

Current Trends in M&A Finance

Jamie Snyder and David Baroni

The
**Real
Deal**

A Webinar Series for M&A
and Securities Professionals

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Speakers



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Jamie Snyder focuses his practice on commercial finance deals, including corporate lending transactions, leveraged acquisitions, specialty financings, and other complex investments.

He represents banks and other financial institutions in connection with senior secured and unsecured credit facilities, unitranche, first-out last-out and other one-stop financings, first lien and second lien transactions, mezzanine and subordinated financings, and cash flow as well as asset-based transactions. He also has experience advising private equity firms and corporate borrowers in debt financings and general corporate matters. In addition, Jamie has extensive experience representing lenders and borrowers in connection with debtor-in-possession financings, bankruptcy exit facilities, workouts, and restructurings. His practice covers a broad range of deal sizes, from single lender domestic financings to lower middle-market companies to broadly syndicated credit facilities for upper-middle-market and large-cap borrowers with extensive cross-border operations.



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David Baroni represents clients in connection with senior, second lien, mezzanine, asset-based, unsecured and unitranche financings, and other complex commercial transactions. David has represented major financial institutions and specialty non-bank lenders, as well as borrowers such as a national foodservice company, a leading global railroad and consumer products manufacturer, and various private equity sponsors.

David is a member of the Commercial Finance Association, and currently serves as Co-Chair of its Young Professionals Committee.

David is committed to serving pro bono clients and has structured and created a unique form of partnership agreement to be utilized by a non-profit that partners with various organizations to assist veterans and their family members. He has also represented a charter school in procuring a loan to finance its operations.



Update on the State of the Leveraged Finance Market

Primary Market

- U.S. syndicated loan issuance was a record \$1.22 trillion in 1H17. Leverage loan issuance was a record \$732 billion.
- A large share of leveraged lending in the first half of this year (71%) was once again made up of refinancing activity, compared to a 47% share in 1H16.
- High-yield bond issuance was flat, with \$23 billion of volume in June. Issuance for 1H17 stands at \$151.5 billion.

Primary Market (cont'd)

- M&A leveraged loan volume stands at \$206 billion.
 - Policy uncertainty out of Washington continues to dampen borrower appetite for transformative deals.
 - Dip in M&A dealmaking is due to the absence of detail on new tax and trade policies rather than lack of lender or investor appetite.
 - Pace of corporate mergers expected to pick up once there is evidence that planned tax and trade changes are getting traction.
- Middle-market lending volume stands at \$79 billion in 1H17, with \$63 billion of issuance in the large middle-market segment and \$16 billion in the traditional middle-market space.

Primary Market (cont'd)

- After tightening in May, new issue yields widened in June, with large corporate credits averaging 4.76% and middle-market yields at 6.2%.
- Average debt to EBITDA levels were higher in 2Q17 than in the prior quarter, increasing to 6.4 times for broadly syndicated LBO transactions and 6.15 times for institutional middle-market LBOs.
- In June the trailing twelve-month loan default rate ticked up to 2%.

Secondary Market

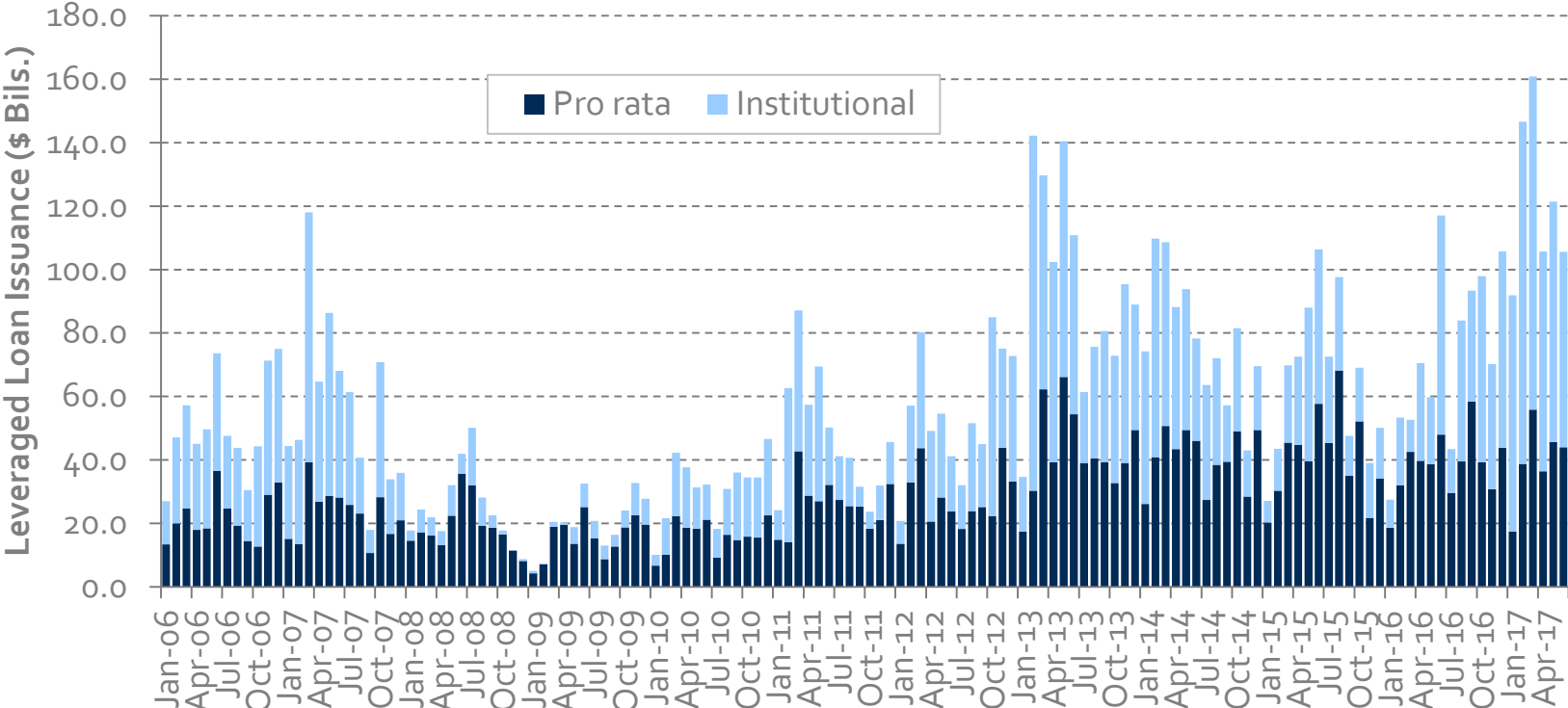
- Loan returns were mostly flat in June.
- Although secondary market bids have climbed this year, prices ticked down in June.

CLOs / Loan Funds

- U.S. CLO new issue jumped in June, posting the largest monthly issuance this year with almost \$15 billion in volume.
- CLO Refinancing activity jumped in June, with \$11 billion in refinancings spread over 24 deals, and \$7.9 billion in reset activity from 18 deals.
- Retail loan funds added \$153 million in June (based on funds that report weekly), taking YTD inflows to \$16.7 billion.

