

GET THE AFFIDAVIT OR  
WAIVE IT? EXAMINING  
CONFESSIONS OF  
JUDGMENT

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Deal Flow in the  
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Mississippi and beyond

By Ed McKinley



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By: PAUL SWEENEY

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# Letter From the Editor



**BY**  
**SEAN MURRAY**

If you thought our congregations in New York, Miami, and San Diego meant that the industry was nowhere else to be found, well you're wrong. In this issue we venture out into America's heartland to find out if business is conducted any differently than the coasts or if it's just more of the same. Out in the Dakotas, Texas, Kansas, and Mississippi you may just find fancy boots as often as business suits and that each deal has got a certain true American grit feel. It's the "West," but tamed, modernized, and flowing with business.

Elsewhere, some companies are wondering if their own flow stands to be affected from a possibly impending shift in how Confessions of Judgment (COJ) are used. In Get The Affidavit or Waive It, we examine how a series of media stories has created momentum for legislative action in New York State. Views on the matter vary and can depend on how one might actually go about using a COJ. Whatever your feelings, it's sure to be one of the most controversial topics of 2019 so expect to hear more about the subject as the year goes on.

2019 is also getting busier in the trade show scene, especially for us as we tackle 4 cities including our first-ever soon-to-be announced international stop. But whether you're attending a deBanked event or one of the handful of other beneficial conferences out there, this issue is armed with advice on how to maximize your time and efforts at them.

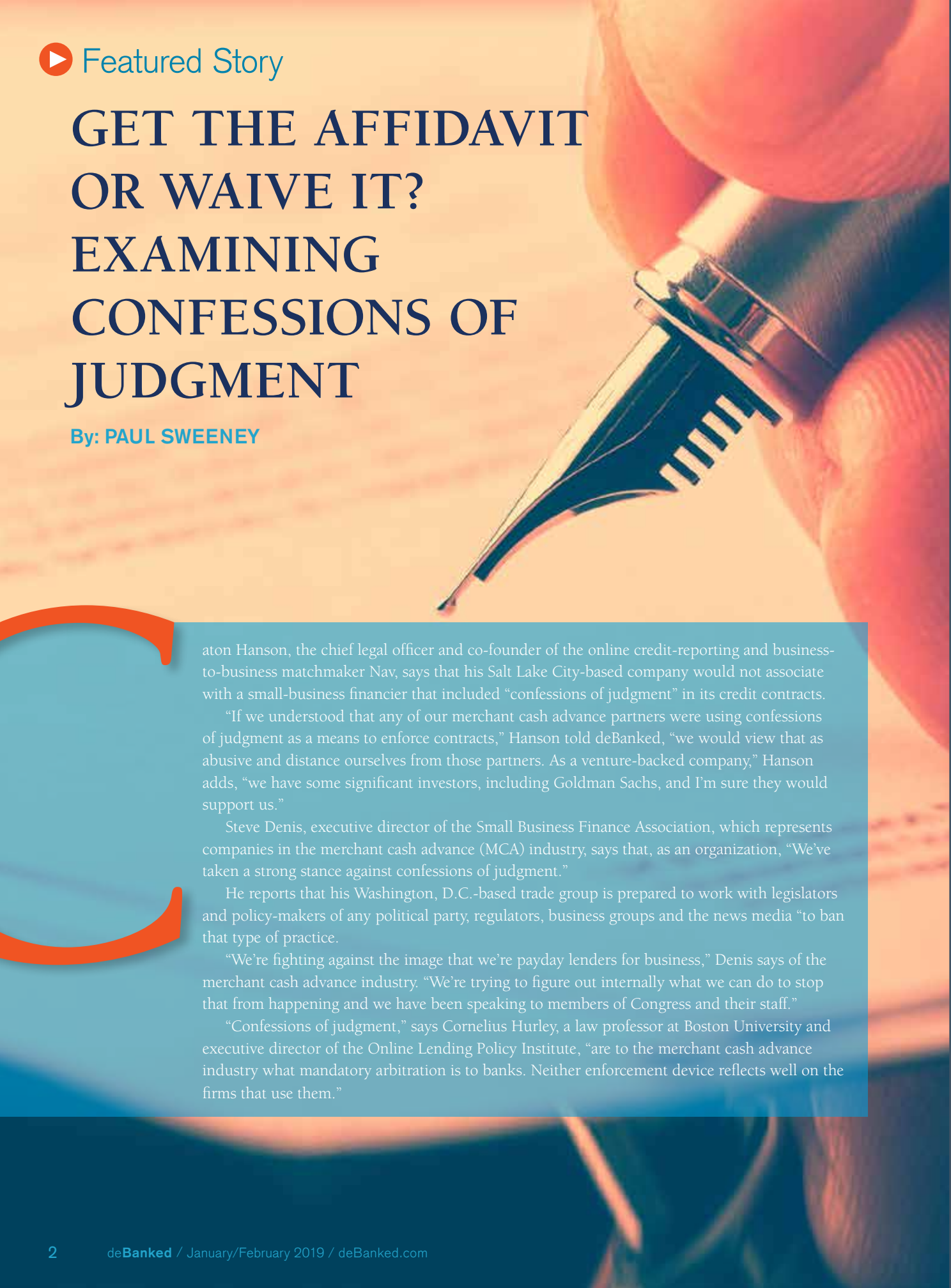
Also, be sure to check out the pages of photos we've assembled from our deBanked CONNECT event in Miami. If you enjoyed that or missed out, you'll absolutely want to register for Broker Fair 2019 in New York City on May 6. Just go to <https://brokerfair.org>

Until next time.

—Sean Murray

# GET THE AFFIDAVIT OR WAIVE IT? EXAMINING CONFESSIONS OF JUDGMENT

By: PAUL SWEENEY



aton Hanson, the chief legal officer and co-founder of the online credit-reporting and business-to-business matchmaker Nav, says that his Salt Lake City-based company would not associate with a small-business financier that included “confessions of judgment” in its credit contracts.

“If we understood that any of our merchant cash advance partners were using confessions of judgment as a means to enforce contracts,” Hanson told deBanked, “we would view that as abusive and distance ourselves from those partners. As a venture-backed company,” Hanson adds, “we have some significant investors, including Goldman Sachs, and I’m sure they would support us.”

