



## 2015 Winter / Early Spring Newsletter - Opening the Year

What a record-breaking start to 2015 we've had so far! New England officially had the most bountiful winter season with Boston's snow accumulation during the 2014-15 season of 110.3 inches (source: weather.com). From the interest rates' high of early 2014, 2015 arrival was celebrated with the lowest interest rates level in 12 months (source: treasury.gov). Last but by far not the least, Crude Oil NYMEX index hit the second lowest point in 10 years in March 2015 (lowest last seen in 2008; source: Nasdaq.com). And this will be the record year if the Federal Reserve begins raising interest rates (last fed funds rate increase took place in June 2006).


While it is not disputed by most pundits that the interest rates will rise in 2015, the economic data is still conflicting. The uncertainty constantly changes the estimated timing of the interest rate's increase. Interest rate predictions fluctuate just as much as the Federal Reserve's language on patience in keeping rates steady or raising them - one day the Fed is patient and the next day it anticipates the rates to increase. There is most definitely a fatigue around the uncertainty and the lack of clarity in the near to mid-term for the economy.

One way to overcome the fatigue is by focusing on what's in our control. A well-known fact in commercial banking is the generational turnover coming up in the next 10 to 20 years, with many senior and experienced banker looking to retire. We face challenge with attracting and developing younger talent interested in the commercial banking field. See an article titled *Turning Talent Crisis into a Success Story* in the next issue of our newsletter or in the April edi-

tion of the RMA Journal for an in-depth look at this issue. As several tiers of up and coming generations of commercial bankers grow and develop in the industry, it is our opportunity to bring them along, share our experiences, and coach and develop this new talent (naturally, let's make sure that we do it in a balanced way, without forgetting about developing tenured professionals).

The RMA New England Chapter Board continues to strengthen by adding experienced financial services leaders as well as rising professionals to its ranks. The Chapter also keeps bringing better and more consistent content to its members. You, our members, are getting involved more and more, which is incredibly rewarding. The Chapter is positioned well to tackle the challenge of the generational turnover.

To focus our attention on this issue, let's make 2015 the Year of Mentoring and Coaching. Mentoring is a perfect and personal way to connect with rising professionals and to bring back training and development. Experienced bankers have a lot to offer and now it is their opportunity to share.

This year, pick one or two rising professionals within your institution to mentor. Set up regular meetings. Learn about their interests and aspiration. Share your successes and failures. And work to provide guidance while developing trust with and understanding of what's important to the new generations. We the RMA New England Board Members look forward to hearing about your successes and supporting your efforts. 



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# New England Chapter Newsletter

## New Board Members

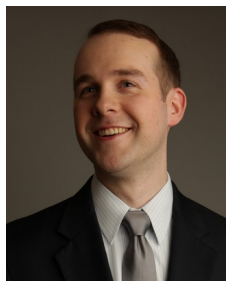
At the Board Meeting on January 8, 2015 three candidates for the New England Chapter's Board of Directors were nominated and approved. Please join us in welcoming Tom Sommerfield, Derek Ezovski, and Will Montague, as the newest members of our Board of Directors!



**Tom Sommerfield** is the Chief Risk Officer for **Blue Hills Bank**. Tom is responsible for credit risk, compliance, internal audit, and enterprise risk management throughout the bank. Previously Tom was a Director at Spring Street Capital, and dating from 1979, gathered experience in finance with CIT, GE, FleetBoston and predecessors, and HSBC. Tom is a graduate of Columbia College in New York. His past volunteer activities have included advisor to the Wayland Charitable Foundation, chair of the School Council of Claypit Hill School in Wayland, and youth sports coaching activities. He rides in the Pan-Mass Challenge each year and co-leads the Bank's riding / fundraising team. Tom currently resides in Wayland, MA.



**Derek Ezovski** is the President of **Outsourced Risk Management Solutions LLC (ORMS)**, a company dedicated to helping financial and real estate firms manage their environmental risks. Before founding ORMS, Derek, a civil / environmental engineer with an MBA from the University of Connecticut, served as managing director of Environmental Data Resources (EDR), a national environmental information company. The author of several articles on environmental due diligence and other property risk management topics, Derek played a lead role in developing desktop environmental products that are simplifying the due diligence process throughout the country. As an advisor to the Small Business Administration, he also used his expertise in the small business arena to make the due diligence process for SBA loans easier than ever before.



**Will Montague** is a commercial banking professional at **Boston Private Bank** with over ten years of banking experience spanning both retail operations and commercial lending. He began his career in banking in 2003 at Brookline Bank while working his way through school. He holds a B.A. in economics from UMass Boston, and an M.Sc. in finance from the New England College of Business. He is currently a Level II candidate in the CFA program. Will joined Boston Private as a Credit Analyst in 2013 and transitioned to a Commercial Loan Officer role in its C&I group in 2014. Will has a passion for working with local manufacturing companies, mentoring fellow bankers and prospective bankers, and coaching youth basketball.



