director, officer or contractor of a company, partnership, sole proprietorship, nonprofit or government agency and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from such company, partnership, sole proprietorship, nonprofit or government agency.”

But the exemption expires on Jan. 1, 2021 and does not appear to cover angel investors or guarantors. “What happens when an individual family member, perhaps a parent or spouse, executes a guarantee merely to support the lender’s financial requirements of a start up?” Goldberg asks. “That person is not involved in the business on a day-to-day basis; yet as the law is written, the disclosure requirements would apply.”

As originally drafted, both SB 1235 and the CCPA defined consumers in inexact terms that could be interpreted to include companies having transactions with other businesses. The definition has been amended in SB 1235, but similar vagaries exist in

A Closer Look

FOR MORE ON THIS TOPIC, see the following articles from the Equipment Leasing & Finance Foundation's Fall 2019 Journal of Equipment Lease Financing at www.leasefoundation.org/industry-resources/journal-of-equipment-lease-financing/

■ **Commercial Lenders Brace for Consumer-Style Disclosures in California and Beyond,**

by Clinton R. Rockwell, Kathryn L. Ryan, Moorari K. Shah and Frida Alim.

One year ago, California became the first state to require consumer-style disclosures similar to those required for consumer loans under federal laws. The requirements of Senate Bill 1235 signal a sea change likely to affect other states as well. This article explains the implications for the equipment finance industry.

■ **Privacy Puzzle: Grappling with the Patchwork of New State-Specific Data Privacy Laws,**

by Andrew Baer and Matthew Klahre.

Lessors conducting business in California must pay attention to the evolving and sometimes puzzling amendments to the California Consumer Protection Act. The act affects both business-to-business and business-to-consumer transactions. Several other states also are enacting laws that signify compliance challenges for national and international businesses.

financial disclosure laws introduced in other states.

"Many terms aren't well defined or defined at all," says Goldberg. Partly as a result, he believes anyone who engages in leasing or lending should assume that all such new laws will apply to them.

"These laws are comprehensive," Goldberg says. "The European Union's General Data Protection Regulation (GDPR) is an influence, and we are seeing more privacy laws nationwide. Our industry includes many types of finance companies and funding sources and a multitude of financing alternatives. We are a trillion-dollar industry, and lenders and lessors will be required to analyze whether SB 1235 or the CCPA applies on a case-by-case basis."

Enbom agrees. "There is a lot of regulation in California, and the regulators do not understand what we do as commercial finance companies," he says. "On the other hand, the California market is huge, and we will continue to do business there despite the constraints on the market."

The company that is now AP Equipment Financing was based in California for more than a decade. But Enbom says a desire for growth collided with high costs and subjectivity to increasing financial regulation. In January 2019 the company moved its headquarters to Oregon and retained its license as a California lender.

To other equipment finance companies doing business in California, Enbom advises, "Make sure you are complying with all finance lender laws—the fines can be huge for non-compliance." He also suggests staying abreast of other legislative trends, including laws on customer data.

Alper observes that many companies doing business in California currently use equipment finance agreements, which do not disclose interest rates, instead of promissory notes, which do. "I bring this up because SB 1235 is the death knell for equipment finance agreements," he says. It is one of several changes that companies financing equipment in California may need to make soon. But Alper's overarching conclusion about the big trend-setting state is much like Enbom's. "We are very consumer-oriented here," he says. "It's not an easy place to do business, with high taxes and high costs. But it's a huge economy, and lenders want entrance into the business environment of one of the largest economies in the world." ☰

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



MEET THE NEW

ELFA Members



*New members
add uniqueness to
ELFA's expanding
community.
Meet some of
them here.*

BY SUSAN L. HODGES



A NEW TWIST TO AN OLD SAYING

could go something like this: “The more things change, the more... ELFA changes.” Indeed, as many industries fret about transformations affecting 21st century businesses, ELFA members can exult about one in particular: the diversity of companies joining the association. The five new member companies profiled here consistently apply their own brand of ingenuity to generate unique approaches to the business of financing equipment. Read on to learn more.

LOGIX CAPITAL

WESTON, FLORIDA AND LOGAN, UTAH

If one word describes this independent, middle-market equipment finance company, it's “entrepreneurial.” Starting in 2002 as an intermodal transporter of milk between California and Hawaii, the entity that is now Logix Capital went through several transitions to become the growing business it is today. Logix Capital finances and leases specialized intermodal and logistics equipment—such as bulk-liquid tank containers and dry and refrigerated containers and chassis—to transportation companies operating in the food-grade space.

Sister company TransChill, Inc., manufactures specialty transport refrigeration equipment such as truck-mounted chillers. Bahman Sadeghi, President of both companies, says that TransChill recently completed work with engineers at Utah State



Bahman Sadeghi

2019 MEMBERSHIP MILESTONES

Celebrating 55 Years

BMO Harris Equipment Finance Company

Celebrating 50 Years

DLL

Celebrating 45 Years

PNC Equipment Finance, LLC

Celebrating 40 Years

Bank of America Global Leasing
John Deere Financial
Macrolase Corporation

Celebrating 35 Years

Commonwealth Capital Corp.
Great American Insurance Group
NETSOL Technologies
Presidio Technology Capital, LLC
Sirius Computer Solutions Financial Services, LLC
Wells Fargo Equipment Finance

Celebrating 30 Years

Americorp Financial, LLC
Glass & Goldberg, A Law Corporation
Tetra Corporate Services, LLC

Celebrating 25 Years

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Celebrating 20 Years

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American Lease Insurance Agency Corporation
BOK Financial Equipment Finance, Inc.
Deloitte
Jules and Associates, Inc.
Madison-Davis, LLC
Marlin Capital Solutions
Merrimak Capital Company LLC
Nutter McClennen & Fish LLP
Ritchie Bros.
Smith Debnam Narron Drake Saintsing & Myers, LLP
TCF Capital Solutions, a division of TCF National Bank
Thompson Coburn LLP
Transamerican Equipment Corp.
Trimarc Financial, Inc.

University to develop electric "gensets," high-voltage battery-power that can be installed on chassis to provide emission-free power to refrigerated containers. "We've just received a patent for this product, so we're gearing up to finance and lease these battery-operated systems," says Sadeghi, adding, "We're quite excited about it."

To date, Sadeghi hasn't found other ELFA-member companies resembling Logix Capital. "I recently attended the ELFA Funding Conference and noticed how different we were," he says with a chuckle. "We're not like many traditional lessors that finance various types of

equipment and buy or sell portfolios, so we don't fit into the normal stream of secondary market paper."

That's one reason Logix Capital may interest other ELFA members. As the company looks to the association for information and education on lease accounting and regulation, executives at other member companies might tap Logix Capital leaders for expertise and market knowledge pertaining to intermodal equipment and other niche transportation assets.

Meanwhile, plans for growth at the company continue unabated. Logix Capital continues to focus on intermodal equipment and regularly considers companies and assets in the space for acquisition. "We might buy a portfolio of assets that are under true operating leases," Sadeghi says by way of example. "But we still don't fall into the category of conventional lessors," he says. "Everything here is in-house. We haven't sold anything yet."

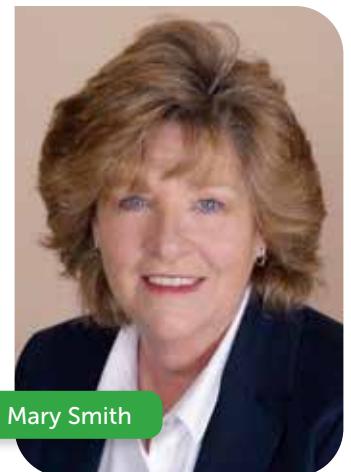
HIGHLAND CAPITAL CORPORATION

LITTLE FALLS, NEW JERSEY

Begun in 1998 as the syndication arm of Greater Community Bank—an institution later acquired by super-regional Valley National Bank, which serves New York, New Jersey, Florida and Alabama—Highland Capital Corporation invested early in talent and its budding experience to become the full-service equipment finance company it is today.

Says Mary Smith, President and CEO, "We were already a niche player in the small-ticket healthcare space, primarily serving the dental and veterinary markets, when in 2003 we changed to a vendor model holding the paper."

That was the year Smith arrived, bringing with her several other leasing and finance professionals. The bank-owned company "did well in the space," she says, establishing a strong foundation and growing steadily. Then last year Highland Capital Corp. moved into the industrial



Mary Smith



KUDOS TO THE ELFA MEMBERSHIP COMMITTEE!

In 2019, the Membership Committee worked closely with the ELFA Membership Department to assist in the association's recruitment and retention initiatives. With the committee's assistance, ELFA met and exceeded its membership goals for the year. Many thanks to the 2019 committee members for their hard work and participation:

Alan Sikora, First American Equipment Finance, an RBC /
City National Company (*Committee Chair*)

Julie Benson, ELFA Staff Liaison

Brett Boehm, TBF Financial, LLC

Donna Christensen, CSC

Mike Coon, Hanmi Bank

David Farrell, Bank of America Global Leasing

Tom Forbes, Wintrust Commercial Finance

Don Hansen, Regents Capital Corp.

Martin Klotzman, Ivory Consulting Corporation

Chris Lerma, AP Equipment Financing

Tom Mariani, CNH Industrial Capital

Thomas Pericak, Hancock Whitney Equipment Finance, LLC

Nathan Petrie, PayNet, Inc.

Marci Slagle, 36th Street Capital

Jeff Walker, CIMC Capital, Inc.

Mike Wiedemer, First American Equipment Finance, an RBC/
City National Company

Do you know of a company that would benefit from ELFA membership? Please email your recommendation to Julie Benson, VP of Membership Marketing, at jbenson@elfaonline.org.

marketplace, covering machine tool, plastics, food processing and packaging. "We needed to diversify," Smith explains. "Several of us had experience in packaging and machine tool, so these were natural choices for us."

