

The Impact of COVID-19 on Mergers & Acquisitions

Taking a deeper dive into how COVID-19 has impacted reps & warranties insurance, deal financing, and giving an overview on cyber and intellectual property protection.

Benesch
KeyBanc Capital Markets
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WELCOME

If you have questions throughout the presentation, please type them into the chat box located in the lower corner of



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AGENDA

Our panel of subject matter experts will be discussing, in order:

- An overview on cyber and intellectual property risks and protection
- Reps and warranties considerations for deals made during this pandemic and for bankruptcy and distressed deals
- How COVID-19 has impacted deal financing from the lender's perspective and the state of the leveraged markets



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Data Privacy and Cybersecurity Issues in Private Equity M&A



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Data Privacy and Cybersecurity Issues in Private Equity M&A

- Whether buy side or sell side, data privacy and cybersecurity risk could have a meaningful impact on valuations going forward.
- Attention must be paid to the jurisdiction at issue. Different jurisdictions have different laws, penalties, and safe harbors from potential liability.
- The plaintiffs bar is getting smart in this area and looking for new defendants and legal theories.
- Most importantly, data privacy and cybersecurity issues are a management and board of directors diversion.



"Eyes Wide Open" | Understanding Risk



Class action lawsuits



BOD actions



Securities fraud claims



Consumer private rights of action



Arbitration clauses

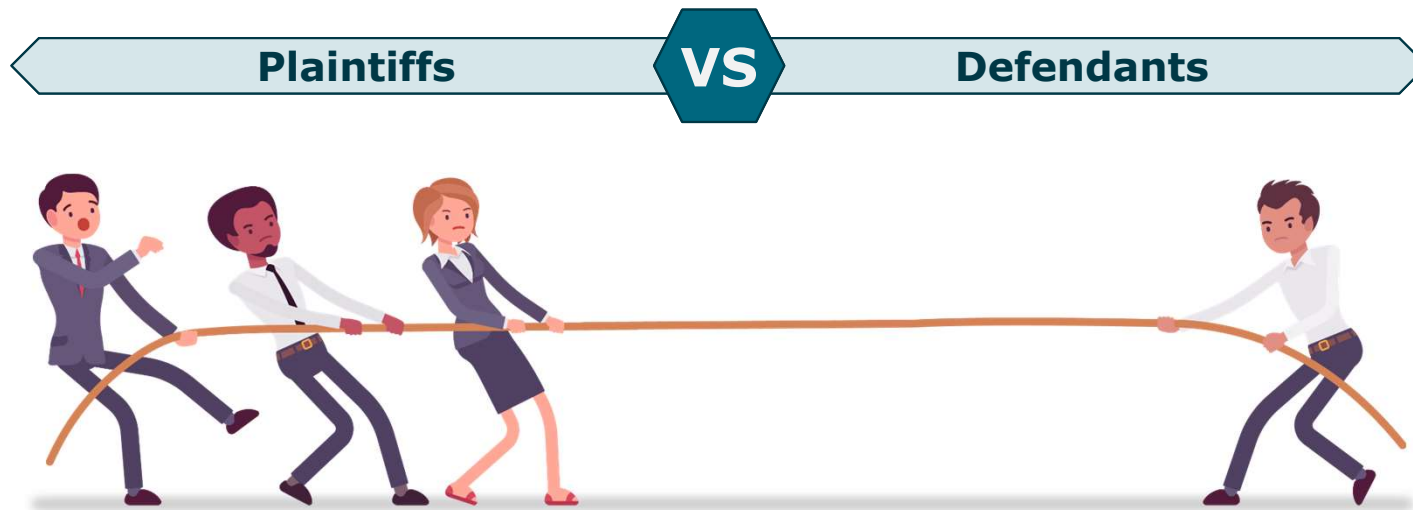


Standing

“No Place to Hide” | Legislative Responses



“I Won’t Back Down” | Who’s Really At Risk?



- ▶ In 2017, a total of 76 data security breach related class actions were filed in federal courts.
- ▶ Of those cases, there were only 27 unique defendants that were sued (after multiple pile-on suits were removed).