# New England Chapter Newsletter

## Firm Profile

The law firm of **Hackett Feinberg P.C.** was established in 1997 and is a combination of the practices of nineteen attorneys - eleven partners and eight associates - with decades of combined legal experience. Prior to the establishment of the firm, seven of the ten members of the firm had worked together for many years at a prominent Boston law firm, and this spirit of a cooperative effort among colleagues still characterizes the firm. The firm's attorneys cover a broad range of practice areas including commercial and real estate lending transactions, creditor's rights, business insolvency, litigation, general corporate, employment and tax matters, and consequently have the ability and expertise to provide the highest quality legal services for most debtor/creditor and business matters. Our representation of lenders includes the enforcement of secured creditor remedies including the use of receiverships, assignments for the benefit of creditors, trust mortgages, secured party sales, foreclosure, Section 363 sales, and Chapter 11 liquidating plans. All attorneys are licensed to practice in the Commonwealth of Massachusetts and meet all requirements of Massachusetts laws with respect to the practice of law in the Commonwealth. Many of our attorneys are also licensed in other New England states and New York. The firm is located at 155 Federal Street, in the heart of Boston's financial district, and all attorneys and support staff operate from this location.

## Beware of the Federal Tax Lien

By John L. Hackett and Justin Fitzgerald of Hackett Feinberg, P.C.

You followed up on the lead, researched the borrower and its business, discussed the proposal with the borrower, and got your credit approver on board. You completed the due diligence, negotiated the documents and have finally closed and booked the loan. Your UCC search has confirmed your first priority filing position on the borrower's assets, but can you really be sure of your security interest's priority? Or can something still go wrong? Unfortunately the answer is yes to the last question. One thing that may go terribly wrong is the attachment of a federal tax lien ("FTL").

A FTL may "prime" your security interest even if you took all steps to perfect it under Article 9 of the Uniform Commercial Code ("UCC"). This can occur because of an incomplete search conducted pre-closing or from events occurring after you closed the loan.

The FTL gives the federal government a legal claim to the taxpayer's property as security for unpaid taxes. The FTL arises when the tax is assessed by the IRS. But before the FTL becomes enforceable against other creditors of the taxpayer, the IRS must "perfect" the FTL by filing a Notice of Federal Tax Lien ("NFTL"). *Once perfected, the FTL can become a serious problem for a lender.*

Before closing, a thorough search of the proper NFTL filing offices must be conducted. For real estate, the NFTL is filed where real estate records are filed, but for personal property the recording office is designated by state law and may vary by state. Some courts have held that a FTL may be perfected even if the NFTL was filed in the wrong place. A NFTL is not required to meet the precise identification standards of the UCC. Courts have held that a NFTL does not have to perfectly identify the taxpayer and may use abbreviated or even incorrect identification.

Once it is perfected, the FTL becomes a lien on all of the taxpayer's property, but more importantly, it becomes a first priority lien on all collateral coming into existence after the NFTL filing, including cash, accounts receivable, inventory and new equipment acquired. In addition, any loans made by a lender after the NFTL filing are junior to the FTL, even if the lender is not aware of the NFTL filing. There is no obligation on the IRS to notify a secured lender of a FTL. A lender caught unaware can find its security interest junior to the IRS on most or all of the taxpayer's assets.

The Internal Revenue Code ("IRC") provides only very limited protection for certain lenders that have entered into loan arrangements before a NFTL is filed, secured by accounts, inventory and other "floating" collateral, but only if they meet the requirements of IRC 6323(c). Under Section 6323(c), loan advances made after 45 days from filing of the NFTL (or earlier if made with actual knowledge of the FTL) are not entitled to protection, and the lender has no priority in any collateral coming into existence more than 45 days from the NFTL filing.

So how can you reduce the risk of being "primed" by an FTL?

1. Be sure to make a thorough search in all appropriate filing offices before you close the loan.
2. Upon learning of an FTL, immediately stop lending. See if the taxpayer has made payment arrangements with the IRS. Perhaps the FTL can be subordinated or you can modify your loan arrangements to protect your security position and to monitor compliance by the taxpayer with an IRS repayment plan.
3. Periodically monitor whether a borrower is timely paying its taxes as part of your normal financial reporting requirements, as part of your field examination protocol in the case of asset based loans, and with any loan amendment.

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4. Include a grant of security interest in deposit accounts in all loan documents. While bank documents often contain set-off language, a right of set-off alone will not prevail against a FTL. A perfected security interest in deposit accounts may have priority status however.