Success has already shown its hand. Business volume and staff have both doubled, and ticket size now ranges from \$10,000 to \$2.5 million, healthcare equipment responsible for the larger transactions. "We're still only about 55 people, keeping the organization very flat so we can make decisions quickly and remain nimble," Smith says. "But we're doing more than \$200 million in annual business."

Highland Capital Corporation joined ELFA for "its host of resources, from industry education to legal and regulatory information, and to meet others in the industry," Smith says. Continued growth is expected to bring the corporation a greater need for syndication and contacts in the funding arena. At the same time, Smith expects to share Highland Capital Corporation's experience and expertise. "We have so much tenure, we absolutely have the potential to get involved in association committees and activities," she says, adding, "We've already been to two ELFA symposiums where we listened, learned and met a lot of people. We look forward to doing more."

AVGEAR US LLC

LAS VEGAS, NEVADA

Decades of experience in audio-visual equipment, along with a desire to benefit the environment, produced the concept for the company operating as AVGear.com. Today this five-year-old service provider is a leader in the recovery and remarketing of AV equipment, refurbishing and repurposing used gear and shipping it to buyers around the world. Customers can elect to consign or trade in their used gear and receive credit toward new equipment in return. The company also performs valuations on new AV assets to determine future residual value and often purchases equipment from leasing and asset-management companies.

"This is our specialty and it's all we do," says Scott Kase, National Director of Sales. "Due to the standardization of digital format, many audio-visual products used in the U.S. can now be used in other parts of the world. We work with production companies in Brazil as easily as with those in Germany."

AVGear.com joined ELFA "because we felt there was a hole in the market," says Kase. "We were getting calls from companies looking for evaluations, and no one was doing this for AV equipment. And since we deal with new equipment as well as used, we're uniquely positioned to perform evaluations and forecast residual values."

Kase says projection technology is responsible for the biggest change in AV equipment today. "There's no longer a projectionist in a booth behind you," he says. "Digital files have replaced the reel-to-reel projector, and laser technology has replaced lamps. You can even steer your sound technology to produce the very same sound in row 5 as in row 50."

Jannet Davis, Director of Operations, says AVGear.com wants to take advantage of its ELFA membership to gain exposure to various levels of association activity. "When we attend trade shows, we only see a certain percentage of the industry, so we're always looking for ways to become more involved," she says.

Since AV equipment is changing rapidly, Davis and Kase hope to share their expertise with companies looking to learn more about the gear as a potential addition to portfolio. "You have to look ahead to understand the cycle of this equipment, because it's much shorter today than just a few years ago," says Kase. "We think we can help other ELFA member companies with this market, and we look forward to meeting more professionals in equipment finance."

MEDICAL TECHNOLOGY FINANCE CORPORATION

EL SEGUNDO, CALIFORNIA

Begun nearly 75 years ago in Tuttlingen, Germany, medical manufacturer KARL STORZ grew to become an international leader in reusable endoscope technology. "For a long time as the market expanded, we had ample opportunity to place our equipment with health care providers," says Wynn Blieberg, Director of Medical Technology Finance Corporation (MTFC). But those opportunities dwindled when three trends combined to drastically alter the market. Says Blieberg, "Standardization of equipment, consolidation of the health care industry, and the reduction of insurance reimbursements made the method of paying for equipment as important to providers as acquiring it and using it."

In response, KARL STORZ formed MTFC in 2008. The captive would serve as an adjunct to the parent company's U.S. sales force, providing sales professionals and customers with a choice for acquisition. "We'd always had the technology, but we didn't have financial solutions," says Blieberg. "So we embarked on this effort as the market changed and found we needed not only excellent talent, but access to information, training and others in the equipment finance industry. There's no better place to get those needs met than at ELFA."

Family-owned and privately held, KARL STORZ and MTFC deliver what Blieberg says is a degree of customer flexibility unparalleled in the industry "because we're not reporting to Wall Street." Instead both parent and captive are guided by a corporate mission to benefit humanity by advancing medical



Wynn Blieberg



technology through innovation and education. Blieberg looks forward to discussing the advantages and benefits of that situation, but also hopes to learn from ELFA member companies in different circumstances. "The industry is always evolving, and what may have worked a few years ago for us may not work in the future," he says.

Today KARL STORZ manufactures endoscopic equipment used globally in surgical imaging, integration and instrumentation for system-wide patient care. Blieberg says a focus on the customer has also produced financial products that leave all options on the table. New customers can trade used equipment for credit on new, and any customer can turn in used equipment made by the manufacturer as part of its repair-exchange program. Leasing comes with the option for modular upgrades over time.

"Because we can refurbish our equipment to 'like new' condition, we roll total solutions into our contracts, wanting to meet customer needs as they evolve and going forward," says Blieberg. "We believe we offer customers the ultimate in what they're seeking: a true partnership that keeps them current on technology and provides fiscal options for running their business with the best cash flow possible and maximum cost-effective use of their assets."

DEDICATED FUNDING

SALT LAKE CITY, UTAH

American Samoa is a small U.S. territory of 60,000 people, sustained by tuna fishing and the processing and shipping that accompany it. Thanks to creative thinking by residents of this island located six hours by plane from Honolulu, American Samoa is also now home to the first U.S. public bank established in nearly a century.

Aligned with the Territorial Bank of American Samoa but separate from it is Dedicated Funding, an independent financier of small-ticket transactions based in Salt Lake City. Early in their careers, several of the professionals at Dedicated Funding worked together at a bank in Salt Lake City—thus the company's location. Grant Finch, CEO and Managing Partner of Dedicated Funding, says both the bank and the equipment finance company are carefully crafted experiments, steadily producing success.

"Dedicated Funding was created two years ago to meet the needs of the bank and bring in a line of

EIGHT WAYS TO MAXIMIZE YOUR ELFA MEMBERSHIP

1. If your company is an ELFA member, you may **create a member profile** from the ELFA website and gain access to valuable, members-only resources.
2. Regular members may participate in the **Survey of Equipment Finance Activity (SEFA)** and receive a **free** copy.
3. Subscribe to the **Washington Report**, a monthly newsletter that keeps members up-to-date on ELFA's advocacy efforts before federal policymakers, regulators and standard-setting bodies.
4. Access the **State Tax Manual**, an easily navigated reference guide designed to aid equipment finance companies in tax compliance and planning. This members-only resource provides a comprehensive state-by-state analysis of sales and property taxes.
5. Help drive the association's mission and volunteer on an **ELFA committee**.
6. Access high-quality, interactive training and resources such as the **NEW Mastering the Lease Agreement Online Course** through **ELFA Academy**.
7. Subscribe to the members-only online discussion groups **LeaseTalk**, **AcctgTalk**, **LegalTalk** and **TaxTalk** to stay connected and exchange information with your peers.
8. Invest in your staff by sending them to an ELFA conference in 2020: **ELFA Women's Leadership Forum** (April 20-21, Chicago) or **EMERGENCE2020** (July 15-16, Denver).

Do you have any questions regarding the benefits of ELFA membership? Please contact the Membership Department at membership@elfaonline.org.



Grant Finch

business," Finch says. "We underwrite, document, close and service transactions that are placed in the bank on its balance sheet as investments. It's a smart way to add to the bank's revenue base."

Types of equipment financed range from machinery/industrial and construction

to computer hardware, medical, restaurant and commercial vehicle. Says Finch, "We wanted to start with as much diversity in asset, industry and geography as we could, so we chose small-ticket—anything under \$250,000."

The company is self-funding and has already processed more than 2500 transactions, creating a

portfolio Finch says is performing well. "But as the bank's depository inflow grows, we need to grow," he emphasizes. "We have the ability to be as much as 60% of the bank's balance sheet, so we're looking for more business. That's one reason we joined ELFA."

Dedicated Funding plans to expand into additional vertical markets, growing out vendor groups that aren't yet fully deployed. "We've also added to our third-party originators and have the capacity to add more," Finch says. Executives recently attended ELFA's Funding Conference in Chicago to introduce the company and develop collaborative relationships. "That happened," says Finch, "and since we do some portfolio sales and pruning, we look forward to meeting more members of ELFA's funding community."

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

2019 NEW MEMBERS

Aspen Field Services
Atalaya Leasing
Atlantic Union Equipment Finance
Atlantic Utility Trailer Sales
AVGear US LLC
Boston Capital Leasing
BrightReps, Inc.
Cass Commercial Bank
CDW Direct LLC
Century Bank
Charger Logistics USA
Clearview Risk Solutions
Conserv Equipment Leasing LLC
Credijusto
Crestmark Vendor Finance
Dedicated Funding
Falcon National Bank
FINCURA
First Foundation Bank
Fleet Leasing LLC

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Global Equipment Management Services
GTC Equipment Finance LLC
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58th Annual ELFA Convention

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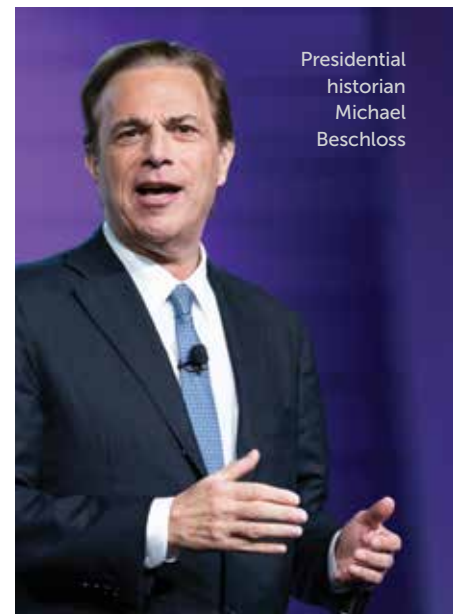
EQUIPMENT LEASING AND FINANCE ASSOCIATION
Equipping Business for Success



Annual Convention

THE ELFA COMMUNITY showed up in full force for the association's 58th Annual Convention in Washington, D.C., in October. The three-day event brought together more than 1,130 industry executives from across the nation and the world—the largest turnout in well over a decade—to network, exchange best practices and address critical issues and trends affecting the industry and their businesses.