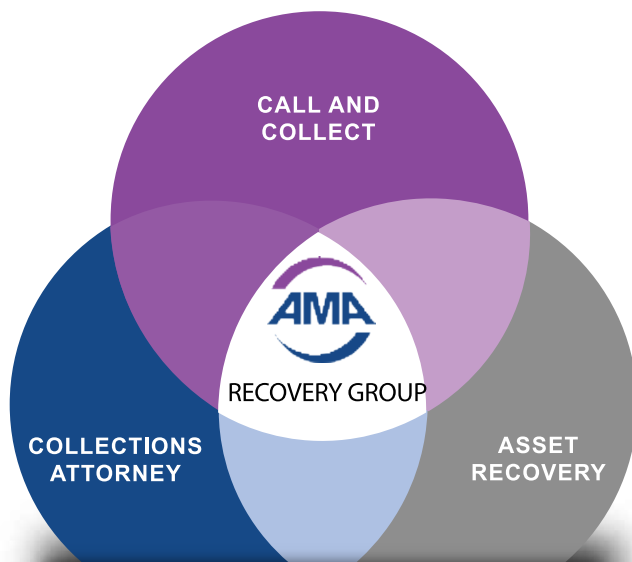
Steve Denis, executive director of the Small Business Finance Association, which represents companies in the merchant cash advance (MCA) industry, says that, as an organization, “We’ve taken a strong stance against confessions of judgment.”

He reports that his Washington, D.C.-based trade group is prepared to work with legislators and policy-makers of any political party, regulators, business groups and the news media “to ban that type of practice.

“We’re fighting against the image that we’re payday lenders for business,” Denis says of the merchant cash advance industry. “We’re trying to figure out internally what we can do to stop that from happening and we have been speaking to members of Congress and their staff.”

“Confessions of judgment,” says Cornelius Hurley, a law professor at Boston University and executive director of the Online Lending Policy Institute, “are to the merchant cash advance industry what mandatory arbitration is to banks. Neither enforcement device reflects well on the firms that use them.”

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**A CONFESSION OF JUDGMENT IS A HAND-ME-DOWN TO U.S. JURISPRUDENCE FROM OLD ENGLISH LAW. THE TERM'S QUIANT, ALMOST RELIGIOUS PHRASING EVOKES IMAGES OF DRAFTY BUILDINGS, BLEAK LONDON FOG, AND DOWDY BARRISTERS IN POWDERED WIGS AND SOLEMN BLACK GOWNS.**

These are just some of the reactions from members of the alternative lending and financial technology community to a blistering series of articles published by Bloomberg News on the use—and alleged misuse—of confessions of judgment (COJs) by merchant cash advance companies. The series charges the MCA industry with gulling unwary small businesses by not only charging high interest rates for quick cash but of using confession-laden contracts to seize their assets without due process.

The Bloomberg articles also reported that it doesn't matter in which state the small-business debtors reside. By bringing legal action in New York State courts, MCA companies have been able to use enforcement powers granted by the confessions to collect an estimated \$1.5 billion from some 25,000 businesses since 2012.

"I don't think anyone can read that series of articles and honestly say what went on were good practices and in the best interest of small business," says SBA's Denis, noting that none of the companies cited in the Bloomberg series belonged to his trade group. "It's shocking to see some companies in our space doing things we'd classify as predatory," he adds. "As an industry we're becoming more sophisticated, but there are still some bad actors out there."

A confession of judgment is a hand-me-down to U.S. jurisprudence from old English law. The term's quaint, almost religious phrasing evokes images of drafty buildings, bleak London fog, and dowdy barristers in powdered wigs and solemn black gowns. (And perhaps debtor prisons as well.)

Yet while the legal provision's wings have been clipped—the Federal Trade Commission banned the use of confessions of judgment in consumer credit transactions in 1985 and many states prohibit their use outright or in such cases as residential real estate contracts—COJs remain alive and well in many U.S. jurisdictions for commercial credit transactions.

Even so, most states where COJs are in use, such as California and Pennsylvania, have adopted safeguards. Here's how the San Francisco law firm Stimmel, Stimmel and Smith describes a COJ.

*"A confession of judgment is a private admission by the defendant to liability for a debt without having a trial. It is essentially a contract—or a clause with such a provision—in which the defendant agrees to let the plaintiff enter a judgment against him or her. The courts have held that such a process constitutes the defendant's waiving vital constitutional rights, such as the right to due process, thus (the courts) have imposed strict requirements in order to have the confession of judgment enforceable."*

In California, those "strict requirements" include not only that a written statement be "signed and verified by the defendant under oath," but that it must be accompanied by an independent attorney's "declaration." If no independent attorney signs the declaration or—worse still—the plaintiff's attorney signs the document, the confession is invalid.

But if the confession is "properly executed," the plaintiff is entitled to use the full panoply of tools for collection of the judgment, including "writs of execution" and "attachment of wages and assets."

In Pennsylvania, confessions of judgment are nearly as commonplace as Philadelphia Eagles' and Pittsburgh Steelers' fans, particularly in commercial real estate transactions. Says attorney Michael G. Louis, a partner at Philadelphia-area law firm Macelree Harvey, "They may go back to old English law, but if you get a business loan or commercial lease in Pennsylvania, a confession of judgment will be in there. It's illegal in Pennsylvania for a consumer loan or residential real estate. But unless it's a national tenant with a ton of bargaining power—a big anchor store and the owner of the shopping center really wants them—95% of commercial leasing contracts have them.

"And any commercial bank in Pennsylvania worth its salt includes them in their commercial loan documents,"



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Louis adds.

Pennsylvania's laws governing COJs contain a number of additional safeguards. For example, the confession of judgment is part of the note, guaranty or lease agreement—not a separate document—but must be written in capital letters and highlighted. One of the defenses that used to be raised against COJs, Louis says, was that a contractual document was written in fine print “but we haven’t seen fine print for years.”

Other reforms in Pennsylvania have come about, moreover, as a result of a 1994 case known as “Jordan v. Fox Rothschild.” Says Louis: “It used to be lot worse. You used to be able to file a confession of judgment and levy on a defendant’s bank account before he knew what happened. It was brutal. But after the Fox Rothschild case, they changed the law to prevent taking away a defendant’s right of notice and the opportunity to be heard.”

Because of that case, which takes its name from the Fox Rothschild law firm and involved a dispute between a Philadelphia landlord renting commercial space to Jordan, a tenant, the law governing COJs in Pennsylvania requires, among other things, a 30-day notice before a creditor or landlord can execute on the confession. During that period the defendant has the opportunity to stay the execution or re-open the case for trial.

