

Perspective by CRF

3rd Quarter, 2023

ALSO IN THIS ISSUE:

[What Not to Believe About Chapter 11](#) Page 20

[Minimizing Supplier Disruption in Your Supply Chain](#)
Digital Article Page 24

[Integrated Trade Promotion and Deduction Management](#) Page 26

[How to Deal with Disputes: A Veteran's Guide to Removing the Backlog](#) Page 30

The Lurking Danger of Artificial Intelligence: Greater Preference Exposure

Written by: Joseph Frank and Jeremy Kleinman, FrankGecker LLP

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Navigating Change Management in Finance Transformation Projects

Written by: Danny Wheeler, BlackLine

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B2B Credit Card Update

By: Andrew Behlmann and Colleen M. Restel, Lowenstein Sandler LLP

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- 2 HIGHER STANDARDS**
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- 3 SMARTER SYSTEMS**
To keep on top of all this, it takes a platform that provides real-time visibility into the status of every account, every action taken, and every payment received.

The Lurking Danger of Artificial Intelligence: Greater Preference Exposure

By: Joseph Frank and Jeremy Kleinman, FrankGecker LLP

Recent growth in the use of artificial intelligence (“AI”) is changing business processes at a rapid pace, and the management of credit relationships is not immune from this influence. Indeed, AI can use machine learning and predictive analytics to better identify customers at risk of non-payment and to communicate effectively with those customers to optimize collection. Used correctly, these tools can be a valuable part of credit management and may enhance the ability to get payments in the door. But if the customer making those payments is insolvent and ends up in bankruptcy, the use of AI may impact a creditor’s ability to keep those payments and create exposure to preference liability under section 547(b) of the United States Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*, hereinafter, the “Bankruptcy Code”).

Preferential Transfers and Defenses

We begin with a quick primer on preference liability under section 547(b). Subject to a few enumerated affirmative defenses, a debtor or trustee in bankruptcy may generally avoid and recover as “preferential” a transfer of an insolvent debtor’s property (over a threshold amount) made on account of an unsecured antecedent debt within the 90 days prior to bankruptcy.

While this definition of “preferential transfer” seems to capture virtually every payment made by a debtor to its unsecured creditors during the 90 days before its bankruptcy filing, section 547(c) of the Bankruptcy Code provides affirmative defenses that can shield a creditor from liability. The two most commonly used defenses are:

- i. the “subsequent new value” defense under section 547(c)(4), providing a dollar-for-dollar reduction of preference liability for additional unpaid goods or services provided after payment of one or more of the alleged preferential transfers; and
- ii. the ordinary course of business defense under section 547(c)(2), protecting payments made consistent with either the prior history of the parties’ credit practices, or the “ordinary business terms” of the creditor’s industry. These alternative criteria are presented disjunctively in section 547(c)(2). However, some courts have suggested that intensified collection efforts could invalidate a defense under *both* alternative prongs of section 547(c)(2). See *In re: Lyondell Chemical Company*, 2015 WL 5560283, at *9 (Bkrcty.S.D.N.Y., 2015) (“the Court notes that there is nothing in the record indicating that LR2 took any ‘extraordinary collection efforts’ that could jeopardize the . . . satisfaction of the elements of the ordinary business terms defense). Furthermore, to prevail on an ordinary course of business defense based on ordinary business terms, a creditor “must provide admissible non-hearsay testimony related to industry credit payment, and general business terms in order to support its position.” *FBI Wind Down, Inc. Liquidating Tr. v. CareersUSA, Inc. (In re FBI Wind Down, Inc.)*, 614 B.R. 460, 495 (Bankr. D. Del. 2020). Where a defendant presents only its own practices without any general industry standards for comparison, it has not met its burden. *Id.*

AI Credit Management and the Ordinary Course Defense

So, what does this have to do with AI? Potentially, a lot. The latest AI credit management tools can:

- prepare reports identifying customers at heightened risk of delaying or missing payments;
- analyze customers communications to predict willingness and ability to pay;
- identify effective times and methods for communicating collection demands to specific customers;
- generate automated collection communications or demands, with language customized to optimize payment prospects from each specific customer.

Used correctly, these tools can bring greater efficiency and, perhaps, effectiveness to the credit management process. However, these tools also can generate documentary evidence of identified risks and

resulting changes in collection efforts, including changes to frequency, methods, tone, and substance of collection demands, and even escalating threats, any, or all of which could undermine an ordinary course of business defense. *See, e.g. In re hhgregg, Inc.*, 2022 WL 370279, at *9 (Bankr. S.D.Ind., 2022) (court found that payments were non-ordinary due in part to increased communications with debtors about the need for payment that included threats of held shipments and frequently included members of the debtors' and creditor's senior management); *In re Roberds, Inc.*, 315 B.R. 443, 467 (Bankr. S.D. Ohio 2004) (rejecting ordinary course of business defense when payment terms changed, and credit holds took place). Indeed, a plaintiff in preference litigation would be wise to take discovery relating to (i) the use of AI in connection with the credit relationship, (ii) when AI identified the debtor as a credit risk, and (iii) how the treatment of, or interactions with, the debtor deviated from prior treatment of that debtor and the treatment of other customers.

While it is easy to envision a time when using AI as an essential credit management tool is ordinary in a creditor's industry, that time has not yet come, and the interplay between AI and a creditor's potential defenses to a preference claim has not yet been explored by bankruptcy courts. Indeed, to a bankruptcy judge who may lack experience using AI in the operation of a business, these AI collection processes may be strong evidence that transfers were not ordinary and cannot benefit from the ordinary course defense.

AI on AI Collection

Don't just take our word for it. We asked ChatGPT "does the use of AI to manage a credit relationship have potential impact on an ordinary course of business defense to a preference claim under section 547(c)(2) of the Bankruptcy Code?" Here was part of its response:

I am not a lawyer, but I can provide some general information that may help you understand the situation. However, for legal advice specific to your case, it's important to consult with a qualified attorney.

Section 547(c)(2) of the Bankruptcy Code provides for the "ordinary course of business" defense to preference claims. This defense allows a creditor to argue that the payment or transfer being challenged as a preference was made in the ordinary course of business between the creditor and the debtor.

The use of AI to manage a credit relationship could potentially impact the ordinary course of business defense in a preference claim, depending on how the AI system is utilized and its effects on the payment transactions. Factors that might be considered include:

1. **Change in Payment Patterns:** If the AI system significantly changes the historical payment patterns between the debtor and the creditor, it could potentially weaken the ordinary course of business defense. This might happen if the AI system leads to substantially different timing or amounts of payments compared to the past.
2. **Predictive Analysis:** AI systems may use predictive analysis to determine payment schedules. If the AI's predictions differ significantly from past practices, it could impact the creditor's ability to establish a consistent ordinary course of business defense.
3. **Influence on Timing and Amounts:** If the AI system influences the timing and amounts of payments, and these changes are deemed unusual or inconsistent with historical practices, it could impact the creditor's ability to establish that the payments were made in the ordinary course of business.

