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THE CREDIT DEPARTMENT IN A TIME OF WAR AND TERRORISM: DEALING WITH THE AFTERMATH OF SEPTEMBER 11

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and

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September 11 has changed our lives. On the commercial credit front, credit professionals are experiencing greater risk with their open account sales. Customers are warning of earnings shortfalls. Bank financing, bond offerings and IPO's are significantly down since Sept. 11, making it difficult for customers to borrow. Customers are laying off workers in the face of fewer orders, delaying product orders, merging with competitors because of the downturn in business, facing extraordinary insurance

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UNITED STATES SUPREME COURT ENFORCES STATUTE OF LIMITATIONS TO SUE OVER CREDIT REPORTS

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The United States Supreme Court has resolved a conflict among the circuit courts to consider how long a consumer has to bring a claim under the Fair Credit Reporting Act. The FCRA provides that a consumer has two years in which the claim arises to bring an action under FCRA. With the case *TRW, Inc. v. Andrews*, 00-1045, the U.S. Supreme Court has decided when the cause of action arises for the purposes of determining the two year limitation.

The FCRA

The FCRA regulates the use of individual credit reports and credit information. Generally the collection of business, trade, and commercial credit reports are not covered by FCRA. The FCRA insures that credit reporting agencies, and the users of such reports, will respect a consumer's right to privacy by pulling consumer credit reports only after express written authorization from the consumer.

Pulling Individual Credit Reports

The Federal Trade Commission is a federal regulatory agency that enforces the provisions of the FCRA. The FTC has vacillated on whether a vendor extending commercial credit must obtain the consumer's consent prior to pulling a consumer credit report to be used for business purposes, or for a personal guarantee of business credit. To be safe, a vendor should obtain the consumer's consent prior to pulling a consumer credit report when extending credit for business purpose.

Penalties For Violating FCRA

The private enforcement provisions of the FCRA permit a consumer to bring civil suit for willful noncompliance with the FCRA, with no ceiling on punitive damages. The consumer may sue for negligent noncompliance, for actual damages sustained. The consumer may also seek to recover the consumer's attorneys' fees. In addition, criminal penalties may also be assessed including fines and imprisonment against any person who knowingly and willfully obtains a consumer report under false pretenses.

The Statute Of Limitations Under FCRA

The FCRA provides that a consumer has two years from the date the claim arises in which to bring an action under FCRA. But when does that time begin to run? When a vendor pulled the credit report without the consumer's authorization, or when a consumer learns that the report was pulled? The difference between the two may be considerable.

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IS YOUR CUSTOMER IN THE "ZONE OF INSOLVENCY" AND UNABLE TO PAY VENDORS – YET PAY BONDHOLDERS?

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Credit professionals whose companies are providing goods and services on credit to telecommunication customers, indeed, companies whose value is comprised of intangible assets, are vigilant for red flags indicating greater risk with sales to the telecom industry. The telecom industry continues to shake out, with Chapter 11 a commonplace refuge to escape immediate payment of vendors' claims as seen by such companies as PSINet, Rhythms NetConnections, Teligent, 360networks, Viatel and Winstar Communications.

Telecom companies usually have at least three types of creditors: banks, bondholders and vendors. Unlike vendors who have a continuing relationship with a telecom customer by providing product or service, bondholders purchase the company's debt and do not have continued relationship with the company unless the company's defaults on the bond issue.

Recently, bondholders have been active demanding cash from telecom customers, even though there has been no technical default under the bond indenture agreement. Bondholders contend that certain telecoms are in the "zone of insolvency", as their cash burn rates outstrip revenue, and that they must immediately liquidate or restructure their debt and pay bondholders. This bondholder activism is recently evidenced by Covad Communications concession to pay bondholders $283 million in advance of filing Chapter 11 even though Covad had not defaulted on its bond issue. Another example, a bondholder has sued Mpower Corporation and its officers and directors, contending the company is in the "zone of insolvency" and bondholders must be paid.

Given bondholders novel strategy to press companies for immediate payment under the theory the customer is in the "zone of insolvency," what are the additional credit risks, both direct and indirect, for a credit executive in assessing an existing customer's credit line, and new open account sales in the telecom industry, including the use of cash burn rates.

Shakeout Of Telecoms

In 1996, the Federal Telecommunications Act was enacted by the U.S. Congress to deregulate the telecommunications industry. However, the Telecom Act seems to have spurred scores of bondholder defaults and bankruptcies. 360 Networks defaulted on $1.5 billion in bonds and filed bankruptcy; PSINet defaulted on $2.9 billion of bonds and filed Chapter 11; Winstar Communications defaulted on $2.9 billion in bonds and filed Chapter 11.

Creditors are alarmed with the telecom shakeout and how poorly they fare in a telecom bankruptcy. A telecom company is comprised of intangible assets whose value is fleeting when it encounters financial difficulty. A telecom Chapter 11 results in pennies on the dollar for unsecured creditors. Bondholders in particular have become active in hopes to avoid future

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FROM THE PUBLISHER:

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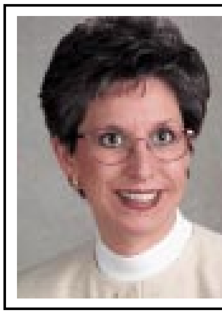
If you have a hot topic affecting the credit and financial professional, e-mail this to Scott.

Guest Column

A LOOK AT ALTMAN'S Z-SCORE

Cindy Moorhead



Question: What is Altman's z-score and how can I use it in my analysis of customer financial statements? Answer: Altman's z-score is a statistical ratio model developed by Edward I. Altman to predict the probability of bankruptcy within two years. While some credit people tend to use this as a magical formula that can predict bankruptcy, it really is not based on magic at all. Here is how statistical models are developed:

First, the modeler would identify some criteria, such as bankruptcy, for failing firms. They then pick a sampling of firms who meet the criteria. They must pick enough firms that meet the criteria for results to be considered statistically valid.

Once they have identified firms having the desired criteria, they would find a similar group of companies, with the only difference being these firms are financially healthy.

Financial statements of these two types of companies would be entered into a database. With the help of computer analysis, a determination would be made of which financial ratios are consistently and significantly different for a healthy and bankrupt company.

Last, a scoring system is developed to weight the importance of the different ratios.

There are actually three different z-scores that have been developed by Edward Altman. The original z-score was developed in 1968. This formula was developed for public manufacturing firms and elimi-

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UNITED STATES SUPREME COURT ENFORCES STATUTE OF LIMITATIONS TO SUE OVER CREDIT REPORTS (Continued)

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U.S. Supreme Court's Decision

The U.S. Supreme Court has decided whether the statute of limitations begins to run when the wrongful credit disclosure is made or when the individual knows or has reason to know of the act. In *Andrews*, the problem began when a business copied personal information about an individual, and fraudulently used the information about the individual. When the individual discovered the fraud, she requested the credit reporting agency to delete the fraudulent transactions from her report. The reporting agency complied, but the individual sued the agency claiming they did not do enough to insure that the information it sold was accurate. The lower court ruled that the claim against the reporting agency was timely pursued. The U.S. Circuit Court for the 9th Circuit disagreed and reversed the District Court holding that the individual could pursue claims against the reporting agency. The credit agency appealed to the U.S. Supreme Court.