Defenses against the execution of a COJ can entail arguments that creditors failed to comply with the proper language or procedures in drafting the document. But the most successful argument, Louis says, is a “factual defense.” Louis cites the case of a retail clothing store renting space in a shopping center that has a leaky roof. In the 30-day notice period after the landlord invoked the confession of judgment, the tenant was able to demonstrate to the court that he had asked the landlord “ten times” to fix the roof before spending the rent money on roof repairs. In such a case, the courts will grant the defendant a new trial but, Louis says, the parties typically reach a settlement. “Banks generally will waive a jury trial,” he notes, “because they don’t want to take a chance of getting hammered by a jury.”

A number of states, including Florida and Massachusetts ban the use of confessions of judgment. That’s one big reason that Miami attorney Roger Slade, a partner at Haber Law, advises clients that “there’s no place like home.” In other words: commercial contracts should specify that any legal disputes will be adjudicated in Florida. “It’s like having home field advantage in the NFL playoffs,” Slade remarked to deBanked. “You don’t want to

play on someone else’s turf.”

He has also been warning Floridians for several years against the way that COJs were treated by New York courts. Writing in the blog, “The Florida Litigator,” Slade—a native New Yorker who is certified to practice law there as well as in Florida—counseled in 2012: “If you live in New York, a creditor can have your client sign a confession of judgment and, in the event of a default on a loan, can march directly to the courthouse and have a final judgment entered by the clerk. That’s right—no complaint, no summons, no time to answer, no two-page motion to dismiss. The creditor gets to go right for the jugular.”

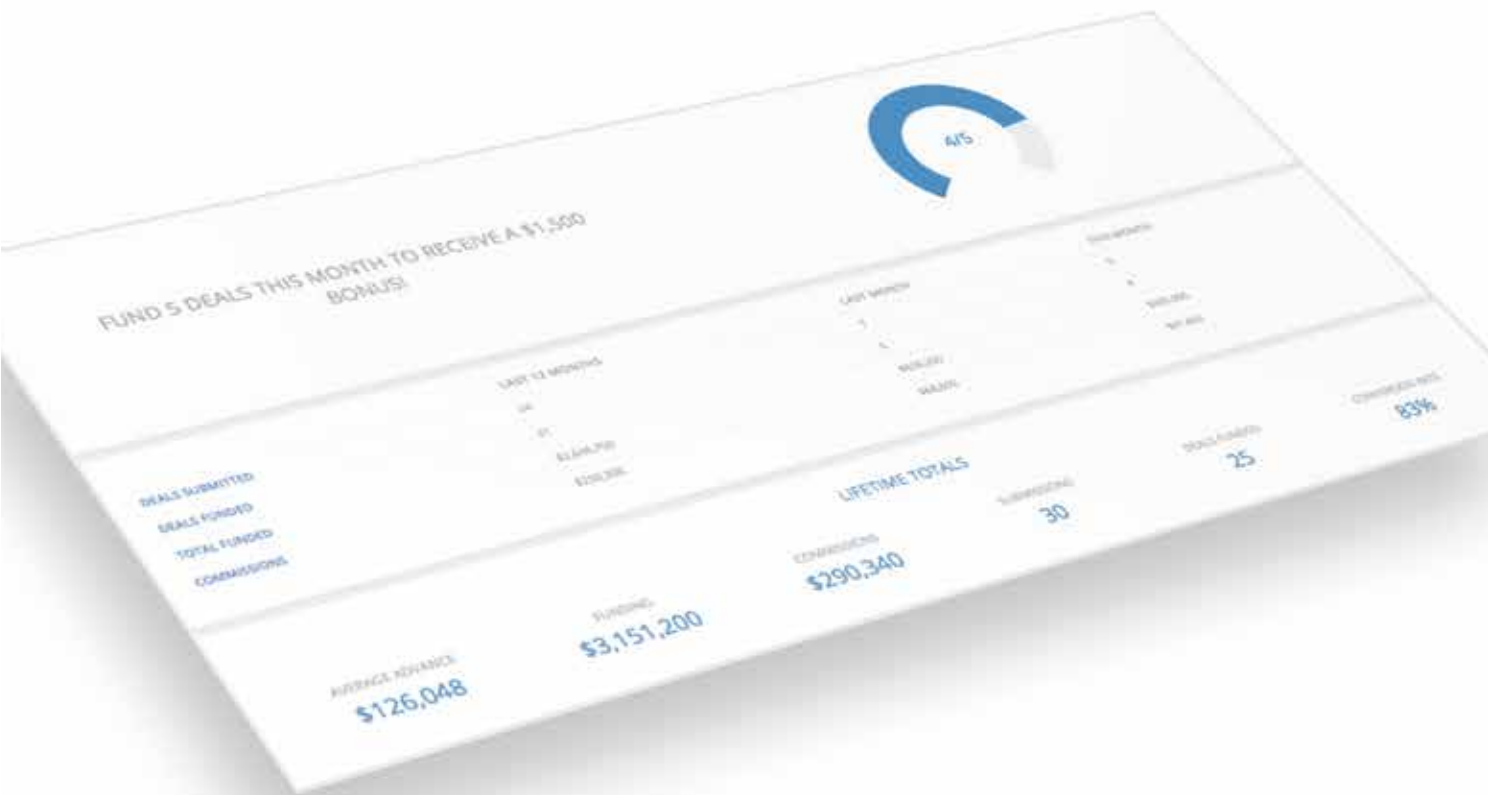
In addition, because of the “full faith and credit clause of the U.S. Constitution,” Slade notes in an interview, a contract that’s enforced by the New York courts must be honored in Florida. “Courts in Florida have no choice,” Slade says. “It’s a brutal system and it’s unfortunate.”

In December, two U.S. senators from opposing parties—Ohio Democrat Sherrod Brown and Florida Republican Marco Rubio—introduced bipartisan legislation to amend both the Federal Trade Commission Act and Truth in Lending Act to do away with COJs. Their legislative proposal reads:

[“\(N\)o creditor may directly or indirectly take or receive from a borrower an obligation that constitutes or contains a congnovit or confession of judgment \(for purposes other than executory process in the State of Louisiana\), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.”](#)

But with a dysfunctional and divided federal government, warring power factions in Washington, and an influential financial industry, there’s no telling how the legislation will fare. Meantime, the New York State attorney general’s office announced in December that it will investigate the use of COJs following the Bloomberg series. And New York Governor Andrew Cuomo has declared support for legislation that will, among other things, prohibit the use of confessions in judgment for small business credit contracts under \$250,000 and restrict judgments by New York courts to in-state parties.

