Cravath Quarterly Review
Finance and Capital Markets

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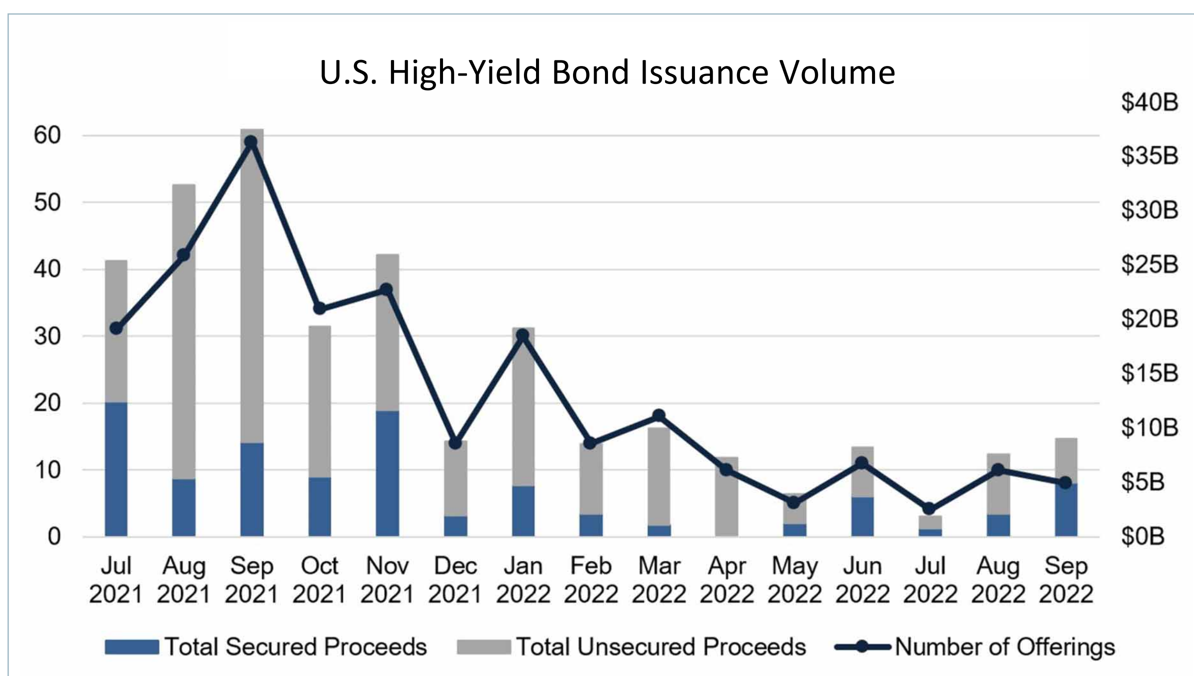
Market Update