The U.S. Supreme Court ruled 9-0 that the clock started to pursue claims against the credit reporting agency when the credit agency passed on the erroneous information, not when the individual discovered the fraud. The Supreme Court stated the deadline is clear under the FCRA and that changes would have to come from Congress. The Supreme Court's ruling places the burden of reviewing and insuring the accuracy of the credit report on the individual who is better able to determine the existence of an erroneous entry and limits the potential liability on the credit reporting agencies and creditors reporting to those agencies.

IS YOUR CUSTOMER IN THE "ZONE OF INSOLVENCY" AND UNABLE TO PAY VENDORS – YET PAY BONDHOLDERS? (Continued)

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meltdowns with their telecom customers.

"Zone Of Insolvency" Triggers Bondholders Activism

Bondholders are now pressuring telecoms to stop spending their cash and make immediate payments to bondholders.

Some telecoms are agreeing to make these extraordinary payments to bondholders to cut their debt and eliminate bondholder pressure. In one instance a telecom, Mpower Corporation, rejected a bondholder's demand for immediate payment or to restructure its debt and give equity to the bondholder. The bondholder sued Mpower and its officers and directors contending that the Mpower was in the zone of insolvency and owed a duty to bondholders to protect their investment.

The suing bondholder conceded that Mpower is not technically insolvent based on an analysis of current assets less current liabilities. However, the bondholder contends that the cash burn rate are such that Mpower requires almost $70 million per quarter to fund operating expenses, it will be insolvent within months. Given the directors of Mpower interests as beneficial owners of preferred and common stock, the suing bondholder contends that the directors have inherent conflicts of interest, which prohibit them from acting in the best interests of creditors. Mpower has denied the bondholder's allegations that is insolvent and has rejected the payment of the bond debt.

Fiduciary Duty Shifts To Creditors

Bondholders are pressuring telecoms for payment before any bankruptcy filing, as after the bankruptcy filing bondholders are left with only pennies on the dollar. However, prior to the company filing bankruptcy, the company normally owes its duty to shareholders before any filings. Once a company is in the "zone of insolvency," the company owes a fiduciary duty to creditors. The "zone of insolvency" is a gray legal area for courts. It is generally measured from an accounting view as liabilities exceeding assets. What does this mean to vendors? This means that a customer's officers and directors owe a duty of care and loyalty to creditors. Bondholders have used this emerging theory to demand immediate payment, even if there has been no default under the bond issue.

Effect of Bondholder Activism on Vendors

As a result of bondholder activism, vendors may only receive a small percentage of their open account, as demonstrated by Covad Communications' plan of reorganization that proposes a prorata payment to vendors. A vendor must not only carefully consider a customer's cash burn rate, but also whether the company has, or may be, obtaining bond debt. If the customer has bond debt, the vendor should consider the risks that bondholder activism may strike and the vendor's credit sale is at risk, notwithstanding a cash burn that indicates a near-term ability to pay a vendor's credit sale.

A LOOK AT ALTMAN'S Z-SCORE (Continued)

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nated all firms with assets less than $1 million. This original model was not intended for small, non-manufacturing, or non-public companies, yet many credit managers today still use the original z-score for all types of customers.

Altman later made two additional models (sometimes referred to as model "A" and model "B") to the original z-score. In 1983, the model "A" z-score was developed for use with private manufacturing companies. The weighting of the various ratios is different for this model as well as the overall predictability scoring. In addition, while the original score used the market value of equity to calculate the equity to debt formula, model "A" used stockholder's equity on the balance sheet.

Model "B" was developed for private general firms and included the service sector. In this statistical model, the ratio of sales to total assets is not used, the weighting on this model is different, and the scoring is, again, different.

Although computerized statistical modeling would aid in determining the weighting of each ratio, common sense helps us understand the purpose of each ratio used.

All three models use return on total assets, working capital to total assets, retained earnings to total assets and the equity to debt ratio. In addition, the original model and model "A" also used sales to total assets in the calculation.

Return on total assets is the ratio that has the highest weighting in each of the three models. This would be the earnings before interest and taxes divided by total assets. It is a measure of how efficiently a company operates before financial and tax considerations are taken into account. It makes sense that, in order to have long-term viability, a company must be able to efficiently produce a profit. The higher the profit generated in relation to assets being used, the stronger the company.

Working capital to total assets is another ratio used in the model. Working capital is an indication of liquidity and this formula would measure this liquidity in comparison to the size of all assets. Most firms file bankruptcy because (for various reasons) they cannot pay their bills, therefore it makes sense that some form of liquidity would be used in predicting bankruptcy.

Retained earnings to total assets is another formula used in the model. Long-term profitability accumulates in retained earnings. Many companies who file bankruptcy are new companies who have not yet had a period of time to accumulate profits. Therefore, it would make sense that firms who have accumulated profits into retained earnings over many years would be less likely to file bankruptcy.

Equity to debt is a formula in the model that would put a weight on the leverage of a company. The higher the debt in proportion to the equity, the more riskier a firm is considered.

The last ratio of sales to total assets is used only in the original z-score and the model "A" scoring. It is a measure of how efficiently the total assets are used to generate sales. Because this ratio varies greatly from industry to industry, it was not included in the model "B" scoring.

The z-score models were developed using large companies. The original model eliminated all companies with assets less than $1 million and the third model used assets averaging approximately $100 million. Small firms may have very different ratios than large companies. Therefore, none of the z-scores may be appropriate for small companies.

I have found in working with the z-score that it tends to be a quick look at the likelihood of a company filing bankruptcy. However, if you have already done good analysis of the financial statements and used your analysis to understand what is going on with your customer, you probably have already come to the conclusion as to whether or not your customer is on shaky financial ground. Using the z-score, in my opinion, does not give you a magical answer. If your customer is unprofitable, has negative retained earnings and is highly leveraged, chances are the statistical model of the z-score will also show you that this company is heading towards trouble.

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THE CREDIT DEPARTMENT IN A TIME OF WAR AND TERRORISM: DEALING WITH THE AFTERMATH OF SEPTEMBER 11 (Continued)

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premiums that may threaten their survival, and those customers that do not have enough cash or assets face a credit crunch, possibly resulting in bankruptcy and going out of business. The bankruptcy of one customer may result in the bankruptcy of one or more of its creditors, who may also be customers.