But if New York State or Congressional legislation are adopted it can have “unintended consequences” to merchant cash advance firms in the Empire State—and to their small business customers as well—asserts the general counsel for one MCA firm. “Losing the confession of judgment will be removing what little safety net there is in a risky industry,” the attorney says, noting that the industry



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“It is not as powerful a tool as the Bloomberg news stories would have you believe,” this attorney, who spoke on the condition of anonymity, told deBanked. “The suggestion seems to be that the MCAs can use the confession of judgment to get back the total amount of money due—and then some—while leaving a trail of dead bodies behind. But that’s not the case.

“What is much more likely to be the case, he adds, “is that MCA companies try to get the defaulting merchant back on track. And—probably more than we should and only after we’ve tried to reach out to them and failed—do we then reluctantly use the COJ as a last resort. At which point we hope we can recover some part of our exposure. The numbers vary, but the losses are always in the thousands of dollars. These are not micro-transactions.

“What’s going to happen,” he concludes, “is that It will not make sense for us to work with those merchants most in need of working capital. The unfortunate reality is that businesses who don’t have collateral and can’t get a Small Business Administration product will be left out in the cold.”

All of which prompts BU professor Hurley to argue that the “Swiss cheese” system of financial regulation among the 50 states continues to be a root cause of regulatory confusion. Echoing Miami attorney Slade’s concern about New York courts’ dictating to Florida citizens, Hurley likens the situation governing COJs with the disorderly array of state laws governing usury regulations.

In the 1978 “Marquette” decision, the U.S. Supreme Court ruled that a Nebraska bank, First of Omaha, could issue credit cards in Minnesota and charge interest rates that exceeded the usury rate ceiling in the Gopher State. Since then, usury rates enacted by state legislatures have become virtually unenforceable.

“The problem we’re seeing with confessions of judgment is a subset of the usury situation,” Hurley says. “One state’s disharmony becomes a cancer on the whole system. It’s a throwback to Colonial times with 50 states each having their own jurisdictions—and it doesn’t work.”

Hurley’s Online Lending Policy Institute has joined with the Electronic Transactions Association and recruited a phalanx of “academics, non-banks, law firms and other trade associations as members or affiliates” to form the Fintech Harmonization Task Force. It is monitoring the efforts by the 50 states to align their regulatory oversight of the booming financial technology industry which was recently recommended by a U.S. Treasury report.

Tom Ajamie, who practices law in New York and Houston and has won multimillion-dollar, blockbuster judgments against “dozens of financial institutions” including Wall Street investment firms, also argues for greater regulatory oversight. He urges greater funding and expansion of the powers of the Consumer Financial Protection Board to rein in “the anticipatory use” of confessions of judgment in commercial transactions.

However, notes Catherine Brennan, a partner at Hudson Cook in Baltimore, the job of protecting small businesses is outside the agency’s mandate. “The CFPB doesn’t have authority over commercial products as a general rule,” she explained in an interview. “Consumers are viewed as a vulnerable population in need of protections since since the 1960’s.” As a society “we want protection for households because the consequences are high. A family could become homeless if they lose a house. Or (they) could lose employment if they lose a car and can’t drive. And there is also unequal bargaining power between lenders and consumers.

“Large institutions have lawyers to draft contracts and consumers have to agree on a take it or leave it basis. So there’s not a lot of negotiation and government has decided that consumers need protections, including a (Federal Trade Commission) ban on confessions of judgment.”

But Christopher Odinet, a law professor at the University of Oklahoma and a member of Hurley’s harmonization task force, sees the efforts of the federal government and the states to grapple with confessions of judgment as further recognition that small businesses have more in common with consumers than with big business. The COJ controversy follows on the recent passage of a commercial truth-in-lending bill by the State of California which, for the first time, stipulated that consumer-style disclosures should be included in business loans and financings under \$500,000 made by non-bank financial organizations.

He cites the close-to-home example of an accomplished professional who got in over his head in financial dealings. “I recently observed a situation where a family member who is a very successful and affluent medical professional was relying on his own untrained business skills,” Odinet says. “He was about to enter into a sophisticated and complex business partnership relying on his intuition and general sense of confidence in the other party.”

Odinet says that he recommended that his relative hire a lawyer. Which, Odinet says, he did.



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# DEAL FLOW IN THE HEARTLAND—FROM MISSISSIPPI AND BEYOND

By *ED MCKINLEY*

**T**he political, cultural and economic abyss that separates the heartland from the coasts seems to grow deeper and wider with each passing day, and trying to reconcile the disparities can feel nearly hopeless. But differences among geographic locations aren't nearly so well-defined or as troubling in the alternative small-business funding industry. What's more, business opportunities can arise when localities differ.

First the lay of the land: Members of the alt finance community agree that funders and brokers are concentrated in just a few geographic locales—Greater New York City, Southern California and South Florida. Those three areas probably generate more than 75 percent of the industry's volume, according to Jared Weitz, CEO of United Capital Source and one of three co-chairs of the broker council recently formed by the Small Business Finance Association (SBFA).



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Sorting out how the industry differs in various regions can prove challenging. The Internet is erasing regional quirks and alleviating the need for physical proximity, says Steve Denis, SBFA executive director. What's more, every ISO and funder develops a slightly different way of doing business regardless of location, he notes.

However, to a great degree it's a matter of tweaking a single general outline for navigating the industry no matter where the office or client is based. That's partially because many members of the industry conduct business in every state or nearly every state.

That said, old-fashioned, small-town ethics can sometimes seem closer to the surface in shops operating far from the coasts. "We're focused on the values of our organization—like doing what we say we're going to do, maintains Tim Mages, chief financial officer at Expansion Capital Group, a funder and broker based in Sioux Falls, S.D. "Some of that maybe comes from the Midwest culture or upbringing."

Outside the major population centers, the industry occasionally seems a little more "laid-back." In a light-hearted example of a relaxed heartland approach to the alt funding business, Lance Stevens, an attorney who's a co-founder of Brandon, Miss.-based TransMark Funding, claims he can underwrite a deal while driving his golf cart and listening to Bon Jovi—all while maintaining his under 5 handicap.

Everything can seem a little more slow in the heartland, where people have time to stop and say hello to strangers, says Weitz. "Some folks are like, 'Hey, my mailbox is three miles from my house, I check my mail once a week. I do not email. I do not fax,' " he observes. "It's a nice change."

Interactions are often more informal between the coasts. "Being in the Midwest we don't use a lot of the lingo and terminology from this space, such as 'stacking,' " says Austin Moss, a managing partner at Strategic Capital in Overland Park, Kan. That lack of jargon may be good or bad, he admits, but instead the staff speaks in a more general, even "holistic," financial language.