* * * *

Practical Steps

So, what should you do? Here are some suggestions:

- Pay attention to the communications generated by AI. If AI is being used to collect outstanding invoices, significant changes in the AI communications can signal that a customer presents an enhanced or even imminent credit risk, which may require special attention to pursue payment while trying to avoid preference liability. At the same time, if a customer does seek bankruptcy protection and seeks to recover preferential transfers, the written communications between the debtor and creditor will likely be scrutinized by attorneys (and, perhaps, a bankruptcy judge) who are otherwise unfamiliar with the parties' business dealings. They may interpret changes in the method, frequency and substance of those communications as undermining an ordinary course of business defense to a preference claim.
- Address the high-risk customers personally. Once an enhanced risk customer is identified, there are steps a credit manager (or AI) can take to address the situation, including shortening payment terms, shifting to CIA or COD, or demanding a deposit or letter of credit, any of which may limit losses in the event of bankruptcy. However, each of these steps can have a range of other adverse consequences. Depending on the importance to the debtor of the goods or services being provided and the debtor's liquidity, a change to CIA or COD or demand for security could also impact the debtor's continued viability, speeding its descent into bankruptcy. Furthermore, any of these credit actions, or even a written threat to take these actions, could constitute a departure from "the ordinary course of business," putting future payments on antecedent debt at risk without the protection of the ordinary course of business defense. Personal involvement when a customer presents significant risk of substantial loss or preference liability can ensure that all the potential consequences of any credit action are carefully considered (including, when necessary, through the involvement of counsel) and that action and communication are tailored to minimize and balance those risks.
- Integrate industry norms and practices into your AI designs and directives. Because section 547(c)(2) protects payments that are either consistent with the parties' prior business practices or the business terms, norms and practices that are ordinary in the creditor's industry, those terms, norms, and practices can be integrated into an AI collection program. While the "ordinary business terms" defense is typically established by expert testimony regarding (i) the ordinary business terms in a creditor's industry, and (ii) whether the payments were received consistent with those terms, evidence of the use of ordinary business terms in AI-based credit management (and no actions that deviated from those terms) could bolster this affirmative defense.
- Get the Payment. Even if a payment is obtained through collection efforts that depart significantly from the ordinary course of business, it may still be protected by the subsequent new value defense under section 547(c)(4), but if it is not, creditors will typically have the opportunity to settle any preference liability at a discount and may have an opportunity to resolve any preference liability through a full or partial waiver of an administrative expense or general unsecured claim. This can often provide a creditor with a greater recovery than refraining from any additional collection efforts and being paid as an unsecured creditor in the customer's bankruptcy.

Ironically, when asked how to minimize risk to the ordinary course of business defense from using AI in credit management, ChatGPT provided the most important advice: "Remember that the specific impact of using AI in a bankruptcy case can vary based on factors such as the nature of the AI system, the industry involved, and the overall business relationship. Working closely with legal professionals who have expertise in bankruptcy law is essential to ensure that your use of AI aligns with legal requirements and best practices."

About the Authors



Joe Frank is bankruptcy counsel to some of the largest public and private corporations in the United States. He provides daily counsel to these companies on both routine and complex bankruptcy matters and has appeared on behalf of his clients in bankruptcy courts throughout the country. He also represents creditors' committees and asbestos claimants' committees and has confirmed Chapter 11 plans on behalf of committees in bankruptcy courts in Delaware, Illinois, Missouri, Wisconsin and New York. As a member of the Trial Bar for the Seventh Circuit Court of Appeals, Joe often represents bankruptcy trustees and creditors in bankruptcy court litigation, and he has filed Chapter 11 bankruptcy cases and handled workouts for mid-sized corporate debtors, including many real estate developers. He does not represent banks, and dedicates much of his practice to helping debtors and unsecured creditors get their fair share in bankruptcy.



Jeremy Kleinman's practice includes the representation of secured and unsecured creditors, commercial landlords, creditors' committees, trustees and other clients in all stages of Chapter 11 bankruptcy proceedings. He also has extensive experience litigating preference and fraudulent conveyance avoidance actions, claim disputes and other bankruptcy-related disputes. Recently, Jeremy confirmed a Chapter 11 plan on behalf of the official committee of unsecured creditors in the Chapter 11 bankruptcy case of a local snack food manufacturer. Although the debtor in that case had few liquid assets at the time of the bankruptcy filing, creditors obtained a 52% recovery through the committee's pursuit of litigation against certain insiders of the debtor.

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Navigating Change Management in Finance Transformation Projects

By: Danny Wheeler, AR Solutions Strategy Manager, BlackLine

Embracing automation has become a strategic imperative for organizations seeking operational efficiency and improved reliability for their finance and accounting (F&A) processes. However, digital finance transformation journeys are rife with challenges that can fundamentally shape the ultimate outcome.

A successful implementation doesn't just mean being smart with technology. It's about managing change throughout your organization, ensuring everyone in the team is on board and making the most of software that tackles the real, everyday pain points for F&A.

You need all the pieces to fit, and to do this, companies must take a considered and strategic approach.

Clear Objectives and Goals

Anchoring your automation initiative in clear, measurable objectives will be paramount to its success. Objectives that are too vague, challenging, or difficult to measure will hinder your project before it even begins.

Clear objectives and goals, on the other hand, will help you steer the ship, and right it when things go wrong. You should think of your objectives as your island. If your project scope starts to creep or become too complex, it can feel like you're struggling to keep your head above water. When this happens, your objectives are where you want to return to. You should be able to come back to them throughout the project, to make sure that what you are doing is aligned with and in support of these initial goals. This will help you to circumvent scope drift and focus on tackling the challenges that matter most to your business and its people.

Additionally, during this first step, you should already be thinking about the success story you want to tell at the end of the project. Think about the objectives you've set – do you know how you will show that you've met these? What benefits will these help to deliver, for people and the organization? If you can't answer these questions, you may need to revisit your objectives to make them clearer and more specific.

Establish Metrics that Align with Automation Goals

This brings us onto metrics and measurement. Whatever your goals for implementing new technology, to demonstrate a good ROI and build a business case for any future improvements, your definition of success must be etched in metrics. This is an area which sometimes (mistakenly) gets left to the end of a project. However, I would encourage you to view this as something that goes hand-in-hand with objective setting.

If you don't think about measurement until the end, you'll only measure what you can – not what would have been best for showcasing success. Establishing the right metrics at the beginning of the project gives you the opportunity to look at these at every stage, adjust your approach accordingly and continue on your transformation journey.

Key Stakeholder Engagement

Planning is of course a priority at the beginning of any project – but change is a team effort. Get the right people involved and do it right away.

Rather than viewing your automation initiative solely through a technology or organizational lens, think about transformation as a people-centric process. Who will be impacted by this project and at what stage? Who needs to be informed? Who is a decision maker? Who can help you shape this? Who, ultimately, will its success depend on?

Involving key stakeholders from the beginning is important for setting expectations and avoiding challenges further down the line. If you introduce a stakeholder group too late, you might end up with objectives that move or change over time, or with technology that is not widely accepted by those who need to use it. Those brought into the project in the early stages are considerably less likely to challenge things down the line – particularly if they have played a part in setting objectives or goals.

Depending on the size of your organization, the number of people who need to be informed and involved will vary. But there are three groups you should not forget:

- A senior leader: someone who will help champion the project for you.
- Your IT department: this team is crucial for any digital F&A initiative. The worst thing you can do is spring a project on them once a solution has been purchased, with an outcome and delivery date that does not work in reality for their time and resources.
- End users: never forget the people who will be using the software you're introducing and remember that people can sometimes feel threatened by change. Communicating how this will benefit them and hearing their concerns are both fundamental to managing change.

Change Champions

Every team needs its heroes. As part of your ongoing stakeholder engagement, try to identify and support "change champions" within your company.

Your most engaged and passionate colleagues often make the best champions. They're the ones who know the current processes and pain points, and see the benefits of what you're trying to do. They may see that the next step in their own career is getting confident using the latest technology. These people can help you communicate how responsibilities and procedures are changing and why. They can help others adapt to the changes and make the integration process smoother.