Keynote speakers addressed packed audiences, sharing their perspectives on a range of issues relevant to the industry. Presidential historian Michael Beschloss kicked off the Monday General Session with an insightful look at presidential politics and the leadership skills that have shaped the course of the nation. Following Beschloss' remarks, outgoing ELFA Chair Jud Snyder joined him on-stage for a Q&A session.



Presidential
historian
Michael
Beschloss



Draws Large Turnout

The Convention drew the largest turnout in over a decade.



Economist
Dr. Marci Rossell



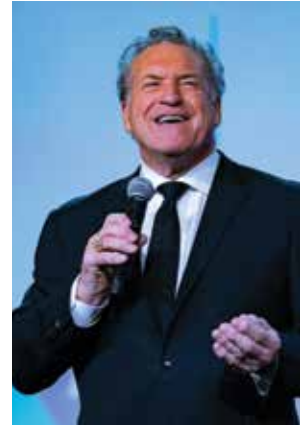
CNN anchor
Jake Tapper



Snyder passed the leadership torch to incoming Board Chair Martha Ahlers.



Kirk Phillips accepted the Advocacy Champions Award on behalf of the Financial Institutions Business Council Steering Committee.



Leadership speaker Mark Scharenbroich

At the Equipment Leasing & Finance Foundation luncheon, Foundation Chair Jeff Elliott rolled out the new Equipment Leasing & Finance Industry Horizon Report, and economist Dr. Marci Rossell gave a lively assessment of the state of the economy and what may lie ahead, followed by a Q&A session with Elliott.

At the Tuesday General Session, CNN anchor Jake Tapper gave an insider's view of current events in the nation's capital, followed by a Q&A session with incoming ELFA Chair Martha Ahlers.

New this year, rather than breaking apart for separate business council luncheons on Tuesday, attendees came together for a Community Luncheon. The

luncheon recognized the five Business Council Steering Committees, which play an important role in the ELFA community. Kirk Phillips accepted the inaugural Advocacy Champions Award on behalf of



Spread across two exhibit halls, more than 30 exhibitors showcased the latest products and services for the industry.

the Financial Institutions Business Council Steering Committee. In addition, leadership expert Mark Scharenbroich entertained attendees with a spirited and often humorous look at how to create more meaningful relationships and acknowledge, honor and connect with others.

More than 60 industry professional spoke at 16 concurrent breakout sessions on a wide range of topics, including technology and innovation, the customer experience, managed solutions, the regulatory environment, emerging talent, hiring, fraud, e-docs and much more.

Members also participated in a community service project (see p. 32 for details).



Breakout sessions covered a variety of hot topics.



2019 Chair
Jud Snyder



The Women's Council Reception drew a large crowd.

The Face of ELFA Is Changing, Says Snyder

In his Convention address, outgoing Chair Jud Snyder, President of BMO Harris Equipment Finance, highlighted ELFA's diversity and inclusion initiatives. He opened his remarks with a video montage showcasing a diverse group of ELFA members smiling and dancing, with one face morphing into the next.

"I had an idea to put this video together because I wanted to highlight the changing face of ELFA...Why it's important, and what we all have to gain from it," Snyder explained.

He argued that in an increasingly competitive landscape, it's more important than ever for ELFA and the equipment finance industry to embrace diversity and welcome all ideas to the table.

"We're actively encouraging input from more diverse groups in a number

of ways," he reported. "ELFA has been broadening its gathering of feedback from the membership to achieve a perspective that's informed generationally, ethnically and by gender."

Snyder discussed the creation of the Emerging Talent Advisory Council, the Women's Council and the new Equality Committee.

"We've gathered a diverse group of constituents onto the Steering Committee with the goal of having everyone's voices heard, identifying areas where they aren't being included and determining how we can do better to include them."

He stressed that companies that focus on including diverse voices in all facets of their business outperform their peers who don't.

"We are a community and when we come together we have the power to make our industry—and each

other—better and stronger. Moving that community in a direction that welcomes all is powerful, is bold and is our future," he said, adding, "I can't wait to see what this room looks like in the years to come."

We Are ELFA, Says Petta

In his Convention address, ELFA President and CEO Ralph Petta celebrated the association community. He opened his remarks with a story about Marshall University, where his son went to school. Each autumn the chant "We are Marshall" fills the school's football stadium, in tribute to the school's community, past and present. Petta proposed an ELFA version of the motto. "When I think about who we are as a group, all 580 member companies, I know that we are a community, too. We are ELFA."

Petta highlighted the many ways ELFA members come together to benefit each



ELFA's new Equality Committee convened at the Convention, chaired by Scott Thacker (pictured front row, fourth from right).

other and the industry as a whole. “We are a special collection of professionals—fierce competitors in the marketplace—who come together under the umbrella of ELFA to engage with each other and share, to learn from each other, to experiment and talk about the results, and to educate others about our industry and its important role in our economy.”

Petta thanked all members for their involvement and shared a series of video clips of members discussing how they benefit from ELFA initiatives, including advocacy, research, the Women’s Council, the Emerging Talent Advisory Council, community service projects and more.



Snyder and Petta presented the Michael J. Fleming Distinguished Service Award to Lori Frasier.

He noted that members achieve collectively what they cannot do on their own. “As individuals, we do so much to contribute to our families, our companies and the

companies of our customers. But together in this community, we are more than the sum of our parts... We’re all here for different reasons, but together, we are ELFA.”



Members Give Back

CONVENTION ATTENDEES participated in a community service project with Community Lodgings, an organization that offers affordable and transitional housing and youth education programs to homeless and



low-income families in Alexandria, Virginia. Thanks to the generosity of member sponsors and our hard-working volunteers, ELFA made a financial donation of \$25,000 to Community Lodgings and donated an additional \$10,000 worth of supplies.

View photos and videos from the Convention!
Go to www.elfaonline.org/AC and click on Media.



For recordings of Convention sessions, visit the Conference Resource Center at www.elfaonline.org/events/conference-resource-center.

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Cloud Lending, a Q2 Company	JDR Solutions, Inc.
CODIX	Linedata Lending and Leasing
Constellation Financing Systems	LTi Technology Solutions
Copernicus-USA, LLC	Monitor / monitordaily.com
Cortera	NETSOL Technologies Americas, Inc.
CSC	Odessa
DAT	Orion First Financial, LLC
Dominion Leasing Software LLC	PayNet, Inc.
ECS Financial Services, Inc.	Sopra Banking Software
EDA by Randall-Reilly	Specialty Equipment Insurance Services
Fifth Third Bank	Wolters Kluwer



THE EQUIPMENT LEASING & FINANCE FOUNDATION is pleased to present the *2019 Equipment Leasing & Finance Industry Horizon Report*. The 2019 Horizon Report emphasizes forward-looking economic and industry insights related to the U.S. economy provided by Keybridge, the Foundation's researchers.

The 2019 Horizon Report includes an opening section presenting the results of a Foundation-commissioned survey of equipment end-users conducted in July 2019. The survey, which is more than double the size of last year's survey, provides the data to estimate the current size of the equipment finance industry, assess the propensity to finance private sector equipment investment for key equipment verticals and forecast end-user plans to acquire and finance equipment over the next 12 months.

The second half of the 2019 Horizon Report provides a detailed analysis of recession risk.

One new feature of the report—the Recession Monitor—is a customized set of indicators designed by Keybridge to help industry leaders anticipate the timing of the next recession on a monthly basis. While a recession does not appear imminent in the next six months, it does make clear that industry leaders need to be thinking about how to position their businesses for a downturn.

Key findings from the 2019 Horizon Report include:

- Total equipment and software investment continued to grow in 2018, with nominal investment expanding by 5.9% to \$1.8 trillion.



New Foundation report spotlights forward-looking economic and industry insights.

By Anneliese DeDiemar

What's on the

Based on the results of the Foundation's end-user survey and analysis by Keybridge, approximately 50% of this investment (and 55% of private sector investment) was financed, resulting in an industry-sizing estimate of about \$900 billion.

- According to the end-user survey (which focused only on private sector investment), the most common payment method used by businesses to acquire equipment and software in 2018 was leasing (24%), followed by lines of credit (16%), secured loans (12%) and other forms of finance (3%). Among non-financed acquisitions, cash (27%) was the most prevalent payment method, followed by paid-in-full credit card purchases (17%) and "other" (1%).
- The end-user survey also revealed that 79% of respondents who acquired equipment or software in 2018 used at least one form of financing to do so (i.e., lease, secured loan or line of credit). This represents a substantial increase compared to

the Foundation's 2017 estimate (58%) and a return to levels observed in 2015 (78%) and 2011 (72%).

- As the longest expansion in U.S. history continues, several economic indicators that have historically provided early warning of a downturn suggest that there may be a slowdown ahead. Overall, a recession will pose challenges for most players in the equipment finance industry. However, those challenges might be mitigated by the adjustments equipment finance professionals can make now to their portfolios and strategy in the months leading up to a recession and at recession onset.

The complete report is now available for free download. Visit www.leasefoundation.org to access this free planning tool. ☰

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



Horizon?

What Are Best Practices?