Then there's the occasional need for the human touch in the heartland. Deals there are sometimes sealed in person, with an office-park conference room substituting for the community bank building on the town square where merchant used to take out loans. "It's not a widespread trend, but a handful of the ISOs we do business with actually do face-to-face solicitation,"

says Mike Ballases, CEO of Houston-based Accord Business Funding.

In line with that mini-trend, an ISO based in Southern California operates a Texas office that specializes in face-to-face encounters, according to Aldo Castro, Accord's vice president of sales and marketing. "It's rather meaningful here," he says of using the practice in Texas. "You get on the road and shake a hand. They put a face to a name."

The process can work in reverse, too. A few of the larger local companies seeking funding from Strategic Capital make the journey to the broker-funder's Overland Park, Kan., offices, Moss says. Bankers who serve as referral partners also like the opportunity to meet in person, he observes.

The personal encounters often strike Moss as "refreshing," he admits. That's because the vast majority of the company's deals occur online and by phone and fax—all without ever seeing the client in person.

Although the desire for personal contact arises from time to time, most heartland deals don't hinge upon it. "It's not a big number, but we see it," Ballases says of face-to-face meetings. "Could it be the wave of the future? Absolutely not."

Moreover, for some in the industry, the need for face-to-face discussions barely registers. It's just not about meeting in person, according to Mages. Instead, he cites the importance of other factors. "Speed, convenience and service are the key differentiators, and that's all driven by data and analytics," he declares. Partnerships also drive the company's business, he notes.

Luck outweighs geography, too, in Mages' view. "It's more an issue of right place, right time," he contends. Deals occur primarily when funders manage to attract business owners' attention at exactly the time when capital's needed, he contends.

Besides, lots of people tend to think in wide-ranging ways these days instead of in narrow, provincial modes, Mages continues. At Expansion Capital Group, he notes, executives have differing points of view because they come from commercial banking, investment banking, the Small Business Administration lending program and the credit card industry.

At the same time, people tend to take an increasingly cosmopolitan approach to their jobs, according to Mages. He notes that executives at his company maintain contacts across the continent, often forged in earlier chapters of their careers.



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Meanwhile, well-trained employees can use a phone call to gather the details they need and establish a consultative relationship without a thought for geography or the need for face-to-face meetings, Mages says.

However, geography can indeed play a role at least once in a while. In a few cases merchants prefer a funder with an address across town or at least in the home state. Sometimes business owners and referral partners choose local brokers or funders simply because their names sound familiar.

Strategic Capital, for example, does more business at home than anywhere else, Moss says. The company's headquarters is in the portion of greater Kansas City that spills over from Missouri into the state of Kansas, making the location convenient to a major population center.

But despite the massive size of greater Kansas City, Strategic Capital remains the only alternative small-business funding option in the area—there just aren't any other local providers, Moss says. It's not like New York, where banks and merchants can choose from among many brokers and funders, he says.

That trend toward being the only game in town or one of just a few can hold true for most companies in the heartland, Moss maintains. A broker or funder based in Denver, for example, would probably have higher volume there than anywhere else, he notes.

Several reasons explain that geographic bias, Moss continues. "The employees live there and have contacts, and we're part of the local associations and chambers," he notes. "We work with just about all the banks in the area, and everyone knows who we are." The company also handles local government bonds and local construction projects, he says.

Mages offers a different perspective. Only a few small-business owners in South Dakota choose Expansion Capital Group because they prefer dealing with a Midwestern company or because they've seen local press coverage or heard Expansion's recruiting ads on the radio, he maintains.

Hometown, home state or regional preferences aside, executives at Accord emphasize the importance of the small-town approach of knowing their customers as well possible. For Ballases—the Accord chairman who started the company with Adam Beebe, who now serves as CEO—that means combining personal and impersonal approaches to underwriting.

Ballases views funders and brokers as falling into three categories. Some choose a personal, hands-on approach and don't rely upon algorithms. A second category emphasizes automation. A third blends the personal and the automated. His organization falls into the latter, he says.

For Accord, the personal comes into play because of what Ballases has learned in his decades in the banking business. He knows margins and growth rates in his applicants' industries, and those factors aren't often incorporated into algorithms, he says.

In fact, commercial banks have failed to learn to evaluate small businesses on their true merits, Ballases continues. Banks tend to underwrite small businesses, which he defines as those in need of \$100,000 or less, by

using a "skinnyed-down" version of how they underwrite big companies, which they base on general financial information. Instead, he counts on discipline, data and his 50 years of experience in commercial banking to evaluate a merchant on an individual basis.

At another company, TransMark Funding, Stevens and his partner draw upon legal and small-business experience to evaluate potential customers' creditworthiness. "That causes us to focus on an applicant's business model and their sustainability, which may boil down to personalities," Stevens says. Transmark combines those factors with "a little bit of credit metrics" to come to decisions on applications.

The company's mix of objective and subjective reasoning differs starkly from the thought process at most coastal funders, Stevens says. While his company gives most of the weight to the subjective and just a bit to the objective, big-city competitors tend to do the exact opposite, he says.





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Of the last five MCA deals that Transmark funded, the merchants averaged 12 checks returned for insufficient funds per month, Stevens says, noting that he can make that statement “with a straight face.” Sometimes it’s been as high as 35 NSF checks per month for successful applicants. “Those people would not even get into the parking lot of a bank and would not get through the door of any MCA funder who’s using any sort of reasonable metrics,” he adds.

An anecdote helps explain the thinking. Suppose a restaurant has been operating for several years in a town of 50,000 and has amassed 2,200 “likes” on its Facebook page, Stevens suggests. “I’m in,” he exclaims, noting that it would take compellingly negative numbers to convince him that the business won’t survive if he helps it obtain capital to improve its positioning in its market.

The vignette illustrates that a business can do well in the community despite the merchant’s financial difficulties, Stevens says. However, the story doesn’t mean Facebook becomes the only determining factor, he continues. Positive factors for success include good location and marketing, he notes.

The principals at many companies funded by TransMark have credit scores in the low 500’s, Stevens continues. “That’s tough,” he says, “because they’re going to have a lot of history of not living up to their financial obligations.” But if someone with that credit score has personally guaranteed a lease on a storefront for the next two years, they may be unlikely to abandon the business. A big bank might look upon that merchant as insufficiently nimble because of the lease, but TransMark takes the opposite view, he says.

Even if a store, restaurant or contractor is “circling the drain” and about to shut down, TransMark may simply believe the owner has the character to make the business work. “Given our minute default rate, we’re right most of the time,” Stevens maintains, adding that banks see applicants as customers, and TransMark sees them as partners.