Due diligence is an important part of every secured loan transaction. Be sure your diligence includes appropriate searches and protocols for FTLs. 

## About the Authors



**John L. Hackett, Jr.**

**Practice areas:**

Banking and Commercial Transactions; Business and Corporate Law; Workout and Creditors' Rights.

**Bar admission:**

Massachusetts, 1980.

**Education:**

LL.M., cum laude, Boston University Law School, 1987.

J.D., cum laude, Suffolk University Law School, 1980.

B.A. cum laude, University of Massachusetts, 1973.

John's practice includes the representation of banks and other financial institutions in connection with both commercial and commercial real estate credit arrangements. His experience ranges from smaller loan transactions to sophisticated multi-borrower and multi-lender transactions involving both typical and unusual collateral in Massachusetts and other domestic and foreign jurisdictions. John also works with creditors in asserting and exercising their rights and remedies under financing transactions including foreclosure and disposition of collateral, and negotiation and documentation of forbearance, restructuring and settlement agreements. John also frequently represents privately owned businesses in debt and/or equity financings and other transactions, including both sales and acquisitions of businesses and other business transactions.

He has been a lecturer for the New England College of Finance, Risk Management Association, Massachusetts Continuing Legal Education, the Eastern Association of Equipment Lessors and various finance industry training organizations. Prior to undertaking the practice of law, John managed the commercial loan review function for a large regional commercial bank.

John lives in Mansfield, Massachusetts.

Contact: [jlh@bostonbusinesslaw.com](mailto:jlh@bostonbusinesslaw.com); 617-422-0200



**Justin Fitzgerald**

**Practice areas:**

Banking and Secured Commercial Lending; Real Estate Finance; Business Law.

**Bar admission:**

Massachusetts, 2010

**Education:**

J.D., University of Detroit Mercy School of Law, 2010.

B.A., Hope College, 2006.

Justin Fitzgerald concentrates his practice in the areas of commercial and real estate lending, banking and general corporate matters. His practice includes the representation of banks and other financial institutions, corporations and other business entities. Justin also represents business clients regarding secured and unsecured loans and commercial real estate loans, as well as other commercial real estate matters and business transactions.

Prior to joining Hackett Feinberg, Justin worked for the Federal Reserve Bank of Boston where he focused on supervisory and regulatory matters, including investments and activities of banks, bank structure, and prudential limitations.

Justin is admitted to practice law in Massachusetts. He is currently pursuing an LL.M. in Banking and Financial Law at Boston University School of Law.

# New England Chapter Newsletter

## Upcoming & Immediate Past Events

### Business Writing for Bankers (RMA National Training Course)

Friday, May 19, 2015 in Boston, MA

#### Course Overview

Business Writing for Bankers focuses on skills needed to write an effective credit memorandum. Learn techniques for creating, analyzing, improving, and reviewing your own credit write-ups. Apply these techniques in class individually and in small group exercises. The instructor will demonstrate and explain, and the participants will then practice critiquing, writing, and revising credit memorandum excerpts.

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### RMA New England Chapter Annual Meeting

Wednesday, May 6, 2015

#### A CEO Panel Event: What Keeps You Up At Night?

##### Featuring:

Christopher Oddleifson, President & CEO of Rockland Trust Company

William Parent, President & CEO of Blue Hills Bank

Wayne Patenaude, President & CEO of Cambridge Savings Bank

Moderator: Jack D'Ambrosia, Chaston Associates

### RMA New England March Event - Financing Mergers and Acquisitions

Wednesday, March 25, 2015

#### Financing Mergers and Acquisitions

##### Panelists:

Kristina Minnick Westerling, Associate Professor of Finance, Bentley University

John Finning, Partner, Alexander Aronson Finning

John L. Hackett, Attorney at Law, Hackett Feinberg P.C.

Mitchell Feldman, Senior Vice President, Santander Bank N.A.

## RMA Credit Risk Certification

For more information, visit [www.rmahq.org](http://www.rmahq.org)

In today's rapidly changing financial services industry, you need practical, day-to-day knowledge that will help you excel in your profession. You need the latest skills - skills that are current and complete. And you need the demonstrated ability to serve a diverse base of clients. Plus, you need all of your knowledge, skills, and abilities to be validated by a respected organization like RMA.

There are seven skill sets you need to build on when preparing for the RMA-CRC examination. This is in addition to the knowledge acquired through the application of concepts as a hands-on lender, analyst, credit officer, or loan services officer.

1. Evaluate the client's industry, markets, and competitors.
2. Assess management's ability to formulate business and financial strategies and to execute them.
3. Complete accurate, ongoing, and timely financial assessments of the client and its other credit sponsors.
4. Assess strengths and quality of client/sponsor cash flow.
5. Evaluate collateral values and conduct periodic inspections of collateral.
6. Identify repayment sources and appropriately structure and document credit exposures for the intended purpose.
7. Learn to recognize problem loans and the actions needed.