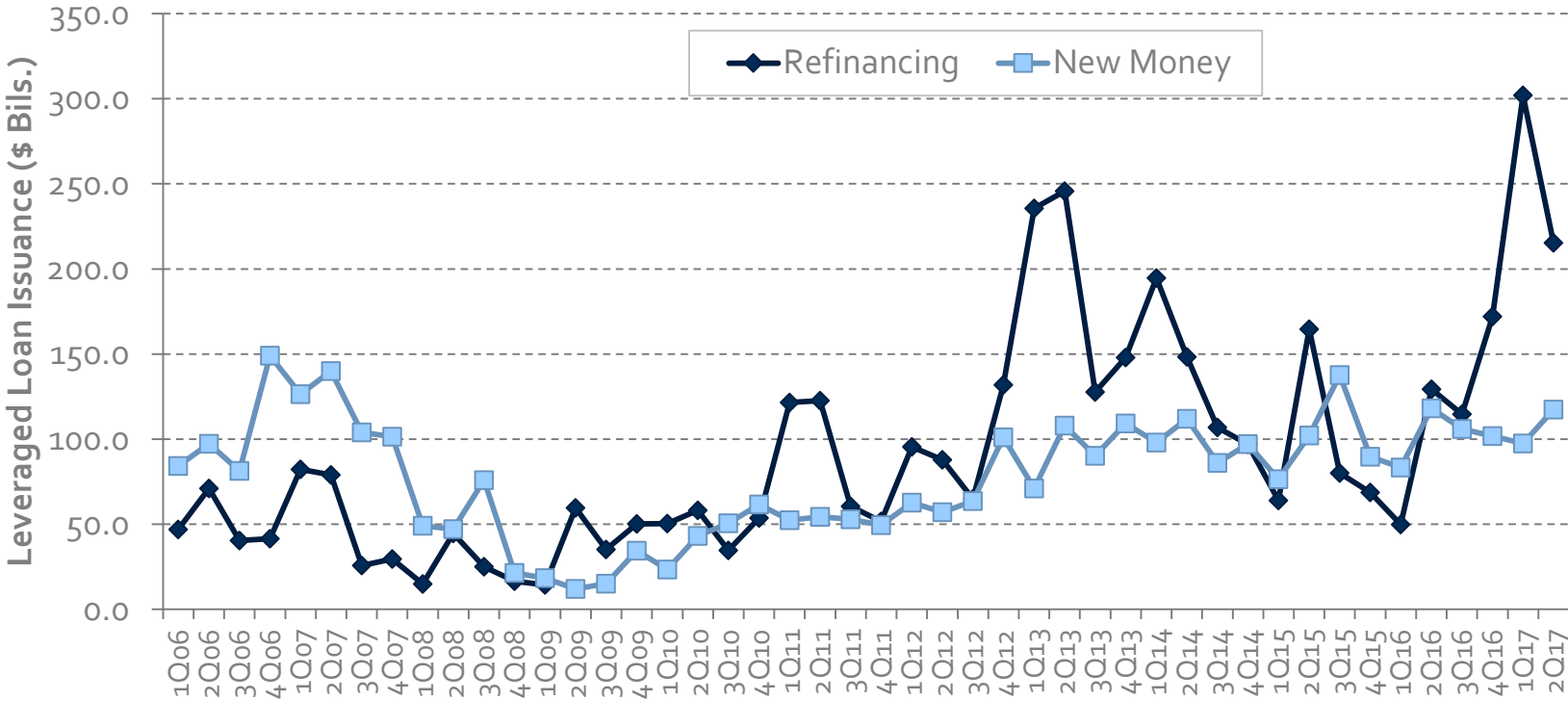
Leverage Loan Issuance: Pro Rata vs. Institutional – Monthly

U.S. LEVERAGED LOAN ISSUANCE



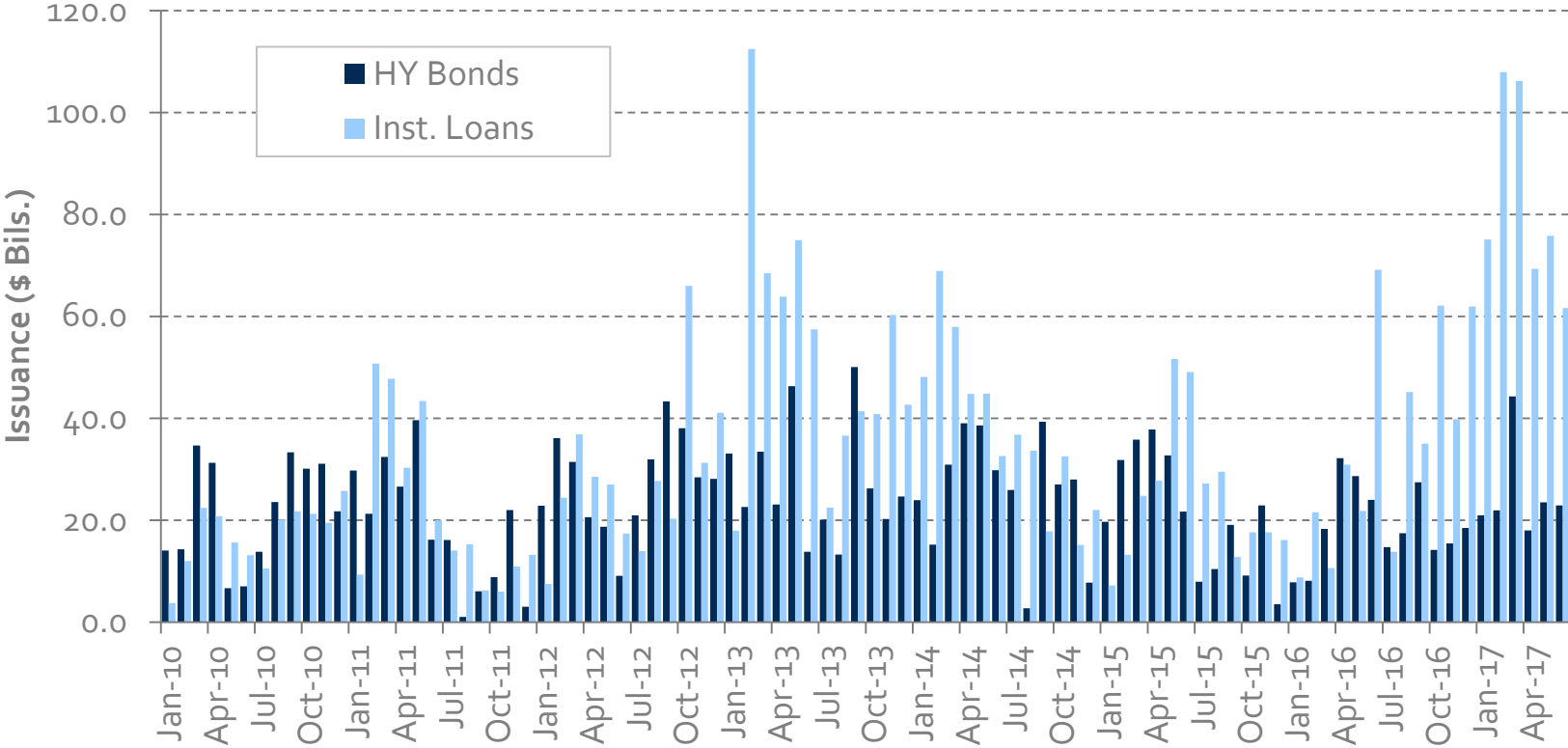
Leverage Loan Issuance: New Money vs. Refinancing

U.S. LEVERAGED LOAN ISSUANCE



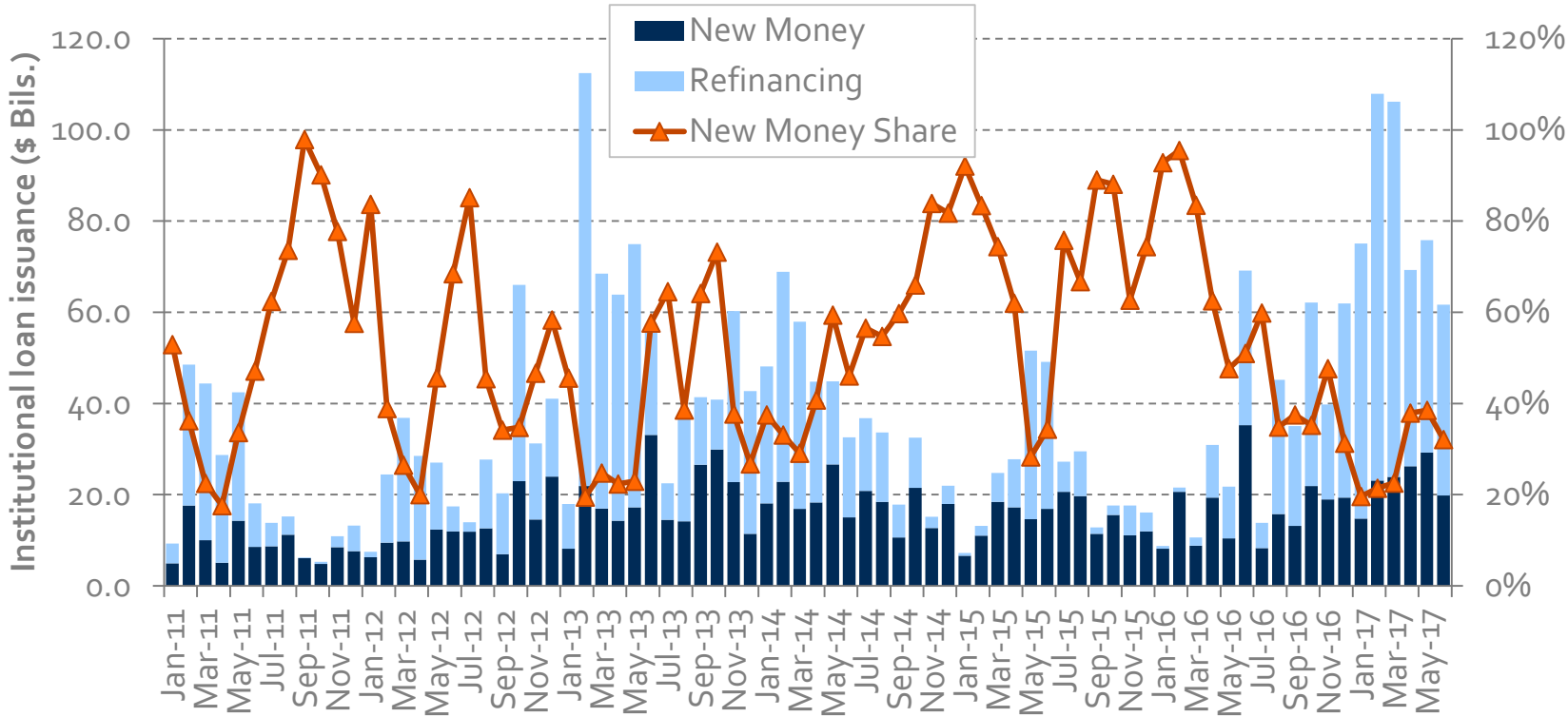
U.S. Institutional Loan and HY Bond Issuance

