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Brave New World —

Community Banks & Credit Unions Enter Syndication Market

BY JEFFREY A. WURST, ESQ.

Regular *ABF Journal* contributor Jeffrey Wurst was puzzled by a recent news announcement that smaller institutions such as community banks and credit unions have shown up as participants in large transactions facilitated by web-based portals. In this article, Wurst tries to imagine what would happen if such a deal defaulted or worse yet, with a complete breakdown of the facility, how all the participants would deal with each other.

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We all know how challenging the present market is for lending institutions that are determined to fulfill their mission to employ funds, while at the same time do so prudently and in full compliance with growing requirements from the OCC. Large money center institutions have long dominated the syndicated market. Their credit limits are sufficiently high to take on larger credits and, of course, their taste for larger deals can be insatiable. However, over the past decade or so as interest margins have shrunk, we have seen some of these institutions exit the small business lending markets only to reenter them when they reconsidered the opportunities they were missing to employ funds. During these periods, smaller institutions such as community banks and credit unions servicing the smaller business markets have seen opportunities come and go, often as a result of the change in direction from the larger institutional banks.

In early December, as I was reviewing my daily email from the *ABF Journal,* the following headline struck my eye: **BancAssets/MidFirst Close $100MM U-Haul Loan.** Headlines such as this are not uncommon in this publication that regularly touts the accomplishments — large and small — of the industry. However, I was unfamiliar with BancAssets and MidFirst. I was not unfamiliar with U-Haul or the concept that U-Haul might take on a $100 million loan. I might have expected a loan like that to have been made by one of the "usual suspects" and not from "a network of 23 community financial institutions" as described in the article. In fact, less than a year earlier another morning headline in the *ABF Journal* daily email announced that AIG Commercial Asset Finance added $75 million to an existing $105 million facility, AIG being one of the "usual suspects."

I quickly became curious about this facility and wanted to know more about it. *Who is BancAssets? Who is MidFirst? Why are they arranging a $100 million loan for U-Haul? Why is the loan not coming from one or more lenders that I would have expected to see make a loan like this?*

My visit to their website disclosed that:

> BancAssets, LLC, in partnership with BancVue, Ltd., offers an institutional-grade platform to bring Main Street to Wall Street. We provide corporate, commercial, and consumer loan programs, administration, servicing, and due diligence support through an established national network of community financial institutions.

OK. That told me about BancAssets.

The 10Q filed by AMERCO, the parent company to U-Haul, on November 6, 2013 for the period ending September 30, 2013, disclosed (as an event subsequent to the close of the reporting period):

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> On October 8, 2013, various subsidiaries of AMERCO Real Estate Company and U-Haul International, Inc. entered into a real estate loan for $100 million. This loan matures in October 2016, with an option to extend for four more years. This loan is secured by certain properties owned by the borrowers. The interest rate for this loan is the applicable LIBOR, plus an applicable margin of 2.50%.

The loan agreement was not attached to the filing so we will need to wait until the 10K is filed to see how this loan, made by "23 community financial institutions" with an average exposure of less than $5 million each, was structured.

According to a December 3, 2013 article in the *Credit Union Times,* the loan was made by four credit unions and 19 banks as follows: Alliance Bank of Arizona; Atlantic Regional FCU in Brunswick, ME; Bankers Trust Co.; Blue Ridge Bank; City National Bank of New Jersey; Cross Keys Bank; ESB Financial, EVB; First Chatham Bank; Kennett National Bank; Leaders Credit Union in Jackson, TN; Metropolitan Bank; MidFirst Bank; Mohave State Bank; Money One Federal Credit Union in Largo, MD; Murphy-Wall State Bank and Trust Co.; Sacramento Credit Union in Sacramento, CA; Southeast National Bank; Sycamore Bank; Texas First Bank; The Brenham National Bank; The Clay City Banking Co. and The First National Bank and Trust Co. of Broken Arrow.

Recent articles that I have authored have addressed challenges facing co-lenders in their dealings with agents in multi-lender transactions. As a result, my imagination started to run afoul about what might occur if *what can't go wrong, does go wrong* and how this group of 23 might approach a workout situation?

Does MidFirst have the capability and experience to agent a deal like this? What is the reporting methodology between the agent and co-lenders? What is the mechanism for resolving disputes, if any, among the co-lenders?

Based upon the very limited information contained in the 10K, it appears that this is structured as a single advance facility and not as a revolver as I had originally thought when I saw the initial announcement. Thus, the co-lenders may expect that they can sit back and collect their share of return each month. Hopefully this will be the case.

Now please join me in imagining this loan as a revolver. *Can it be done? Can a group like this deal with daily or even weekly or monthly borrowing base certificates, advances, collections and settling up? How? How would they deal with defaulting lenders? How would they deal with covenant defaults or worse yet, with a complete break down of the facility? How would they deal with each other?*

We all know how difficult it is to get a consensus in small club deals let alone large multi-lender syndications. Imagine that conference room when my theoretical $100 million revolver by 20 institutions goes into default and the lenders are called to a meeting.

As you can see, I am fascinated with the concept created by BancAssets. But they are not the only one with a platform bringing parties together. The Receivables Exchange is another electronic platform bringing together parties to financial transactions. According to its website:

> The Receivables Exchange [is an] electronic exchange for the sale and purchase of accounts receivable. In association with NYSE Euronext, [it] connects large corporate sellers of receivables with diversified sources of liquidity, including banks, family offices and asset management funds. Transactions over [The Receivables Exchange] are structured to result in a "true sale" of the receivables, thus offering balance sheet benefits to sellers and attractive risk-adjusted returns to buyers.

Sound like factoring? Well, maybe, but not exactly.

DealVector is another web-based portal. But instead of bringing together funding sources and funding users, DealVector provides a platform for investors to anonymously communicate with each other. According to its website:

> Participants in CDOs, CLOs, derivatives, hedge funds and other alternative investments have no easy way to identify other parties to their deals. This imposes large costs with respect to price discovery, governance, consent solicitations, illiquid asset sourcing, creditor class formation and many other common events requiring communication among deal participants … DealVector provides a confidential deal registry, secure online communication tools, and a validated membership base that make it easy to answer the question "Who's in my deal?"

So what is the take-away of all of this? We all know that we are living in the most challenging time for financial institutions to responsibly employ funds. We also know that as the bank regulators continue to tighten the reins on how regulated institutions may employ their funds, competition increases from non-regulated sources for funding. The internet has created opportunities that enhance this competition.

At the risk of giving away my age (do I really care?), I must confess that although I have jumped into and have welcomed the new opportunities created from the web, as an attorney, I remain very traditional in approaching the structure and administration of financial transactions.

So, for those entering this Brave New World of finance — Caveat Emptor! (Buyer beware.) abfj

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