By R David Conover, Rob Herb and Christopher Nugent



A NEW SURVEY OF ASSET MANAGERS reveals that when it comes to impairment testing, there have been some changes over the past decade.

Both new and experienced asset managers frequently ask the same questions regarding impairment testing: How often should I test residual values in my portfolio? How can I accomplish the impairment testing required FAS 144? Are there risks if I test too frequently or, more important, not frequently enough? Is there a standard methodology for testing? Do I test

all or sample? How do I balance the important aspect of risk management with time and resources? Should I use third-party appraisers to perform my testing?

The ELFA Equipment Management Committee recently conducted a survey of equipment managers to gauge where practices stand today and how they have changed since 2009, when the committee last conducted a survey on this topic. The committee's goal is to assist asset managers in developing best practices in portfolio management to comply with accounting standards. Aside from complying with the technical accounting rules and regulations, the asset manager needs to practice sound portfolio management to manage equipment risk.

A NOTE ABOUT FAS 144

FAS 144 applies to long-lived assets that are to be held or used and defines an impairment as a condition that exists when the book value of a long-lived asset or asset group exceeds its fair value. It further requires that an impairment loss shall be recognized only if the book value of the long-lived asset or asset group is not recoverable and exceeds its fair value.

Additional information is available from the FASB website at www.fasb.org/summary/stsum144.shtml, which is an important resource for equipment managers.

SURVEY RESULTS

A total of 48 asset or portfolio managers responded to the 14-question survey, which focused on both practices and actual impairment experience. Key findings were as follows:

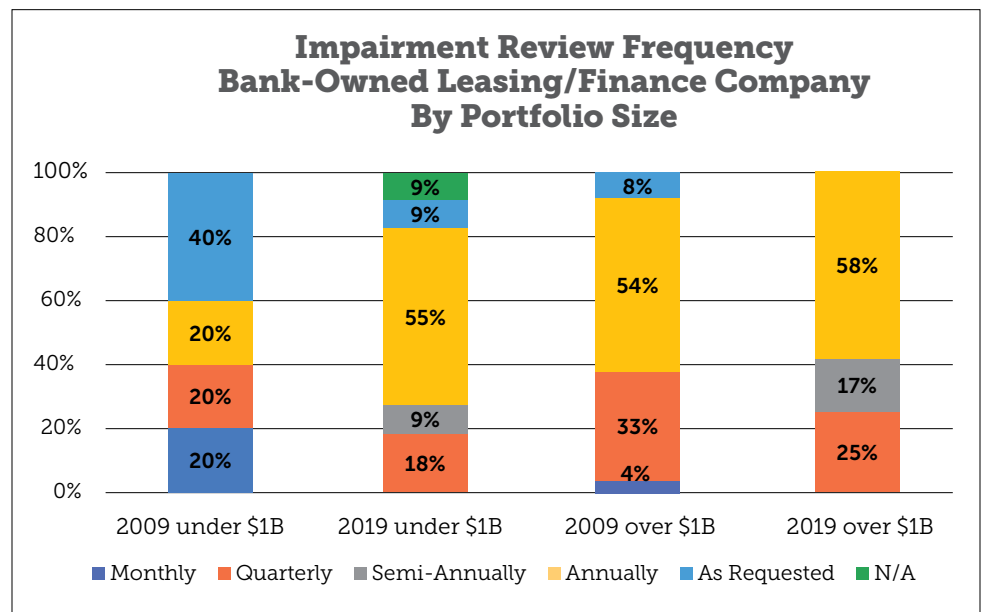
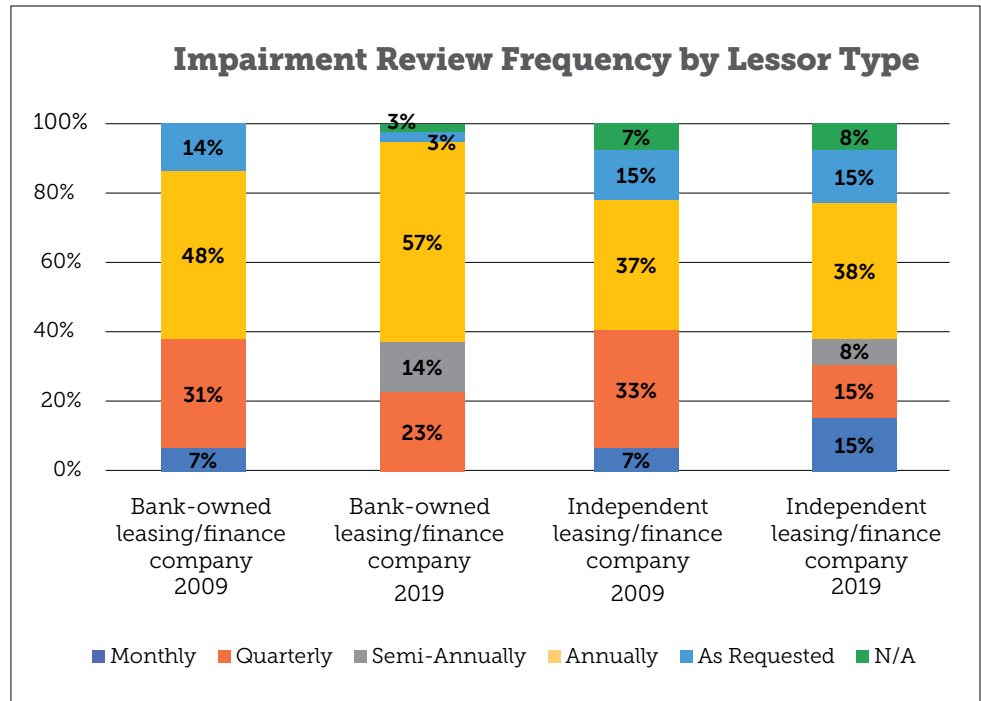
Impairment Processes – At a high level, we found larger equipment finance companies with net book value >\$1B (dominated by bank-owned versus independents) have more formal impairment processes and review cycles, but don't take impairments more/less frequently. This difference perhaps speaks more to regulatory requirements and internal audit processes. Simply put, if you're under bank regulations, you need to formally document your practices in a process document and adherence to that policy will be audited. Senior managers and auditors of a company with net book value <\$1B can get comfortable with an asset manager's practices without needing a formal policy.

Impairment Review Schedule – A total of 94% of banks now have a regular impairment review schedule, which is up from 86% 10 years ago. Just under a quarter of independents reported they don't have a regular impairment review, which is consistent with 2009 results. It is interesting to note that in both groups, there has been a move from quarterly to semi-annual reviews, which could speak to the stability of the economy.

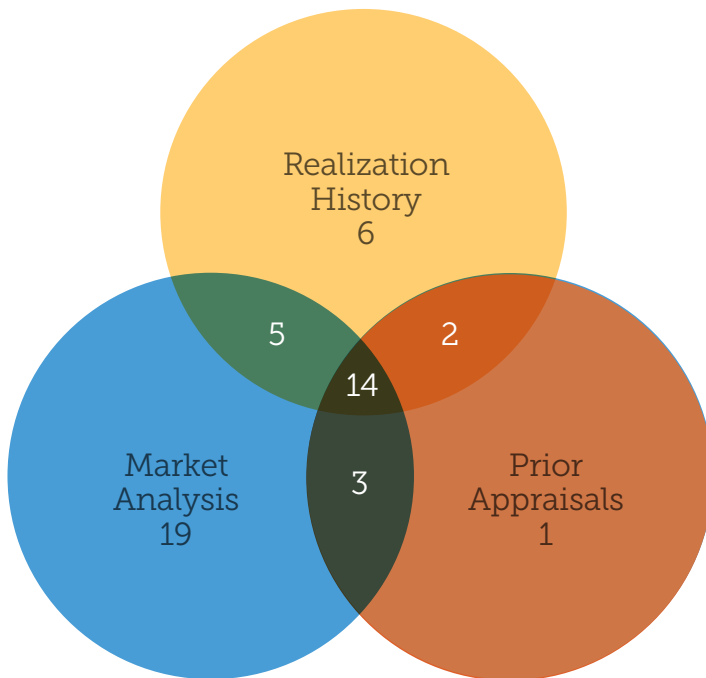
Looking at bank-owned equipment finance companies, we see that, not surprisingly, larger organizations are more likely to have a scheduled impairment review. Independents did not show a trend based upon size.

Methodology – When asked what type of methodology they employ—residual realization history, market analysis of comparable sales and listings, or review of prior appraisals—the results were mixed. From a methodology standpoint, market analysis (external data) was the most common source of data, with 77% of respondents using it and roughly half of

those combining it with internal realization history or prior appraisal reports. Banks >1\$B were more likely to employ third-party appraisers to perform this work in conjunction with internal staff, perhaps to address industry specializations or to ensure impartiality. These banks are also the most interested in exploring artificial intelligence/predictive analytics to improve/automate the impairment process. Also, the method to stratify the portfolio (by industry, asset type, contracts with large RV exposures) varies by respondent but larger organizations tend to engage in multiple stratifications versus just one cut.



IMPAIRMENT TESTING METHODOLOGY



BEST PRACTICES

The prudent asset manager needs to comply with GAAP, FAS 144, the internal policies and procedures of the company and with the strictures and mandates of internal and external auditors. This requires review and analysis of the relevant portfolio to identify and manage equipment book value risks and to identify areas of the portfolio that may be at risk.

A portfolio impairment review policy and procedure that accomplishes this would have the following elements:

- A representative sample of the portfolio is typically defined as 20% of the contracts for each major segment/vertical. In addition, the sample would typically include all assets with residual over \$100,000.
- When sampling, it is appropriate to exclude recently booked transactions (usually those booked within past 12–16 months as review can be considered current).
- When reviewing with portfolio approach realization, history is a good metric.
- A frequency of semi-annually or annually is appropriate.
- Impairment review process: Compare FMV at lease termination with expected FMV of asset.