U.S. LOAN AND BOND ISSUANCE



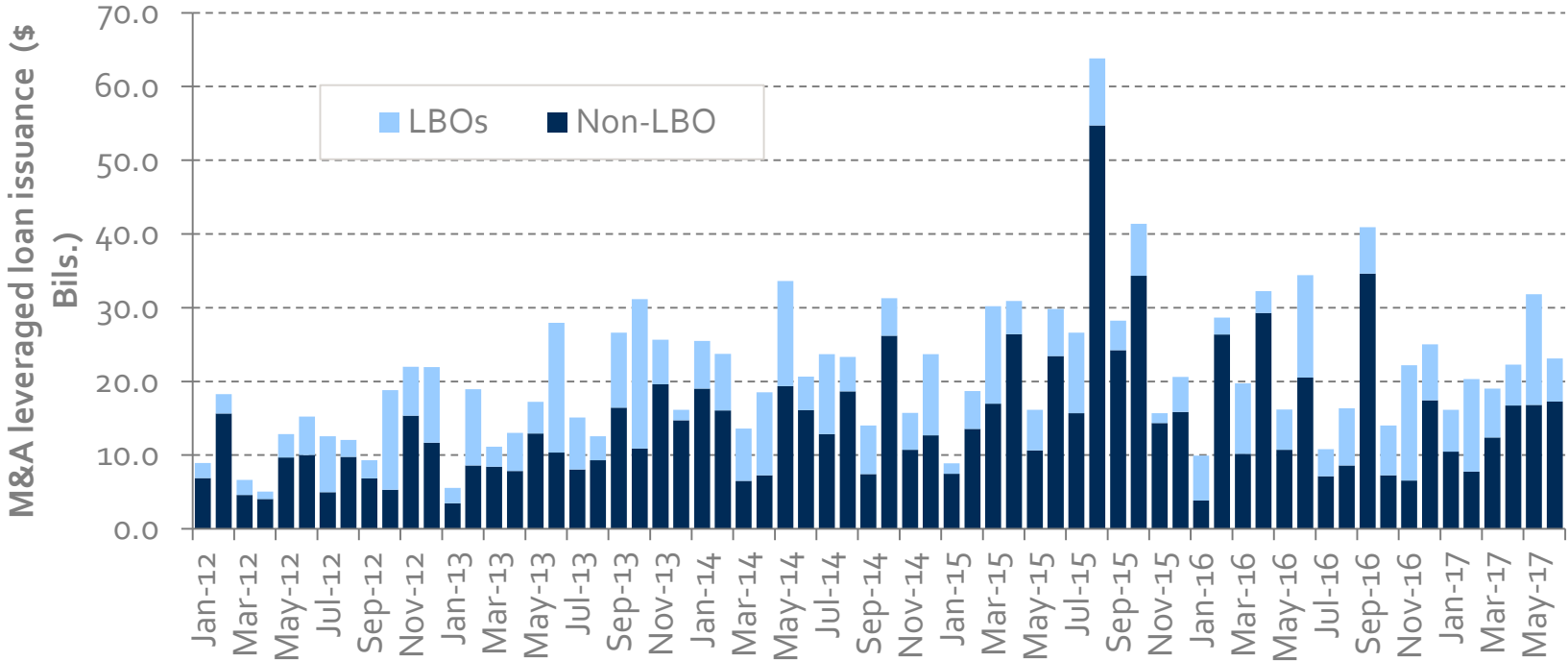
U.S. Institutional Issuance: New Money vs. Refinancing