# New England Chapter Newsletter

## Special Thanks to Our Sponsors

### Our Chapter appreciates the support of our Gold Sponsor



**Hackett Feinberg P.C.**

businesses throughout New England, including formation of entities, real estate related transactions, business disputes and employment matters. HF offers sound, attentive and practical legal services to our clients at reasonable rates.

[Hackett Feinberg P.C.](#) is a mid-sized Boston law firm specializing in the representation of national, regional and community banks, institutional and governmental lenders in commercial lending and commercial real estate lending activities. Our lawyers are experienced in enforcement of creditors' rights in state and federal courts, including bankruptcy court. We also counsel small and mid-sized

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panies in New England.

The oldest business development corporation in the United States, [BDC Capital](#) has been recognized locally and nationally as a leader and innovator in business lending and capital investment. Many of New England's leading financial institutions invest in BDC to help promising companies expand. Over 60 years, we have invested more than \$1 billion in thousands of



among the top 10% of all CDC's in the country.

[CDC New England](#) is a private, non-profit corporation originally started in 1981 as a Certified Development Company to provide SBA 504 Program loans to small businesses for the acquisition of fixed assets in Massachusetts. Three decades later, CDC has assisted companies throughout New England and now maintains five offices in the region. We are consistently ranked



from \$50 million to more than \$5 billion.

[Chaston Associates, Inc.](#) is the leading independent loan review company in New England. Established in 1984, our firm has provided outsourced credit risk review and other consulting services to more than 200 banks located across the Northeast and points beyond. Currently, our customer base approximates 100 institutions reporting total assets ranging



**CEIS REVIEW INC.**  
Consulting Services to the Financial Community

serve methodology and validation, CRE portfolio stress testing, portfolio acquisition review, CRE concentration analysis, credit risk management process review, structured finance review, credit loan policy maintenance, problem loan advisory, credit analysis, regulatory relations, credit database formation, and loan and credit seminars.

[CEIS Review](#) is an independently owned consulting firm serving the needs of the commercial and savings bank communities as well as those of other commercial lending institutions. Our services include loan review, loan loss re-

# New England Chapter Newsletter

## Meet the RMA New England Chapter Board

### Officers:

President <b>Richard Labrecque</b> Citizens Bank	Vice President <b>Joseph Herzog</b> Rockland Trust	Treasurer <b>David O'Brien</b> Rockland Trust	Secretary <b>Joanne Franco</b> National Grand Bank
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### Directors:

<b>Don Bedard</b> Lowell Five Cents	<b>Dima Berdiev</b> DNB Advisory	<b>Carol Brennan</b> BDC Capital	<b>Diana Carito</b> Salem Five
<b>Lana Delic</b> Citizens Bank	<b>Brad Egan</b> Santander	<b>Derek Ezovski</b> Outsourced Risk Mgmt. Solutions LLC	<b>Joanne Franco</b> National Grand Bank
<b>Michael Gallagher</b> Enterprise Bank	<b>Kama Giedra</b> Citizens Bank	<b>Joe Herzog</b> Rockland Trust	<b>Lisa Krywucki</b> Fidelity Cooperative Bank
<b>Richard Labrecque</b> Citizens Bank	<b>Bruce Lemieux</b> Rockland Trust	<b>Andrew Mahoney</b> Cambridge Trust	<b>Will Montague</b> Boston Private Bank
<b>David O'Brien</b> Rockland Trust	<b>Katerina Papp</b> Eastern Bank	<b>Tom Piemontese</b> Century Bank	<b>Tom Sommerfield</b> Blue Hills Bank
<b>Marilyn Tressel</b> Boston Private Bank	<b>Paula Zaiken</b> The Property & Casualty Initiative		

### Past Presidents / Board of Advisors:

Immediate Past President (2012-14) <b>Michael Gallagher</b> Enterprise Bank	2010-12, LORS <b>Don Bedard</b> Lowell Five Cents	2008-09, LORS <b>Bruce Lemieux</b> Rockland Trust
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Strategic Planning Committee, Audit, Bylaws  
**Andrew Mahoney**  
Cambridge Trust

Interested in getting involved in the RMA New England?

### We want to hear from you!

We are a group of high energy banking professionals who put together educational, networking, panels and various other events and products. We work within our business community to bring value to our peers through a wide range of services.

RMA New England Chapter  
10 Back River Rd.  
Amesbury, MA 01913  
Julie Conroy, Administrator  
978-263-9003 | Email: julie [at] rmanewengland.org