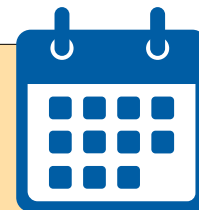
- Review responsible party: internal asset management staff or external appraisal, depending on expertise and time availability.
- Deliverables: summary document listing all assets reviewed by residual at maturity versus FMV, recommendations for impairments.

See the ELFA website at www.elfaonline.org/industry-topics/equipment-management for additional information and the complete best practices document as recommended by the ELFA Equipment Management Committee.

Your documented procedure needs to ensure rigor while at the same time incorporating a degree of flexibility to allow an asset manager to investigate areas of the portfolio where there are questions, while being regimented enough to ensure integrity, consistency and reliability of process. The procedure needs to start with extracting the data and the populations to be reviewed. This can be customized by the lessor based upon business model, verticals served and external risks identified. For a less mature financing organization, 100% of the transactions may be reviewed if this is not too much of a burden.

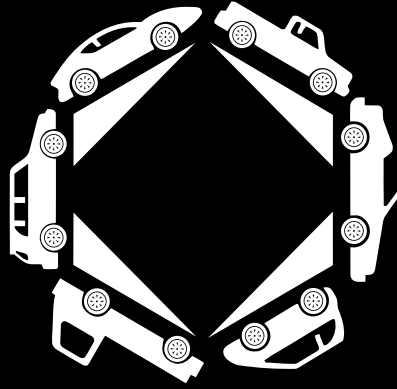
Bottom line: Define a policy, have procedures, perform at least annually, customize to business and document! ☰

DAVID CONOVER is Senior Vice President, Asset Management and Pricing, Customers Commercial Finance, LLC. **ROB HERB** is Vice President, Global Asset Manager, Healthcare and Clean Technology, DLL and a member of the ELFA Equipment Management Committee. **CHRIS NUGENT**, ASA, is Managing Director, Bluechip Asset Management LLC and a member of the ELFA Equipment Management Committee.



SAVE THE DATE!

Learn more on this topic at the 2020 Equipment Management Conference, Feb. 23–25 at the Omni Resort at Championsgate in Orlando, Florida.



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ACCOUNTING

for Change

Takeaways from the Lease and Finance Accountants Conference BY JOHN BOBER

WHAT ARE THE CRITICAL ACCOUNTING ISSUES facing the equipment finance industry? The 2019 Lease and Finance Accountants Conference, held in Chicago in September, tackled a number of important new developments. With the adoption this year of the new leases standard, ASC 842, by most public companies, the conference's focus shifted from issues related to the initial application of the standard to the issues and questions that have arisen as lessors and lessees have begun to account for leases within the new model.

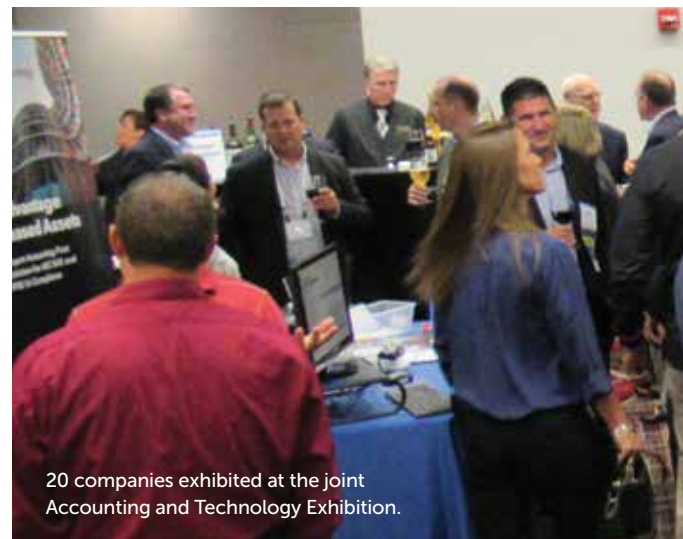
In total there were 20 general and breakout sessions covering such topics as:

- Current and emerging lessor topics,
- ASC 842 adoption lessons learned,
- Sales of leases and loans,
- Acquisition accounting,
- Lease accounting data requirements,
- Sale leaseback accounting,
- Leases of real estate and
- Operationalizing the IFRS leases standard.

While the sessions often focused on technical accounting, the topics covered were connected to matters of current interest to the membership. For example, the accounting determination of whether a transaction is a lease or a service is timely as the industry continues to consider managed service arrangements with customers. The session "A Lease or Not a Lease" provided useful information on the distinction between leases and services and the consequences of the conclusion under the new standard.

In addition to lease accounting and ASC 842, the new credit loss standard, ASC 326, was also the subject of several sessions, including a joint session with the ELFA Operations and Technology Conference. ASC 326 replaces today's incurred loss model for loans and leases with a lifetime credit loss approach, which is known as the Current Expected Credit Loss or CECL model. Application of CECL is very dependent upon data, and companies have at times struggled to assemble the data. Also, CECL is a cross functional exercise and it requires companies to involve accounting, risk management, regulatory, operations and technology functions. Given the breadth of its impact, CECL will likely be the subject of further review in this magazine's Financial Watch column in the coming year.

A recurring feature of the conference is the opportunity it provides attendees to hear directly from the accounting standards setters. This year Board members from both the Financial Accounting Standards Board and International Accounting Standards Board participated on panels. Marsha Hunt of the FASB reviewed the Board's activities and participated in a discussion of several leasing questions that have arisen in the past few months. One of the FASB's recent actions that was covered was the matter of reference rate reform. The sunset of LIBOR and similar rates around the world leads to a series of accounting challenges related to the accounting for contract modifications and hedge accounting when the hedging derivative and/or the hedged loan or lease is modified for the change in reference rate away from LIBOR. The FASB developed a framework for dealing with these changes. This is an emerging issue for the membership that extends



20 companies exhibited at the joint Accounting and Technology Exhibition.



beyond the accounting for the change. This topic will be revisited as companies prepare for the end of interbank offer rates.

The presentation by IASB Board member Gary Kabureck included a review of how adoption of the IFRS leases standard has proceeded. He noted in his presentation that the IASB received relatively few questions on the standard, and he reported that adoption of IFRS 16 appears to have gone smoothly. While IFRS 16 has been adopted by the large, public companies in a number of countries, the lease standard has not yet been brought into the separate and distinct accounting model of IFRS for small and medium sized enterprises or SME's. The process of incorporating IFRS 16 into IFRS for SME's will take a number of years.

During the Q&A, Kabureck was asked to reflect on how ELFA helped or influenced the Boards during their work on the leases standards. He noted ELFA was helpful to the Boards. We provided useful information on the equipment leasing market and

lease accounting, and he praised our efforts to work constructively with the Boards. The consistency of our message was mentioned: We accepted that leases would be on balance sheet for lessees, but we also emphasized that the standard needed to reflect the economics of leasing and not be so complex as to make it overly hard for lessees to apply.

If you missed the conference and wish to learn more about the topics that were covered, copies of the session handouts and audio recordings are available on ELFA's website at www.elfaonline.org/events/conference-resource-center. Save the date: The 2020 Lease and Finance Accountants Conference will be held Sept. 14–16 in New Orleans. ☰

JOHN BOBER is Managing Member of IXL Lease Advisory Services, LLC and is the Chair of the ELFA Financial Accounting Committee.



Reaching Your Full **TECHNOLOGY** Potential

Insights from the Operations and Technology Conference

by Jennifer Martin

WHETHER YOU ATTENDED THIS YEAR'S OPERATIONS AND TECHNOLOGY CONFERENCE to gain perspective on improving client experience, develop skills around how to lead through change or network with the most impactful technology vendors in our space, this popular event—held in Chicago in September—did not disappoint.

The conference kicked off with a client experience pre-session, hosted by Deb Reuben of Reuben Creative, spinning client experience innovation content from the recently formed ELFA Technology Innovation Work Group. Through an interactive forum, participants learned practical ways to stay on top of their clients' expectations in this fast-moving, ever-changing environment.

Next, we officially kicked off the conference with an informative keynote session. Dr. Robert Wescott, Founder and President of Keybridge Research LLC, previewed new research from the Equipment Leasing & Finance Foundation, assessing the potential for various degrees of recession and the resulting impact we could experience within our industry.

This engaging insight was the springboard for two days of rapid-fire sessions that balanced the operational side of leadership with the practical application of full technology potential.

The interactive session "Who Moved My Cheese Again" engaged the audience and took us in and out of our comfort zones, providing insight into how various personality types handle change and how we as leaders can navigate a full spectrum of behaviors.

The "Dip Your Toe" series gave 30-minute burst presentations throughout the conference, providing practical information on topics like Artificial Intelligence and Blockchain. At the session "Dip Your Toe into the Digital Journey" Denis Stypulkoski of TIAA Commercial Finance Inc. shared a digital journey that had us all thinking about how we can evolve to become "software companies that offer leasing products."

An interactive session on the power of diversity in your organization offered an open dialogue and excitement around how to practically improve organizations through a diverse workforce and culture of inclusiveness.



The 2019 Operations & Technology Excellence Award was presented to Cisco Systems Capital Corporation and John Deere Financial. Pictured at right: ELFA President and CEO Ralph Petta; Jen Martin; Alex Doubinkine and Mike Infante of Cisco Systems Capital Corporation; and Andrew Cotter, former Operations & Technology Committee Chair. At left: Petta; Martin; Vinodh Sankaranthi, Shwetha Bhat and Mark Theis of John Deere Financial; and Cotter.



Interactive sessions engaged attendees.