U.S. INSTITUTIONAL LOAN ISSUANCE



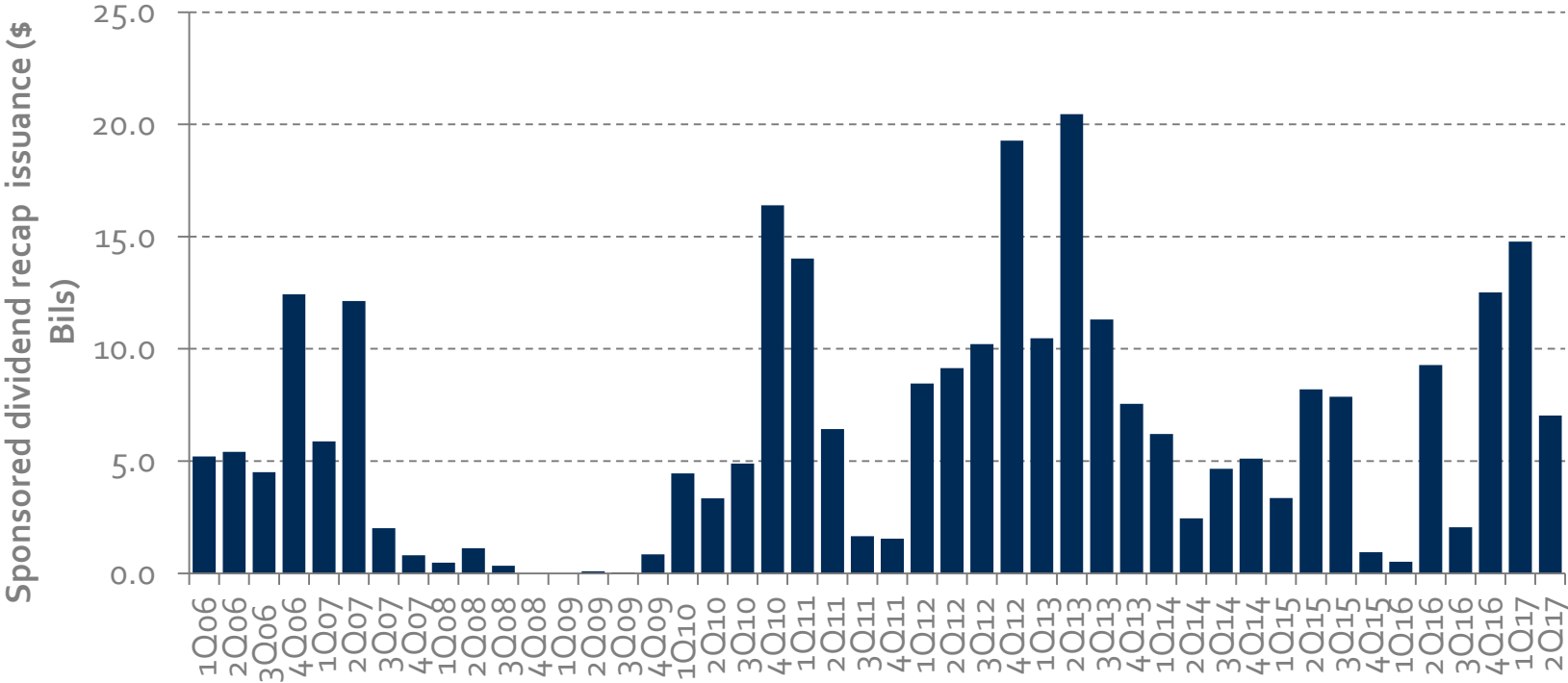
M&A Leveraged Loan Issuance – Monthly

U.S. M&A LEVERAGED LOAN ISSUANCE



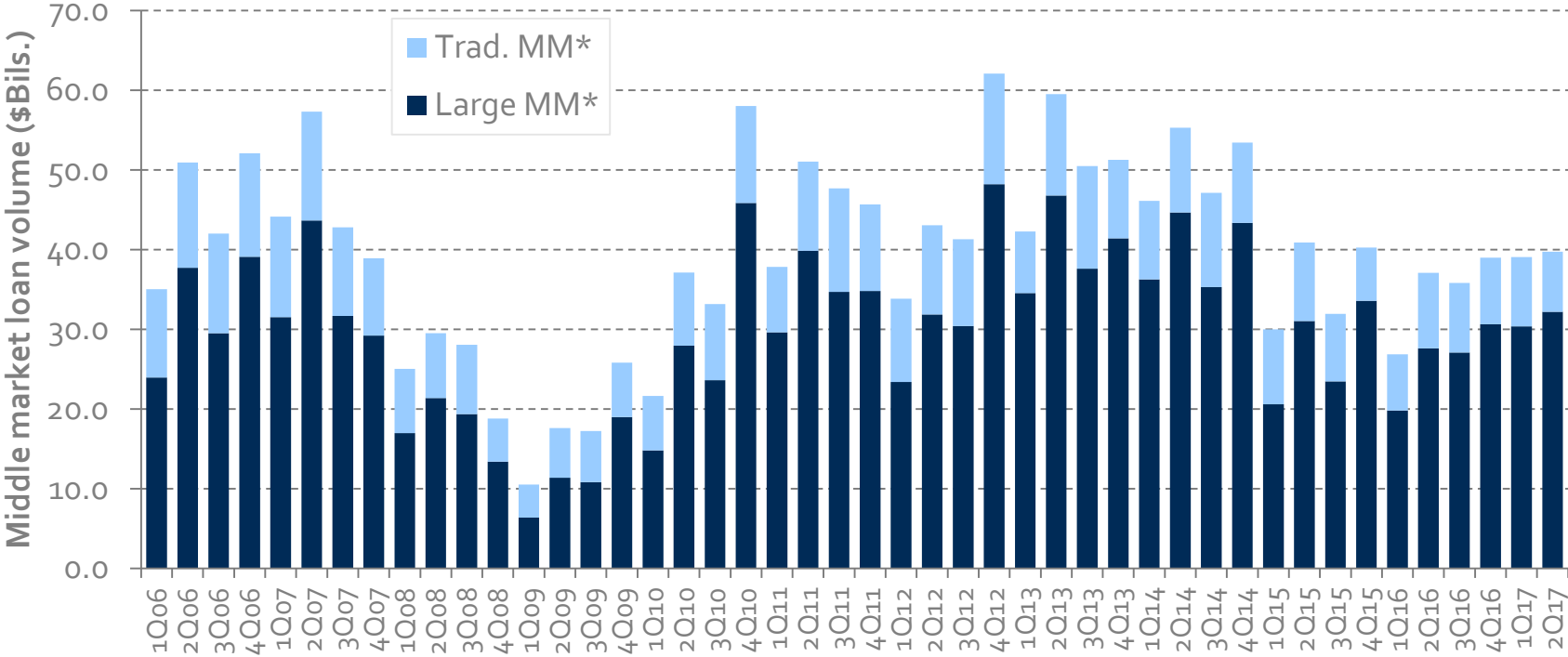
Sponsored Dividend Recap Loan Volume

SPONSORED DIVIDEND RECAP LOAN VOLUME



Middle-Market Loan Issuance

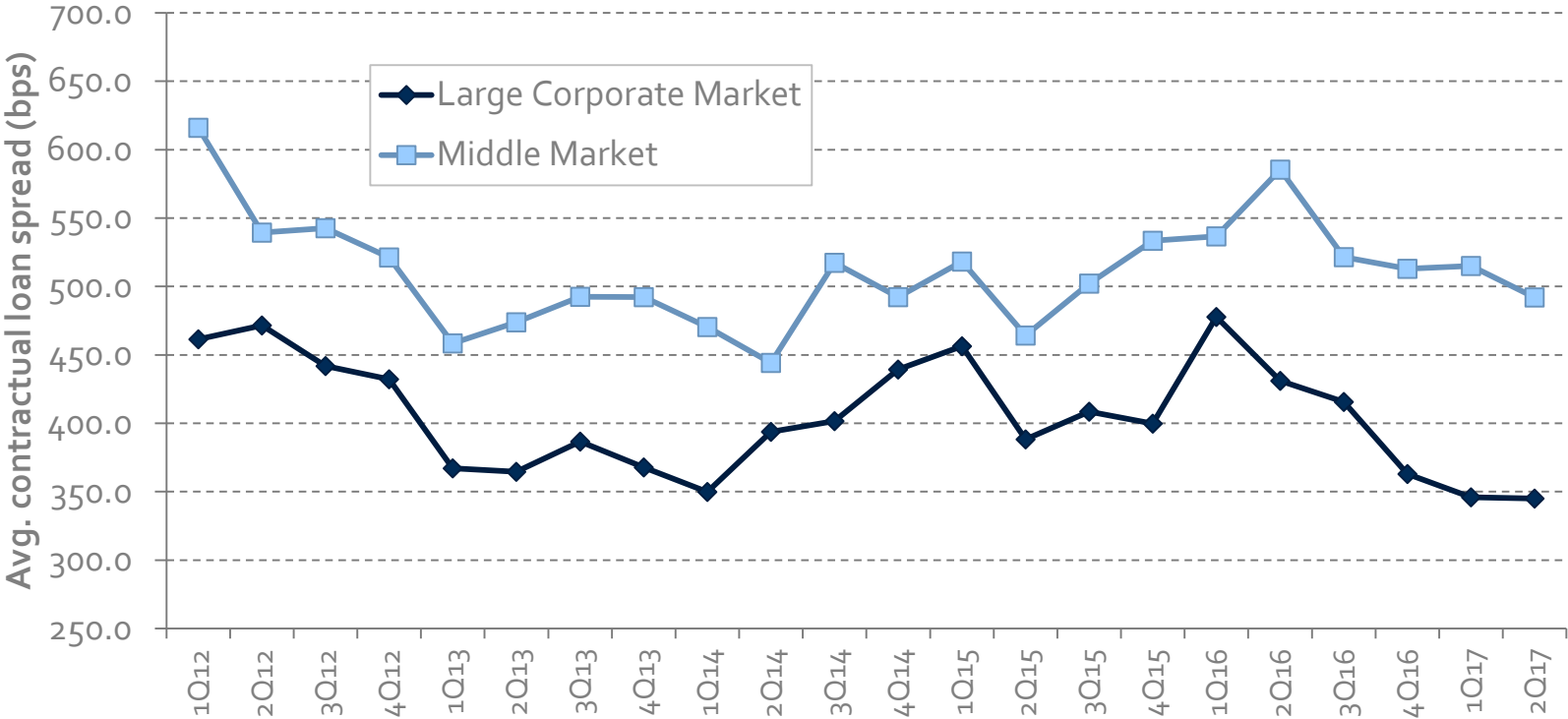
U.S. MIDDLE MARKET LOAN VOLUME



*Traditional MM: Deal Size <=\$100M, Large MM: Deal Size >\$100M to \$500M, For all: Borrower Sales <\$500M

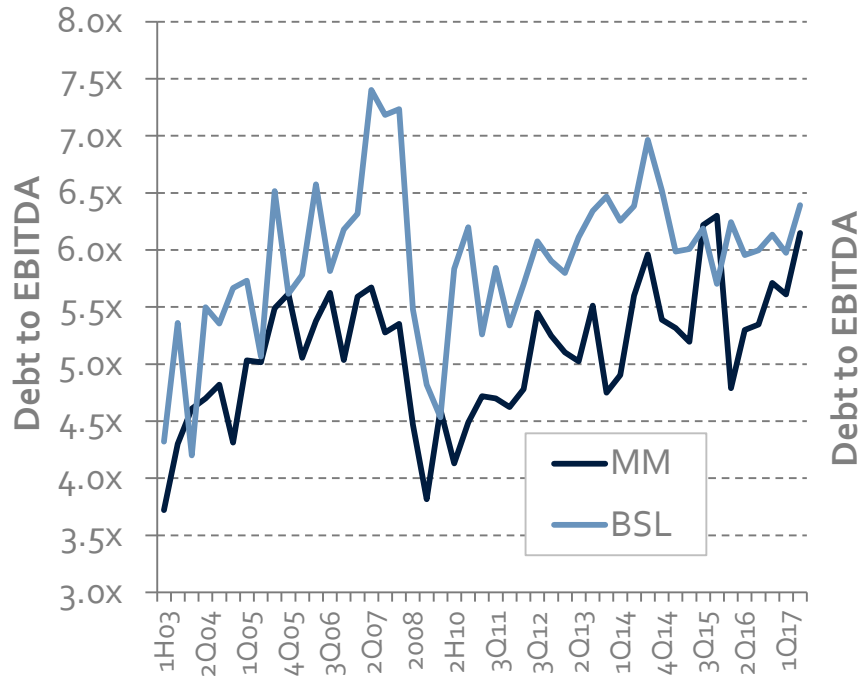
Primary Market Institutional First-Lien Loan Spreads