“Safe & Sound” | Contractual Safeguards



Standard of Care



Covenants, Reps & Warranties



Indemnification & Cross-Indemnification



Limitations of Liability



Confidentiality Clauses



Insurance

Reps & Warranties Insurance Considerations



Steve Lee

Transactional Risk Consultant

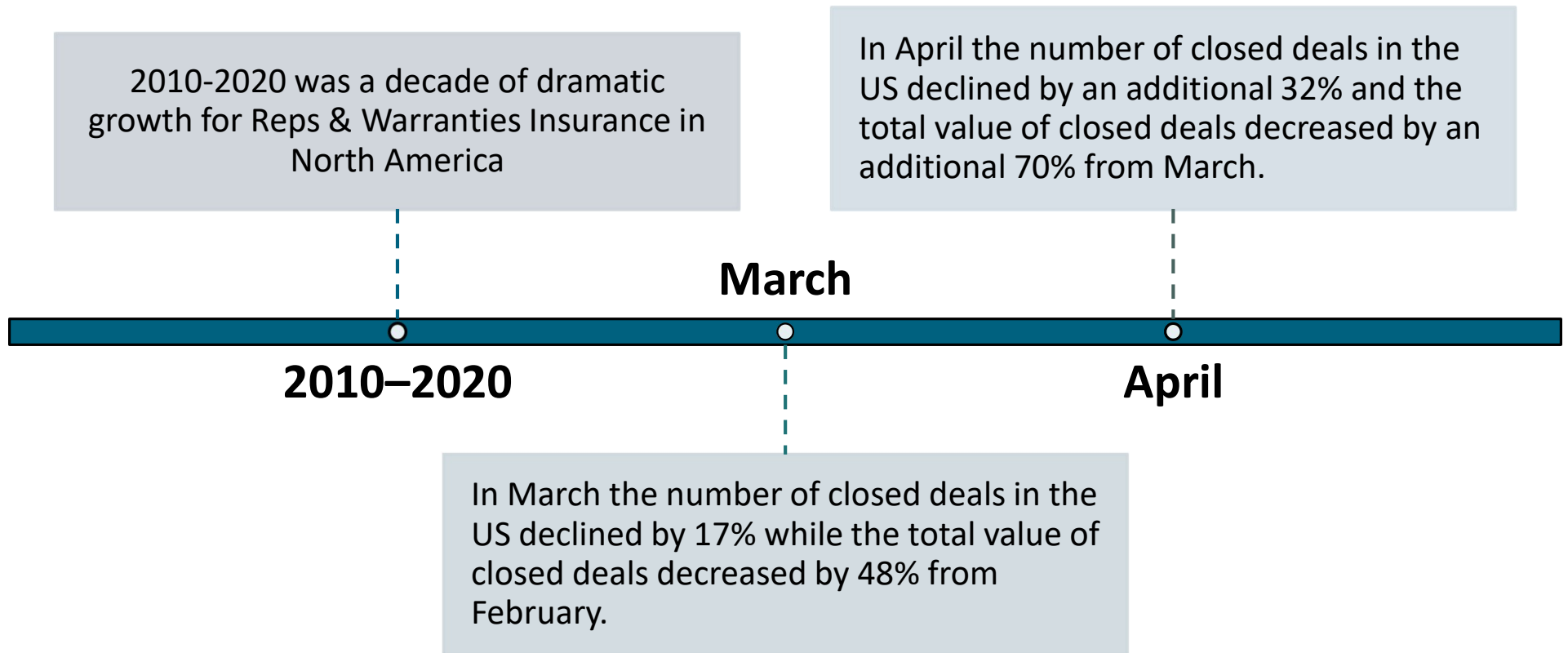
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PRIVATE EQUITY

SWIFT END TO PERIOD OF HISTORIC GROWTH



UNEVEN DEAL MARKET

- **Technology and health care are top industries where deals are getting done.**
- **Oil and gas and finance are the industry sectors with the biggest drop in deal activity.**
- **The Reps & Warranties insurers are open for business and insured deals are getting done.**

How has COVID-19 impacted Reps & Warranties Insurance?

- Pricing
- Underwriting
- Coverage

PRICING

- **As a result of the sharp drop in deal activity, underwriters have excess capacity**
 - **Premium rates remain stable**
 - **Increased competition for attractive deals**
 - **Longer term rates are expected to increase as a result of increased claims activity and the negative impact to the investment returns for the insurers**
-

UNDERWRITING

- **Comprehensive buyer due-diligence required**
 - Have travel restrictions or shut down orders prevented the buyer from conducting site visits, Phase I's or other typical diligence?
- **COVID-19 specific diligence required**
 - How has COVID-19 impacted the target's supply chain, material customers, working capital, employees and cyber security?