The session “Who Moved My Cheese, AGAIN?” included a hat exercise that provided insight into how various personality types handle change.

We learned what bait we need for “phishing” season and why toast isn’t just for breakfast!

Back for its second year, the vendor lightning rounds gave informative insight into each exhibitor as they answered the question “How do my company and solution provide for the future?” in a fast-paced and fun three-minute presentation challenge.

The conference then connected with its accounting conference partner—the ELFA Lease and Finance Accountants Conference—in an all-angles holistic conversation about the changes required to comply with CECL implementation.

We learned how to be agile organizations and not just run agile projects, what bait we need for “phishing” season and why toast isn’t just for breakfast! (Hint: While making toast seems simple, the variety of outcomes help reveal unexpected

insights and diverse points of view into how we frame ideas, communicate and address problems with visual design thinking.) The creativity and commitment of the Operations & Technology Committee to provide timely, useful and engaging content continues to impress all who attend.

We’re already working on next year! I hope to see you in New Orleans at the 2020 Operations and Technology Conference, scheduled for Sept. 14-16. ☰

JENNIFER MARTIN is SVP, Leasing and Vendor Program Support at Key Equipment Finance and Chair of the ELFA Operations & Technology Committee.

Ten Essential Lease Provisions

WORDS MATTER. But which words should be in the contracts leasing attorneys pour over, passionately debate and... sometimes lose sleep over?

Other than describing the term length, addressing economic provisions for rent payments and identifying a signature or similar acknowledgment confirming a lessee is bound by the documents, leases come in a wide variety of forms. Various considerations arise between legal, operations and sales personnel regarding how long a lease should be, what it should cover and what provisions it should include.

From a lessor's standpoint, an ideal lease should achieve two goals: (1) protect the lessor's economic interest—revenue stream and residual interest and (2) limit the lessor's liability. Here are 10 essential provisions that are "must haves" and a few other "nice to haves."

Must Haves

- 1. Indemnity** – A lessor typically does not have visibility into how a lessee uses or operates equipment. Additionally, a lessor usually does not select the equipment or maintain it. In most transactions, a lessor merely finances the equipment's acquisition and holds title (or minimally a first-priority security interest). Consequently, it's essential that the lessor be indemnified by the lessee and held harmless for damages, claims or other losses arising from the condition, operation, performance or maintenance of the equipment. The lease should provide that the lessee's indemnification obligations survive the expiration, termination, cancellation or assignment of the lease. In some cases, government-related lessees are statutorily prohibited from being subject to third-party indemnification obligations.
- 2. Hell or High Water** – The lease should provide that the lessee's payment obligations shall not be reduced, delayed, abated or discontinued for any reason, including equipment failure, the lessee's dissatisfaction with the equipment's functions or damage/destruction of the equipment. Lessors (and assignees) rely on the payment stream and the lease should state that payment obligations shall not cease for any reason.
- 3. Acceptance** – This seems simple, but without an acknowledgment in the lease (or in a separate document ancillary to the lease) it can be difficult to determine when the lease term commences or whether the equipment has been delivered and fully installed. An acceptance certificate also fulfills another important function: to confirm that the lessee inspected the equipment and has determined it is in place and suitable for the lessee's needs. This can be extremely important to the extent the lessee later claims the equipment was not fully delivered or did not function as intended (I'd recommend a separate lessee signature on an acceptance certificate confirming these items).
- 4. Disclaimer of Warranties/Waiver of Defenses** – The lessor should disclaim express and implied warranties, including the warranties of merchantability and fitness for a particular purpose. Warranty disclaimers should be clear, unequivocal and, as required in some jurisdictions, conspicuous (in all caps). Include language that the equipment is being leased "as-is" and "with all faults." The lease should specifically disclaim any lessor liability for lessee damages or specific performance in connection with the lease. If the lessor plans to assign to a funder, consider providing that the lessee is not entitled to assert any claims, defenses, setoffs or counterclaims against the assignee that might be raised against the lessor.
- 5. Risk of Loss/Insurance** – The lessee should be solely responsible for, and otherwise bear the entire risk of, damage, loss, theft and destruction of the equipment for any reason. Provide that to the extent of damage to, or partial loss of, the equipment lessee is obligated to repair and restore it. To the extent of theft or complete destruction of the equipment, the lessee should be responsible for replacement or for a stipulated loss/casualty value payment to compensate the lessor and its residual interest. Require the lessee to insure the equipment for its replacement cost (naming the lessor as an additional loss payee) and to obtain liability insurance (naming the lessor as an additional insured). The amount of liability insurance necessary is asset and industry dependent. Require that the lessor receive 30 days written notice from the insurer prior to cancellation. If the equipment stores data, consider additional coverages for data loss and misuse scenarios.
- 6. Default and Remedies** – Defaults and remedies could be the subject of an entire article; however, the lease should minimally provide that the lessee's failure to make timely payments constitutes an event of default. Also, the lessee's

2020

ELFA Annual Calendar of Conferences, Workshops and e-Learning Opportunities

FEBRUARY

February 23-25

EQUIPMENT MANAGEMENT CONFERENCE & EXHIBITION

Omni ChampionsGate • Orlando, FL

MARCH

March 8-10

EXECUTIVE ROUNDTABLE

The Ritz-Carlton Golf Resort, Naples, FL

March 25

19TH ANNUAL IMN/ELFA INVESTORS CONFERENCE

Union League Club • New York, NY

APRIL

April 7-9

PRINCIPLES OF EQUIPMENT LEASING AND FINANCE WORKSHOP

Offices of Accenture • Chicago, IL

April 20-21

WOMEN'S LEADERSHIP FORUM

Hilton Palmer House • Chicago, IL

April 21

BANK BEST PRACTICES ROUNDTABLE

Hilton Palmer House • Chicago, IL

April 21

CAPTIVE AND VENDOR FINANCE BEST PRACTICES ROUNDTABLE

Hilton Palmer House • Chicago, IL

April 21

INDEPENDENT BEST PRACTICES ROUNDTABLE

Hilton Palmer House • Chicago, IL

April 21-23

32ND ANNUAL NATIONAL FUNDING CONFERENCE

Hilton Palmer House • Chicago, IL

April 21

EMERGING TALENT NETWORKING EVENT

Hilton Palmer House • Chicago, IL

MAY

May 3-5

LEGAL FORUM

Omni Shoreham Hotel • Washington, DC

May 20

CAPITOL CONNECTIONS

The Washington Court Hotel • Washington, DC

JUNE

June 1-3

CREDIT AND COLLECTIONS MANAGEMENT CONFERENCE & EXHIBITION

Hilton Palacio Del Rio • San Antonio, TX

June 9-10

TAX BEST PRACTICES ROUNDTABLE

Offices of Akerman • Chicago, IL

June 17-19

PRINCIPLES OF EQUIPMENT LEASING AND FINANCE WORKSHOP

ELFA • Washington, DC

JULY

July 15-16

EMERGENCE2020

Magnolia Hotel Denver • Denver, CO

July 15

EMERGING TALENT NETWORKING EVENT

Magnolia Hotel Denver • Denver, CO

SEPTEMBER

September 14-16

OPERATIONS & TECHNOLOGY CONFERENCE AND EXHIBITION

Sheraton New Orleans • New Orleans, LA

September 14-16

LEASE AND FINANCE ACCOUNTANTS CONFERENCE

Sheraton New Orleans • New Orleans, LA

September 14

EMERGING TALENT NETWORKING EVENT

Sheraton New Orleans • New Orleans, LA

September 15-17

PRINCIPLES OF EQUIPMENT LEASING AND FINANCE WORKSHOP

Offices of Stonebriar Commercial Finance • Plano, TX

OCTOBER

October 25-27

ELFA 59TH ANNUAL CONVENTION

JW Marriott Austin • Austin, Texas



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PRINCIPLES OF EQUIPMENT LEASING AND FINANCE WORKSHOP

ELFA instructors have been introducing equipment finance company employees to the basics of the business for three decades. For workshop details, visit www.elfaonline.org/events/.

If the 2020 dates and locations do not fit your schedule and you have 10 or more employees you would like to send to the workshop, ELFA can bring the workshop to you. Contact Alexa Carnibella for further details and pricing, 202-238-3416 or acarnibella@elfaonline.org.

For the latest information and updates go to:
www.elfaonline.org/events/calendar/



failure to adhere to non-monetary obligations, and its furnishing of false or misleading information to the lessor, should constitute events of default. Consider whether to require a written default notice and a cure opportunity prior to exercising the lessor's remedies, or whether to empower the lessor to pursue remedies without notice. Remedies should minimally include rights to: (a) terminate the lessee's rights under the lease, but not its obligations; (b) recover all accrued and unpaid lease payments as of the default date; (c) accelerate and cause to become immediately due the present value of future amounts due under the lease; (d) authorize the lessor to retake possession of the equipment; and (e) pursue remedies available at law, equity or pursuant to any statute.

7. **Grant of Security Interest/Authorization to file UCC-1** – Provide that notwithstanding the transaction is intended to be a true lease, the lessee grants a security interest in the equipment (with language also addressing proceeds, accessions, replacements, etc.) and authorizes the lessor to file a UCC-1 Financing Statement. This offers protection for lessors if the transaction is later determined to be a disguised security agreement.
8. **Late Fees** – To cover the lessor's administrative and operational expenses to address slow payers, consider language entitling the lessor to recover a late fee if the lessee fails to timely pay. Five percent of the amount due is popular in the industry, but consider whether the transaction is a true lease, whether the lessee is an entity or an individual, applicable state law and customer relationships.
9. **Recovery of Expenses/Net Lease** – Many items fall into this category, including recovery of attorneys' fees, personal property taxes, license and registration fees, assessments, delivery and freight costs, installation expenses, etc. Regarding attorneys' fees, use broad language encompassing litigation expenses, fees incurred in asserting the lessor's rights in bankruptcy, expenses incurred in government investigations and expenses incurred whenever the lessor is required to assert rights and pursue lease remedies.
10. **End of Lease Options** – Unless the lease is a simple rental agreement, at the end of the term, the lessee will be required to return the equipment or exercise a purchase option. Many leases provide that unless the lessee returns the equipment or exercises an option, the lease automatically renews. The equipment's economic life and the amount of the purchase option may impact whether the transaction is a true lease. Additionally, some states employ strict requirements to enforce automatic renewals. The lessor should be thoughtful in drafting these provisions.

