

Fraud Playing Offense: Red Flags and Defense Tactics to Avoid Getting Burned



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FRAUD PRIMER: WHAT IS FRAUD?

fraud **noun**

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Definition of *fraud*

1 a : DECEIT, TRICKERY

specifically : intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right

// was accused of credit card *fraud*

b : an act of deceiving or misrepresenting : TRICK

// automobile insurance *frauds*

2 a : a person who is not what he or she pretends to be : IMPOSTOR

// He claimed to be a licensed psychologist, but he turned out to be a *fraud*.

also : one who defrauds : CHEAT

b : one that is not what it seems or is represented to be

// The UFO picture was proved to be a *fraud*.

Source: Merriam-Webster

Obtaining something
of value by
intentionally
deceiving
someone else

CREDIT FRAUD

**Obtaining goods,
services, or both,
on credit,
*intending not
to pay***

PAYMENT FRAUD

**Paying for goods
or services using
*fake or stolen
means of
payment***

FORMS OF CREDIT FRAUD

THE TAXONOMY OF DECEPTION

IDENTITY SCAMS

“Same Name” Scam

Fraudster applies for new credit using a name that looks and sounds very similar to the same of an existing, legitimate business.

“Ship To” Scam

Fraudster places an order in the name of an existing customer, with goods to be shipped to a new address not belonging to the customer.

Synthetic Identity

Perpetrator creates a fake company, individual, or both – out of thin air. This is often a long con used to build increasing credit availability before a bust-out scam.

OTHER CREDIT FRAUD SCHEMES

E-Mail Spoofing

Fraudster impersonates business principals, to obtain credit or redirect payments.

Application Fraud

Customer falsifies or misrepresents information in credit application.

Undisclosed Ownership Changes

Customer changes hands to a risky new owner, unbeknownst to you.

PAYMENT FRAUD

PAYEE BEWARE

RECEIVING
FRAUDULENT
PAYMENTS

HAVING YOUR
PAYMENT
CREDENTIALS USED
FRAUDULENTLY

DATA BREACH -
THEFT OF CUSTOMER
DATA OR PAYMENT
CREDENTIALS

PAYMENT FRAUD

METHODS OF FRAUDULENT PAYMENT



Stolen / Misused Credit Card Numbers



Counterfeit Checks / ACH Using Stolen or Fake Account Information



Counterfeit Currency



Wire / E-Payment Fraud Using Stolen / Falsified Credentials, Social Engineering, etc.

**NO MATTER WHAT FORM THEY
TAKE . . .**

**CREDIT FRAUD AND PAYMENT
FRAUD ARE THEFT**

fraud / from

TRUE TALES FROM THE TRENCHES:
CASE STUDIES OF FRAUD IN THE REAL WORLD

deception

tricks; a p

TRUE TALES FROM THE TRENCHES: FRAUD IN THE REAL WORLD

“We insisted on prepayment from a new customer before delivering goods.

This was a **smart move**.
The **sense of urgency** in the purchase order precluded a credit investigation and was a **red flag!**

The fraudster sent a screenshot of the wire transfer receipt.

Another **red flag**: A wire receipt is **easily faked** and is not proof of receipt of funds!

We delivered the goods before confirming that we received the wire.

Until **your bank says you’ve received the wire, you do not have the money!**

We never received the wire.

That’s because the “customer” never sent the wire!

We recognized this was a scam after the second attempt.”

This tactic is **becoming increasingly common**.

TRUE TALES FROM THE TRENCHES: FRAUD IN THE REAL WORLD

“A **reputable agency** submitted an insertion order on behalf of a **blue-chip advertiser**.

The fraudster was using the classic **same name scam** - on two levels at once!

We performed **credit and reference checks** on the agency before running the ads.

This is the trickiest aspect of a same name scam: the name they're using is a **real, creditworthy business**

It turned out that the person who signed the insertion order **was not an employee of the agency** and the insertion order was a **fake**.

This was an opportunity to uncover the same name scam. How?

For every new account, we now **validate that the person signing the order is an actual employee** of the responsible company.”