COVERAGE

- **Most (but not all) insurers have added a COVID-19 exclusion to the policy**
- **Some underwrite this issue on a deal by deal basis**
- **Negotiate the scope of the COVID-19 exclusion before selecting the insurer**

SAMPLE COVID-19 EXCLUSIONS

“losses arising out of or related to any business interruption or other financial consequence arising from the COVID-19 virus (or evolution or mutation thereof) including any government or other regulatory sanctioned response thereto”

“to the extent the Loss is increased by (i) the presence, transmission, threat or fear of a novel coronavirus, including the coronavirus disease (COVID-19) or any evolution thereof, and/or (ii) any mandatory or advisory restriction issued, or action ordered or threatened, by any public authority, regulatory body or government in connection therewith including any federal, state, local or foreign regulation, rule, statute or law (with the burden of proof as to such increase on the Insurer)”

“losses arising from or relating to any business interruption or other business downturn to the extent such interruption or downturn arises out of the Coronavirus (including any resulting COVID-19 sickness) or any government or other regulatory sanctioned response thereto”

WHAT'S NEXT ?



Some insurers may exit the Reps & Warranties Insurance market depending on how long the drop in deal activity continues



Growth in insuring distressed sales and bankruptcy sales

Leveraged Debt Considerations & The State Of The Leveraged Market



Bob Scelza

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KeyBanc Capital Markets

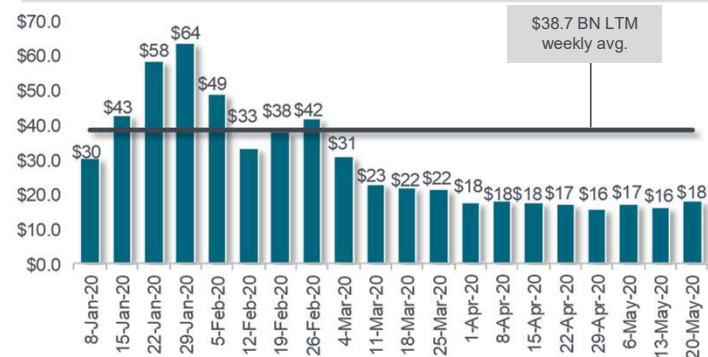
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Leveraged Loan Market Snapshot

- Demand Technicals
 - There were three CLOs issued for the week ended May 22nd totaling \$1.1 billion and \$25.4 billion YTD
 - 2020 CLO net new issuance is projected to end up at ~\$85 billion, down about 28% YoY
- Supply Technicals
 - The forward calendar increased to \$18.4 billion on May 20th
 - M&A activity drove the calendar through the week, with 16 deals totaling \$18.0 billion
- The net forward calendar continues to moderate in the new year

Weekly Institutional Forward Calendar (\$ in BN)



Weekly CLO Issuance (\$ in BN) ¹



New-Issue Clearing Yields

		30-Day Rolling Average			
		4Q19	1Q20	March 2020	April 2020
Overall		5.51%	5.66%	6.22%	N/A
4B		3.97%	4.45%	N/A	N/A
2B		6.52%	6.06%	6.70%	6.52%
Middle Market ²		7.99%	7.44%	7.70%	N/A

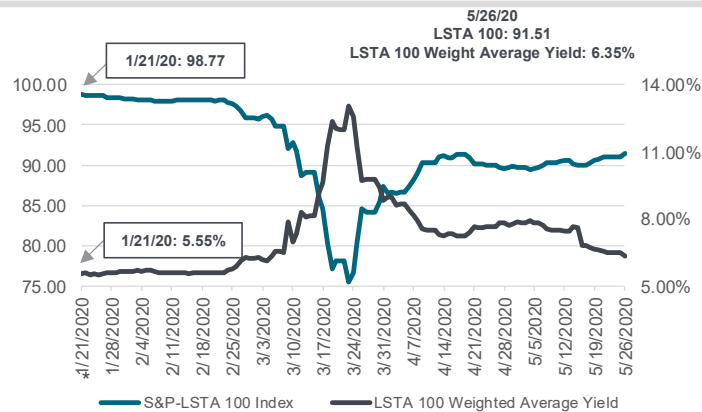
Sources: KeyBanc Capital Markets, Bloomberg, IFR, LCD, Morgan Markets