BONDS

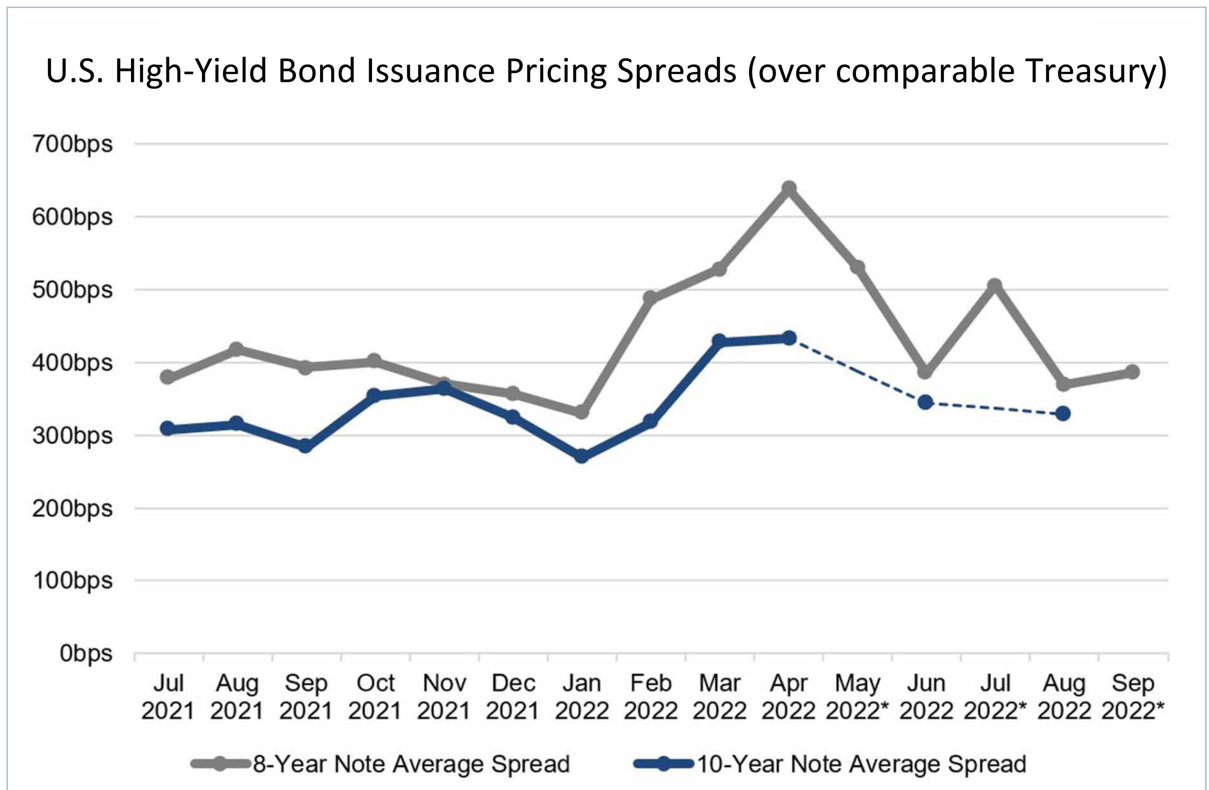
U.S. High-Yield Bonds

The pace of U.S. high-yield bond issuances continued to decline in the third quarter of 2022, continuing the downward trend that began in the fourth quarter of 2021. The $18B in proceeds from issuances for the third quarter of 2022 was down 5% as compared to the second quarter of 2022 ($19B) and 81% as compared to the third quarter of 2021 ($95B). The $37B in total proceeds for the second and third quarter of 2022 was the lowest two-quarter total since 2008.



Data Source: Leveraged Commentary & Data (LCD)

Based on the limited issuances in the third quarter, average pricing spreads on high-yield 8-year and 10-year notes in the third quarter of 2022 were approximately 19% and 14% lower, respectively, than in the second quarter of 2022.

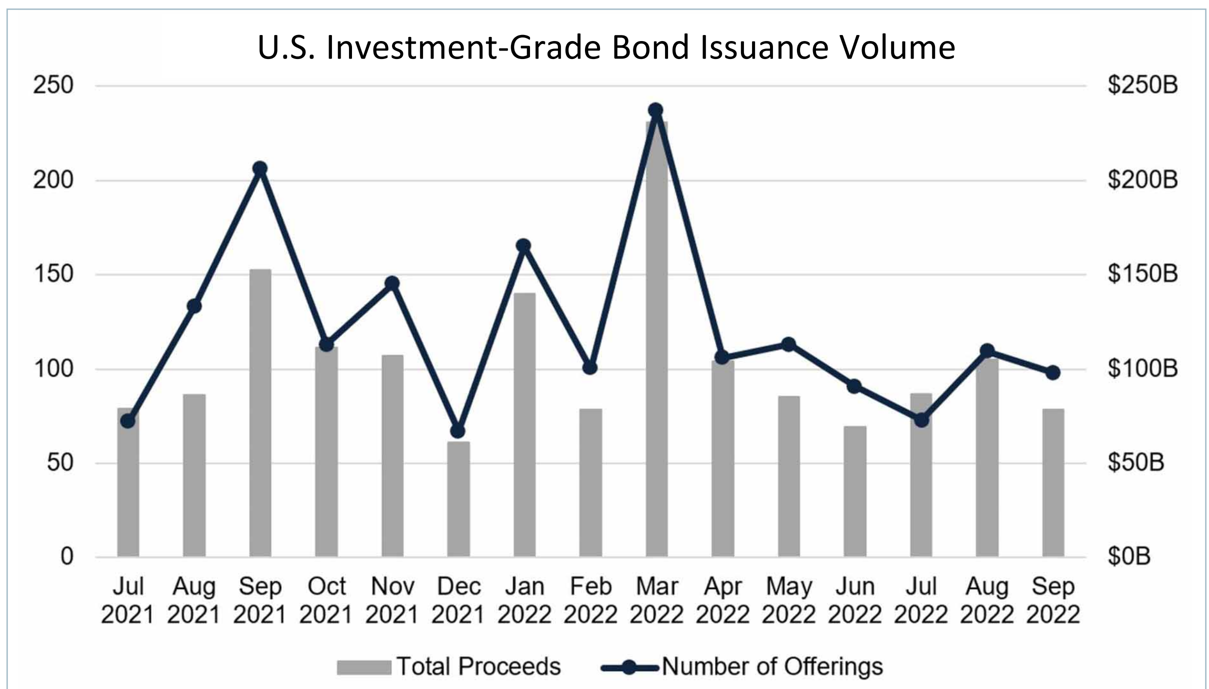


* No high-yield bonds with a 10-year maturity were issued in May, July or September 2022.