What does the new environment mean to the credit professional and credit agreements, customers and the economy? In such an environment, what are the real credit risks, both direct and indirect, in assessing an existing customer's credit line, and new open account sales? Of course, a customer's financial leverage is even riskier in today's environment.

But does this mean widespread defaults by customers on open account sales in the aftermath of Sept. 11? What steps should a credit executive take with credit sales in the face of recent events? Is the simple answer tightening credit extension and collections, or are there additional steps a credit professional may take?

A. Economic Impact on Customers

1. What Will It Cost?

The post-Sept. 11 costs to federal and state government and private industry are in the billions and on several levels. The U.S. government expects to spend billions in security.

Reports in the national media indicate that the insurance industry expects total insured losses to be between \$40 billion and \$70 billion. As of the end of October, 72,000 insurance claims had been filed in New York, alone. New York property claims associated with the Sept. 11th attacks are expected to reach up to \$16 billion, with an additional \$550 million in personal property claims, with automotive claims expected to exceed \$40 million.

Workers' compensation losses are expected to be \$4 billion to \$6 billion, aviation losses of \$5 billion to \$9 billion, liability claims of \$3 billion to \$20 billion, and life insurance claims exceeding \$3 billion. In addition, private industry is expected to spend billions more to protect employees in the future.

Local governments and cities report that municipal revenues have been affected by the Sept. 11 attacks, and many are finding it difficult to meet budgets, in part, because of a decrease in tax collection and an increase in expenses to cover security.

2. Worldwide Problems

The aftermath of Sept. 11 has and will significantly affect countries overseas. Many European companies claim to have business damaged because of the attacks. Some European governments are considering intervening with emergency tax measures. A number of European companies claim that Sept. 11 has resulted in a downturn in their business. Some question whether certain European companies are using this as an excuse for other problems facing the business.

As an example of political change, thousands of Iranians, who in previous years may have marched in the streets shouting, "America is the Great Satan," are now marching in the streets in protest of their fundamentalist Islamic government and chanting "We love you, America!"

3. Industry Wide Problems

The terrorist actions are impacting virtually all industries, and all segments along the production chain, from manufacturing to distribution to retail. Airlines, hotel and insurance companies are facing extraordinary losses resulting from the attacks. Likewise, telecommunications and transportation are seen as being strongly affected by these events which have only worsened the pressures on the American steel industry. Few customers will escape the downturn. Corporate customer purchases are being scaled back, as consumer purchasing wanes. It is reported that California, for example, will lose 265,000 jobs from the economic fallout of Sept. 11.

It may be difficult for the credit professional to discern those customers that are indirectly affected by the terrorist attacks. Scores of businesses have been indirectly affected by the terrorist attacks attributed poor financials to these events. Some customers may use these events as an opportunity for non-payment, whether legitimate or not.

4. Accounting Standards

For public companies, there was confusion as to the proper accounting and reporting as to the terrorist attacks. The Financial Accounting Standards Board (FASB), which oversees corporate accounting standards, pronounced that companies may not designate losses tied to the terrorist attacks as extraordinary items with their earnings announcements. FASB reasoned that the economic impact of the terrorist acts were so pervasive that it would be impossible to capture this impact in a single financial line item.

5. Litigation

A number of customers may be litigation targets surrounding the Sept. 11 events, or their customers, whom they derive a significant source of business. Scores of lawsuits are expected against airlines, the airplane manufacturer and building owners, among others, for failing to anticipate or take proper steps with the attacks. Insurance companies contend that they do not have the financial wherewithal to insure against the losses and have requested federal assistance. Insurance companies have conceded that their policies that include act-of-war policy exclusions does not bar claims from the Sept. 11 terrorists acts.

The prospect of widespread litigation has prompted federal legislative efforts to limit the scope of liability suits against certain parties. Federal legislation has already passed that protects United Airlines and American Airlines from litigation liability greater than their insurance policies. Fortunately (or unfortunately, depending on your perspective), many large multi-national companies carry comprehensive general liability policies with coverages in excess of \$100 million.

The federal government may propose leg-

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THE CREDIT DEPARTMENT IN A TIME OF WAR AND TERRORISM: DEALING WITH THE AFTERMATH OF SEPTEMBER 11 (Continued)

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islation that limits liability for all companies that are targets for such litigation. The concern is that absents caps on liabilities, insurance companies may refuse to issue policies, further disrupting the economy. Insurance companies have warned companies that policies will be cancelled in the next two months, because of the extraordinary liability.

To overcome the high cost of insurance premiums for terrorism liability, major airlines have formed an insurance pool to cover terrorist acts. The airlines would pay into an insurance fund to cover terrorist acts.

6. Insurance Premiums Rise

Many customers whose businesses were not directly affected by the terrorist attacks have found their property and casualty insurance rates increasing dramatically. Insurance companies are looking to recoup their losses from Sept. 11 through increased premiums.

Customers may be forced to consider unconventional alternatives to meet insurance needs such as terrorism bonds, wherein companies issue the bonds and pay off in the event the company is a target of a terrorist event. Another avenue may be insurance pools sponsored by municipalities that do not profit.

7. Bankruptcies

The aftermath of Sept. 11 is causing an increase of bankruptcy filings. Many companies were already suffering through a slowing economy before Sept. 11, and these events have created financial crisis forcing bankruptcy filings with the result of suspending payment of creditors. Many customers will face dramatic increases in their business insurance premiums, which may further squeeze their ability to meet expenses. Some customers may find themselves in default of their bank loan covenants if they are unable to obtain Planet Hollywood and Bethlehem Steel both attribute the aftermath of Sept. 11 as uncontrollable events that have forced them to file bankruptcy. Likewise, home furnishings retailer House2Home attributed a downturn in its business to the Sept. 11 attacks, which forced a Chapter 11 filing. A number of restaurants have likewise pointed to Sept. 11 as a cause for their failure to meet trade debt and filing bankruptcy.

Absent federal legislation to limit liability, insurance companies are facing questions as to their survival. Lloyd's of London may have to cover up to $8 billion in losses in the Sept. 11 attacks. Federal legislation is being considered that would force the U.S. government to pick up the cost of future terrorist acts, after insurance companies have made an initial contribution, such as in the $10 billion range.

8. Fraud and Bustouts

Given the problem economy, a credit professional must be especially vigilant of customers taking steps to stay afloat, including fraudulent accounting and reporting practices. Vendors should also be mindful that the FBI and policing agencies are focusing on homeland security, making white collar crime and bust out schemes a lower priority. The Justice Department has shifted its focus from investigating and prosecuting past crimes to investigating threats of future terrorist attacks. Given the focus of law enforcement on combating terrorism and not domestic business fraud, bust-out artists may sense an opportunity to conduct fraudulent schemes against vendors.