Testing Before Showtime – Not After

Before your transformation project goes live, remember: test, test, and test again. Do not wait for issues to reveal themselves after launch. Instead, ensure rigorous testing has been carried out well in advance of the go live date.

This is a crucial part of the process to ensure that the technology performs as expected and that any potential roadblocks are dealt with proactively and head on. What's more, it will build confidence in the system's readiness and sets the stage for communicating success back to the business.

User Acceptance Testing – testing of the technology with real-life users and scenarios is invaluable at this stage. It will identify any unforeseen issues before the official launch, giving the team a chance to address them.

Balancing Perfection and Progress

While it's critical to test and make sure you're set up for a successful launch, it's also important to understand that there is room to refine and improve things at a later stage.

A common mistake during an integration project is to expect perfection right away and become stuck in a holding pattern when it doesn't materialize. If 95% of your project and processes are working as expected, that may be enough. Prioritizing measurable and impactful progress over a 'perfect scenario' will help you to reap benefits sooner. In turn, these benefits will likely help you to make a case for any additional investment that might be needed to achieve that last 5%.

Often, it's better to take a step-by-step approach to transformation, gradually scaling and bringing people on the journey with you. Trying to do everything at once only heightens the risk of overpromising and underdelivering.

Sharing the Success

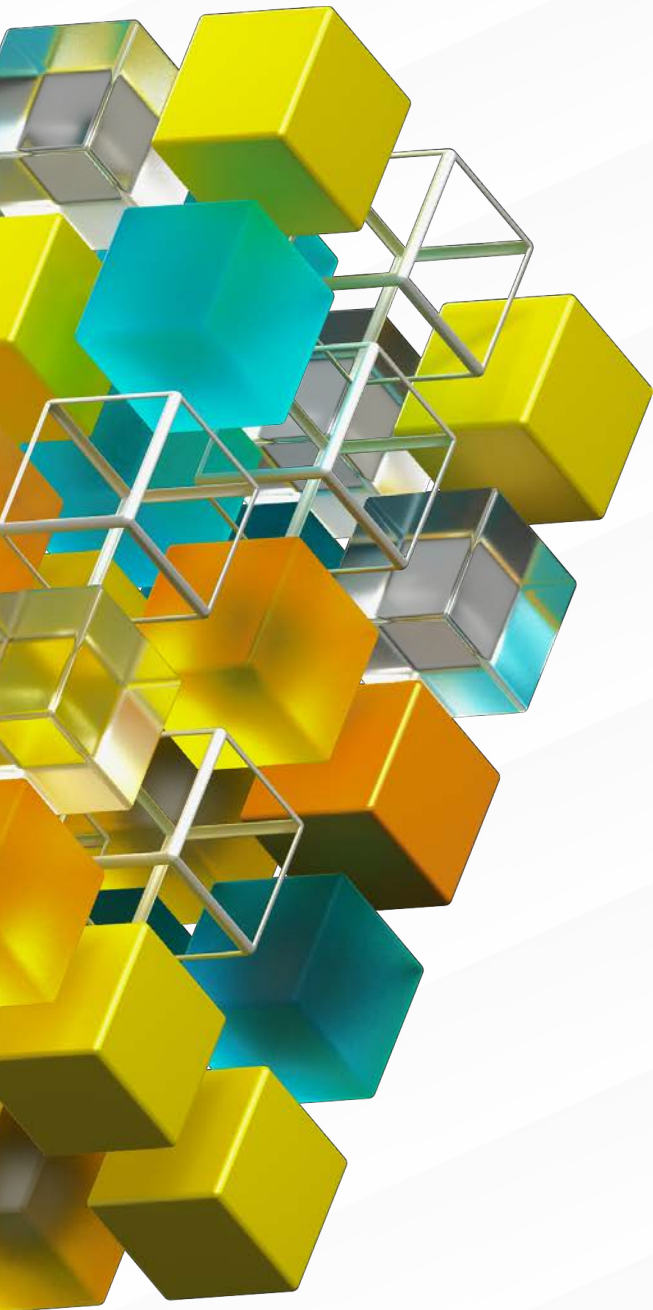
Once everything is up and running, it's time to share the good news. If earlier steps were followed, accurate metrics in line with initial objectives will demonstrate the automation's positive impact. What's more, you should have a range of stakeholders and change champions who are ready and willing to talk about the benefits they've seen along the way.

Ultimately, a successful automation journey opens up exciting possibilities for F&A teams. While the technicalities are important, the real key to success is understanding that people are at the heart of it all. Ensuring successful implementation of technology and ushering in positive change requires F&A leaders to bring together employees, processes, and technology. By following these steps, you should be set up for success and in a position to demonstrate ROI for the next steps in your transformation journey.

About the Author



Danny Wheeler is an accomplished technology professional with over 15 years of experience in product management, business analysis, and project management within the financial automation space. With a background in Accounts Receivable, he is currently the Solutions Strategy and Marketing Manager for Accounts Receivable Automation at BlackLine, a leading financial automation software company.



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B2B Credit Card Update

By: Andrew Behlmann and Colleen M. Restel, Lowenstein Sandler LLP

Credit cards have become the dominant method of payment in consumer transactions, with studies showing only 9 percent of Americans use cash as their primary form of payment.¹ That trend is making its way into business-to-business (B2B) payments to an ever-increasing degree. Although convenient—and in many instances necessary—as a method of payment, credit cards are also the most expensive method of payment for a merchant to accept. The costs of accepting credit cards, commonly referred to as swipe fees, comprise an alphabet soup of charges imposed at each step of the card payment process. That panoply of fees typically ranges from 2 percent to 5 percent of the payment amount, which can make a significant impact on the merchant's bottom line, especially in an inflationary environment. This leaves merchants between a rock and a hard place: *How can they prevent credit card swipe fees from eroding their margins while still remaining competitive in the marketplace?*

The simplest solution (at least in theory) is to add a surcharge to credit card transactions to recover some or all of the associated swipe fees. Following a settlement of antitrust litigation against Visa and Mastercard in 2012 and a series of court decisions invalidating various state laws prohibiting merchants from imposing a surcharge on credit card payments, merchants in the retail arena have begun doing just that. Other options include cash discounts, convenience fees, and dual pricing (listing separate prices for cash and credit card sales), but merchants must be mindful of the ever-changing regulatory landscape governing these mechanisms.

For a short time, surcharging was regulated by federal law. Since 1984, however, such regulation has been left to a patchwork of state laws. As discussed below, state surcharge regulations remain in effect in a handful of states. States may take different approaches with respect to (i) whether surcharging is permissible, (ii) what constitutes a surcharge, (iii) how a surcharge must be communicated to the customer, and (iv) whether merchants can use dual pricing or cash discounts as an alternative to surcharging.

In a 2017 case, *Expressions Hair Design v. Schneiderman*,² the U.S. Supreme Court held that a New York statute that prohibited credit card surcharges but permitted dual pricing impacted merchants' First Amendment rights as a regulation of commercial speech. However, the appellate court below, the U.S. Court of Appeals for the Second Circuit, had not sought an opinion from the Court of Appeals of New York (New York's highest court) as to the actual meaning of the challenged statute.