The business model requires peering into the future to see how the merchants will look after using perhaps \$25,000 in capital to make improvements and while dealing with 18 percent holdback for the next six months, Stevens observes. “If they look strong, I need to fund them,” he says of the company’s prognostications.

To find ISOs who appreciate the TransMark model, the company seeks out purveyors of credit card merchant services, Stevens says. They encounter those merchant-

services providers at trade shows and through “some general poking around,” he notes.

The merchant-services people often have long-standing relationships with merchants and thus can feed information into the TransMark way of viewing deals. “Tell me what it looks like when you walk into their store at 11 a.m.,” Stevens says to illustrate the kind of conversation he has with ISOs. “How is their signage?”

Besides understanding clients, it also pays to understand markets, and proximity can help with the latter, according to Ballases and Castro from Accord in Houston. “We have an affinity for Texas,” Castro says.

Many of the businesses based in Texas are vendors to people—like mechanics who fix cars or restaurants that feed people—not vendors to businesses, Ballases notes. Vendors who cater to people are better candidates for merchant cash advances than business-to-business companies are, he maintains.

“It’s just a huge state,” Castro declares. “We’ve got a thousand new residents moving to Texas every day.” Nearly 10 percent of the nation’s small businesses operate in The Lone Star State, he notes.

“There’s a convergence of the population growth, a low tax rate, low regulations, low cost of running a small business relative to national levels, and a great small-business environment,” Castro says of the Texas scene. “In addition, the healthcare industry is exploding here, and there are the ancillary businesses to healthcare.”

Meanwhile, the state’s Hispanic entrepreneurs remain under-served by alt funding ISOs, which presents a great untapped opportunity, Castro maintains. Funders who cater to those Hispanic merchants will find them loyal, he predicts. In Texas alone, Hispanic consumers spend half a billion dollars annually, he says.

To capitalize on that burgeoning market, Accord has assembled a team that can help Anglo ISOs bridge the cultural and linguistic gap, Castro says. “We do that every day,” he maintains. “We’re jumping on the phone with merchants and helping them get the funding they need to support the growth of their operations.” Those conversations with merchants do not put Accord in competition with ISOs, Castro notes. Accord does not maintain an inside sales staff and does all of its business through ISOs, he says.

Only a few of those ISOs are based in Texas, according to Ballases. Most of Accord’s ISOs operate from offices in the Northeast, with many in the other common geographic spots of South Florida and Southern



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California, he says. So that makes Accord a national company despite its emphasis on Texas, Ballases says.

Accord's experience at home, combined with nationwide contacts in the industry, have convinced the company's leadership that too many brokers remain unaware of the opportunities in Texas.

That's why Accord is producing ads, videos, infographics, blogs and social media posts to alert those coastal ISOs to opportunities in Texas. The company even offers a tab called "FundTEX" on its website. "We're getting the word out," Castro says of the company's effort to publicize his state.

Besides operating in areas sometimes overlooked on the coasts, heartland brokers and funders sometimes have to reinvent the industry almost from scratch. Brokers

The lack of local experience sometimes prompts brokers in the heartland to tap the Big Three areas for talent. Expansion Capital Group, for example, has a business development director in New York who came from another ISO, Mages says. Besides cultivating relationships in NYC, the business development expert makes frequent trips to Southern California and South Florida.

Meanwhile, members of the industry who tire of the rapid pace on the coasts might want to consider moving inland to fill the vacant jobs, sources suggest. After all, the heartland has its advantages, according to Moss. "Most people here have houses, and the cost of living is lower than in places like New York," he says. A spacious five-bedroom house in Kansas City might cost less than



can find themselves teaching the business to potential investors outside the Big Three geographic locations, Moss says. In New York, investors already know the industry and use that familiarity to evaluate brokers, he says.

Brokers and funders also have to deal with the heartland's lack of workers with industry experience. As the lone company in the market, Strategic Capital, for example, can't find many prospective employees with previous jobs in the business, Moss notes. "There is no OnDeck or Yellowstone or RapidAdvance down the street to provide a talent pool for hiring," he says.

That's good and bad, Moss maintains. New hires don't require re-training to lose habits that don't fit the Strategic Capital way of working. But it's difficult to find underwriters, accountants and other prospective employees with the right background. It doesn't work to put new salespeople on straight commission because the "ramp-up" period takes longer with employees unfamiliar with the industry, he says.

a cramped apartment in New York, he notes.

To commute to the company's suburban office, his typical employee jumps into a car in a climate-controlled attached garage, cruises for half an hour or so on roads relatively free of traffic and parks in the lot a few steps outside his office building. It's less stressful than crowding into a subway car, he notes.

The hinterland's not as culturally barren as some might believe, Moss continues. The public hears "Kansas City" and they think of tornadoes, cows and the Wizard of Oz, he says. But the reality includes a downtown replete with skyscrapers and pro sports, not to mention lots of tech, healthcare and aerospace companies. "It's like a mini-Chicago," he notes.

But a retreat from the coasts may not be in the offing. Ballases expects that the majority of ISOs will continue to concentrate on the East Coast and West Coast because that's where population growth remains strongest and thus provides the most opportunities. "It's a numbers game," he observes.





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# INDUSTRY NEWS

**11/26/18** Shopify acquired TicTail, a Swedish e-commerce company

**11/28/18** Numerated, a fintech company offering banks a real-time lending and growth platform, announced that it had closed on \$8 million in additional financing—bringing its total funding to \$17 million.

The British Business Bank (BBB) committed to lend up to £150m to UK small businesses through Funding Circle.

**11/29/18** The SEC announced settled charges against professional boxer Floyd Mayweather Jr. and DJ Khaled, for failing to disclose payments they received for promoting investments in Initial Coin Offerings (ICOs).

**12/3/18** Bloomberg News reported that the New York Attorney General had opened an investigation into potential abuses by finance firms that offer quick money to small businesses nationwide.

SoFi confirmed they were trimming 100 people between its offices in Healdsburg and Salt Lake City. The cuts represent about 7 percent of its overall workforce of 1,400 people.

**12/4/18** CommonBond announced the acquisition of NextGenVest, a pioneer in helping Generation Z make the best financial decisions from high school, through college, and beyond.

**12/5/18** OnDeck Announced Agreement to Combine Canadian Operations with Evolocity Financial Group.

Mirador, a Portland startup that seeks to streamline loan applications for small businesses, announced it had been sold to a Wisconsin company called CUNA Mutual Group.