Common red flags for the credit professional to identify fraud or a bust-out include a fake company name that is similar to the name of a well-established company. Another flag is unusually large profits depicted on the income statement — if that statement is even provided. Indeed, it may be delivered to an address other than the business address. Finally, a large merchandise order following a history of small orders should raise a question for a credit executive dealing with a relatively new vendor.

There are several steps credit executives can take to protect themselves from fraud and a bust-out, including: keep the vendor's credit functions and sales functions separate; visit the new customer during business hours and observe sales behavior; visit the customer when the business is closed; ask for a personal guarantee; and discuss the account with other vendors in the industry group.

Prior to Sept. 11, identity theft was a major concern for vendors and law enforcement. As some terrorists in the Sept. 11 attacks had stolen identities, there is greater concern over this crime. Identity theft may be as high as 750,000 cases a year according to some privacy advocates. Biometrics and other technological developments are expected that will make stealing an identity much more difficult.

B. Impact on Customer Agreements: Changes with Invoices, Order Acknowledgments, Credit Applications, Terms and Conditions, Supplier Agreements and Leases

The terrorist attacks on our country on Sept. 11 are unprecedented as to their loss of life and impact. In light of the magnitude of these events and disruption to the economy, a credit professional must reconsider the terms of its documents in light of these events.

Some customers indirectly affected by the Sept. 11 events –- or some future event — may rescind their purchase orders for goods contending that the supervening terrorist event has fundamentally changed the agreement. The customer may contend that the event has made their performance impossible which allows them to rescind the purchase order with no obligation owing for the breached agreement.

The seller considers Article 2 of the Uniform Commercial Code and contends that it may sell the goods to another buyer and the customer must cover any losses the seller suffers, and the terrorist event is not an excuse to cover the loss. The credit professional should consider provisions in the sales contract that may limit this new uncertainty, such as:

1. Act-of-Terrorism Protections

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THE CREDIT DEPARTMENT IN A TIME OF WAR AND TERRORISM: DEALING WITH THE AFTERMATH OF SEPTEMBER 11 (Continued)

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a. Force Majeure

A force majeure provision, or Act of God, provides that performance may be excused or suspended in light of an unpredictable event. What event qualifies as a force majeure is key. What of a terrorist act? Under the terms of a contract, an Act of God will not be excused absent a contract provision to the contrary. To avoid the risk and uncertainty, the parties may agree to arbitrate whether an event qualifies as a force majeure event.

The seller may consider the following force majeure provision, that includes an act-of-terrorism exception:

> "Seller shall not be liable for delays or failures in delivery, damage to Goods, or performance due to acts of God, governmental authority or public enemy, fire, flood, strike, labor disturbance, epidemic, war, terrorist event, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond Seller's control."

But what is a terrorist act? The buyer and seller may agree to arbitrate what constitutes a terrorist event.

b. Impossibility of Performance

Do the Sept. 11 events make the contract with your customer unenforceable? A customer may refuse to perform under the agreement, such as accept delivery of the goods, claiming that basic assumptions of the agreement are different today because of the terrorist acts. The customer may contend that the extraordinary events of Sept. 11 that makes performance impossible, and is a defense to performance.

c. Act-of-terrorism exclusion

The Sept. 11 acts have resulted in exclusionary provisions from insurance companies, such as:

Terrorism Exclusion

> "Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of or threat of or fear of terrorism (whether actual or perceived) regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
>
> For the purpose of this endorsement an unlawful act of terrorism means an act, including but not limited to the use of force or violence and /or the threat thereof, of any person or groups) of person, whether acting alone or on behalf of or in connection with any organizations) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
>
> This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of or threat of or fear of terrorism (whether actual or perceived). If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.
>
> In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect."

Expect this type of provision in the future. To exclude this type of provision, a business may have to pay more.

2. Insurance

Insurance may be used to shift risk. The issue for the Sept. 11 events is whether insurance may provide some protection – whether direct or indirect – to businesses for losses suffered as a result of the Sept. 11 attacks, and coverage for any future acts. Customers, as well as the credit professional's business, may carry insurance that provides for coverage for business interruption losses. Whether insurance coverage protects against indirect losses, i.e. where the business has not been struck by terrorist act but has been significantly affected by downturn of business because of the terrorist act, depends on the terms of the insurance policy.

Insurance policies cover many forms of losses, and must be reviewed to determine the nature of the policy, including whether the policy covers all risks, or only those risks expressly named. A pre-Sept. 11 probably does not contain a provision that excludes coverage for terrorists acts. However, the policy may exclude coverage for an act of war. Courts have interpreted an act of war as an attack by a sovereign government. The Sept. 11 attacks should be excluded from the act of war exclusion, as they were not attacks by a sovereign nation.

The credit professional may consult with an insurance broker to review the amounts and types of insurance to be carried. In the future, it is likely that creditors can now expect insurance carriers to share risk; not absorb it. Also, in certain cases, it may make sense that the insurance requirements flow down to vendors or subcontractors.

3. Indemnity

Indemnity may also be used by the credit professional to shift risk of loss from a terrorist act. Indemnity allocates particular risks between the parties, wherein one party agrees to hold another partially or wholly harmless from the consequences of a terrorist act, usually damage to property or personal injury (including death). The seller may want to cap the indemnity to the value of any applicable insurance; the buyer may not want to cap the liability.

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THE CREDIT DEPARTMENT IN A TIME OF WAR AND TERRORISM: DEALING WITH THE AFTERMATH OF SEPTEMBER 11 (Continued)

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4. Liquidated Damages

The vendor may include a liquidated-damages clause in the credit agreement. Under the liquidated-damages clause, the agreement provides the amount of damages in advance, which can lend to more certainty for the parties. Given the uncertainty of the economy and the threat of disruption from terrorist acts, the liquidated-damages provision may be used to limit damages in the event of a specific default, such as late delivery:

> "LIQUIDATED AND ACTUAL DELAY DAMAGES. In the event of Customer's failure to purchase Items in accordance with the schedule established in this Agreement, as modified by authorized time extensions and/or mutually agreed revisions, Customer shall be liable for all delay damages payable by [__________] to Supplier as the proximate result of Customer's delay in purchases from Supplier. Any damages resulting from this provision will be limited to $[________]."

5. Contractual Limitation of Liability

Like a liquidated damages clause, the buyer and seller may contract to limit liability to add certainty to the sale and risk of loss. The following sets forth limiting language:

> "In no event shall either Buyer or Seller be liable for anticipated profits or for incidental or consequential damages arising out of either party's performance or failure to perform hereunder. With the exception of liquidated damages of which Seller's liability shall be limited to [______%] of the purchase order value, neither party's liability on any claim of any kind or for any loss or damage arising out of or in connection with this order shall in any case exceed that portion of the order price allocable to the goods or services or portion thereof which gives rise to the claim. Any action by either party against the other party from this order, including either party's breach thereof, must be commenced within one year after the cause of action has occurred or shall be deemed waived."