Data Source: Leveraged Commentary & Data (LCD)

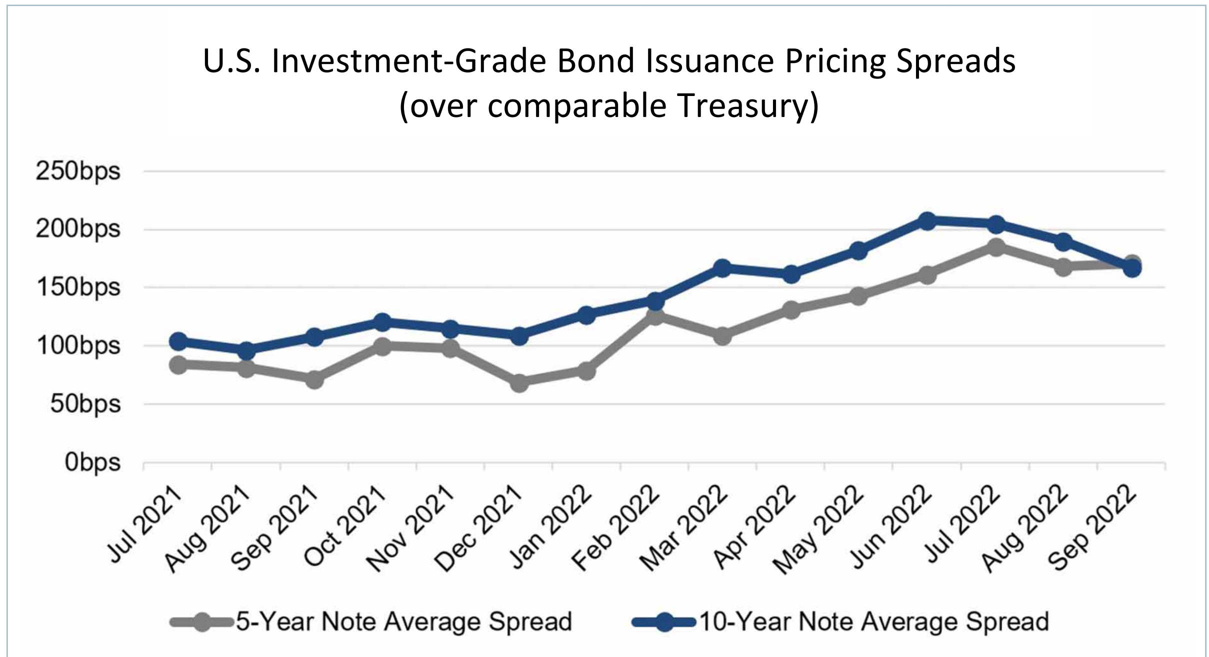
U.S. Investment-Grade Bonds

Total proceeds from U.S. investment-grade issuances were $270B in the third quarter of 2022, up 5% as compared to the second quarter of 2022 ($259B) but down 15% from the third quarter of 2021 ($317B).



Data Source: Leveraged Commentary & Data (LCD)