PRIMARY MARKET INSTITUTIONAL FIRST-LIEN LOAN SPREADS

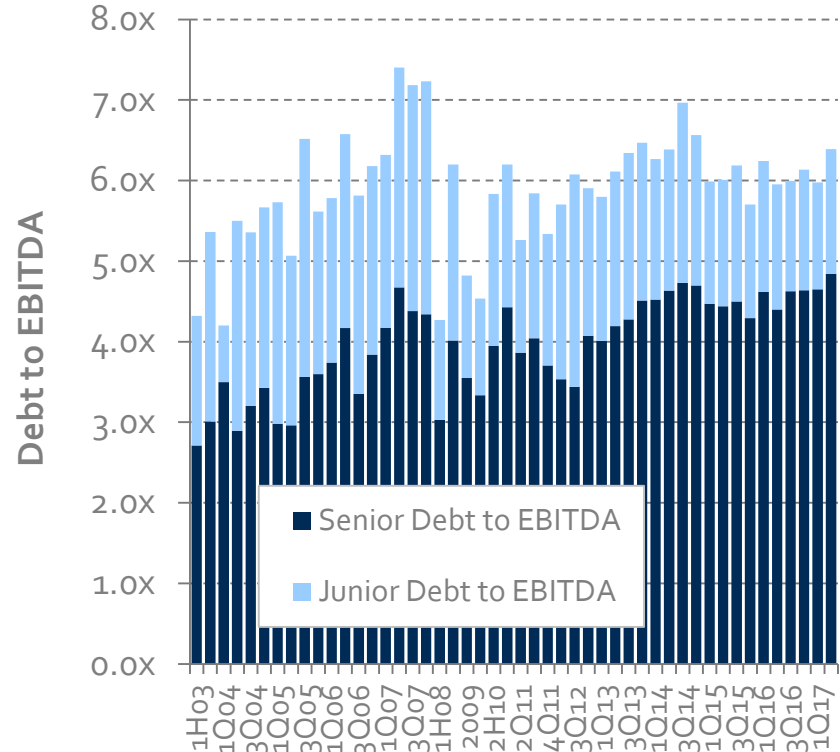


LBO Debt to EBITDA Levels

BROADLY SYNDICATED VS. INST. MIDDLE MARKET

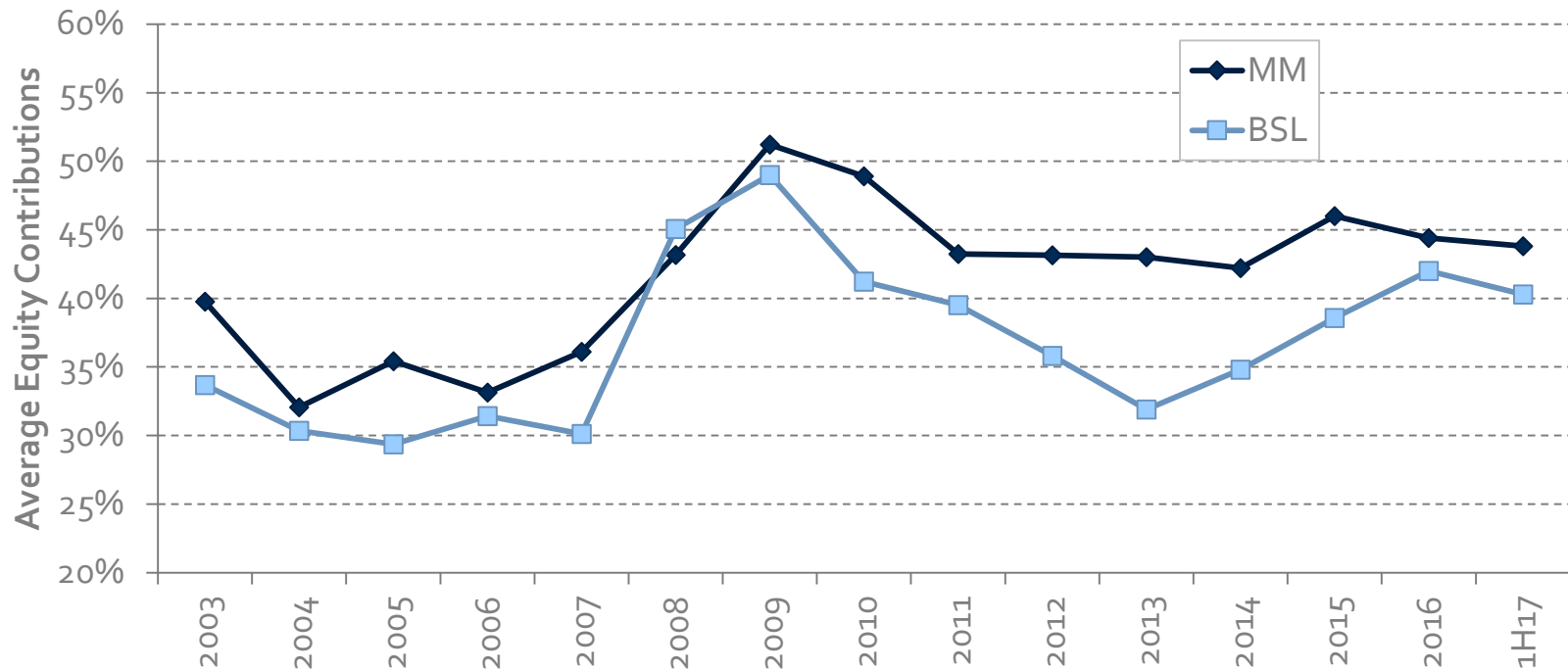


BROADLY SYNDICATED LBOs



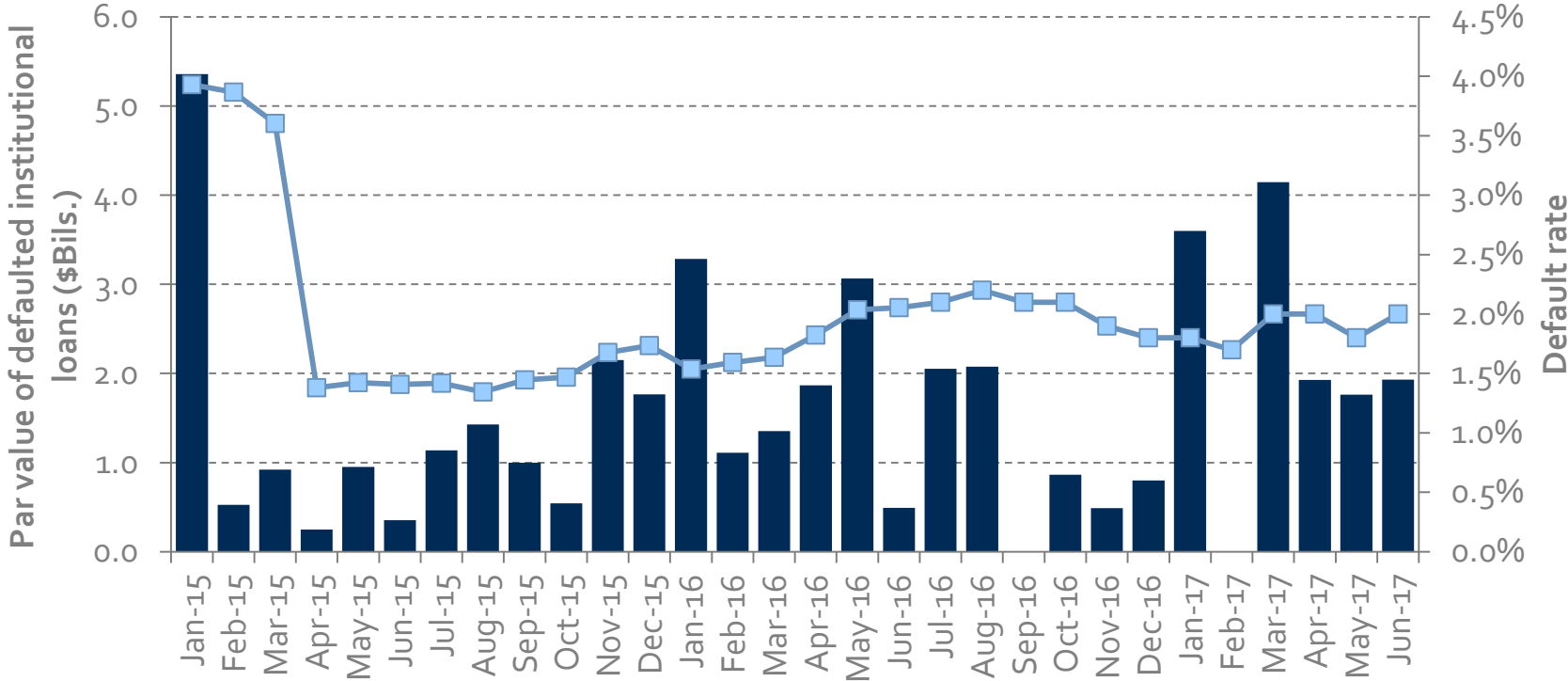
LBO Equity Contributions: Broadly Syndicated vs. Institutional Middle Market