6. The "Battle of the Forms"

Companies that acknowledge purchase orders for goods with sales order acknowledgements run the risk of the "battle of the forms;" with each party's documents passing one another. In the post Sept. 11 environment, the credit professional must be mindful of a customer's new terms and attempts to limit its liability.

In the event that the seller's sale order acknowledgement contains terms and conditions different from the buyer's purchase order, then the two parties will be considered to be engaged in the "battle of the forms"—an unsigned contract which would then likely be interpreted by Article 2 of the Uniform Commercial Code.

7. Warranty and Limitation of Liability

From the seller's view, the contract will exclude the implied warrantees of merchantability and fitness for a particular purpose; as well as special, incidental and consequential damages. However, exceptions may apply, such as when the buyer relies upon the seller's product design intended for a specific use.

Most seller's try to limit their liability to the value of the order which gave rise to the claim (except in the event of personal injury (including death) or damage to property; in which case the seller's best hopes would be to limit the liability to the value of any available insurance then in place, or mandated by law).

Each party's liability to the other may be affected in ways unimaginable prior to Sept 11—particularly with any underlying documents which may have been drawn up prior to Sept 11.

C. The Electronic Credit Department Gains Prominence, but Watch for Computer Virus

The U.S. mail service has been interrupted and used as a vehicle for bioterrorism. The postal service is requesting a federal bailout because of a downturn in demand as a result of terrorist attacks. Likewise, the airlines were grounded after Sept. 11 which meant customer payments were delayed.

Given the uncertainty surrounding federal mail service and risk of bioterrorism being transmitted by the mail, credit departments may embrace electronic technology to document the credit sale. While electronic commerce may increase as a result of terrorist acts and the threat of new acts, vendors must be vigilant that e-communications can be a target. Thus, encrypting e-communications can be important to protect against hackers.

1. Documenting the Electronic Credit Sale

Federal and state laws now generally recognize that e-contracts have the same force as ink and paper counterparts.

a. The Statute of Frauds and the E-Contract

Article 2 of the Uniform Commercial Code governs the rights and remedies of a buyer and seller with the sale of commercial goods. Article 2 provides that with the sale of goods over $500, there must be a signed writing. A signature certifies the writing for the sale of goods. With the traditional sale of goods over $500, the credit professional memorializes the sale agreement with a signed credit application and signed invoices.

Thus, the e-mail is an electronically created contract and, thus, must be afforded the same respect as that afforded to a paper contract.

b. The E-Signature Law

The Electronic Signatures in Global and National Commerce Act (The E-Sign Act), a federal law, went into effect November, 2000. The E-Sign Act makes e-signatures as legally binding as ink-and-paper signatures, and can be used in legal proceedings. An e-signature is generally defined as a form of technology, including fingerprint readers, stylus pads and encrypted smart

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cards, used to verify a party's identity so as to certify contracts that are agreed to over the Internet. Thus, the example of the credit professional receiving an e-signature attached to an e-P.O. is enforceable under the E-Sign Act.

The effect of the E-Sign Act is a uniform and nationwide legal recognition that a vendor may engage in e-credit transactions across state lines and the e-contract is valid with all states. Some of the relevant provisions of The E-Sign Act for the credit professional are: (1) parties to the contract decide on the form of digital signature technology to validate the contract; (2) Businesses may use e-signatures on checks; (3) Businesses must require parties to the contract to make at least two clicks of a computer mouse to complete a deal; (4) The consumer decides whether to use an e-signature or handwritten signature; (5) Records of e-contracts may be stored electronically.

c. Verifying the E-Signature

A key question for the credit professional considering using e-signatures on contracts and checks, however, is having a reliable way to certify an e-contract, or authenticate an e-signature, to reduce the risk of fraud, or claims of unauthorized use of an e-signature. Technology to verify a person's identity, so-called digital identification devices, is solving these concerns.

2. E-Mail Increases

A highlight of the significance of e-mail is when the World Trade Center was struck, and phone service was unavailable for many in Manhattan, e-mail and instant messaging was the only way to communicate. E-mail communications with the customer, employer, employees and credit colleagues will continue to grow in light of the terrorist acts and threat of acts. For example, use of e-mail for assisting in the credit process, such as gathering credit information, including credit reports, for decision-making; alerting credit association members of problem accounts; communicate with credit peers; communicate with customers, including sending files across computer networks; and the dunning e-mail and collection efforts with the delinquent account.

However, the credit professional should consider making a hard copy of e-mails to protect against disruption of the e-mail service. The hard copy will provide a back up that may be faxed to a customer or others.

3. E-Payments Reduce Risk of Delay and Non-Payment

The aftermath of Sept. 11 is forcing credit professionals to reconsider the way customers pay, encouraging e-payment alternatives to eliminate the threat of delay of payment. This technology may be an important tool for credit professionals to manage cash flow in this new environment. Part of the of the e-payment revolution is recent legislation that recognizes the force of an electronic signature.

Some of the payment forms available to vendors to eliminate the risk of the bad check, depending on the type of business the vendor is involved, are:

a. Electronic Bill Presentment and Payment

EBPP is a system by which customers can call up and authorize payment of their bills online, either through a direct banking link, or through a Web site. EBPP is reduced operational costs associated with a paper-based billing and remittance process. EBPP has become a popular payment method in part because the customer requires e-payment. With commercial accounts, proprietary sites may be set up.

b. E-Checks

Electronic version of a paper check. The e-check may provide for multiple payers, endorser signatures and is governed by the Uniform Commercial Code article covering checks. The customer may choose to have a third party accept the payments in an e-lockbox or have the receipt directed to the accounts receivable department for handling. E-checks use digital signatures, hardware tokens, duplicate detection, blinded account numbers, activation and current banking practices.

c. Guaranteed Checks

Software companies have developed websites that allow vendors to input checking account and payment information of a debtor to guarantee payment. Other companies are producing electronic systems, which allow vendors to accept check information through the phone, e-mail, or the Internet and provide a more accurate method of getting payment and streamlining the check acceptance process. A vendor can get the number of their accounts and in the same day, through the software, a company produces a check ready for deposit, printed by its own printer and processed through the Federal Reserve System.

d. Credit Card

Vendors have embraced customers using credit cards to pay for their commercial sales. The U.S. mail service has been used as a vehicle for bioterrorism resulting in delays with mail service. The credit card industry, however, claims that the Sept. 11 events did not create serious disruption to merchants, other than a drop off in transaction volume.