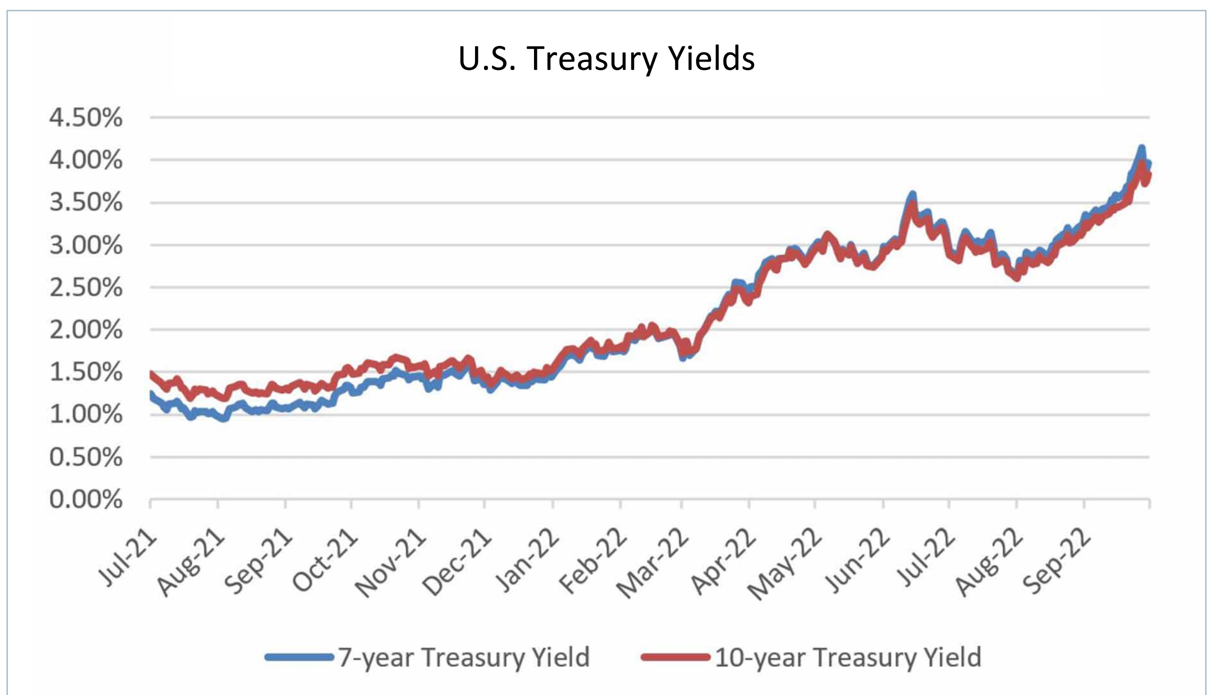
Pricing spreads (measured over the comparable Treasury) on U.S. investment grade bond issuances in the third quarter increased over the prior quarter, with an overall increase on the 5-year note average spread of 21% as compared to the average for the second quarter of 2022. Pricing spreads on 10-year notes in the third quarter of 2022 saw an increase of 2% as compared to the average spread in the second quarter of 2022. In both cases, despite pricing increasing overall in the third quarter as compared to the second quarter of 2022, pricing declined slightly over the course of the third quarter.



Data Source: Leveraged Commentary & Data (LCD)

U.S. Treasury 7-year and 10-year Yields

U.S. Treasury 7-year and 10-year rates continued to rise, ending the third quarter of 2022 at 3.97% and 3.83%, respectively, for an increase of 93 bps and 85 bps, respectively, compared with the end of the second quarter of 2022.

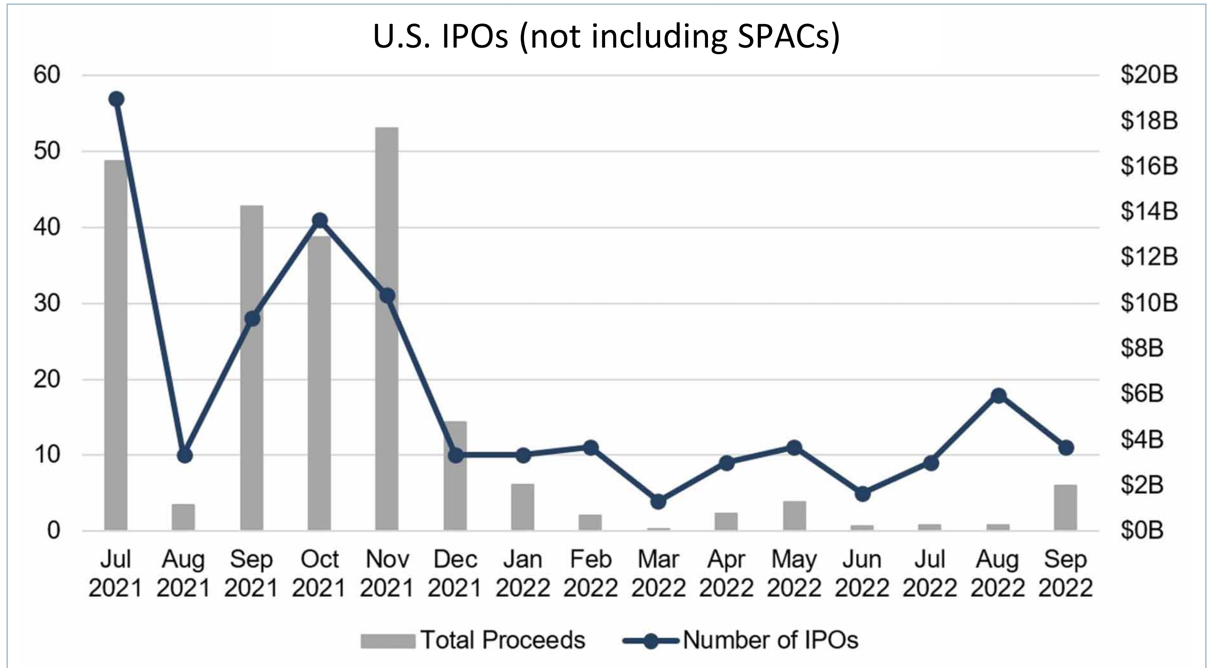


Data Source: Bloomberg Finance L.P.