- Check E-Mail Domain
- Web Search
- LinkedIn / Social Media
- Confirmatory E-Mail / Call
- Trusted Contacts (if a new contact @ existing client)

TRUE TALES FROM THE TRENCHES: FRAUD IN THE REAL WORLD

“We made advances to Borrower under a revolving loan agreement. All advances were deposited in Borrower’s account at a large New York bank.

We received an e-mail, purportedly from Borrower’s President, advising that Borrower had **moved its bank accounts** to a small Montana bank and **providing new wire instructions** for future advances under the loan agreement.

We called the President of Borrower **at his office number** and left a message seeking to confirm the change. We received a return call **from an unknown cell number**, ostensibly from the President, confirming the change.

We received an email request, again appearing to come from Borrower’s President, for a \$1,000,000 advance under the revolving loan, and wired the advance to the new Montana bank account.

Borrower’s President later informed us that Borrower never changed banks and did not request the \$1,000,000 advance. The Montana bank informed us that the funds were withdrawn and the account had been closed.”

Changes to customer information are a fraud red flag – *especially changes to banking information!*

E-mail alone should never be sufficient to update wire instructions or authorize outgoing payments. Wire/ACH payments should be voice verified with trusted contacts.

Calling a trusted number was a good practice. The return call from an unknown outside phone number was a **red flag**.

Timing relative to the bank account change should have been a red flag. Also evaluate the size of the draw vs. historical norms.

This was a relatively sophisticated scam... but this method is becoming increasingly common.

TRUE TALES FROM THE TRENCHES: FRAUD IN THE REAL WORLD

“Someone called in an order and said they were from a large university that **had an existing account with us.**

The caller ordered \$30,000 of textbooks and requested that we drop ship the books to a **new, off-campus address.**

We got the police involved. The address turned out to be a **public storage unit** and the books had already been reshipped.

The FBI traced the shipment. It had been sent to a bookstore in New Hampshire that ordered the books from the crooks. We are not sure that the bookstore knew the books were stolen but we are sure they purchased the books at a discounted price.”

Classic “ship to” credit fraud attempt. Did anyone know the person placing the order? Any procedure in place to validate?

Requesting delivery to a new address is a **red flag** that should trigger a validation procedure both internally and with the customer.

Too late to avert the fraud!

Diligence on the ship-to address and validation with trusted contacts at the existing customer would have averted this fraud!

“A cybercriminal recently copied an A/R employee’s signature line and **sent an e-mail to our customer.**

The e-mail **said that our bank information had changed**, and provided new wire info.

Our customer **made wire payments** of amounts owing to us into the bogus account.

The cybercriminal **absconded with the funds.”**

Spoofing – You can educate **your own employees**, but how do you educate **customers’ employees**?

Invoices and statements: “Our wire instructions are: _____. If you receive alternate payment instructions, please contact _____ before remitting payment.

The customer was the legal victim since they still owe you the \$... But **what is the relationship worth** to you?

This particular type of **payment fraud** is a difficult one to prevent since the **payment is originating elsewhere**

TRUE TALES FROM THE TRENCHES: FRAUD IN THE REAL WORLD

“Our firm was **retained by a new client** to pursue collection litigation against its customer.

Before the firm took any collection action, the client advised that the customer agreed to make a large partial payment **by check, through the law firm.**

The client instructed the firm to **deduct its fees** from the payment, then **remit the balance** to the client.

The firm received the check, **drawn on a Canadian bank** – where the customer had no operations.

We **verified with the supposed customer** that they did not issue the check and had no relationship to the client (a fraudster).”

What due diligence did the firm do to understand who the new client was?

Why would the payment go through the firm when the firm had **undertaken no collection activities yet?**

THIS IS ALWAYS A GLARING RED FLAG

Not just a check, but a foreign check that will take longer to be dishonored!

Crisis averted!

A hand holding a magnifying glass over the word 'FRAUD' spelled in red blocks. The word 'FRAUD' is spelled out in large, red, 3D block letters. Below it, the word 'EVIL' is also spelled out in similar red block letters, though it is slightly faded. The background is a blurred image of a person in a blue shirt.