On remand, the Second Circuit certified a question to the Court of Appeals of New York: "Does a merchant comply with New York's General Business Law § 518 so long as the merchant posts the total dollars and cents price charged to credit card users?" The state court answered that question in the affirmative—i.e., that a merchant complies with the New York statute "if and only if" it uses dual pricing and lists "the total dollars and cents price charged to credit card users." The court explained that under a dual-pricing regime, credit card users "see the highest possible price they must pay for credit card use and the legislative concerns about luring or misleading customers by use of a low price available only for cash purchases are alleviated."³ The court concluded that the New York statute prohibited a "single-sticker pricing scheme" in which merchants list the cash price and indicate that a certain percentage or additional flat fee will be charged for credit card purchases, requiring consumers to "engage in an arithmetical calculation[.]"

Following a series of procedural contortions in a litigation that lasted over six years, the plaintiffs in *Expressions* eventually abandoned their case while the appeal was pending in the Second Circuit on remand, jointly moving with the New York attorney general to dismiss the appeal and to vacate the order of the

¹ Becky Pokora, *Credit Card Statistics and Trends 2023*, Forbes Advisor (Mar. 9, 2023), available at <https://www.forbes.com/advisor/credit-cards/credit-card-statistics/>.

² 581 U.S. 37 (2017).

³ *Expressions Hair Design v. Schneiderman*, 32 N.Y. 3d 382, 393 (N.Y. App. 2018).

District Court below finding the state statute unconstitutional. As a result, New York's statute has been left in limbo (albeit with the overlay of a finding that it is a regulation of commercial speech). In 2020, the New York State Division of Consumer Protection issued an alert indicating that the state intends to resume enforcement of § 518, but specifically in the consumer context.⁴

Since the Supreme Court's decision in *Expressions*, surcharge prohibitions in many states have been amended by state legislatures or held invalid by courts, and several state attorneys general have declared their states' laws unconstitutional and declined enforcement. However, three statutes prohibiting surcharge remain. In Connecticut, Maine, and Massachusetts,⁵ surcharges remain prohibited while cash discounts are permissible. In Connecticut, for example, a merchant can be fined \$500 *per violation* of the surcharge prohibition. It is critical that merchants continue to monitor surcharge regulations as they evolve. From there, merchants can work with counsel to fine-tune their terms and conditions to leverage surcharge-friendly state laws to apply to their transactions.⁶ The use of contract terms to designate a particular surcharge-friendly state as the situs of credit card payments, and to provide that the laws of that state govern any disputes related to credit card payments, is a common practice. However, to date, that practice has not been tested in court in a reported decision. Readers should work with in-house or outside counsel to understand the risks inherent in this approach and to craft contract terms appropriate to their situation.

In surcharge-friendly states, merchants must still carefully abide by certain requirements imposed by card network rules and, in some instances, by state statute. First, the surcharge must be disclosed at *both* the point of entry and the point of sale. In the context of a restaurant, for example, the surcharge must be disclosed on both the menu and the bill. In addition, the surcharge must be itemized on the bill or invoice. The same is true in the B2B context, including any online payment portal or e-commerce website.

Merchants must also abide by certain requirements of the individual card networks, which require merchants to notify the networks in writing, by completing a simple form, at least 30 days before beginning to surcharge transactions.⁷ Certain credit card networks also direct that customers presenting their cards cannot be treated differently from those using other credit card brands.

A surcharge can be a flat fee across all transactions, or it can be a percentage of the price of the purchase. However, a surcharge for Mastercard or Visa credit card transactions cannot exceed *the lesser* of a cap established by the card networks (4% for Mastercard, 3% for Visa) or the actual cost of acceptance to the merchant over a one- or 12-month lookback period. Federal law prohibits surcharging debit card transactions.

Another means of recouping part of the cost of card acceptance is a convenience fee—a fee charged for all payments made through an alternative payment channel, such as an online payment portal. Convenience fees are not permitted for credit card transactions made with a physical card (“card present” transactions). Convenience fees can be charged across all forms of payment, rather than just credit cards, although certain credit card brands place restrictions on convenience fees. However, a convenience fee must be a fixed amount rather than a percentage of the sale. In the B2B context, where transaction amounts are typically larger than in consumer transactions (and can vary significantly from customer to customer), this requirement makes convenience fees less useful.

4 Consumer Alert: NYS Division of Consumer Protection Alerts Consumers to NY Law Related to Credit and Debit Card Surcharges, Dec. 8, 2020, available at <https://dos.ny.gov/news/consumer-alert-nys-division-consumer-protection-alerts-consumers-ny-law-related-credit-and>.

5 While surcharges remain prohibited in Massachusetts, convenience fees are permissible if certain conditions are met. See Opinion 21-005: Convenience Fee (Apr. 12, 2022), available at <https://www.mass.gov/opinion/opinion-21-005-convenience-fee>.

6 This article is not legal advice or a legal opinion.

7 Mastercard: <https://www.mastercard.us/en-us/surcharge-disclosure-webform.html>.

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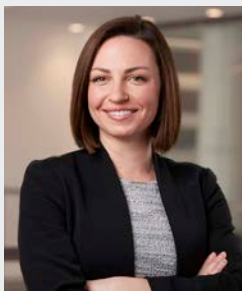
In addition to state statutes and requirements of credit card companies, merchants must also be careful not to violate the Robinson-Patman Act of 1936, which makes it unlawful to sell commodity goods in like quantities to two different customers at two different prices with the effect of lessening competition. Violations of the Robinson-Patman Act carry civil liability as well as possible criminal penalties and are potentially actionable by competitors even without federal intervention. Open, and fact-specific, questions must be considered regarding what constitutes “lessening competition” and whether any defenses—such as a cost justification or a meeting competition defense—apply.

The decision of whether, and how much, to surcharge will be largely dependent on the merchant’s business, the goods sold, the quantities the goods are sold in, and the merchant’s customers, in addition to the legal considerations discussed herein. There is no one-size-fits-all solution. However, it is possible for merchants to strike the right balance to maintain their competitive pricing while not sacrificing their bottom line.

About the Authors



Andrew Behlmann is a Partner in the Bankruptcy & Restructuring Department at Lowenstein Sandler LLP. Andrew leverages his background in corporate finance and management to approach restructuring problems, both in and out of court, from a practical, results-oriented perspective. With a focus on building consensus among multiple parties that have competing priorities, Andrew is equally at home both in and out of the courtroom, and he has a track record of turning financial distress into positive business outcomes. Clients value his counsel in complex Chapter 11 cases, where he represents debtors, creditors’ committees, purchasers, and investors.



Colleen M. Restel is Counsel in the Bankruptcy & Restructuring Department at Lowenstein Sandler LLP. Colleen advises clients on all aspects of complex financial restructuring matters. She represents creditors’ committees, tort claimant committees, individual creditors, post-confirmation fiduciaries, securities plaintiffs, debtors, and other interested parties, whom she guides through the development and implementation of innovative solutions and strategies aimed at maximizing recoveries and achieving results.

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-Maintain separate trust accounts for collected funds

-Fulfill **continuing education** annually

-Promptly remit funds

-Engage a vetted field of **creditors' rights attorneys** if necessary

-Submit to a **financial and procedural review** to ensure ongoing adherence to requirements

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Turning the Tide on Late Payments: A Spotlight on Efficient Order-to-Cash Strategies

By: Chad Bruffey, Senior Director, Enterprise Sales, Billtrust

Navigating the complex landscape of B2B transactions requires more than just the exchange of goods and services; it entails a delicate interplay of financial interactions that can greatly influence the health of a company.