LBO EQUITY CONTRIBUTIONS



Institutional Leveraged Loan Defaults

INSTITUTIONAL LEVERAGED LOAN DEFAULTS





Review of Current Deal Terms and Hot Topics

Structure and Pricing

- More covenant-lite and single-covenant deals
- Issues for lender investing across the capital structure
- Filling out the subordinated/junior/fixed asset tranche
- Pricing dichotomy

Flex Terms

- Scope
 - Pricing
 - ECF
 - MFN sunset for incremental
 - Soft call
 - Tenor
 - Amortization
 - “Free and clear” and unlimited amounts under incremental
 - Maintenance covenants
 - Starter basket under Available Amount
 - Leverage governor for use of Available Amount
 - Grower baskets
- Reading the market

Negative Covenants

- Unlimited baskets
- Available amount baskets – see Annex II A
- Permitted acquisition baskets
- Grower baskets
- Unrestricted subsidiaries (movement around related tests, and which reps and other provisions apply thereto) – see Annex II B

Other General Terms

- Excess Cash Flow recapture
 - Credits
 - Exclusions
 - \$ Floor on Required Prepayments
- Yank-A-Bank provisions allowing termination of a lender's commitments (as opposed to just forcing an assignment)
- Call protection
 - Repricing only?
 - Exclusions

Financial Covenants

- EBITDA Add-backs:
 - First draft definition – see Annex II C
 - Final definition:
 - Cash restructuring costs
 - Costs savings, and caps, shared caps or no caps, etc. – see Annex II C
 - Inclusion of deferred revenue/revenue from operating improvements
- Net Debt (Just domestic? Control agreement required? Capped?)

Incremental Facilities

- Fixed (“Free and Clear”) and Unlimited – see Annex II D
- General Conditions
- Sidecar Facilities (*pari passu* or subordinated)
- MFN Sunset

Sungard

- What is it / purpose?
 - Acquisition agreement reps
 - Specified reps
 - Collateral perfection
- Making vs. accuracy of reps and test loosening to either waive, or permit cure of, breached reps at close
- Often layered into incremental and permitted acquisition provisions
 - “Limited Condition Transactions” and impact on leverage and default testing

Documentation

- Sponsor Control of Documentation (agent drafting vs. sponsor preparing only initial draft vs. sponsor drafting)
- “Designated Lender Counsel”
- DQ Lists
 - Anyone prior to a date certain before closing
 - Competitors thereafter until closing
 - Ability to supplement the list post-closing but Agent consent required for non-competitors
 - Ensure no liability on the part of Agent to monitor or enforce
- Delayed Draw Term Loans: Closing fees payable when drawn (rather than when issued)
- Real Estate Exclusions



Annex II – Various Sample Definitions and Provisions

Annex II A

The limitations on Investments, Restricted Payments and Restricted Debt Payments referenced above in the Loan Documents shall be subject to a carve-out in the amount of a building basket (the “Available Amount”), which will equal the sum of (i) \$10,000,000, plus (ii) a growth amount based on the retained portion of excess cash flow (i.e. the portion of excess cash flow that is not required to be applied to repay the Term Loans) which amount shall not be negative (the “Growth Amount”), plus (iii) the amount of proceeds of equity investments in Holdings after the Closing Date, the proceeds of which are contributed to the Borrower and which consist of common equity or other qualified equity on terms to be agreed in the Loan Documents (**but excluding any Specified Equity Contribution**) (“Permitted Equity”), plus (iv) the fair market value of capital contributions after the Closing Date in respect of Permitted Equity of the Borrower, plus (v) debt and disqualified stock issued after the Closing Date that have been exchanged or converted into Permitted Equity, together with the fair market value of any property received upon such exchange or conversion, plus (vi) returns, profits, distributions and similar amounts received on investments made using the Available Amount (up to the amount of the original investment), plus (vii) the amount of any investment made by the Borrower and/or any of their Restricted Subsidiaries in reliance on the Available Amount (up to the amount of the original investment) in any Unrestricted Subsidiary that has been redesignated as a Restricted Subsidiary or that has been merged or consolidated into the Borrower or any of its Restricted Subsidiaries or the fair market value of the assets of any Unrestricted Subsidiary that have been transferred to the Borrower or any of its Restricted

Subsidiaries, plus (viii) Declined Proceeds; provided, that in the case of Restricted Payments made using the Available Amount, as of the date of declaration thereof, no **payment or bankruptcy** event of default may be continuing **and solely with respect to Restricted Payments and Restricted Debt Payments [made in reliance on the Growth Amount], subject to pro forma compliance with a Total Leverage Ratio equal to the Total Leverage Ratio on the Closing Date.**

Annex II B

The Credit Documentation will contain provisions pursuant to which, subject to customary restrictions including **no event of default, pro forma compliance with the financial covenants** and **usage of investment capacity**, the Borrower will be permitted to designate any **existing or subsequently acquired** or organized subsidiary as an “unrestricted subsidiary” and, subject to customary conditions (including, without limitation, those set forth in the proviso below), subsequently re-designate any such unrestricted subsidiary as a restricted subsidiary, it being understood that (a) the designation of any unrestricted subsidiary as a restricted subsidiary shall constitute the incurrence at the time of designation of any indebtedness or liens of such subsidiary existing at such time (and such designation shall be permitted only to the extent that such indebtedness (and any guarantees thereof) and liens are permitted under the Credit Documentation) and (b) the fair market value of such subsidiary at the time it is designated as an “unrestricted subsidiary” shall be treated as an investment by the Borrower at such time (and such designation shall be permitted only to the extent that such investment is permitted under the Credit Documentation); **provided**, that (i) **unrestricted subsidiaries will not be subject to the representations and warranties, affirmative or negative covenants or event of default provisions of the Credit Documentation (with exceptions to be mutually agreed)**, (ii) the results of operations (including the Consolidated EBITDA) and indebtedness of unrestricted subsidiaries will not be taken into account for purposes of determining any financial ratio or covenant contained in the Credit Documentation, (iii) at all times the aggregate Consolidated EBITDA of all restricted subsidiaries must equal at least 90% of the Consolidated

EBITDA of the Borrowers and their subsidiaries, (iv) once the Borrower designates a restricted subsidiary as an unrestricted subsidiary, if such unrestricted subsidiary is re-designated as a restricted subsidiary it may no longer be designated as an unrestricted subsidiary, and (v) no restricted subsidiary may be designated as an unrestricted subsidiary under the Facilities if it is a “restricted subsidiary” under the Senior Notes.

Annex II C

First Draft: “Consolidated EBITDA” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for [Holdings/the Borrower] and its Subsidiaries in accordance with GAAP: (a) Consolidated Net Income for such period plus (b) the sum of the following, without duplication, to the extent deducted in determining Consolidated Net Income for such period: (i) income and franchise taxes, (ii) Consolidated Interest Expense and (iii) amortization, depreciation and other non-cash charges (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future), (iv) extraordinary losses (excluding extraordinary losses from discontinued operations) and [(v) Transaction Costs] less (c) the sum of the following, without duplication, to the extent included in determining Consolidated Net Income for such period: (i) interest income, (ii) any extraordinary gains and (iii) non-cash gains or non-cash items increasing Consolidated Net Income. [For purposes of this Agreement, Consolidated EBITDA shall be adjusted on a Pro Forma Basis.]