Payment by credit card is appealing as it allows for payment prior to goods being released. However, a vendor may risk chargeback of disputed balances. The credit card company is not obligated to verify whether or not the dispute is legitimate. The vendor may be responsible for unauthorized purchases and fraud. A vendor may accept a personal credit card for a commercial sale, however it may be an indicator that the company the person is purchasing for is in financial trouble. However, it may mean that the person wants the frequent flyer miles. Credit card transactions conducted by telephone, fax or the internet, also known as card-not-present transactions, have a higher risk of fraud.

e. Virtual Escrow

A third party ensures that the customer receives the item and the vendor receives

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payment. Both parties agree to use same service before their transaction and the customer sends payment using a credit card, check or bank transfer through the service. The escrow service verifies payment and then the vendor ships.

f. E-Payment Alternatives Reduce Risk of Delay

Central to the credit department is accelerating the cycle to make a credit decision and reduce delay of payment on the sale in today's environment. The various e-payment mechanisms may achieve this and reduce delay of payment in today's environment.

4. Computer Virus Risks

As noted, there are several reasons for the credit department to go electronic in today's environment. However, terrorism can take many forms, including attacks on computer systems. Although it is uncertain how terrorists may attack the Internet, and what it may take to shut down the Internet, it has been show that computer viruses can take down operating systems. The credit professional should consider encryption and back up electronic files to protect credit information.

5. Cyber Attacks and Disaster Recovery Planning

In the aftermath of Sept. 11, companies which were located in the World Trade Towers lost everything. Fortunately, many companies responded with disaster recovery plans developed, in many cases, in preparation for the Y2K phenomena. Most, if not all, computer systems had critical data backed up and stored at remote sites. However, it is quite clear that extensive amounts of paper-based documentation was destroyed forever; with legal and financial consequences unknown.

Vendors should develop redundant procedures ensuring that originals of key agreements are stored at remote sites. Contingency plans need to be developed so that the company's operations can continue; even after a catastrophic event.

Company IT professionals should re-scrutinize their firewall defenses against viruses and hacking. Established security measures should be re-evaluated due to the increased perception of risk of attack.

D. Credit Analysis in New Environment

1. Denying Credit in the New Environment

Some industries, such as certain airlines, have discussed racial profiling as necessary to ensure passenger safety. Can such profiling carry over to credit analysis of commercial credit?

The Equal Credit Opportunity Act (ECOA) was enacted by Congress in 1989, and the Federal Reserve Board issued Regulation B to implement ECOA in 1990. ECOA is a federal statute that prohibits credit grantors from discriminating in the granting of credit based on a prohibited basis, including race, color, religion, national origin, gender, marital status or age (collectively referred to under the regulations governing ECOA as the "Prohibited Basis"). ECOA is intended to promote the availability of credit without regard to characteristics that have nothing to do with creditworthiness. Creditors are required to notify applicants of action taken on their applications, and to retain records of credit applications.

There is no federal legislation or authority that allows a credit professional to ignore ECOA because of the Sept. 11 events.

2. Privacy Rights in the New Environment

With the arrival of the Internet and sharing of a customer's financial information electronically, a customer's privacy rights to financial information has been at the forefront of legislation passed by the U.S. Congress and state legislatures. The Federal Trade Commission, the federal agency that regulates federal privacy legislation, has been active in interpreting this legislation and has been concerned with the unauthorized release of private credit information to third parties, including the dramatic rise of the crime identity theft. Courts, including bankruptcy courts, have wrestled with the breadth of a customer's privacy rights and duties owed to customers.

However, since Sept. 11, the U.S. Congress and the President have focused on terrorism legislation that will significant impact consumer privacy. The FTC has suspended pending privacy legislation. Federal legislation is anticipated that will require national identity cards, imbedded with chips, that will enable tracking an individual for terrorism activity. The anti-terrorism legislation reflects a change in concern over privacy rights, wherein individuals are willing to sacrifice privacy for safety.

E. Steps to Reduce Credit Risk Post-Sept. 11

Given the uncertain economic environment and threat of further economic disruption, the credit professional may consider alternatives to reduce credit risk, yet still make the sale.

1. Secured Transactions

Revised Article 9 of the Uniform Commercial Code was recently adopted by a majority of states. A hallmark of revised Article 9 is that it significantly relaxes the minimum standards that security agreement and financing statement must meet. Another hallmark is that revised Article 9 eliminates the requirement of a debtor's signature for both the security agreement and financing statement. This means that the security agreement can be electronic.

a. Purchase Money Security Interest

The vendor may consider taking a security interest in the goods it sells to the customer and the proceeds from the sale of the goods. Under the amended Article 9 of the Uniform Commercial Code, for the vendor to obtain a valid purchase money security interest (PMSI) in the goods it sells to the customer a multi-step process must be complied with. The customer first executes a security agreement describing the goods covered in favor of the vendor, which gives

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the vendor a security interest in those goods. The vendor perfects the security interest when it files a financing statement with the filing office (usually the Secretary of State), which adequately describes the goods.

The vendor's PMSI will prime the inventory secured creditor's lien only if: (1) the PMSI is already perfected at the time the customer receives possession of the goods; and (2) the vendor gives written notice to any other preexisting inventory secured creditor. If the vendor fails to perfect the PMSI, including giving notice, the vendor's priority is governed by the "first to file" rule. This means that an inventory secured creditor will prime the vendor's PMSI.

Some problems with a PMSI can be that it requires the consent of the customer, may require the consent of the customer's lender can be complicated to properly perfect and can be cumbersome for the vendor frequently selling in small lots.

2. Consignments

Article 9 of the perfection requirements provides the means whereby a vendor can establish a valid security interest in its own inventory, even when that inventory has been delivered to the customer. The vendor's compliance with the perfection requirements of the UCC not only protects ownership of inventory; in the event of a dispute over the goods, the vendor will prevail over a competing creditor.

An agreement is executed describing the relationship of the parties involved (i.e., the vendor owner is consignor and the customer seller is consignee); a description of the inventory; and agreement that title to the merchandise only passes to third-party buyers. Then the vendor completes a UCC-1 financing statement, which again describes the inventory and makes clear that the inventory is delivered on consignment. The vendor then files the statement with the filing office (usually the Secretary of State). A vendor must give notice to any creditor asserting a security interest in the customer's inventory in order to avoid any appearance that inventory coming to the customer is free from ownership claims. To have priority in the accounts receivable generated by the sale of consigned goods, the vendor must also comply with the UCC notice-filing requirements as to accounts receivable.

Like PMSI, some problems with a consignment can be that it requires the consent of the customer, can be complicated for the vendor to properly perfect and can be cumbersome for the vendor frequently selling in small lots.

3. Guarantees

A guarantee, whether corporate or personal, is not the preferred credit enhancement, as it requires the vendor to take legal action to get paid when the customer fails to pay. However, a guarantee may be used as leverage by the vendor to force the customer to pay by threatening to pursue the guarantor, who may be a principal of the customer. Customers are often financed by deep-pocketed venture capitalists. If the vendor is a key supplier of the customer, the vendor may look to the venture capitalist to guarantee the sale.