EQUITY

U.S. IPOs

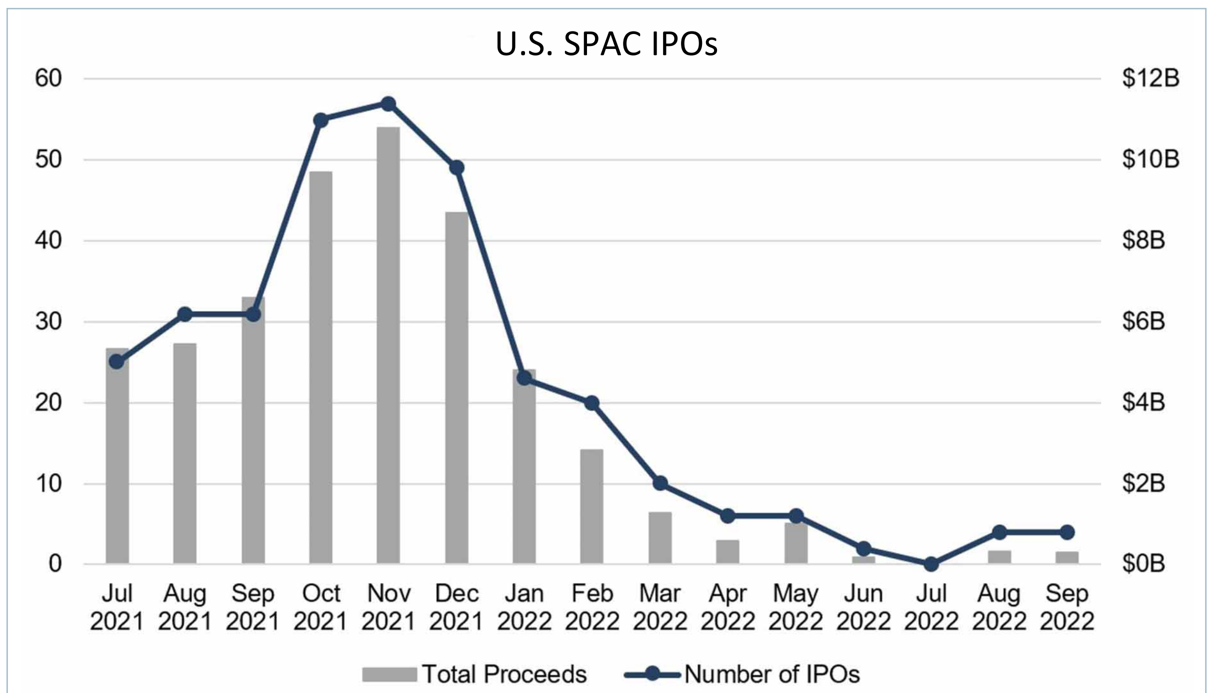
The U.S. IPO market (not including SPACs) in the third quarter remained far less active than to the record-setting levels seen in 2021, driven by volatile market conditions and stock market declines. The $2.5B of total proceeds from U.S. IPOs (not including SPACs) for the third quarter of 2022 was up 14.4% as compared to the second quarter of 2022 ($2.2B) but down 92.0% as compared to the third quarter of 2021 ($31.7B).



Data Source: Refinitiv, an LSEG Business

U.S. SPACs

The U.S. SPAC market saw a continued decrease in activity in the second quarter of 2022, and remains far less active as compared to 2021 levels. The $0.6B of total proceeds from U.S. SPAC IPOs for the third quarter of 2022 was down 65.5% as compared to the second quarter of 2022 ($1.8B) and was down 96.4% as compared to the third quarter of 2021 ($17.4B), driven by, among other things, regulatory uncertainty, trading levels of U.S. SPAC IPOs at or below initial issue prices in the secondary markets and declining market appetite in connection with a rise in market volatility.