Indeed, conducting business extends far beyond the moment of purchase, stretching into a series of interdependent steps that together form the Order-to-Cash (OTC) cycle. From the initiation of an order to final payment processing, the OTC process is an intricate journey that can either propel a company toward sustainable growth or lead it down a perilous path marked by cash flow bottlenecks.

Unfortunately, the latter is the current reality for many businesses whose success is being threatened by a continuous spurt of economic challenges. In fact, [recent research](#) conducted by IDC on behalf of Billtrust uncovered the commonality of late payments today, with nearly 1-in-5 invoices (17%) going unpaid by their due date.

The danger of late payments cannot be understated. Beyond the immediate impact on cash flow, late payments ripple through the entire supply chain, causing a domino effect of delayed payments to suppliers, hampered production schedules, and strained relationships. This, in turn, can have a far-reaching impact on the global economy, impeding the overall growth and dynamism of businesses, industries, and entire sectors.

Addressing this peril requires more than a reactive approach—it necessitates comprehensive and efficient OTC strategies that tackle the root causes of late payments and fosters a sustainable ecosystem of business transactions.

The Rising Need for Modern OTC Processes

In an era where business landscapes are rapidly evolving, adopting a modern OTC system has become not just a choice but a strategic imperative. The traditional linear approach to OTC, which often relies on manual processes and disjointed systems, is no longer sufficient to meet the demands of a fast-paced and interconnected global marketplace. Yet, many businesses are stuck in antiquated times, relying on inefficient processes that are doing more to hurt their financial health than optimize it.

Only 15% of businesses say they've achieved a connected OTC process based on real-time data, underscoring a struggle among brands to reach digital maturity. This reliance on inefficient systems is fueling worry across industries: a staggering 94% of C-suite executives expressed concern that manual OTC processes could negatively impact their company's financial performance.

Simply put, a modern OTC system holds the key to unlocking enhanced efficiency, transparency, and agility in managing the complex web of transactions that define a company's financial health. This is because modern OTC processes can:

- **Streamline Workflow Integrations:** A modern OTC system seamlessly integrates every step of the order-to-cash cycle, from order initiation to cash collection. This integration minimizes data silos, reduces human errors, and ensures consistent and real-time visibility into each stage of the process. As a result, decision-makers gain accurate insights into customer behavior, payment trends, and potential bottlenecks, enabling them to make informed choices that drive the company forward.

- **Enhance the Customer Experience:** Customer satisfaction lies at the heart of any successful business, and a modern OTC system contributes significantly to delivering a superior customer experience. By streamlining order processing, invoicing, and payment procedures, companies can provide quicker response times, accurate billing, and flexible payment options. These customer-centric features not only foster stronger relationships but also increase the likelihood of timely payments, mitigating the risk of late payments.
- **Provide Data-Driven Insights:** Data is a powerful asset that fuels strategic decision-making. A modern OTC system captures and centralizes a wealth of data related to customer behavior, payment history, and transaction trends. Through advanced analytics and reporting capabilities, businesses can harness this data to forecast cash flows, identify areas for optimization, and proactively address potential payment delays before they escalate.

The most important benefit of all, however, is how a modern OTC strategy can boost payment efficiency through automation. Let's take a look at why this is so valuable.

Mitigating Late Payments Through Automated OTC Processes

Businesses are increasingly turning to automation as a driving force behind improved efficiency. We're especially seeing the impact of this transformation in OTC processes, where the integration of automation has the potential to revolutionize the way companies manage their financial interactions.

Compared to traditional OTC processes, which can be laborious and error-prone, automation empowers a seamless, error-reduced, and expedited OTC workflow that not only minimizes the risk of late payments but enhances overall financial agility. Let's take a look at a few ways automation can improve OTC processes and mitigate late payments.

Firstly, automation can have a huge impact on invoicing and documentation, an area that's actually undergoing significant regulatory changes in many countries and regions. With automation, businesses can streamline the creation and distribution of invoices by generating them from accurate order data. Invoices can then be delivered electronically, minimizing the chances of delays caused by physical mail while allowing companies within regions like the EU meet evolving e-invoicing mandates.

Additionally, automation can dramatically reduce the time companies spend assessing credit risks and setting credit limits. This is because automation can monitor customer payment behaviors and credit profiles in real-time, promptly alerting credit managers to potential risks. This allows for proactive credit limit adjustments and the swift identification of customers who might be at risk of delayed payments. Critically, automation also reduces the likelihood of late payments due to forgetfulness by sending timely and automated payment reminders to customers.

And finally, automation can significantly enhance the cash application process, enabling AR teams to match incoming payments to outstanding invoices accurately and promptly. This reduces the time spent reconciling accounts and ensures that no payments are overlooked or misallocated.

Promoting Financial Stability Through Modern OTC

The spotlight on efficient OTC strategies reveals a powerful truth: innovation and adaptability are the bedrock of financial resilience. And as businesses continue to navigate the intricate dance of financial interactions, their ability to turn the tide on late payments has never been more important.

By embracing modern OTC systems that harmonize automation, data insights, and customer-centricity, organizations can usher in a new era of fiscal efficiency. But the ripple effects extend far beyond balance sheets. They resonate across industries, supply chains, and economies at large, invigorating growth, fortifying partnerships, and shaping a landscape where late payments become a relic of the past.

About the Author



Chad Bruffey is Senior Director, Enterprise Sales at Billtrust. His focus is helping organizations drive value through automation, optimization and standardization. Before Billtrust, he had senior-level positions with C2FO, Tungsten Network (formerly OB10), Verian and Kofax.

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What Not to Believe About Chapter 11

By: *Kenneth A. Rosen, Esq., Lowenstein Sandler LLP*

“Don’t worry about extending credit to the debtor during Chapter 11. You’ll have an administrative claim.”

True but not fully. Claims that arise during the bankruptcy case from goods or service received by the debtor during bankruptcy have an administrative claim. But it is the rule that a lender to the debtor will require a super priority administrative claim as a condition to making loans to the debtor (called “DIP” loans). This means that, if the bank is not paid in full from its collateral, the bank’s administrative claim is senior to other administrative claims, such as those of a vendor.

Professionals retained in the case typically have a “carve out” so that their administrative claims become senior, even to those of the bank, so the super priority administrative claim given to the bank will affect professionals less. Further, professionals are paid on a monthly basis, typically 80% of their invoice amount with the balance of 20% paid every 120 days. And even when a debtor is struggling with cash flow issues, professionals seem to get paid anyway. Finally, recognize that there is never a guarantee that administrative claims are paid. There have been many cases where the debtor’s estate becomes administratively insolvent. Two that come to mind are the retailers Toys R Us and Sears. It happens more often than is commonly known.

“You should now give the debtor credit because our banks have agreed to give us DIP funding.”

DIP financing does not necessarily give a debtor materially more liquidity. It may be that the debtor has simply asked its lender to continue the same financing arrangements during bankruptcy that it had before bankruptcy. Advance rates may not have changed. The credit limit may not have changed. This is often referred to as “rolling over” the loan. DIP financing is more expensive than out-of-court financing. Besides a higher interest rate, there may be facility fees, maintenance fees, exit fees and default fees. Finally, even if the debtor obtained an over advance, it may be consumed to cover increased losses until the business is stabilized, increase professional fees due to the bankruptcy, or in order to give the debtor a brief opportunity to sell the business. Significant dollars do not necessarily trickle down for the purchase of goods and services.

“We’re offering you critical vendor status. So, now you won’t have a pre-bankruptcy claim anymore.”