The basic legal principle is that the guarantor is not a party to the principal debt. The guarantor's undertaking is independent of the customer's promise to pay. Merely because both contracts are on the same paper, for example, the credit application — the customer's promise to pay for the vendor's goods or services, and the guarantor's promise to pay if the customer does not — does not change the independence of the agreements.

The guarantee should include a statement that the signing party is personally guarantying the debt of the customer referenced in the credit application. The guarantee should have under the signature block a line for the individual guarantor's social security number and a line for the individual guarantor's home address. The guarantee should be signed before a notary to reduce the risk that the guarantor may contend that the guarantee was forged.

4. Letters of Credit

A letter of credit (L/C) is a promise by an issuer, the bank, to pay the vendor, as beneficiary, when the customer has defaulted on the sale. The customer uses its assets as collateral for the L/C, so that the credit of the bank is substituted for the credit of the customer in favor of the vendor. The customer pays the issuing bank a fee to issue the L/C. If the vendor submits proper documents upon default, the bank will pay the L/C and the customer reimburses the bank. An L/C may be either revocable or irrevocable. An irrevocable L/C can be modified only with consent of the vendor. A revocable L/C can be modified by the bank without the consent of the vendor. The vendor can obtain a standby L/C, which assures payment after the customer's default. The vendor should insist on an irrevocable L/C with the customer sale.

L/C's are independent from the underlying contract between the customer and the vendor. The bank honoring the L/C is concerned only to see that the documents conform to the requirements in the L/C. If the documents conform, the bank will pay, and obtain reimbursement from the customer. The bank need not look past the documents to examine the underlying sale of goods. Thus, a vendor is given protections that the issuing bank must honor its demand for payment (which complies with the terms of the L/C), regardless of whether the goods conform to the underlying sale contract. The amount of the L/C should equal the amount of the line of credit.

The L/C's independence of contracts may allow a vendor to avoid the effects of a customer's bankruptcy. Bankruptcy courts recognize that the proceeds of a letter of credit are not property of the customer's bankruptcy estate, and that a bankruptcy court does not have authority to bar payment under a L/C, notwithstanding the effects of the automatic stay.

The vendor may insist on an L/C that provides for the maximum exposure under the credit line. For example, if the vendor specially manufactures goods, those goods that are in process yet not billed to the customer should be included in the amount

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of the L/C.

5. Advance Payment Guarantees, Bonds and Liens

If the vendor is buying or selling based upon milestone payments, then it is usually best to obtain (or give) a third party guaranty.

If the vendor is engaged in a selling activity in which someone else's real property is enhanced by creditor's supply of goods or services, then it is essential for the vendor to protect its buying and selling activities.

For public works, this is usually achieved by performance and payment bonds issued by a specialized insurance company commonly referred to as a surety. For example, the Miller Act of 1935 (40 U.S.C. 270) requires performance and payment bonds for large Federal public works projects.

For example, the U.S. Army Corps of Engineers requires a prime contractor to obtain a bond for a $ 100,000 project. The Performance Bond would ensure that the project was completed, and the associated Payment Bond would help protect any vendors and subcontractors to the prime contractor.

Each state has enacted what are commonly referred to as "Little Miller Acts." However, creditors need to be forewarned that not all bonds guarantee full payment; limitations may apply. At the very least, creditors should request and obtain a copy of the bond(s) prior to beginning work or manufacture.

For private jobs, most creditors rely upon mechanic's or materialmen's lien rights. Each state has its own unique requirements. However, time windows do apply, and some states require first furnishing notices to the owner. Also, how far removed the vendor is from the owner of the real estate from the standpoint of the money chain is significant. The further removed, the less likelihood of prevailing on a lien claim.

F. Employer/Employee Relations and Customer Relations in New Environment: Business as Usual?

1. Employer/Employee

Employees, whether in the credit department or elsewhere, are concerned about opening mail, flying for business and working in high-profile locations. The Sept. 11 events have weakened productivity and employee well being. Employees handle the stress of these events differently. Does the employer now have a responsibility to ensure an employee's safety in this new environment? Many businesses are consulting with security firms to advise on steps to protect the company. What may have been considered as office jokes may now be considered as threats. For example, an employee was recently fired for having spread white powder on another employee's desk.

What is the employer's duty to protect employees in the face of new threats of terrorism? How far does that duty extend? Does an employer have responsibility for the employee's safe commute where there is a terrorist threat? Is tele-commuting an option the employer must consider with such a threat? What if an employee refuses to fly out of concerns over safety where travel is required. What remedy does an employer have? What of the employee that refuses to continue work in a high rise out of safety concerns? The law is uncertain which is requiring companies to go to great lengths to create a safe workplace.

Companies are establishing safety plans for employees at work locations. Employers are examining evacuation plans, protections against bioterrorism and maintaining emergency food and water supplies. Employers are also considering threats to the mailroom. Many companies are following guidelines provided by the U.S. Postal Service in dealing with suspicious packages. Employees are also updating personal information of employees, including contact information so they may be reached in an emergency. The credit department may consider maintaining a contact list of employees within the department.

Many employees have undergone a significant shift in views of work and personal life with their priorities shifting, and the credit department is not immune to this. Does the employer have a duty to help employees with emotional issues surrounding the new environment? Employers are now asked to draw the line with employer/employee relationship and personal and family concerns. The vendor may look to information sources to assist with employee stress. Check the National Center for Post Traumatic Stress Disorder's website: www.ncptsd.org.

2. Customer Relations

Given the environment, a credit professional must be mindful of collection efforts with delinquent accounts. Customers may still be traumatized from the terrorist attacks.

G. Legislation in the New Environment

1. Anti-Money Laundering

Selling overseas, or to customer who exports your product, may raise risk of recently unveiled anti-money laundering programs.

2. International Traffic in Arms Regulations ("ITAR")

The Arms Control Act and ITAR prescribe criminal penalties (fine of up to $ 1 million and/or imprisonment up to 10 years, 22 U.S.C. Sec. 2778(c)) for willful violations. In addition, ITAR violations may result in loss of export or import privileges (called "debarment"), 22 C.F.R. 127.7. Inadvertent violations should not generate penalties at the higher levels, but the government has discretion in these matters, and several violations have been reported prior to Sept. 11. For example, McDonald Douglas was fined by the Commerce Department for $2.1 million for selling China aerospace equipment which China installed at a military facility. It is expected that the Department of State will increase its scrutiny as a result of the events of Sept. 11.

In this global economy, companies buy and sell worldwide. Running afoul of ITAR's regulations can be unintentional. For example, it may not be a time to export top-of-the-line PC's to certain Middle Eastern

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countries — when the PC's might be used to aid against USA military actions.