Data Source: Refinitiv, an LSEG Business

U.S. Follow-On Offerings

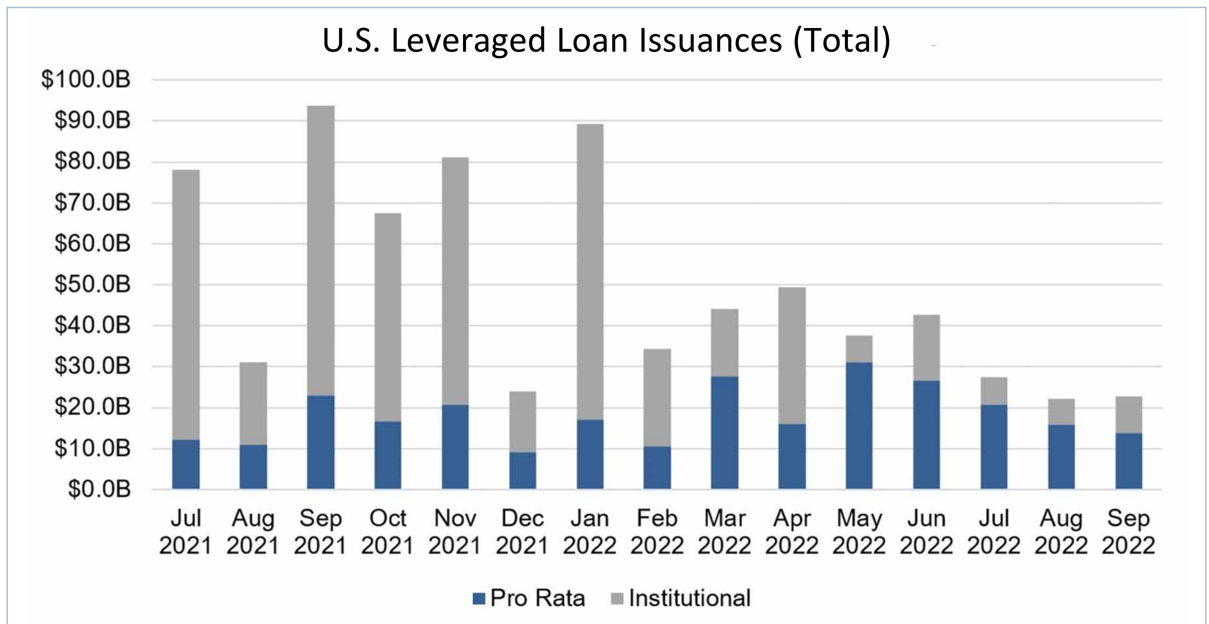
The $17.7B in proceeds from U.S. follow-on equity offerings for the third quarter of 2022 was up 46.5% as compared to the second quarter of 2022 ($11.7B) and down 67.5% as compared to the third quarter of 2021 ($52.7B).