Nice to Haves

- **Assignment/Sublease Language** – The lessor should have the right to assign the lease to a funder. The lessee should not have the right to assign the lease without consent.
- **Choice of Law and Venue** – Considerations include where the lessor maintains operations and/or personnel, equipment deployment locations and whether the equipment is fixed or moveable.
- **Waiver of Jury Trial** – Equipment leasing concepts are often challenging to explain to judges, much less juries. Jury waivers are not enforceable in some jurisdictions.
- **Equipment Maintenance** – To preserve the lessor's residual, require the lessee to adhere to applicable manufacturer's specifications. Depending on the type of equipment leased, maintenance provisions can be very robust and specific.
- **Lessee Representations and Warranties** – Among others, representations from the lessee that it: (a) is duly organized and authorized to conduct business; (b) is empowered and authorized to enter into the lease; (c) holds all licenses and permits to conduct business; and (d) has paid all taxes can be powerful lessor tools in the event that facts later emerge to challenge the legitimacy of the transaction or imperil the equipment.
- **Landlord/Mortgagee Waiver** – Usually set forth in a separate document rather than a provision, if the equipment will be installed on mortgaged or leased property, this can assist a lessor in avoiding fights with other lenders and landlords regarding lien priority, and it may assist a lessor in gaining access to the equipment in the event of a default and/or abandonment without having to pay the landlord.
- **No Alterations** – Be clear that the lessee may not alter equipment without the lessor's consent. Include language that if the lessee does so, the alterations become property of the lessor.
- **Inspection Rights** – This can be an important tool, as the lessor owns the equipment. A must-have for mid- and large-ticket lessors.

Some will disagree whether the above "must haves" are all indeed necessary, or whether some "nice to haves" should be mandatory. There is certainly room for differences of opinion, debate and discussion depending on, among other things, an organization's customer base, portfolio makeup and risk profile. ☰



BENJAMIN J. COURT is a Partner at Stinson LLP and a member of the ELFA Legal Committee.



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EQUIPMENT LEASING AND FINANCE ASSOCIATION
Equipping Business for Success

The Sky Is Not Falling!

In the wake of the lease accounting and tax code overhauls, there are more reasons than ever to lease and finance equipment.

ASC 842 (“Leases”) has become effective for larger companies with fiscal years starting after Dec. 15, 2018, and the Tax Cuts and Jobs Act was passed at the end of 2017. These are two major changes for the equipment finance industry and so far during 2019 we have not seen any major fallout from these two dramatic changes.

The last major Tax Code overhaul was about 30 years ago and the last major lease accounting “overhaul” was around 1977—about 40 years ago!

Think about it: The last major Tax Code overhaul was about 30 years ago and the last major lease accounting “overhaul” (if you call the formalization of lease accounting standards under FASB 13 an “overhaul”) was around 1977—about 40 years ago! For those of us who were in the industry when both of those changes occurred, we recall that they did not spell the beginning of the demise of the equipment finance industry. And in my opinion, neither will these two major recent events. In fact, if anything, they simply reinforce the core reasons for equipment leasing and finance in the first place!

Remember that one of the primary reasons for leasing is *the need for capital* to acquire assets to continue to run businesses. And by business we mean the business of commerce, the business of shipping goods, the business of providing services by various governments, the business of generating alternative energy, the business of transportation, the business of providing health-care and the business of providing infrastructures, to name just a few.

So to remind everyone that one can make an entire career out of equipment leasing and finance even starting today, we are going to restate the obvious!

Benefits of Leasing and Structured Finance Remain

A majority of U.S. businesses finance some of the acquisition of the usage of their assets using leasing or a structured financing solution akin to leasing, such as a power purchase agreement or an energy services agreement.

Let’s briefly look at some of these reasons to remind ourselves and our customers why they should continue to use these products to finance their businesses!

■ **Tax management** – Leasing and structured financing allows users to more efficiently manage some of their federal income taxes. When entities cannot efficiently

utilize all the tax deductions or credits on a current basis or even at all (for instance tax-exempt entities), financiers are often able claim the benefits and share them with the user via lower rental payments or power rates. For instance, virtually all wind and solar installations are financed using some transfer of the tax credits and deductions to an entity that can more efficiently use them. Many of these installations provide reduced-cost power to entities otherwise not able to use them, including tax-exempt entities. Also, under the new limitations for currently deducting interest expenses (currently limited to 30% of tax EDITDA), leasing an asset or buying the power rather than financing it with debt avoids the incurring of interest expense. Therefore, the new Tax Code makes tax leasing and structuring financing more beneficial than ever.

- **100% financing** – Both leasing and structured financing generally provide for 100% of the financing of the assets being acquired. Most entities finance purchased assets using a combination of expensive equity along with debt. An industrial company may assume a 40-50% or more equity portion and the remainder in debt. The equity buffers a lender from loss should the business fail. Rather than needing to use this costly equity to buffer a lender from the risk of loss, leasing and structured financing assume the full risk of ownership of the asset.
- **Financial reporting** – Compared to reporting 100% of the value of an asset on their balance sheet, leasing and structured finance still enable a user to utilize an asset and only report the portion that they have committed to use. Often only 60-70% of it is reflected on the user’s balance sheet. This reduced balance sheet reporting provides for improved return on investment and return on assets compared to a loan, simply because the entity does not report 100% of the asset’s value. Additionally, under ASC 842’s accounting for a

capitalized operating lease, the rent expense is still level compared to the front-end loading of expenses reported with ownership financed by a loan.

■ **Remaining more current with technological innovations** –

Lessees can remain more current with technology by acquiring and upgrading equipment more frequently compared to loan financing. Manufacturers of assets constantly improve models to sell the next generation of assets, either by lowering the cost of ownership (think improved fuel mileage and reliability and reduced maintenance costs) or providing greater technological advances (such as greater resolution produced by MRIs and CTs). Lessees avoid the residual risk of the asset at the end of its usage because the lessor assumes that risk. Leasing enables entities to acquire the usage of these newer, more advanced assets without dealing with the remarketing of the older assets. Just like with a car lease, they simply return the asset at the end of the lease.

■ **Cash flow management** – Leasing often provides for lower, more manageable and flexible payments compared to a loan. Lease payment structures and power purchase agreements are notably more flexible than loans. The Tax Code allows for rent holidays as well as non-uniform rent payments and as such most leasing companies are geared towards providing

much more flexibility with regards to payment plans. Because leasing also funds specific identified assets, it allows an entity to utilize general debt sources for financing those items not otherwise easily financed, such as sales development or research and development expenses.

As organizations implement ASC 842 and analyze the implications of the Tax Cuts and Jobs Act, the leasing professional may assist by reminding them of the benefits of leasing from a financial reporting, economic and tax perspective. It is time to show them again why leasing continues to make good business sense! ☰



JOE SEBEK, CPA, is Director of Tax Reporting for Siemens Financing Services. He is a member of ELFA's Financial Accounting Committee and Alternative Energy Subcommittee and is Chair of ELFA's Federal Income Tax Committee in New York State.

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Seeking Clarity on Section 1071

ON NOV. 6, 2019, the Consumer Financial Protection Bureau (CFPB) held a symposium on the small-business lending marketplace and the future of Section 1071. Section 1071 of the Dodd-Frank Act will, once in force, require certain demographic information to be collected about credit applicants and provided to the CFPB. As mentioned in the last edition of this magazine, the CFPB is moving deliberately on Section 1071, and while the speed of their action has significantly accelerated in recent weeks, progress on Section 1071 is still glacially slow. Some key takeaways from the symposium include the following.

Open Issues Abound

Somewhat shockingly, nine years after the passage of Dodd-Frank, it seems like every issue is still an open issue. During the symposium the panelists were asked to discuss issues that are elemental to any final rules. For example, during their opening remarks the CFPB officials referred to Section 1071 as requiring the collection of certain information about credit applications by woman-owned, minority-owned or small businesses. However, from the discussion, it is clear that there is no clarity on whether the rules will require collection from only businesses that fall into those categories, or if information will be required from every applicant, including publicly traded companies.

Headline Issues Are Getting the Attention

During consideration of Section 1071 and in the years afterwards, the definition of small business has been a key issue. Everyone involved with this process has agreed that a clear definition is key. Inherent in that belief is that the Small Business Administration (SBA) definition is unworkable. The SBA defines small business based on NAICS codes so that, in order to be a small business, an apiculture (beekeeping) small business must have less than \$1 million in gross revenues, while a food product machinery manufacturer must have 500 or fewer employees.

While this is important, the issue here is really bureaucratic, and has provided a smokescreen for thornier issues like the fact that determining ownership of a small business can be quite complex when there are multiple owners, or the owner is not completing the application.

Community Investment Groups Have a Big Appetite

The National Community Reinvestment Coalition was one of the groups represented at the symposium. Their appetite for data collection under this rule is not small. They earnestly believe that commercial financiers collect this information already, and it is not a big deal to require it to be submitted to the government. First this is not true; businesses are currently prohibited from collecting racial or almost any gender information about their customers and, second, it ignores the fact that significant portions of the commercial finance marketplace currently have no federal functional regulator, so any regulatory regime is all new.