In addition to bullets, tanks, and the usual items which vendors consider to be of military use, ITAR applies to hardware, products, data, software, engineering designs and the like. Refer to the U.S. Munitions List 21 C.F.R. 121.

ITAR also regulates the importation of these items into the USA. Even Canada and other members of NATO countries are affected to some degree by ITAR. Refer to the Office of Defense Trade Controls at www.pmdtc.org.

3. Computer Hacking and RICO Prosecution

Under new anti-terrorism legislation, the USA Patriot Act, some computer crimes may be treated as terrorist acts which may be prosecuted under RICO, the federal racketeering statute. The RICO law was originally designed to battle organized crime. The provision will protect attempts to cause damage to commercial and business sites.

4. USA Patriot Act and the Dot-Com

The federal government is concerned that terrorists may be communicating their plans via e-mail and the Internet. The USA Patriot Act, a federal law signed by the President on October 26, gives federal law enforcement easier access to a computer user's Internet activity. If the credit professional is employed by a dot-com or telecom company, the Patriot Act may affect them as follows: cable companies providing Internet service are governed by wiretap laws; authorizes interception of a hacker's e-communications; allows search and seizure of property without notice; Internet service providers may disclose information without a subpoena if information could save lives. It is unclear as to what will be the financial cost to dot-coms to comply with subpoenas and search warrants.

H. Education and Industry Groups Post-Sept. 11

The industry group can be rich source of information and education for the credit professional. However, the Sept. 11 events have made travel difficult and attendance is down with meetings of national industry groups. The economic downturn has also made it difficult for a credit professional to support lengthy travel for industry group meetings. Several NACM affiliates have industry groups that have gone electronic. Web conferencing is being used by industry members to discuss with a host a number of topics. The industry member may communicate with the host and other members via computer. Because of antitrust concerns, chat rooms have not been favored by industry group members. The Internet may also be used by the credit professional to obtain immediate updates to trade group information.

I. Returning to Normal and Steps to Protect Credit Sales Post-Sept. 11

The aftermath of Sept. 11 may impact your credit decisions both directly and indirectly. The aftermath of Sept. 11 may become the common reason a credit executive hears for non-payment of an account.

How may you assess the post-Sept. 11 risk? With potential customers, and a public company, review the most recent quarterly report (10Q) or annual report (10K) filed with the Securities and Exchange Commission. What disclosures are made regarding the aftermath of Sept. 11. Has the potential customer identified risks, and do these risks affect the ability pay your extension of credit? 10Q and 10K disclosures should provide a sense of direct credit risk. Included in your analysis for the potential customer is indirect credit risk. Analyze whether the potential customer is in an industry susceptible to recent developments.

As to indirect credit risks, there may be a domestic credit crunch as an aftermath of Sept. 11 and banks balk at lending. A credit executive should be aware of this risk with a potential customer, as the credit executive does not want to see its goods foreclosed on by the customer's lender because financing is cut off. A credit professional may consider taking collateral, personal or corporate guarantees, letters of credit, to back up the immediate credit risk.

With existing customers and credit lines, consider classifying your customers with post Sept. 11 risk. Those classified with greater direct and indirect risk should be monitored closely in the coming months. Perhaps with some customers, consider taking collateral, personal or corporate guarantees, letters of credit, to back up the immediate credit risk.

With an applicant seeking credit from you, if it is a public company investigate whether the applicant has backup credit lines that can be tapped in the event of a disaster that allows it to access capital and continue to operate. A customer that has reserves to withstand a disaster may allow it meet its operating debt.

The credit professional should consider backup computers and telecommunication systems of the credit department to avoid the risk of loss of customer information in the event of a disaster.

In light of events, the credit department may wrestle with whether it should be centralized or decentralized, particularly if the location may pose a security threat.

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RECENT ENGAGEMENTS AND ACTIVITIES

Blakeley & Blakeley LLP Recent Engagements and Activities for Winter 2001

Blakeley & Blakeley continues to represent its vendor clients in the areas of creditor rights, commercial litigation and collection, credit documentation, bankruptcy and out-of-court workouts.

- ❑ Spoke to the **Bay Are Credit Professionals** in **San Jose** regarding the **Privacy Rights of Your Customer.**
- ❑ Spoke to **CMA Business Credit's Computer Industry Group** in **San Jose** regarding **The Risks and Opportunities of Selling to a Dot-Com.**
- ❑ Spoke to the **Nevada Institute of Credit** in **Las Vegas** regarding the **Internet and the Electronic Credit Department.**
- ❑ Spoke to **CMA Business Credit's Building Materials Industry Group** regarding **Beating the Bankruptcy Preference.**
- ❑ Spoke at the **Western Region Credit Conference** in **Las Vegas** regarding **The Risks and Opportunities of Selling to a Dot-Com.**
- ❑ Spoke at the **All-South Conference** in **Atlanta** regarding the **Internet, E-Credit and Legal Issues Affecting the Credit Professional and The Risks and Opportunities of Selling to a Dot-Com.**
- ❑ Spoke to the **Advertising Media Credit Executive Association** in **San Antonio** regarding **Bankruptcy and Creditors' Rights.**
- ❑ Spoke to the **National Food Manufacturer's Credit Group** in **San Diego** regarding **Creditors' Rights** and the **Internet, E-Credit and Legal Issues Affecting the Credit Professional.**
- ❑ Spoke to **CMA Business Credit's Institutional Food Group** regarding the **Beating the Bankruptcy Preference.**
- ❑ Spoke to the **National Health and Beauty Aids Credit Group** in **San Diego** regarding **Creditors' Rights** and the **Internet, E-Credit and Legal Issues Affecting the Credit Professional.**
- ❑ Spoke to the **Credit Research Foundation** in **San Antonio** regarding **Creditors' Rights and Bankruptcy.**
- ❑ Spoke at the **CMA Business Credit Industry Group** in **Fresno** regarding **Creditors' Rights.**
- ❑ Spoke to **MHRV Industry Credit Group** regarding **Creditors' Rights** and **Internet, E-Credit and Legal Issues Affecting the Credit Professional.**
- ❑ Spoke to the **CMA Business Credit's Paper and Packaging Group** regarding **Accepting Credit Card Payment for Commercial Credit Sales.**
- ❑ Spoke to the **North American Retail Credit Group** in **Las Vegas** regarding **Bankruptcy and Creditors' Rights.**
- ❑ Spoke to the **NACM/Chicago's Furnishing's Industry Group** regarding **Credit Applications.**
- ❑ Spoke at the **CFDD Industry Meeting** regarding **The Credit Department in a Time of War and Terrorism: Dealing with the Aftermath of September 11**
- ❑ Spoke to the **National Retail Group** regarding **Internet, E-Credit and legal Issues Affecting the Credit Professional.**

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