Yes, that is true. But a condition to critical vendor status is that you give the debtor post-petition credit (after the bankruptcy petition date) equal to the amount of the prepetition debt that was paid off. As a result, the vendor’s total liability does not decline, it just becomes all administrative indebtedness. However, as stated above, there are no guarantees that administrative claims are fully paid, and critical vendor agreements usually require that a vendor provide credit terms the same as those given to the debtor in the ordinary course pre-bankruptcy. But what does “ordinary course” mean? Many debtors pay their bills in a number of days that are greater than what is stated in the invoice. Is ordinary course being interpreted by the debtor as invoice terms or as the terms that were allowed by the vendor pre-bankruptcy? It can make a big difference in terms of risk management.

A smart vendor will agree to no more than a finite amount of post-petition credit and a finite number of days for payment with the proviso that the vendor may alter terms on a rolling basis as the case unfolds. A lot can happen during the course of a Chapter 11 case. The debtor could struggle to find a purchaser of its business. It may encounter an especially hostile creditors committee. Litigation may be dragged out such that emergence from Chapter 11 becomes exceedingly difficult and/or excessively costly. And in the worst case, the debtor defaults to its lender. A smart vendor does not want to be locked into post-petition

credit terms without an “out” in the event of a material adverse change.

“The debtor can’t modify the terms of the critical vendor agreement just for you.”

This is just an excuse to not have to go back and explain to the lender or to management why the vendor’s terms for becoming critical will not work. Remember – if you have been offered critical vendor status it is because you are a *critical* vendor. In other words, the reorganization will become more difficult without the goods or services that you supply. Think about what difficulties it will cause the debtor if you say that you prefer not to sell to them on their terms. Can they easily purchase the goods or services that you provide from another vendor? Would doing so take precious time or will it delay production? If so, then the vendor should consider telling the debtor that the vendor’s counter proposal is the best that the vendor can do and that it is their burden to convince others that the vendor’s terms and conditions are worth it to the debtor because the alternative is much worse.

“The debtor budget presented to the court looks reasonable.”

It might be. But remember that it is only a cash flow budget. It is not a projection of accrued income or loss. A cash budget is easier to “manage” as is necessary to prevent a default, and the budget is usually short term. The budget contains numerous assumptions, such as the amount of post-petition credit that the debtor will be able to get. Assumptions as to sales do not always pan out. For example, many debtors will assert that they will not lose sales despite the commencement of a Chapter 11 case. But they quickly learn that, despite the debtor’s assurances, customers are wary of not having the debtor’s product at a critical time, so the customer will immediately seek to second source. Finally, a cash flow budget does not reveal the rate of inflow of new orders or the rate of decline of back orders.

“The bank is fully supportive of our reorganization.”

Really? Banks have only one interest in mind – getting themselves paid. Requiring a Chapter 11 debtor to obtain as much post-petition credit from its vendors is part of their strategy. After all, the goods sold by a vendor on credit instantly become part of the lender’s collateral upon delivery. Banks will demand that it have a security interest in any assets of the debtor that were not part of their collateral package before bankruptcy. This ensures that before other creditors see any recovery, the bank must be fully paid.

“Why don’t I want to join the creditors committee? I’m very busy already and there isn’t much to gain.”

Because you might have preference exposure. A preference is a pre-petition payment to the vendor during the 90 days preceding bankruptcy where the payment was on account of an antecedent debt. An antecedent debt is one that was past due at the time of payment. There are several exceptions to the preference statute, such as the new value defense or the ordinary course defense. The first thing that a creditor should do upon a customer commencing a bankruptcy case is to do a rough preference analysis. If there is significant exposure, then the vendor could consider creditors committee membership. The goal is to help prevent the lender from obtaining preferences as part of its collateral package and also to have preference actions waived under a plan of reorganization. It’s very painful to give back dollars that were collected pre-bankruptcy. Do not rely on other committee members – they may have less exposure when the dollars legitimately were owed to the vendor and where the collection was due to the vendor’s diligence. A creditors committee has a big voice in the Chapter 11 process and gets the attention of the bankruptcy judge. At every stage of the case, the committee should consider when it could extract such a concession, and it starts with blocking the bank from capturing preference actions. Finally, in a Chapter 11 case where the business and/or assets are sold to a third party, neither the bank, asset purchaser nor the debtor may care about helping pre-existing vendors avoid preference attack. In addition, the case professionals may need the money derived from preferences to pay administrative claims, such as their own fees.

About the Author



Kenneth A. Rosen, Esq - Lowenstein Sandler Chair Emeritus, Bankruptcy & Restructuring Department with more than 35 years of proven experience, Ken is the first call for companies seeking a strategic plan for recovery from financial distress.



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By: Li Mao, Senior Product Manager, Fraud and Tom Hayes, Solutions Consultant, Solutions Consultant, Experian Business Information Services

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Integrated Trade Promotion and Deduction Management

By: John Metzger, Chairman of the Carixa and Smyyth companies

McKinsey, the global consultant, says that Revenue Growth Management (RGM) is “the discipline of driving sustainable, profitable growth from a consumer base using a range of strategies around assortment, promotions, trade management, and pricing.” Although this idea is familiar, many companies are rethinking their approach to a more dynamic strategy, including revised processes and better software to manage trade deals, customer billbacks, and settlements, broadly referred to as Trade Promotion Management (TPM).

Consumer packaged goods (CPG) companies use RGM-TPM to coordinate the efforts of finance, product, marketing, logistics and sales teams to maximize product sales through different customer channels. CPG companies use these marketing and promotional strategies to sell products through online stores and brick-and-mortar locations. These programs include media advertising, in-store spending, sampling, endcaps, slotting, volume discounts and displays. CPG companies also drive product demand using coupons, co-op advertising and special pricing.

20% of Revenues!

The CPG industry averages tens of billions of dollars annually to trade promotions. Comprising an estimated 20% of its annual revenues and representing the most significant item on the P&L statement after the cost of goods sold, it's no surprise that many companies are actively seeking ways to optimize the management of these promotions. Given the scale of this expense, it is essential to determine the ROI of all promotional strategies and their orchestration, including the implementation of automated back-office processes to prevent erroneous promotions taken by the customer.

What is Trade Promotion Management & Settlement All About?

Trade Promotion Management (TPM) includes paying or crediting retailers to promote CPG products. However, determining the ROI of trade promotions can be complex. One particular challenge for TPM managers is keeping up with large-scale customers who have invested significant money optimizing the process to their benefit, leaving billback and settlement validation to the suppliers. Moreover, the engagement of supplier sales departments in resolving issues or investigating disputes is a costly distraction from their primary focus of selling.

Additional TPM challenges include:

- Ongoing tracking of trade activity
- Figuring ROI by comparing trade spending to projected lift in sales
- Keeping accrual reserves adequate to deal with trade deductions
- Validating incoming deductions against the deal parameters

To optimize these promotions, CPG companies use technology tools and expert consultants. Within this continuum, Trade Promotion Settlement includes a post-execution review to determine whether retailer or customer performance has met the deal parameters. Various forms of “settlement,” such as off-invoice allowances, paper checks, billback deductions, and trade deal accruals, are used to track and settle the agreed promotional funds with retailers. Integrating trade promotion settlement software with deduction management leads to a high ROI by eliminating errors and overpayments. In our experience, these errors and invalid claims can run as high as 10-20% of trade promotions program dollars which is a significant accretion to the bottom line.

Trade Charges and Settlement Types:

- Off-Invoice Allowances - Trade allowances reflected in the product invoice pricing (off-invoice allowance) are straightforward. The net invoice price paid by the retailer already reflects the deal, so no further proof of performance is needed.

