GSCFM: Advanced Degree for Credit Professionals

The Graduate School of Credit and Financial Management (GSCFM) program focuses on a spectrum of essential business and individual professional growth disciplines. This two-year program will be held on the campus of American University in Washington, D.C. June 17–27, 2019 and June 22–July 2, 2020.

The program delivers high quality, application based credit, financial and management instruction in a setting designed for executive education. It challenges participants to examine issues and processes not simply from the standpoint of corporate credit and finance, but from a cross functional point of view. Participants will return to their companies with in-depth knowledge of the field and the ability to use that knowledge on the corporation's behalf.

FOR MORE INFORMATION:
nacm.org/graduate-school-gsfcm

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Assembling, Analyzing and Presenting a Credit Proposal

PRESENTED BY:
Joey Jordan
Helena Agri-Enterprises, LLC

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CALENDAR

JAN	
1/28	Post Judgment Collection Remedies
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FEB	
2/13	NACM Heartland Board Meeting
2/13	**WEBINAR:** Is Your Company Financially Efficient?
2/14	Heartland Lunch & Learn — Components of a Credit Write-up: assembling, analyzing and presenting a credit proposal.
2/14	**WEBINAR:** LC Series—Choosing the Right INCOTERMS for Letters of Credit: Why International Commercial Terms Matter and the Role They Play
2/21	National Ag Retail - MN Region Meeting
2/28	NACM Heartland Construction Meeting
MAR	
3/4	Certification Exam
3/7	National Ag Retail — IA Region Meeting
3/7	NACM Heartland Ag Spring Confrence
3/13	National Ag Retail — KS Region Meeting
3/21	**WEBINAR:** LC Series—Letter of Credit Documentation: How to Avoid Discrepancies
3/22	**CERTIFICATION:** Applications due for the CBA, CBF and CCE May 19 nationwide exam
3/28	NACM Heartland Construction Meeting
APR	
4/10	NACM Heartland Board Meeting
4/18	**WEBINAR:** LC Series—Roles and Responsibilities of Banks in the Payment Process
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Receiverships and Bankruptcies:

A PRIMER FOR TRADE CREDIT PROFESSIONALS

BY WANDA BORGES, ESQ.
BORGES & ASSOCIATES, LLC

CREDITORS ARE OFTEN CONFUSED BY THESE SEEMINGLY SIMILAR INSOLVENCY PROCEEDINGS. WHILE THEY MAY BE SIMILAR, THEY ARE QUITE DIFFERENT.

So, what is the difference between a bankruptcy and a receivership?

A bankruptcy, as the term is generically used, is a formal insolvency proceeding which takes place in the United States Bankruptcy Court and is governed by federal law, including the Federal Rules of Bankruptcy Procedure. There are five distinct kinds of bankruptcy proceedings. This article will only address business bankruptcies.

Chapter 7 – commonly referred to as a "straight bankruptcy." In a chapter 7 proceeding all assets of a debtor are turned over to a chapter 7 trustee who liquidates those assets. The proceeds of that liquidation are then paid to creditors in the order of priority set by statute.

Chapter 9 is a reorganization of a municipality. The best-known chapter 9 proceeding was the City of Detroit.

Chapter 11 is a reorganization of a business wherein the goal is for that business to restructure its debts, formulate a plan of reorganization to pay its creditors or sell some or all of its assets in order to formulate a liquidating plan that will pay money to its creditors.

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>> RECEIVERSHIPS AND BANKRUPTCIES

Chapter 12 is a reorganization of a family farmer, which can be a business operation. This also applies to family fisherman or family ranchers which may also be business operations.

Chapter 13 is a reorganization of an individual with regular income. The common type of business which may file a chapter 13 proceeding is a sole proprietor or a partner in a partnership. In a chapter 13 proceeding, the individual must give up its "disposable income" to a chapter 13 trustee for distribution to his/her creditors in the order of priority set by statute.

Chapter 15 is best known as a "cross-border insolvency." A chapter 15 is used in the United States in order to recognize and work with another insolvency proceeding taking place in a country outside of the United Sates and is filed in order to protect the U.S. assets while the insolvency proceedings are ongoing.

A receivership is a state court or federal court and is an extraordinary remedy which preserves and protects property, either while a lawsuit is ongoing or in order to protect that property while a purchaser of that property is sought so that such property will not be dissipated or removed from the jurisdiction of the court. A Receivership takes place through a court order and is utilized only in exceptional circumstances and with or without the consent of the owner of the property. A "Receiver" is an independent person appointed by the court to take charge of the business and property of the debtor while the court is deciding to whom the moneys belong.

+ When might a credit professional encounter a receivership situation?

More often than not, a receivership is commenced by an entity who holds a lien/mortgage on the real property and is seeking to take possession of that real property. That mortgagor or lien holder will often seek the appointment of a receiver in order to make sure that the debtor does not damage, destroy or dispose of that property while the lien holder is seeking a court order to turnover that property to it.