COVID-19 Impact on Institutional Loan

Market Technical Conditions

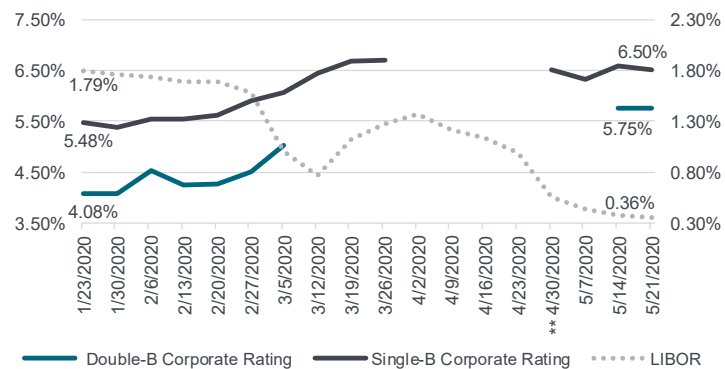
- M&A transactions continue to test appetite in the leveraged loan market, with the second LBO deal (underwrote in February) launched in the market
- The broad market continues to build momentum as larger issuers benefit from the apparent window
- Middle market primary activity remains quiet as issuers are focusing on obtaining amendment flexibility
- The secondary market ticked higher based on Phase I openings, more positive news on vaccine as well as the impact of holiday week
- The S&P-LSTA Leveraged Loan 100 Index stands at 91.51 with loan returns for the year falling to -6.88% as of 5/26/2020

S&P-LSTA Leveraged Loan 100 Index & Yield



Sources: KeyBanc Capital Markets, Bloomberg, LCD, Refinitiv
 *Confirmed COVID-19 case counts compiled by Bloomberg Newsroom starting 1/21/2020
 **Not available due to limited single-b and double-b issuances in April and March

Average New Issue Yield Progression

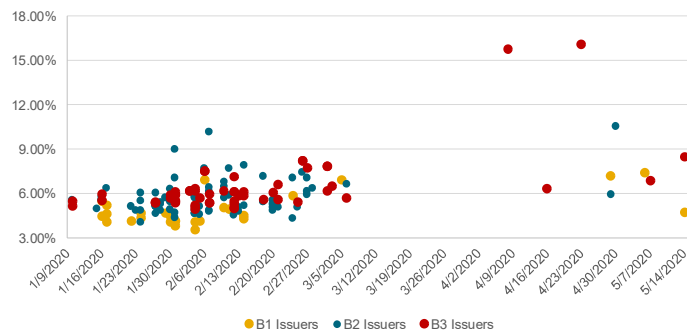


New Issue Activity Starts to Open to Higher Rated Issuers

Commentary

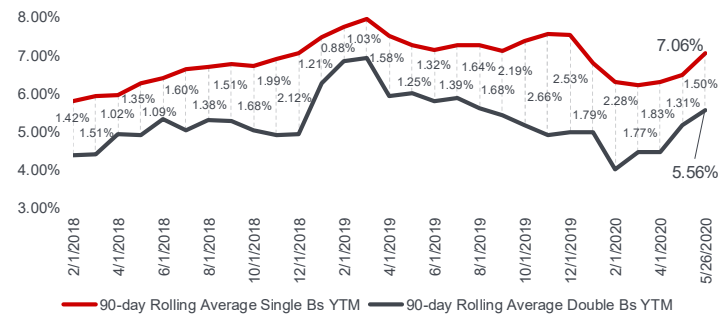
- Investors exhibited a “flight to quality” mentality at the end of 2019 as sentiments on trade wars, the cycle, and global market volatility were top of mind in addition to the technical equation
- The difference in yield between double Bs and single Bs in event-driven transactions is 150 bps, compared to 88 bps in February of 2019, illustrating a increase in the cost of risk
- When including refinancings (all deals), the difference in yield between Double Bs and Single Bs is 210 bps, vs. 271 bps late last year
- New deals announced over the past week included M&A financings and some new names with strategic uses of proceeds