- Billback Deductions - Complexity arises when settlement is a post-event billback deduction from the retailer for the agreed trade deal. These deductions are the most complex, requiring careful review after being deducted.
- e-Payments and Paper Check - Whether paid by ACH or check, it is crucial to validate the chargeback issued by the retailer or distributor. While less frequent than in the past, it is still common practice for CPG companies to pay promotions carried by the salesperson. This form of payment requires tight integration with the TPM system, or you risk double payments or double deductions.

Strategies to Refine Your Trade Promotion Process

Simplify Trade Promotion Deal Formats

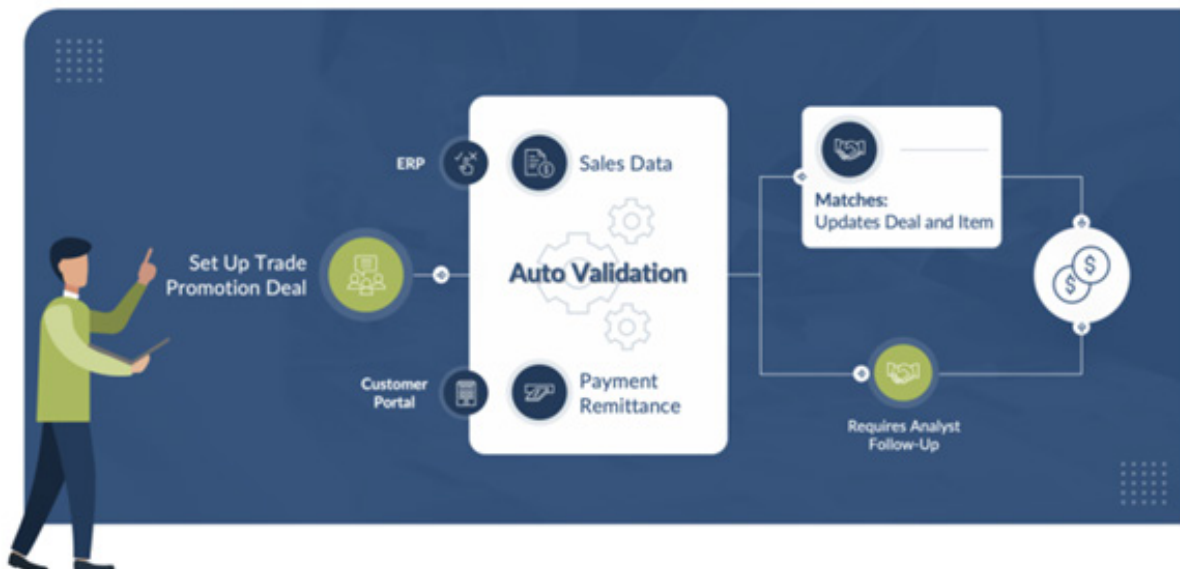
Standardize templates to ensure your sales and promotion offer sheets are clearly understood. Remove any gray areas open for misinterpretation, such as promotions based on ship date, order date and receipt date. Getting your sales and marketing departments involved is essential to tighten internal control of sales agreements – specific error patterns that require additional exploration may become evident. For example, in cases where deals are often misinterpreted and result in excessive deductions, it's probable that the deal sheets are unclear.

Utilize Brokers

In Fast-Moving Consumer Goods (FMCG) and Food and Beverage industries, brokers play an essential role in the CPG manufacturer-retailer relationship. They are often the first line of communication with the customer and are often involved in resolving disputes concerning billbacks, performance and deductions. Your brokers are *integral* to your deduction management system and should (like internal departments) have specific roles assigned depending on the type of billback or dispute.

10 Key Features of Integrated Trade Promotion & Deduction Management Software

It's essential to evaluate the big picture ROI of your trade promotion plans, however, it's equally important to validate whether your retailers performed correctly according to each deal. Doing this requires integrated Trade Promotion, Deduction and Accounts Receivable software. These tools will validate and reconcile the retailer/distributor billbacks.



The best systems manage trade promotion settlement comprehensively, eliminating disconnected systems, spreadsheets and manual processes. They streamline the processing, validation of charges and tracking of accruals **through deduction resolution**. The ideal system incorporates these 10 best-in-class features:

1. Tracks customer deal accrual balances in the system, not by spreadsheet.
2. Enables creation of funds and deal templates using workflow.
3. Applies billbacks to the appropriate accrual funds after validation.
4. Updates account accrual balances daily as transactions occur, so finance and marketing always have the current state of the liabilities and expenses.
5. Adjusts expense accruals as billbacks are deducted by the customer and validates with proof of performance or sales and remittance data.
6. Identifies and routes billbacks for validation as they occur in the accounts receivable cash application system, including credit approvals and escalations.
7. Identifies billbacks exceeding accrual balances, missing proof of performance, or double deducted and charged back to the retailer.
8. Includes integrated deduction collection workflow, including autonomous robotic process to follow up and recapture erroneous billbacks.
9. Maintains an auditable history of every transaction for your accountants and supports audit and regulatory compliance.
10. Accesses sales and accounts receivable deduction data, facilitating investigation, reconciliation and dispute resolution of post-audit charges. *Over 50% of post-audit deductions are double-deducted or have errors but rarely discovered and recaptured due to inadequate policies and software.*

Conclusion

The systems, management processes and deal planning require a fresh look. Modern software solutions are needed to simplify processes and provide optimal results – in particular, implementing advanced trade promotion settlement software and systems to audit and reconcile trade deductions.

If managed effectively, Trade Promotion Settlement technology offers not only anticipated revenue growth opportunities but also avoids profit leakage and a significant ROI from both. Rather than viewing the administration of trade promotion chargebacks as a mere cost of doing business, it should be considered an incremental investment opportunity and an essential aspect of RGM planning.

About the Author



John Metzger is Chairman of Smyth & Carixa, which provides advanced Carixa™ accounts receivable automation and expert services for accounts receivable, including deduction management, to help clients achieve extraordinary productivity, cash flow, and profits. Previously John was CEO of Creditek, an AR and Deduction Management BPO industry leader, with a team of 1,000 specialists in consumer technology, pharma, and CPG. Earlier experience includes managing a turn-around consultancy, and prior positions including EVP of Global Operations, Director of Distribution, and Director of Credit.



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How to Deal with Disputes: A Veteran's Guide to Removing the Backlog

By: Keith Cowart, FIS

When you mention the word "disputes" to a credit manager, you invoke a very visceral reaction. No one likes them, yet everyone experiences them. Sounds like the start of a riddle. Some companies and industries face disputes more than others. For some, it is an accepted course of normal business. Does it really have to be though? I submit to you that disputes can be remedied and even prevented with some intentional focus and a little time and effort.

First and foremost, there is no magic bullet for how to best deal with disputes. Anyone who tells you they have "the" solution without sitting down and doing a thorough review of your business and operations is setting you up for disappointment. A technological solution that handles disputes is absolutely a necessity, but not for the reasons you might think. A solution is not going to magically keep disputes from happening. It simply facilitates the workflow and provides visibility to the size of the problems you are facing.

The only tried and true strategy for disputes is root cause identification, analysis and remediation. This cannot be done by a system alone – or by an Accounts Receivable team alone. One of the most frustrating circumstances surrounding disputes for a credit manager is the fact that they did not create the issue and they typically have very little power to resolve it on their own. If you categorize all of the disputes you have handled over the last 3-5 years (which is a best practice by the way, more on that later), and you assign those categories to two different groups within your company (one for who created the problem, and the other for who has to resolve the problem), then you will find very few, if any at all, that are assigned to the Accounts Receivable team.