DETECTION AND PREVENTION

TAKEAWAYS: RED FLAGS AND WARNING SIGNS

WITH AN EXISTING CUSTOMER, **CHANGE** IS ALWAYS A RED FLAG FOR POTENTIAL FRAUD:

- Shipping Address
- Payment Information (Wire/ACH)
- Contact Information
- Deviation from Historical Patterns
 - Order Size
 - Product Mix
 - Order Frequency
- Request for Increased Credit Line
- Increase in Reference Requests
- Increase in NSF Payments

More than one red flag usually shows up at a time when fraud is afoot!

VALIDATE CUSTOMER-INITIATED CHANGES TO **PREVENT FRAUD**:

- Perform basic due diligence (Google search) on new shipping addresses and confirm with a trusted contact.
- Validate any change to wire/ACH instructions by telephone with a known, trusted contact.
- Consider deviations from historical patterns (outsized orders, unusual product mix, paydown/reorder, spike in reference inquiries) against the overall context of the customer relationship.
- Reserve the right in your T&Cs to refuse to extend credit on an order-by-order basis in the event of elevated risk.

TAKEAWAYS: RED FLAGS AND WARNING SIGNS

WITH A NEW CUSTOMER, PAY ATTENTION TO **CONTEXT CLUES**:

- Incomplete Credit Applications
- Phone Number / E-Mail Mismatch
- Reference Issues
 - Odd Address / Phone Number
 - Tone / Content of Call
 - Unfamiliar References
- Missing Principals
- Unsolicited Orders (some industries)

More than one red flag usually shows up at a time when fraud is afoot!

USE **BASIC DUE DILIGENCE** TO HELP AVOID NEW CUSTOMER FRAUD:

- Web Investigation
 - Customer Website
 - Social Media Search
 - Phone Number Search
 - Google Maps Street View
 - HQ Address and Ship-Tos
- Call Trade and Bank References
 - Use a reference form and/or a reference script
 - Do some basic diligence on unknown references – Google!
- Validate business name and good standing with secretary of state

QUESTIONS



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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.

Andrew writes and speaks frequently about bankruptcy matters and financial issues. Before becoming a lawyer, he worked in senior financial management at a midsize, privately held company.



Education

- Seton Hall University School of Law (J.D. 2009), magna cum laude; Order of the Coif
- University of Missouri-Saint Louis (B.S. 2005), Business Administration-Finance and Accounting; *Beta Gamma Sigma*

Bar Admissions

- New Jersey

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With more than 35 years of experience in the bankruptcy and insolvency field, Bruce is a recognized leader nationwide in trade creditor rights and the representation of trade creditors in bankruptcy and other legal matters. He has represented trade and other unsecured creditors, unsecured creditors' committees, secured creditors, and other interested parties in many of the larger Chapter 11 cases that have been filed. Bruce also handles letters of credit, guarantees, security, consignment, bailment, tolling, and other agreements and legal credit issues for the credit departments of institutional clients.

Among his various legal recognitions, Bruce received the Top Hat Award in 2011, a prestigious annual award honoring extraordinary executives and professionals in the credit industry. He was co-chair of the Avoiding Powers Committee that worked with the American Bankruptcy Institute's (ABI) Commission to Study the Reform of Chapter 11, participated in ABI's Great Debates at their 2010 Annual Spring Meeting—arguing against repeal of the special BAPCPA protections for goods providers and commercial lessors—and was a panelist for a session sponsored by ABI. He is a frequent presenter at industry conferences throughout the country, as well as a prolific author regarding bankruptcy and creditors' rights topics in various legal and trade publications.

Bruce is a co-author of "Trade Creditor's Risk-Mitigation Tools and Remedies Manual," published by ABI in 2019. He has also contributed to **ABI Journal** and is a former member of ABI's Board of Directors and former co-chair of ABI's Unsecured Trade Creditors Committee.



Education

- University of Pennsylvania Law School (J.D. 1980)
- Wharton School of Finance and Business (M.B.A. 1980)
- University of Rochester (B.A. 1976), Phi Beta Kappa

Bar Admissions

- New York

Recent Publications

- May 2022
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