Winners and Losers (Exemptions and Inclusions)

It is clear that many of the symposium participants have determined that there may be a parochial benefit to partnering with the CFPB in this regulatory effort and pushing for more regulation in some areas and less in others. For example,

one panelist specifically indicated that annual percentage rates (APR) should be collected as well as information about merchant cash advances. The logic is that if APR is collected, many of the lenders charging triple-digit APRs might exit, leaving the market smaller and possibly more reputationally sound. Another indicated that certain types of activity, including leases, were obvious candidates for collection, while others might not be. It was also suggested that third-party provision of some information, such as revenues, might be desirable, reducing the amount of information required to be collected by the financier.

It will be left to the CFPB to determine which portions of the financial services industry to exempt, and which data elements to include, and those decisions will have significant impacts on the commercial finance marketplace. One can hope that the CFPB will start making some of the big decisions publicly, so that the market can rationally prepare for this regulatory regime.

For those interested, the entire symposium is available on the CFPB's website at <http://bit.ly/2WTrwT5>. ☰



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

Executive Roundtable



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Complete details and registration information coming soon.

Contact Lisa Ramirez at lramirez@elfaonline.org to receive information about this Roundtable.



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New York Finance Lenders License Legislation Introduced

NY SB 6688 by Sen. James Sanders, Chairman of the New York Senate Banking Committee, was introduced on Sept. 6, 2019. Similar to the California lenders license, this bill would require licensure of companies offering commercial financing products in New York State. (See more on this topic in the cover story on p. 14.)

The Legislative and Regulatory Subcommittee of the ELFA Legal Committee is guiding our industry response. ELFA members with New York based resources able to join in this advocacy should contact Scott Riehl, ELFA Vice President, State Government Relations.

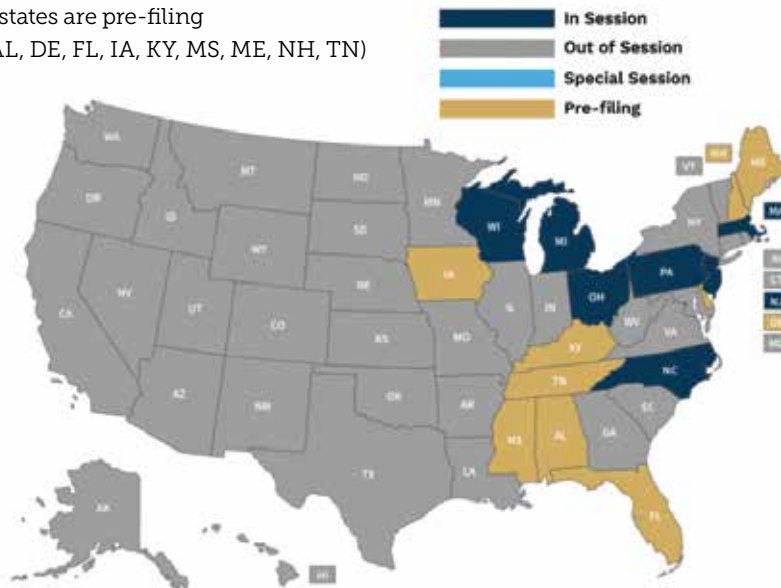
Subcommittee Submitted Summary

- The bill requires businesses making or soliciting commercial financing products to businesses in New York to be licensed by the New York Department of Financial Services.

- Commercial financing products are defined as:
 - Loans or lines of credit under \$500k
 - Purchase transactions (Factoring Receivables) under \$500k
 - Commercial leasing under \$500k
- “Making or soliciting” is defined broadly and includes marketing, bank partnerships, referrals (brokers for compensation) and traditional lending or purchasing of receivables.
- Exemptions:
 - Less than five financing products per year
 - Banks and credit unions

State Legislatures in Session (as of Oct. 11, 2019)

- 7 states are currently in regular session (MA, MI, NC, NJ, OH, PA, WI)
- 0 states are in special session
- 34 states are out of session
- 9 states are pre-filing (AL, DE, FL, IA, KY, MS, ME, NH, TN)



- The bill includes a licensure regime with requirements for application, condition for issuance, changes of control, grounds for suspension or revocation, examination and recordkeeping.
- There is a section that prohibits advertising any statement or representation with regard to rates, terms, costs or conditions that are false, misleading or deceptive.
- The bill prohibits confessions of judgment.
- The bill provides that DFS should provide regulations to implement these requirements.

The bill can be found at <http://bit.ly/2VxamcY>. ☰



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

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Foundation Celebrates 30th Anniversary

Record support and resources mark milestone year

Foundation Founder Inducted into Hall of Fame



Paul S. Gass

ELFA named Foundation Founder Paul S. Gass to the 2019 Class of the Equipment Finance Hall of Fame at the 58th ELFA Annual Convention in Washington, D.C.

Gass's leasing industry achievements inspired him to give back. In 1989, he identified a need to generate awareness of and resources for the equipment finance industry and supported the creation of a non-profit corporation—the Foundation for Leasing Education—dedicated exclusively to the educational, charitable and scientific advancement of the industry. The invaluable Foundation resources and programs developed as a direct result of Gass's vision continue to propel the equipment finance sector forward.



Over 100 New Ambassadors Join Donor Family

The Equipment Leasing & Finance Foundation is funded entirely through donations from many generous corporations and individuals. These donations provide the necessary funding to develop key resources and trend analyses, maintain our grant program and support the research products published by the Foundation. In 2019 alone, over 100 new contributors began their legacy of giving back to the equipment finance industry. Thank you for your commitment to making a lasting impact!

Become a Foundation Ambassador

Post Internship Opportunities

Now is the perfect time to look ahead to the summer for opportunities to connect with the next-generation workforce. The Foundation launched a one-stop, digital Internship Center to provide a platform for students in search of internships and companies with

opportunities to connect. If you are an equipment finance company that offers internships, post your opportunities today!

Share Your Story

Pay-it-forward and become a Guest Lecturer to share your own experiences. The Foundation provides a ready-made, fully-customizable presentation developed

by industry experts to introduce students to the industry. Depending on your audience, the presentation includes additional slides that go in-depth on particular subjects (e.g., lease accounting). If you already have given or are planning to give a presentation, email Stephanie Fisher at sfisher@leasefoundation.org.

Learn more at www.leasefoundation.org/academic-programs/home/.

Data-Driven Reports Now Available to Position You for 2020 Success

To stay ahead of the curve, include invaluable Foundation reports in your strategic planning. Now available are two popular resources:



2020 Equipment Leasing & Finance U.S. Economic Outlook



2019 Equipment Leasing & Finance Industry Horizon Report

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



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Value in the Proposition

AS THE COMPANY CMO, I'm often asked my thoughts on advertising. Where should my firm place an ad? Who should design, copywrite and print our collateral? Direct mail or e-campaign? LinkedIn or Facebook?

Long before I extol the virtues of building a sound marketing plan or even touch upon the micro-details of search engine optimization, I boil the conversation down to something more fundamental yet indispensable to the success of any business plan: the company value proposition.

At North Mill, we're proud to work with many brokers, or referral agents, who excel at what they do. Creating a unique identifier that clearly resonates and succinctly separates one player from the next, though, is not easy to do for any firm. According to HubSpot, upwards of one-third of B2B businesses do not have an established value proposition. Indeed, in a sea of equipment finance brokers who call on a finite set of lenders, extricating oneself from the pack can make a big difference in the level of success achieved.

When discussing value proposition, I find it easier to highlight what it's not. It's not a slogan, tagline or a way to position yourself in the market. Instead, it's a business ingredient that solves a problem a competitor cannot solve—or at least cannot solve as well as you do. It's also a promise that assures you'll deliver value and why you're the best one to do so. Given the significance of the topic, much can be said. There is a short list of principles, however, that we at North Mill Equipment Finance abide by. A few worth noting:

Ask and Ye Shall Receive

One of our brokers newer to the equipment finance industry lamented that she just didn't know what to say in her value story. The suggestion: Who better to



Extricating yourself from the pack can make a big difference.

zero in on what the customer is looking for than the customer? At North Mill, we regularly survey our brokers on how we're doing. In the last year alone, we've implemented a list of enhancements based solely on broker feedback.

Benefits, Not Features

One referral agent was proud that his brokerage is family-run. A successful entrepreneur, he took it a step further and explained why that mattered to the customer. He didn't emphasize the feature, but instead, the benefit. At North Mill, we expound on the benefits of being a broker-centric organization—and our referral agents rest assured that we will *not* go direct.

Know Your Competitors

Determining the strength and weaknesses of the competition is no simple task, especially when the landscape is dotted with lots of similar firms. Websites, marketing materials and current and former customers are just a few potential sources to tap. At North Mill, we leverage broker testimonials and, in turn, recommend our brokers do the same with their customers.

Whenever we can help our value referral agents, we jump at the chance. Simple though it may seem, crafting a unique and effective value proposition can be daunting. But by practicing what we preach, and by doing what we say we're going to do, we believe we can offer sound advice. After all, helping our brokers succeed is part and parcel to our own value story. ☐

DON COSENZA, CLFP, is Senior Vice President and Chief Marketing Officer at North Mill Equipment Finance.



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Note: Rank excludes banks with high non-loan asset concentrations: Goldman Sachs, Morgan Stanley, BONY, State Street, Charles Schwab. Ranks as of 12/31/2018. Based upon total gross loans and total aggregated domestic deposits for bank holding company. Sources: SNL, FDIC, company reports. Subject to credit approval. Additional terms and conditions apply. Products and services offered by Capital One, N.A., Member FDIC. © 2019 Capital One.



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