Final Draft: “Consolidated EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period,

- a) increased (without duplication, including for purposes of determining Consolidated Net Income) by the following, in each case (other than clauses (xi) and (xii)) to the extent deducted in determining Consolidated Net Income for such period:
 - i. provision for taxes based on income or profits or capital, including, without limitation, federal, provincial, state, franchise and similar taxes and foreign withholding taxes of such Person paid or accrued during such period (including penalties, interest, costs and expenses related to such taxes or arising from any tax examinations and

tax distributions made to equity holders on account of income attributed to them from Holdings and its Subsidiaries); plus

- ii. Consolidated Interest Expense of such Person for such period (including net losses or any obligations under any swap contracts or other derivative instruments entered into for the purpose of hedging interest rate risk); plus
- iii. Consolidated Depreciation and Amortization Expense of such Person for such period; plus
- iv. any out-of-pocket fees, payments, expenses or charges (including Transaction Costs but excluding depreciation or amortization expense) related to: (x) the Transaction, including any payments and expenses (including legal, tax, structuring and other costs and expenses), or any amortization thereof, related to the Transaction (including all Transaction Costs)) that are established within twelve months after the Closing Date and (y) any proposed or actual any equity offering, investment, acquisition, disposition, dividend, restricted payment or recapitalization or the incurrence and/or repayment of Indebtedness (including any incremental facility and any refinancing thereof) (in each of the foregoing whether or not successful), including (1) such fees, expenses or charges related to the Loans, the Loan Documents and any credit facilities, including the Subordinated Note Documents, (2) any amendment or other modification of the Loans, the Loan Documents and any credit facilities, including the Subordinated Note documentation, and (3) any charges, non-recurring acquisition costs or contingent transaction costs incurred during such period as a result of any such transaction; plus

Annex II C

- v. other than costs associated with the recruitment, integration and retention of employees in the ordinary course of business, the amount of any out-of-pocket deferred compensation, severance, signing bonuses, retention, recruiting and relocation costs and expenses, integration costs, transition costs, costs incurred in connection with any nonrecurring strategic initiatives and intellectual property development, project startup costs and other restructuring charges, costs associated with establishing new facilities, facility expansions, new lines of business or reserves, and any other one-time costs incurred in connection with acquisitions (including the Acquisition) and costs related to the closure and/or consolidation of facilities in the good faith determination of Company and as certified by Company's chief financial officer, chief executive officer, controller or other comparable executive; **provided, in no event shall the aggregate amount added to Consolidated EBITDA under this clause (v), together with all amounts in such period determined in accordance with clause (xi) of this definition, exceed 15.0% (or such greater amount approved by Requisite Lenders) of Consolidated EBITDA in any test period (calculated prior to giving effect to any adjustment pursuant to this clause (v));** plus
- vi. (A) any indemnities, (B) any management fees pursuant to the Management Services Agreement and (C) reasonable, out-of-pocket expenses paid to the Sponsor and its affiliates not to exceed, for clause (C) only, \$500,000 per Fiscal Year; plus
- vii. non-cash stock option and other equity-based compensation; plus
- viii. (A) compensation and expense reimbursements for travel expenses and fees paid to directors of Holdings or any of its Subsidiaries permitted under the Loan Documents in an aggregate amount not to exceed \$500,000 per Fiscal Year and (B) indemnifications of directors, officers and comparable managers of Holdings or any of its Subsidiaries permitted under the Loan Documents; plus
- ix. to the extent covered by insurance or reimbursed, or, so long as Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer (provided that Consolidated EBITDA shall be decreased in any future period in which such reimbursement is actually received by an amount, if any, by which such reimbursement is less than the accrued amounts added back pursuant to this clause) losses or expenses with respect to liability or casualty event; plus
- x. earn-out obligations incurred in connection with any Permitted Acquisition and paid or accrued during the applicable period and on similar acquisitions completed prior to the Closing Date; plus

Annex II C

- xi. the amount of cost savings, operating expense reductions, and synergies projected by Company in good faith to be realized as a result of specified actions taken or initiated prior to or during a twelve-month period (including the 12 months after the Closing Date and related to the Transaction) or reasonably expected to be taken (which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period), **net of the amount of actual benefits realized during such period** from such actions; provided that (x) such cost savings are **reasonably identifiable and factually supportable** (in the good faith determination of Company and as certified by Company's chief financial officer, chief executive officer, controller or other comparable officer), and (y) such actions have been taken or initiated or are reasonably expected to be taken, **no later than 12 months after the end of such period** months; **provided, in no event shall the aggregate amount added to Consolidated EBITDA under this clause (xi), together with all amounts in such period determined in accordance with clause (v) of this definition, exceed 15.0% (or such greater amount approved by Requisite Lenders) of Consolidated EBITDA** in any test period **(calculated prior to giving effect to any adjustment pursuant to this clause (xi))** and **the add-backs pursuant to this clause (xi) shall not be duplicative of Pro Forma Adjustments for the same period**; plus
- xii. costs or losses related to hedging obligations or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions and the costs and expenses related to maintaining such hedging obligations; plus
- xiii. foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities; plus
- xiv. any loss, cost, expense or payment deducted in calculating Consolidated Net Income and reimbursed by third parties (other than Holdings or any of its affiliates); plus
- xv. one-time transaction costs associated with becoming a public company; plus
- xvi. any costs or expenses incurred by Holdings, Company or a Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of Holdings or Company or net cash proceeds of an issuance of Qualified Equity interests of Holdings or Company; followed by

Annex II C

- b) increased (without duplication) by the amount of proceeds received by Holdings and its Subsidiaries of business interruption insurance to the extent not already included in Consolidated Net Income;
- c) increased (without duplication) by the amount of any Cure Amount solely for purposes of determining compliance with the financial covenants in subsection 7.6;
- d) decreased (without duplication) to the extent included in determining Consolidated Net Income for such period, by non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period and excluding any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase Consolidated EBITDA in such prior period;
- e) decreased (without duplication) by gains related to hedging obligations; and
- f) decreased (without duplication) by gains resulting from the impact of foreign currency changes on the valuation of assets or liabilities.

There shall be included in determining Consolidated EBITDA for any period, without duplication, (A) the acquired EBITDA of any Person, all or substantially all of the assets of a Person, or any business unit, line of business or division of any Person acquired by Company or any Subsidiary during such period (but not the acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed of by Company or such Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an “Acquired Entity or Business”), based on the actual and audited (if available) acquired EBITDA of such Acquired Entity or Business for such period (including the portion thereof occurring prior to such acquisition) and (B) an adjustment in respect of each Acquired Entity or Business equal to the amount of the Pro Forma Adjustment with respect to such Acquired Entity or Business for such period (including the portion thereof occurring prior to such acquisition).

Annex II C

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA for any period that includes any Fiscal Quarter ended on or about the date set forth below, Consolidated EBITDA shall be the amount opposite such period:

Period	Consolidated EBITDA
Fiscal Quarter ended []	\$5,841,957
Fiscal Quarter ended []	\$7,221,374
Fiscal Quarter ended []	\$7,905,742

provided, that Consolidated EBITDA for the Fiscal Month ended on or about [] shall be computed in a manner consistent with the quality of earnings report delivered to the Administrative Agent prior to the Closing Date.

Annex II C

“Pro Forma Adjustment” means, for any test period that includes all or any part of a Fiscal Quarter included in any post-acquisition period, with respect to the acquired EBITDA of the applicable Acquired Entity or Business or the Consolidated EBITDA of Holdings, (a) the pro forma increase or decrease in such acquired EBITDA or such Consolidated EBITDA, as the case may be, that is factually supportable and is expected to have a continuing impact, in each case as **determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act**, as interpreted by the Securities and Exchange Commission and (b) **additional good faith pro forma adjustments** arising out of cost savings initiatives or synergies attributable to such transaction and additional costs associated with the combination of the operations of such Acquired Entity or Business with the operations of Company and its Subsidiaries, in each case being given Pro Forma Effect that (i) have been realized or (ii) will be taken, are committed to be taken or expected to be taken and are **supportable and quantifiable (in the good faith determination of Company and as certified by Company’s chief financial officer, chief executive officer, controller or other comparable executive)** and **expected to be realized within the succeeding twelve (12) months** in an aggregate amount **not to exceed 15.0%** (or such greater amount approved by Requisite Lenders) of Consolidated EBITDA on a Pro Forma Basis for that period calculated after giving Pro Forma Effect to the inclusion of such pro forma adjustments and, in each case, including, but not limited to, (w) reduction in personnel expenses, (x) reduction of costs related to administrative functions, (y) reductions of costs related to leased or owned properties and (z) reductions from the consolidation of operations and streamlining

of corporate overhead) taking into account, for purposes of determining such compliance, the historical financial statements of the Acquired Entity or Business and the consolidated financial statements of Company and its Subsidiaries, assuming such permitted acquisition or disposition, and all other permitted acquisitions or dispositions that have been consummated during the period, and any Indebtedness or other liabilities repaid in connection therewith had been consummated and incurred or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the interest rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination); **provided**, that so long as such actions are initiated during such post-acquisition period or such costs are incurred during such post-acquisition period, as applicable, for purposes of projecting such pro forma increase or decrease to such acquired EBITDA or such Consolidated EBITDA, as the case may be, it may be assumed that such cost savings will be realizable during the entirety of such test period, or such additional costs, as applicable, will be incurred during the entirety of such test period.