Yield Progression for Single-B Issuers

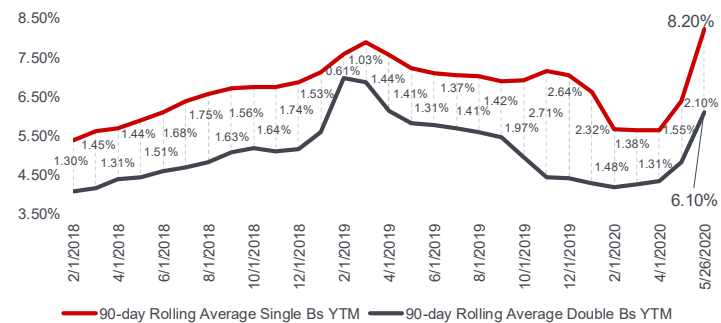


Sources: KeyBanc Capital Markets, Bloomberg, LCD
 [1] Includes M&A, LBO, and Spinoffs
 Data as of 5/22/2020

90-day Rolling Average YTM (Event-driven Deals) [1]



90-day Rolling Average YTM (All Deals)



Institutional Loan Market Activity Since Market Correction

- The primary market continues to take steps toward normalcy as previously closed transactions relaunched and some new names with strategic uses of proceeds are making their way through the market
 - The net forward calendar increased to \$16.6 billion
 - A couple large previously announced deals continue to sit idle and will be watched. Those are:
 - Eldorado – Caesars (NasdaqGS:ERI) and Thyssenkrupp^[1] (XTRA:TKA)

US Institutional Forward Calendar

Issuer	Sponsor	Industry	Use of Proceeds	CRPR		Deal Size (in millions)	LEAD AGENT
				Moody's	S&P		
Caesars Entertainment Inc	Not Sponsored	Gaming & Hotel	Merger	Ba3	B+	2400.00	J.P. Morgan
Eldorado Resorts	Not Sponsored	Gaming & Hotel	Merger	B1	B	3000.00	J.P. Morgan
LogMeIn	Francisco Partners	Computers & Electronics	LBO	NR	NR	3300.00	Barclays
Apergy Corporation	Not Sponsored	Computers & Electronics	Merger	Ba3	BB-	537.00	Bank of America
Xperi Corporation	Not Sponsored	Computers & Electronics	Merger	B1	BB-	1100.00	Bank of America
AVI-SPL Inc	Marlin Capital Partners	Computers & Electronics	LBO	B2	B	370.00	Bank of America
Northwest Fiber	Not Sponsored	Cable	Acquisition	B2	B-	795.00	Bank of America
RSA	Symphony Technology Group	Computers & Electronics	LBO	NR	NR	1350.00	UBS
SnapAV	Hellman & Friedman	Computers & Electronics	Acquisition	B3	NR	390.00	UBS
Cincinnati Bell Inc	Macquarie	Telecom	LBO	B2	B	1350.00	Goldman Sachs
Atlas Technical Consultants	Bernhard Capital Partners	Building Materials	Merger	NR	B	281.00	Macquarie
Century Casinos	Not Sponsored	Gaming & Hotel	Acquisition	B3	B-	170.00	Macquarie
Cott Beverages	Not Sponsored	Food & Beverage	Acquisition	B1	B	400.00	Deutsche Bank
Delek	Not Sponsored	Retail	Corp Purpose	Ba3	BB	200.00	Wells Fargo
Xplornet	Stonepeak Infrastructure Partners	Telecom	LBO	B3	B-	1275.00	Credit Suisse
Mohegan Tribal	Not Sponsored	Gaming & Hotel	Refinancing	Caa2	B-	100.00	Credit Suisse
Segra	EQT Partners	Telecom	Acquisition	B2	B	275.00	TD

Institutional Transactions Priced Since May 4th, 2020

Issuer	Wrap Date	Cov Lite	Sponsor	Industry	Use of Proceeds	CRPR		TLB	OID
						Moody's	S&P		
Comerstone OnDemand	5/22/2020	Yes	Not Sponsored	Computers & Electronics	Acquisition	B2	B	\$1005M / L+425	97
Sedgwick Claims Management Service	5/21/2020	Yes	The Carlyle Group	Tech	Corp Purpose	B3	B	\$300M / L+425	96
Learning Care Group	5/21/2020	Yes	American Securities	Services & Leasing	Corp Purpose	Caa1	CCC	\$190M / L+850	97
Blackstone Mortgage Trust	5/19/2020	No	Not Sponsored	Real Estate	Corp Purpose	Ba2	B+	\$250M / L+475	97
Alterra Mountain Company	5/14/2020	Yes	KSL Capital / Henry Crown & Company	Entertainment and Leisure	Corp Purpose	B1	B	\$400M / L+450	98
Aristocrat Leisure	5/14/2020	Yes	Not Sponsored	Casinos and Gaming	Corp Purpose	Ba1	BB+	\$500M / L+375	98
WebPro	5/11/2020	Yes	CVC	Tech	LBO	B3	B	\$540M / L+525	94
Conservice Midco LLC	5/7/2020	Yes	Advent International / TA Associates	Tech	LBO	B3	B-	\$475M / L+425	95
Nielsen Finance	5/7/2020	Yes	Not Sponsored	Services & Leasing	Refinancing	Ba3	BB	\$550M / L+375	98
Bombardier Recreational Products	5/6/2020	Yes	Not Sponsored	Consumer	Corp Purpose	B1	BB-	\$600M / L+500	97