So, why does the problem fall on Accounts Receivable? Simply stated because the Accounts Receivable team is at the end of the value chain. They are also responsible for ensuring healthy cash flow. This responsibility brings heavy pressure, but often without the necessary authority to resolve the disputes.

Without the authority to resolve disputes, a technology solution cannot offer you the promised salvation that some claim. Automating the routing and workflow of disputes is extremely helpful when it comes to triaging the enormous backlog of disputes that your team handles. Utilizing a technology solution in conjunction with a continuous improvement mindset, is the only approach to not only resolving disputes, but also preventing them.

As stated before, the Accounts Receivable team has very little authority over resolving disputes. This means you must create a cross functional project team. The team can and probably should be led by Accounts Receivable because we are at the tail end of the value chain and experience the pain that the upstream functions cause. If you have not done the review and categorization of your last few years of disputes, this should be the first task the cross functional team undertakes. One major hurdle for most companies is getting the attention and buy-in of those upstream teams because all they see is that you are not collecting on their invoice(s). What they don't see is the volume of issues their teams are creating and the combined positive financial impact that can be achieved with the investment of time and resources (that are minimal in comparison to what the collection team is investing) as part of a cross functional project team.

The cross functional team does not have to be a full-time thing. In fact, if it is full-time for more than a few months, you're probably approaching it wrong. This should start as a triage center, focusing on the most critical patients (problems) first, while also remedying the easy to solve issues (the proverbial low hanging fruit) to get the overall count of disputes down to a manageable level. Some companies dedicate Accounts Receivable resources to just handle disputes. Others put the responsibility on the collectors that own those customers. There is not one way that is better than the other. It all comes down to your business, indus-

try, and internal culture. I recommend to clients that if you currently have a large backlog of disputes, they should think about dedicating some resources, for a short time, to managing disputes. If disputes are still manageable, then dedicating resources will unnecessarily divert attention away from collecting on non-disputed invoices. Regardless of the situation you are currently in, you should begin focusing on prevention of disputes.

Creating a continuous improvement mindset or approach should be your ultimate goal when it comes to disputes. The basic stages of continuous improvement are Plan, Do, Check, Act. They are not one and done. This is a cycle with varying intervals based on what is achieved. I will not get into the details behind this approach in this article, but it helps to understand the theoretical basics. By categorizing your past disputes, you create a baseline for which you will measure the success (or lack thereof) of the cross functional project team. Not only will this help to identify the type of disputes and point you in the direction of those responsible for creating the disputes, but it will also give you the count and revenue impact that ultimately gives you the power to enact change. If you are already utilizing a technology solution for your disputes, this step of categorizing past disputes should be much easier, and this will ultimately give you what you need for future monitoring and adjusting.

The cynical side of me wants to suggest imposing “fees” to those business units that either refuse to participate in this cross functional team and/or those business units that breach thresholds of number of disputes and dollar amount in a specific category. The reality is that will be hard to sell internally. But nothing gets people motivated to create change more than impacting their personal incentives. The more levelheaded side of me does suggest that you get an executive sponsor to help encourage participation. Who the correct executive is will depend on how your unique company is structured.

One word of warning when it comes to this cross functional team, over time, the natural tendency will be to turn meetings into individual dispute review sessions. While those types of meetings are necessary to help resolve individual disputes, that will not get you to your goals. The cross functional team should be focused on the macro level. From there, separate workstreams can and should handle the resolution of disputes. Remember, prevention is one of the goals of the cross functional team. They do this by identifying what is causing the disputes and taking steps to change processes, correct data, and educate those upstream, not only on the impact of what they are doing, but also on how they can contribute to preventing disputes.

Data is a key component of improving your dispute backlog. Ensuring you have timely and accurate reports will provide you with the ammunition your cross functional team needs to make appropriate decisions. If you’re pulling this information manually from your ERP or from various spreadsheets, I highly suggest looking into technology to make this process easier. Most importantly, be sure what information you provide to decision makers is actionable. There is nothing worse than wasting time on useless reports that no one ever looks at.

Setting warning thresholds for each business unit is also a necessary step. These can take the form of re-engaging with the cross functional team once a certain type of dispute reaches a certain number or dollar value over a specific time period. For a practical example, if a particular business unit has had 50 disputes related to pricing over the last month, that may point to a specific issue that if left unchecked, will continue to contribute to your dispute backlog.

The important thing here is to not jump to conclusions without doing your due diligence. My gut reaction for the example above is that there is something incorrect on the material master that is causing incorrect pricing to go out on invoices. There could be many explanations, however. If you jump to conclusions without verifying the facts, you not only waste time and resources and continue to add more disputes to your backlog, but you also will erode the confidence your business partners have in your ability to improve results. It could be that the person entering the orders is manually overriding the prices or the customer

is a bad player and may be taking advantage of the fact that your company has previously just written off their disputed invoices because of the lack of organizational control.

If and when you start to see improvements from the work of your cross functional team, it is extremely important that you continue to monitor and adjust. If your realistic goal at the beginning is to reduce disputes by 20 percent, and you achieve that, are you satisfied with keeping it there? This is where the continuous improvement mindset really kicks in. You then set a new goal and start the Plan, Do, Check, Act steps again. Otherwise, you will find yourself right back in the backlog mess you were in to begin with. Combining technology with a solid process, policy, and a cross functional team will put you on your way to preventing disputes, improving cash flow, and even reducing your operational expense.

About the Author



Keith Cowart is the Global Market Owner for Receivables within FIS' B2B Division which features the award-winning Credit-to-Cash products, GETPAID and Integrated Receivables. He has over 22 years of professional experience in various accounting and finance leadership roles including Accounts Payable, G/L Accounting, as well as Credit and Collections in large global companies with shared service centers. Keith's focus has always been in continuous improvement and leveraging technology to automate processes which drive results.

GETPAID

RECEIVABLES AUTOMATION

FIS™ GETPAID automates your credit-to-cash cycle with Artificial Intelligence, workflows, and collaboration to improve cash flow.

FEATURES AT A GLANCE

CREDIT MANAGEMENT



- Online credit application
- Automated credit reviews
- Integrated credit bureau data
- Configurable scorecards

CASH APPLICATION



- Intelligent document & data recognition
- Accelerated machine learning w/ auto-clearing
- Straight-through processing for all payments

STRATEGIC COLLECTIONS



- AI-driven risk-based collections
- Integrated email w/ AI interpretation & responses
- Business defined templates
- Real-time AR w/ API interface

COLLABORATION TOOLS



- Customer Portal (EIPP)
- Sales & Service Portal
- Salesforce.com App
- Two-way API integrations for CRM systems

DEDUCTION & DISPUTE MANAGEMENT



- Automatic identification & routing
- Advance workflow with auto-approvals
- Root cause analysis & reporting

ADVANCED REPORTING



- User configurable dashboards
- Real-time daily operational metrics
- Ad hoc report & dashboard creation

PRIMARY BENEFITS



IMPROVE DAYS SALES
OUTSTANDING (DSO) & CASH FLOW



IMPROVE OPERATIONAL
EFFICIENCY



IMPROVE DECISION MAKING &
COLLECTION PRIORITIZATION



IMPROVE CUSTOMER EXPERIENCE
& INTERNAL COLLABORATION



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IAB SOLUTIONS, LLC



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