Data Source: Refinitiv, an LSEG Business

LOANS

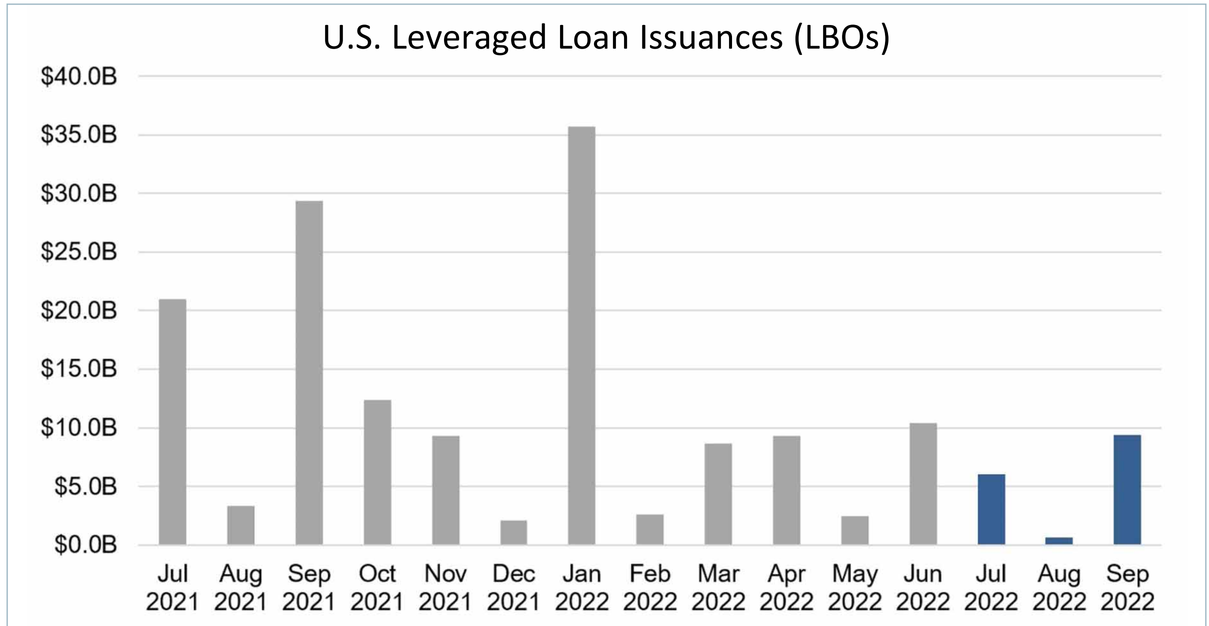
U.S. Leveraged Loan Issuances

Activity in the U.S. leveraged loan market continued to slow in the third quarter of 2022, with total volume down 44% as compared to the second quarter of 2022 (and down 64% as compared to the third quarter of 2021). Institutional term loan volume was $22.1B in the third quarter of 2022, down 60% compared to the second quarter of 2022 (and down 86% as compared to the third quarter of 2021). Pro rata loan volume was $50.3B in the third quarter of 2022, down 32% compared to the second quarter of 2022 (and up 9% as compared to the third quarter of 2021). The share of pro rata loan volume increased to 69% of total loan volume in the third quarter of 2022, up from 57% in the second quarter of 2022 (and 23% in the third quarter of 2021). The middle market institutional term loan market was especially weak—as of October 17, 2022, LCD reported no middle market first lien institutional loans in the third quarter of 2022.



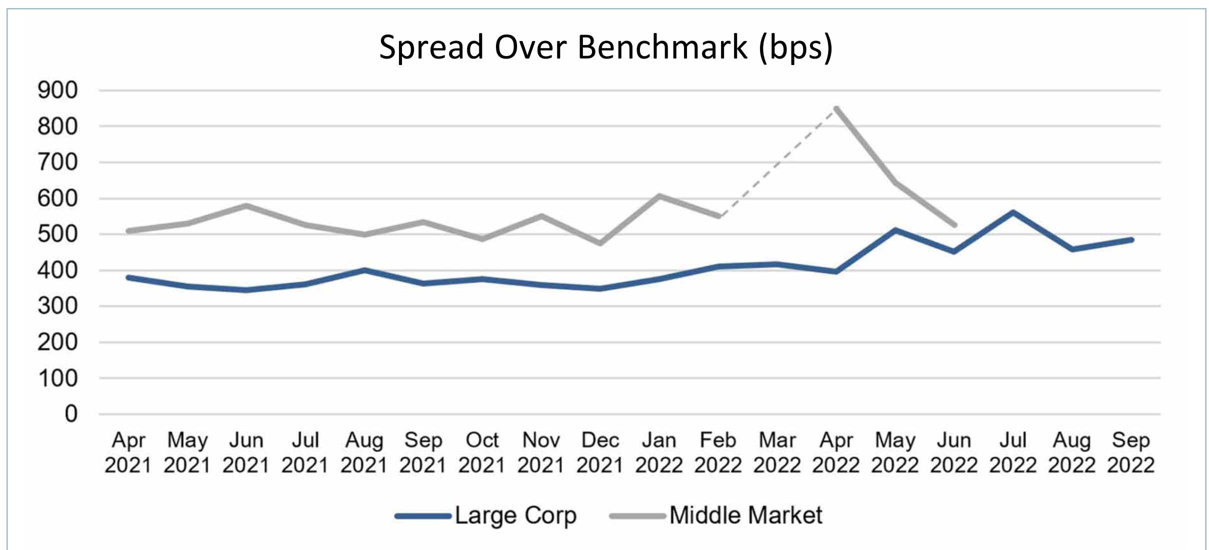
Data Source: Leveraged Commentary & Data (LCD)

US LBO Overall Volume
The U.S. LBO loan market has not yet recovered from the sharp drop in volume in February 2022 with the onset of hostilities in Ukraine and related market turmoil. In the third quarter of 2022, there were $16.0B of U.S. LBO loans issued, as compared to $22.2B in the second quarter of 2022 (and down from $53.7B in the third quarter of 2021).



Data Source: Leveraged Commentary & Data (LCD)