**12/6/18** Senators Sherrod Brown and Marco Rubio have called for a nationwide ban on Confessions of Judgment in response to the Bloomberg Businessweek series published last November. The bill, which would amend the Truth in Lending Act, may be named the Small Business Lending Fairness Act.

Under the terms of the Strategic Alliance Agreement between Glance Technologies and Merchant Advance Capital (both based in Canada), the companies will collaboratively market and promote each other's businesses through their respective marketing and sales channels. Under the terms of the Referral Agreement, Glance will be paid a fee for each transaction that Merchant Advance Capital closes from a Glance generated lead.

Kathy Kraninger was confirmed by the Senate to lead the Consumer Financial Protection Bureau by a 50-to-49 vote.

At least 43 reporters and editors, most of them in New York, are known to have left Bloomberg News in 2018, according to a story published in the New York Post.

Cross River Bank, which provides banking services to fintech companies, announced the completion of a funding round of roughly \$100 million.

**12/10/18** Finitive, which brings capital from institutional investors to alternative lending companies, appointed Neil Wolfson to its Board of Directors. Wolfson also serves on the Board of Directors at OnDeck.

**12/11/18** Velocity Capital Group, a small business funding company run by CEO Jay Avigdor, raised a \$5 Million Series A round and secured a \$10 million line of credit.

**12/14/18** Coinbase announced instant PayPal withdrawal feature for US customers.

**12/18/18** Marlette Funding announced plan to add more than 200 jobs in Delaware.

Yahoo Finance named Square the #1 company of 2018.

**12/19/18** Lending Express appoints former Maple founder Ofer Ariel to Chief Product Officer; Promotes Daniel Katz to Chief Operating Officer.

OnDeck announced plan to enter the equipment financing market.

Directory Kathy Kraninger said she would rebrand the BCFP back to its original acronym, CFPB.

The WSJ reported that Square would renew its effort to apply for a bank charter.

Maria Vullo, the Superintendent of the New York Department of Financial Services, announced her resignation after 3 years in the position.

**12/21/18** LendingTree announced that they would be acquiring ValuePenguin, a personal finance website.

**12/31/18** deBanked announced its two favorite small business forums of 2018: <https://www.small-business-forum.net> and [www.businessadviceforum.com](http://www.businessadviceforum.com).

**1/3/19** Entrepreneur Magazine named Reliant Funding one of the "Best Entrepreneurial Companies in America".

**1/8/19** CAN Capital announced the appointment of Edward J. Siciliano as CEO. Siciliano joins CAN Capital most recently from Marlin Business Services, a nationwide provider of commercial financing and depository products. While at Marlin, Siciliano served in roles including Chief Operating Officer, Interim Chief Executive Officer and EVP, and Chief Sales Officer.

**1/10/19** The Small Business Finance Association (SBFA) announced the SBFA Broker Council Board of Directors. The Council is a newly formed initiative composed of alternative finance brokers who are dedicated to helping small businesses secure fair and responsible capital. The Council is co-chaired by Jared Weitz, founder & CEO of United Capital Source and James Webster, CEO & co-founder of National Business Capital. The new additions to the board include Peter Ribeiro, CEO of US Business Funding; John Celifarco, Managing Partner, Horizon Financial Group; and Stephen Sheinbaum, President and CEO, Circadian Funding.

**1/11/19** Lumi, an Australia-based alternative lender, has completed a \$31.5 million series A capital raise to take on the realm of small business lending.





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# TIPS FOR TRADE SHOW SUCCESS

By CHERYL WINOKUR MUNK

Conference season will soon kick off, but many attendees are at a loss at how to score big at these events.

Without a doubt, trade shows and conferences offer participants a prime opportunity to boost brand exposure, make professional connections and increase sales.

But there's also a lot of behind-the-scenes work required to turn these events into successful business endeavors.

While the playbook won't be the same for every company, here are some tried-and-true tips to help attendees get the most out of conferences.





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## CHOOSE CONFERENCES WISELY

Start by determining which conferences to attend. With dozens to choose from, it's not realistic from a budget, time or value perspective to hit every conference, says Jim Larkin, who manages events for OnDeck. Companies should select conferences based on which ones make the most sense for their goals and objectives. Not all conferences will offer the same benefits to every company or industry professional, frequent conference attendees say.

Ideally, management teams should meet early in the year to weigh the pros and cons of each conference, against the backdrop of the company's budget. Some factors to consider include where and when the conference is being held, which of your competitors, prospects and customers are likely to attend and how many employees it makes sense to send, if any.

"Budgets drive everything and you want to be smart with spending money," says Janene Machado, lead event planner for deBanked, whose flagship conference, Broker Fair, is scheduled for May 6 in New York. "You need to be strategic about why you are attending a particular conference," she says.

## PLAN AHEAD

It's essential to plan ahead for each conference to make the most out of the event. This includes carefully combing through the agenda, scheduling meetings ahead of time and getting acquainted with the physical layout of the event space. If more than one company representative is attending, it's also important to coordinate their

activities in advance to avoid duplicating efforts and to maximize productivity.

"You have to make your own luck at these conferences," Larkin says.

Most events have an online or mobile agenda and networking portal that are open to participants at least a few weeks beforehand. Bookmark the sessions you would like to attend, build your wish-list of people you would like to meet and start requesting meetings as soon as possible, says Peter Renton, co-founder and co-chairman of LendIt Fintech, which has an upcoming conference scheduled for April 8 and 9 in San Francisco. "Last year we helped to enable nearly 2,100 meetings at our USA event, and most of those meetings were organized through our networking portal," Renton says.

Don't delay when it comes to setting up advance appointments because schedules can fill up quickly, says Monique Ruff-Bell, event director for Money20/20 USA, which will take place in Las Vegas from Oct. 27 through Oct. 30. "Identifying the right contacts beforehand, reaching out and establishing what you'd like to achieve in a short meeting will make your time much more productive," she says.

It's fine for attendees to leave some time in their schedule for impromptu meetings as well; just be sure to fill those slots, says Ken Peng, head of business development and marketing at Elevate Funding. "No one should ever be asking, 'what are we doing next?' You should know," he says.

It's also a good idea to plan ahead for a dedicated meeting

space so you'll have a convenient, comfortable and quiet space to conduct meetings, seasoned conference attendees say. This can be especially important at big conferences where thousands congregate.

For those who don't want, or can't afford, to pay for a meeting room, it's a good idea to find a quiet restaurant or coffee shop outside the busy convention center area where you can have quiet, uninterrupted, productive conversations in a relaxed environment, says Larkin of OnDeck. Don't choose the heavily frequented coffee shop next to the hotel where meetings are sure to be disrupted by heavy foot traffic, he says. "Get away from the noise, the hustle, the chaos. Quiet is king."