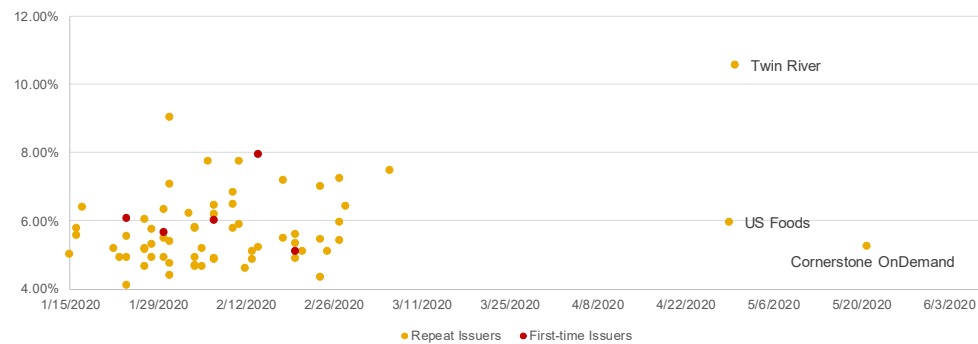
Sources: KeyBanc Capital Markets, Bloomberg, LCD, Refinitiv
 [1] Cross-border transaction

B2 and B3 Issuers Pricing Analysis

Commentary

- Arrangers have structured first-time issuers to B2 ratings, as 18 of 24 first-time issuers since September 2019 have been rated B2 vs B3
- As a result of the COVID-19 pandemic, there has been a lack of clearing yield data as new issue volume has grinded to a halt
- Recent B3 activities are primarily driven by well-known issuers across debt markets

Yield Progression for B2 Issuers



Average Spread & Yield

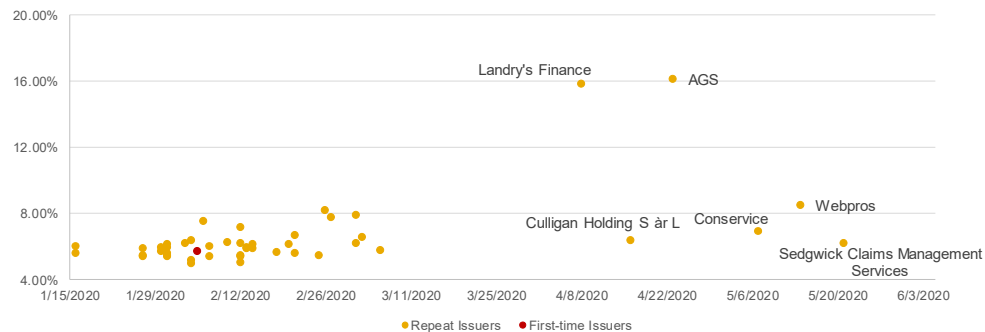
4Q 2019 ^[1]

Issuer Type	B2			B3		
	Deals	Spread	Yield	Deals	Spread	Yield
First-time	13	506	7.6%	5	545	8.4%
Repeat	24	403	6.3%	26	473	7.4%
All	37	439	6.8%	31	485	7.5%

YTD 2020

Issuer Type	B2			B3		
	Deals	Spread	Yield	Deals	Spread	Yield
First-time	5	425	6.2%	1	375	5.7%
Repeat	66	380	5.7%	47	445	6.5%
All	71	383	5.7%	48	444	6.5%