+ What do credit professionals need to understand about receiverships?

Once a receiver is in place, that receiver can still purchase goods or services from creditors and the creditors will be paid by the receiver. A credit professional must be sure, however, to clarify its records so that the receiver becomes primarily responsible for any assets sold to it or services rendered to it so that the creditors' claim does not become mixed into the fray of what was owed by the original debtor.

+ How might they best handle receivership? Are there any special rights or concerns?

The most important thing for creditors to understand is that there is a priority lien creditor who is trying to get possession of the original debtor's assets. Therefore, a creditor must make sure that it does not allow any delayed payments by the receiver so that the creditor will be in a worse position that it was in the first place.

Moreover, receiverships are governed by state law and the laws, while similar, are different from state to state. The primary issues for a creditor in a receivership are:

1. There will likely be a time deadline for creditors to file pre-receivership claims. Generally, that deadline is ninety-days from the date of the appointment of the receiver.
2. Goods sold or services rendered to a receiver must be paid timely by the receiver.
3. Some states provide for a receiver to recover preferences (like in a bankruptcy) and the defenses to the preference attacks differ from state to state.
4. There is no creditors' committee in a receivership.
5. There is no automatic stay in a receivership. However, a receiver may seek a court order stopping a creditor from proceeding with its action.

+ Is this something that is more prevalent now than perhaps in the past? If so, why?

In some states, where receivership laws provide for preference recoveries with little available defenses, (such as New Jersey or Wisconsin), receiverships have become more popular. In addition, the cost of a receivership is generally less expensive than the cost of a bankruptcy proceeding where there is a secured creditor (lien holder or mortgagor) and can be quicker and more efficient than a bankruptcy proceeding in federal court. The disadvantage for the trade creditor, however, is that the receivership will likely be more advantageous to that lien holder with little return to the unsecured trade creditor body.

Lessons Learned

FROM BEST PRACTICES LUNCH

In November, more than 30 members gathered for our annual Best Practices Roundtable. The conversation was informative, lively and fun. Here's a recap of some of the topics discussed:

Credit Card Surcharging
One member discussed with the fees on credit cards, "I could pay for another person for what I pay in fees." While there was general grumbling of agreement, members shared how they dealt with the surcharging.

+ Most acknowledged that they accept cards – but many don't apply a surcharge.
+ An example was given from a member who charges a 2% surcharge on all credit card transactions. To do this in compliance with regulations surrounding surcharges, the fee was first communicated with the processor. Then the fee was posted at the front desk, on receipts, as well as part of the agreement signed with new customers. This surcharge has prompted more payments in cash.

Internal Support of Collections Process
"Money is not money if it is 90 days past due," observed one participant. Another noted that bankruptcies are happening to companies that haven't been late on payments. And yet another talked about how deteriorating commodities prices were a concern. Clearly, collecting accounts receivables in a timely fashion is a concern.

+ The sales team was mentioned as a frequent offender of attempting to ignore measures put in place. "A credit hold should be a credit hold until the money is collected, a payment plan is put in place, or the situation is understood and dealt with." Most felt it was their responsibility to educate the sales teams why certain actions are taken and when. This includes making sure they understand the company's credit policy.

Purchase Orders
Have you noticed that POs rarely have all the information you need? One member suggested making sure you match up POs with current credit applications so you can be assured the customer understands the terms. It also gives you a chance to double check the client isn't changing the terms.

Using ACH
At least two participants discussed how using ACH has helped in the accounts receivable process. "We send an invoice on Tuesday and ACH on Friday. This cuts down on discrepancies, but it also forces a conversation before a client goes delinquent."

And, what happens if there wasn't enough money in the account? "I am willing to wait a week or until they notify me there is money. Most of the time it is just a matter of a couple of days," the NACM Heartland member said.

ICE and Credit Exchange Groups
Ongoing access to ICE and credit exchange groups were mentioned as invaluable tools for extending credit. Among the reasons:

+ No other place to get such current, relative information.
+ The ICE watchlist makes it easy to see shared customers that are past due.
+ The ICE credit score is useful.

Ask the board: When do you waive service charges?

Norman W. Honas
Helena Agri-Enterprises, LLC
Credit Manager
West Des Moines

We always attempt to collect 100% of our service charges with late customers. We will make adjustments to service charges (on a case by case basis) when the following occurs:

1. Timing of when the check is applied against the account.
2. Invoicing issues.
3. Product complaint issues.

Ty Knox
EFCO Corp.
Director of Credit & Risk
Des Moines

EFCO is an equipment leasing company so we execute a rental agreement (contract) for every project we are asked to supply equipment on. One of the standard clauses in our contract is PAYMENT TERMS which includes finance charge language for delinquent payments.

My collectors have the ability to waive one finance charge per year without additional approvals. This is solely at the discretion of the collectors and is dealt with on a case by case basis.