## MAKE SMART SPENDING CHOICES

Conferences can be expensive, so it's important to make the right decisions with the available budget.

For instance, companies don't have to miss out on promotional opportunities just because the highest level of sponsorship is out of reach for their budget. Instead, look for creative ways to make an impact without breaking the bank, says Stephanie Schlesinger, director of marketing for LEND360.

Schlesinger suggests that would-be sponsors have an open conversation with conference organizers about what they can afford to spend and what they hope to reap in return for their marketing dollars. She offers the examples of companies that have sponsored popcorn breaks, pens and pads of paper, badges, lanyards and other marketing materials. "There could be





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opportunities to do something very unique. By brainstorming together we can think of outside-the-box opportunities to really make an impact for your brand,” she says.

Another cost consideration is where to stay. Though it can be tempting to save a few bucks by bunking off-site, that’s not always the most prudent decision, frequent conference attendees say.

“Time is really valuable at these shows and events. If you’re staying off-site you have to battle everybody for the cab line, and the increased expense of commuting can offset any cost savings,” says Sheri Chin, chief marketing officer at BFS Capital. Also, staying on-site “gives you more flexibility when unscheduled things come up,” she says.

If staying on premises isn’t an option, conference attendees should make extra efforts to spend considerable time in the bar or lobby of the conference site, says Jeffrey Bumbales, marketing director at Credibly. People will come in and go and it’s an easy way to start conversations, he says.

### ARRIVE EARLY, WORK LATE

Conferences typically consume a lot of energy, so Eden Amirav, chief executive and co-founder of Lending Express, recommends participants try to catch people well before they are running on empty. As the conference goes on, it becomes harder to engage people because they also get drained, he says.

Typically conference doors open a few hours before the first sessions begin, and this can be an especially effective time to network,

Amirav says.

Arriving early also allows participants to find their way around. Ruff-Bell of Money20/20 USA recommends participants walk through the entire event space upon arrival to get their bearings. “Many of these large conferences can be overwhelming, and knowing where to go will help with your time management,” she says.

Bumbales of Credibly also recommends conference attendees pack their schedule tightly—even though it might mean activities extend late into the evening. Instead of calling it quits at 6 p.m. he recommends conference attendees plow through and host evening meetings over dinner or drinks. Even though a participant may be tired, it’s best not to miss these important networking opportunities, he says.

The proper conference mindset includes knowing there’s a good chance sleep won’t be plentiful.

To accommodate, Bumbales tries to ensure he’s well-rested before a conference. He also makes sure to pack protein bars and non-perishable snacks for replacement meals as needed throughout the conference in case he needs to eat on the go. The goal is to hit the ground running and be able to focus entirely on conference-related business, he says.

### BE SOCIAL

Although numerous social opportunities abound at conferences, not everyone takes advantage. Certainly not everyone is as comfortable approaching strangers. But it’s important for conference-goers to try to break out of their shell whenever possible, industry professionals say.

When he first started going to conferences, Gary Lockwood, vice president of business development at 6th Avenue Capital, says he found





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it difficult to strike up conversations with strangers because it took him out of his “comfort zone.” But he forced himself to make the extra effort, and it has served him well. He says that some of the best connections he’s made have come from these chance meetings at breakfast, lunch or during random breaks.

Although attendees don’t always stay on-site for meals, Peng of Elevate Funding recommends people stick around during these times, if possible. He finds these meals a good opportunity to chat with others in a comfortable setting as opposed to the more strained conversations that can happen when someone approaches him at an exhibitor booth. These informal conversations offer a better chance to build a rapport with someone and learn—in a non-pressured environment—about what the other person does, he says.

Bumbales of Credibly says elevator time offers another opportunity for chance meetings that can turn into business opportunities. Most times, he prefers to take the stairs, but not at conferences. Elevators can be great for short, yet productive conversations. He likes to position himself next to the elevator buttons, which gives him an opening to break the ice. He says he’s had a few business opportunities arise as a result of elevator conversations.

It’s also important not to monopolize anyone’s time says Machado of deBanked. Everyone is there to meet as many people as possible, so she recommends keeping conversations quick, meaningful and relevant.

When he’s talking to someone

for the first time, Lockwood of 6th Avenue Capital tries to listen more than he speaks. “I want to listen a little more than I talk in the beginning so I can tailor the conversation to what they need.”

While not every exchange will be fruitful, it’s important to recognize that any conversation could lead to future business; even a commercial real estate broker who has no present connection to merchant cash advance can be a potential partner or resource at some point, Lockwood says.

It’s also a good idea to keep your business cards handy at all times. Bumbales says he’s been in several situations when people don’t have them available, which makes exchanging information more awkward. “It’s a lot less awkward to exchange business cards than it is to ask for someone’s cell phone number,” Bumbales says.

### **MAKE YOUR FOLLOW UP COUNT**

Because each day is so jammed-packed with information, it’s a good idea to take notes so you don’t lose track of important details, says Ruff-Bell of Money20/20 USA. Each person will have his own system, but effective note-taking becomes important for recapping the event back in the office and for sending post-event follow-ups to new contacts. “At the end of each day, go through your notes and clean them up, ensuring you’ll understand the key points and important details weeks later,” she says.

Some conference participants fall short when it comes to following up with new connections they’ve made, but this can be a grave mistake. Follow-up emails are most

effective when they are personal, says Peng of Elevate Funding. He recommends attendees jot down a few notes on the business card of each person they meet to jog their memory later on about their conversation. Then, weave details of the conversation into the follow-up email, so the correspondence won’t seem cold, generic or canned, he says.

Remember, conference-goers will be meeting hundreds of other people at the conference, Ruff-Bell says. “Ensure your follow-up is prompt, effective, and most importantly, memorable,” she says

### **MAINTAIN PROFESSIONALISM AT ALL TIMES**

Even though the setting is social, conference attendees need to be mindful about maintaining proper decorum at all times. This is a seemingly obvious rule of thumb that people sometimes forget, conference participants say.

“You’re there for work first, play second,” Peng says.

Professionalism also dictates that attendees and exhibitors should be where they are supposed to be at appropriate times. Peng recalls a conference he attended last year where one of the exhibitors left its booth unmanned for most of the conference. There’s no way to know where an interaction at these booths can lead in terms of new business or face-time with existing clients.

“It’s not doing the company any favors” by passing up the opportunity, he says.



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