Yield Progression for B3 Issuers

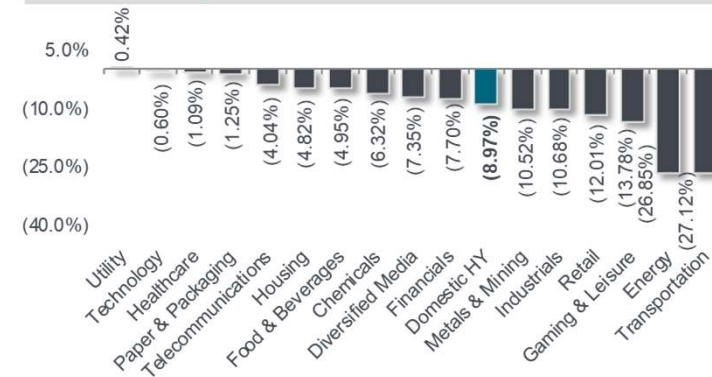


Sources: KeyBanc Capital Markets, Bloomberg, LCD
 [1] Transactions since September 2019
 Data as of 5/22/2020

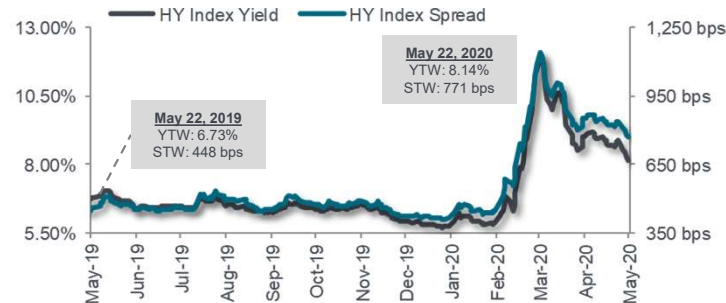
High Yield Market Snapshot

- High yield bond prices and equities rose significantly last week despite an escalation in U.S. - China tensions, as well ongoing HY inflows and another strong week in the primary market
 - High yield bond yields and spreads ended the week at 8.14% and 771 bps, falling 73 bps and 69 bps from May 15th
 - The HY Energy sector yields 14.24%; **ex-Energy, the HY Index Yield sits at 7.42%**, or 72 bps lower than the HY Index inclusive of Energy
 - YTD returns from the high yield utility sector have turned positive, the first sector to do so after two months

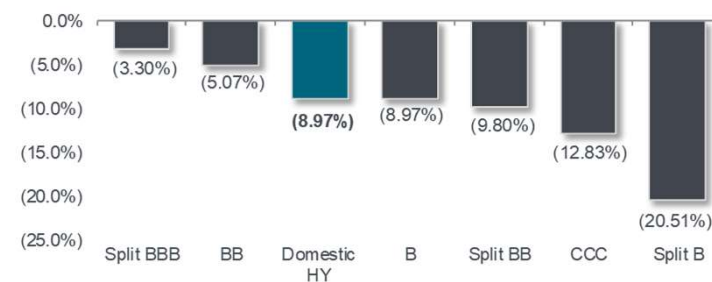
YTD Return by Sector



High Yield Index Yield & Spread (LTM)



YTD Return by Rating

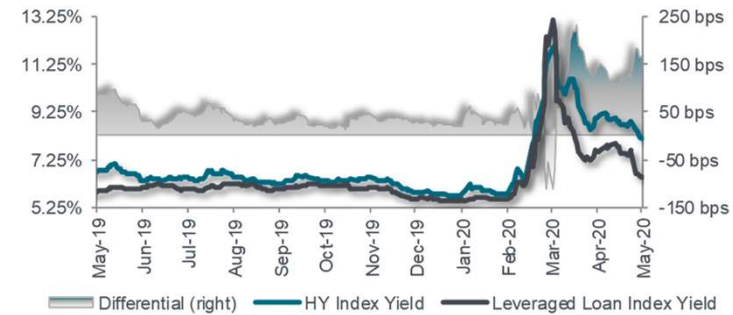


Sources: KeyBanc Capital Markets, Morgan Markets, Bloomberg

High Yield & Leveraged Loan Market Update

- High Yield
 - The high yield primary market saw 22 deals price last week for \$10.6 billion of new issue volume
 - High yield funds reported a \$1.6 billion inflow last week, marking the 8th straight week of inflows
- Leveraged Loans
 - The leveraged loan primary market saw seven deals price last week for \$3.3 billion; this comes after four deals priced the week prior for \$2.3 billion
 - Leveraged loan funds experienced a fifth consecutive weekly outflow last week, reporting a \$466 million outflow

Index Performance (LTM)



Weekly New Issue Volume (\$ in BN)



Weekly Fund Flows (\$ in MM)



Sources: KeyBanc Capital Markets, Lipper FMI, Morgan Markets