Annex II D

On or before the maturity date of the applicable Senior Credit Facility, the Borrower shall have the right, but not the obligation, to increase the aggregate amount of the Senior Credit Facilities by (i) increasing the size of the Term Facility and/or adding one or more incremental Term Facilities (each, an **“Incremental Term Facility”**) and/or (ii) adding one or more incremental revolving facilities and/or increasing the commitments under the Revolving Facility (each an **“Incremental Revolving Facility”**); and together with any Incremental Term Facility, the **“Incremental Senior Credit Facilities”**) in an aggregate amount of such Incremental Senior Credit Facilities not to exceed the sum of (A) **\$30.0 million** (the **“Free and Clear Amount”**) plus (B)(I) in the case of an Incremental Senior Credit Facility that serves to effectively extend the maturity of the Term Facility and/or the Revolving Facility, **an amount equal to the reductions in the Term Facility and/or the Revolving Facility to be replaced with such Incremental Senior Credit Facility** and (II) in the case of an Incremental Senior Credit Facility that effectively replaces any commitment under the Revolving Facility terminated under the “yank-a-bank” provisions, **an amount equal to the portion of the relevant terminated commitments under the Revolving Facility** plus (C) the **amount of any voluntary prepayment of the Term Loans and/or any Incremental Term Facility and/or any permanent reduction of the commitments under the Revolving Facility or the**

commitments under any Incremental Revolving Facility; provided that the relevant prepayment (I) is not funded with long term indebtedness and (II) shall not include any prepayment that is funded with the proceeds of an Incremental Senior Credit Facility incurred in reliance on clause (B) above plus (D) **an unlimited amount** (the **“Incremental Incurrence-Based Amount”**) at any time so long as in the case of this clause (D), after giving effect to the relevant Incremental Senior Credit Facility, (1) if such indebtedness is secured on a *pari passu* basis, the Total Secured Leverage Ratio (as defined below) does not exceed [4.50]:1.00,¹ (2) if such indebtedness is secured on a junior lien basis, the Total Secured Leverage Ratio does not exceed [4.75]:1.00,² and (3) if such indebtedness is unsecured, the Total Leverage Ratio does not exceed [4.75]:1.00,³ in each case calculated on a pro forma basis after giving effect to such Incremental Senior Credit Facility, including the application of the proceeds thereof **((x) assuming, in the case of any Incremental Revolving Facility, that all commitments under such Incremental Revolving Facility were fully drawn and (y) without “netting” the cash proceeds of any borrowing under any such Incremental Senior Credit Facility)**; provided that:

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1. To be set at Closing Date Level.
 2. To be set at Closing Date Level plus 0.25x.
 3. To be set at Closing Date Level plus 0.25x.

Annex II D

- a) no event of default or default exists or would exist after giving effect thereto, unless the lenders providing the applicable Incremental Senior Credit Facility shall otherwise agree;
- b) the loans under any Incremental Revolving Facility will mature no earlier than the Revolving Loan Maturity Date (as defined below) and the Incremental Revolving Facility and Revolving Facility shall be subject to customary pro rata borrowing, letter of credit participation, commitment reduction, payment and repayment provisions;
- c) the stated maturity date applicable to any Incremental Term Facility will not be earlier than the Term Loan Maturity Date (as defined below) and the weighted average life to maturity of any loans under such Incremental Term Facility shall not be shorter than the remaining weighted average life to maturity of the initial Term Loans under the Term Facility;
- d) the interest margins for any Incremental Senior Credit Facility shall be determined by the Borrower and the lenders of such Incremental Senior Credit Facility; **provided, that, to the extent any Incremental Term Facility that is *pari passu* in right of payment and security with the existing Term Facility made available on the Closing Date is entered into within 18 months of the Closing Date**, in the event that the interest margins for such Incremental Term Facility are greater than the corresponding interest margins for the existing Term Facility made available on the Closing Date by more than 50 basis points, then the interest margins for the existing Term Facility made available on the Closing Date

shall be increased to be equal to the interest margins for such Incremental Term Facility minus 50 basis points; **provided further**, that, for purposes of determining such interest margins, (w) original issue discount (based on an assumed four-year life to maturity), interest rate floors, and upfront and similar fees payable by the Borrower shall be included, (x) any amendments to the Interest Margin on the relevant existing facility that became effective subsequent to the Closing Date but prior to the time of the addition of such Incremental Senior Credit Facility shall be included, (y) if such Incremental Senior Credit Facility includes any “LIBOR” interest rate floor greater than that applicable to the relevant existing facility and such floor is applicable to the relevant existing facility on the date of determination, such excess amount shall be equated to interest margin for determining the increase and (z) customary arrangement, commitment, structuring, underwriting and similar fees (regardless of whether any such fees are paid to or shared in whole or in part with any lenders providing such Incremental Term Facility) shall be excluded.



Recent Experiences with M&A Finance Transactions

R&W Insurance

- What is it?
 - Provides coverage for indemnification claims a buyer may have for losses resulting from breaches by seller's reps and warranties in an acquisition agreement
 - Shifts some of the business risk of an acquisition to an insurer in exchange for payment of the policy premium
 - Increasingly common (especially in middle-market, private M&A deals) and with increased use premiums have lowered, coverage limits and policy periods have increased and underwriting time has decreased (typically one to two weeks)

R&W Insurance (cont'd)

- Benefits to Seller

- Reduces risk of liability of breaches of reps and warranties
- Reduces amount of proceeds placed in escrow or in other holdback arrangements (i.e. more money in pockets of seller at close)
- Expedited negotiation process (reduces negotiations over reps and indemnity obligations)

- Benefits to Buyer

- Increased certainty of recovery (especially helpful in deals with multiple sellers)
- Enhance buyer's bid in auction process as permits more limited indemnification package from seller

R&W Insurance (cont'd)

- Key Points for Lenders

- Make sure insurer under the policy is a loan party and not the sponsor (proceeds should go back into the loan party group as opposed to an entity outside the scope of the guaranty and lien package in favor of the Agent)
- Add Agent as a lender's loss payee
- Permit collateral assignments of the insurance proceeds without the consent of the insurer (or get consent)
- Consider entering into a specific collateral assignment of the rep and warranty policy (generally speaking, with some exceptions, insurance policies are outside the scope of Article 9 of the UCC and defer to state law for perfection)
- Consider adding a mandatory prepayment of the loans under the credit facility if any proceeds are received (if the credit facility includes an "Extraordinary Receipts" mandatory prepayment, expressly include proceeds of rep and warranty insurance in such prepayment)

J. Crew / Unrestricted Subs

- J. Crew used a combination of its \$150mm bucket for investments in restricted non-guarantor subsidiaries and its \$100mm general investment bucket to move \$250mm of IP to a Cayman subsidiary.
- Using a provision in its credit agreement allowing for investments by a restricted non-guarantor subsidiary in an unrestricted subsidiary to the extent financed with proceeds received from an initially permitted investment, J. Crew moved the \$250mm worth of IP to an unrestricted subsidiary.
- Since the unrestricted subsidiary is not bound by the covenants of J. Crew's credit agreement, it can borrow against the transferred IP without triggering a prepayment requirement or default and use the proceeds of that loan for any purpose (including prepaying structurally subordinated debt of the parent).

Foreign EBITDA

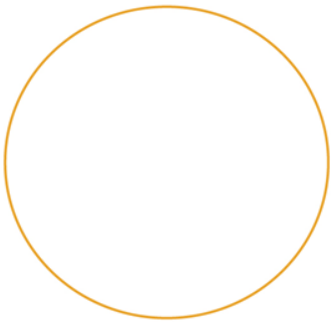
- Typically when lenders underwrite a secured financing they include the EBITDA of all subsidiaries assuming that all can and will provide credit support, but for tax reasons that is often not the case with respect to foreign subsidiaries
- Given the increasingly global reach of most businesses, including many middle-market businesses, lenders are increasingly being asked to underwrite financings where a material percentage of consolidated EBITDA comes from foreign
- Questions that often arise in this scenario are (1) how large/solid is the domestic platform to support debt service and (2) what are business growth plans (i.e. is focus on domestic or foreign or both)



What's To Come?

Trends to Consider

- Continued slow creep of large market terms down-market, and of sponsor/leveraged terms into the corporate space (with limits)
- Continuation of recent trends with respect to non-bank lenders (speed of execution, lack of regulatory constraints, risk/leverage tolerance, cost of capital/pricing/return hurdles), and limitations (revolvers and traditional bank products)
- Unitranche as a popular alternative to customary financing structures
- ABL: FILOs, club deals, large hold positions
- Slowdown in refinancings as there are fewer candidates and it becomes less attractive to pursue repricings as issuers have already come to market multiple times reducing potential savings
- Clarity in Washington will allow boards to stop waiting on sidelines resulting in an uptick in new money issuance that will help ease the current supply/demand imbalance given the influx of capital to the market from multiple sources . . . right?



Thank you.