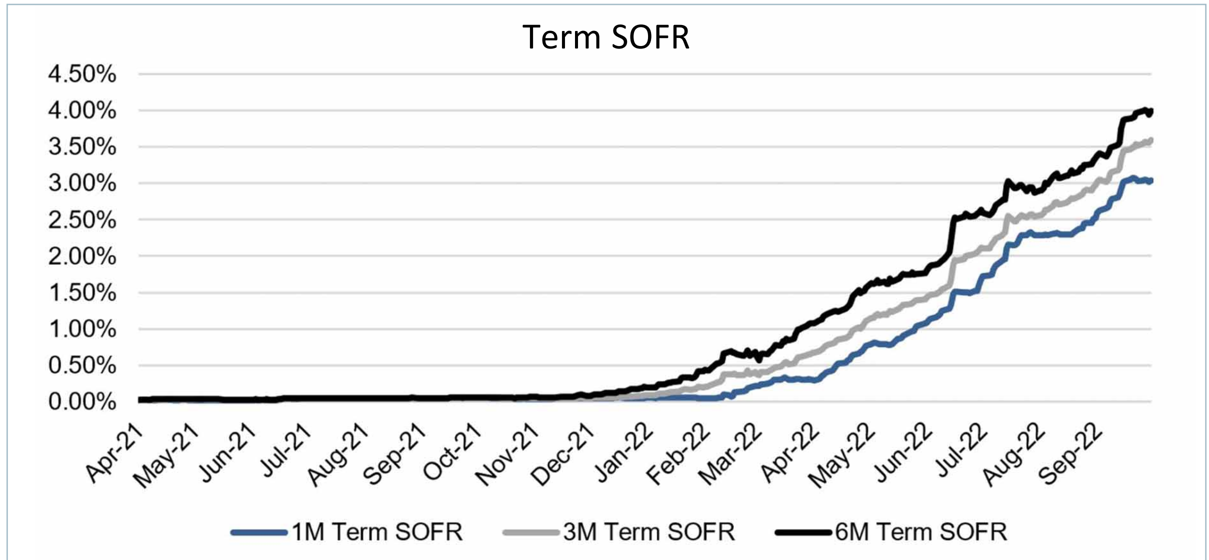
Primary Market Institutional First-Lien Loan Spreads
Average spreads over benchmark rates on first lien institutional loans for large corporate leveraged loan transactions were 500 bps in the third quarter of 2022, 122 bps wider than the 378 bps average spread in the trailing twelve month period.



Data Source: Leveraged Commentary & Data (LCD)

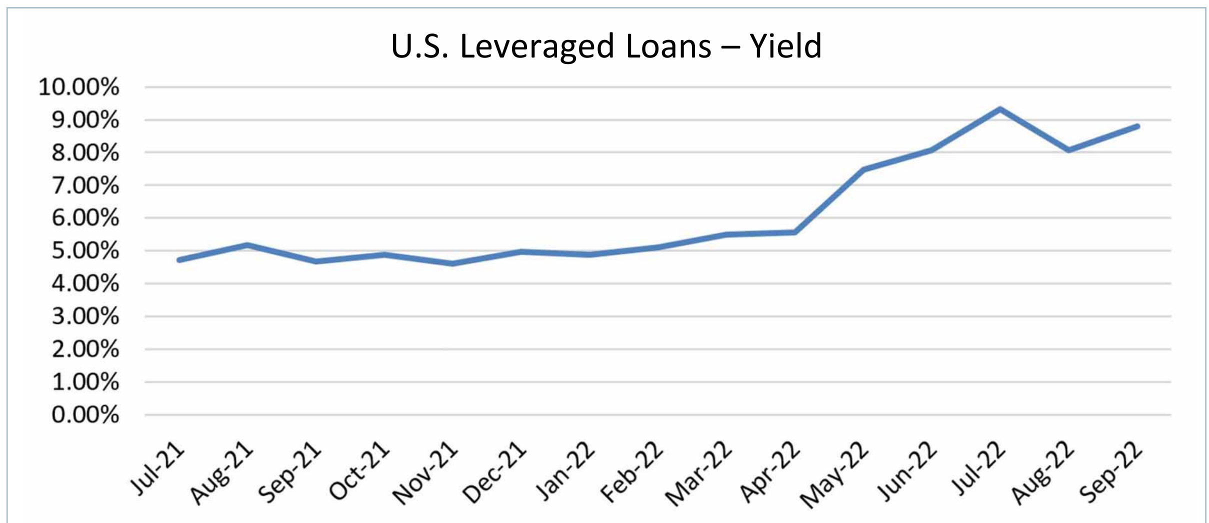
Note: Middle market is defined as borrowers with an annual EBITDA of less than $50mm. Average spreads are dollar-weighted based on reported spreads, and do not reflect credit spread adjustments. As of October 17, 2022, LCD reported no middle market first lien institutional loans in March 2022 or in the third quarter of 2022.

Term SOFR Reference Rate
At the same time as spreads over benchmark have widened, benchmark rates have also increased. Term SOFR ended the third quarter of 2022 at 3.04%, 3.59% and 3.99% for the 1-month, 3-month and 6-month tenors, respectively, for an increase of 136 bps, 148 bps and 136 bps, respectively, compared with the end of the second quarter of 2022.



Source: Bloomberg Finance L.P.

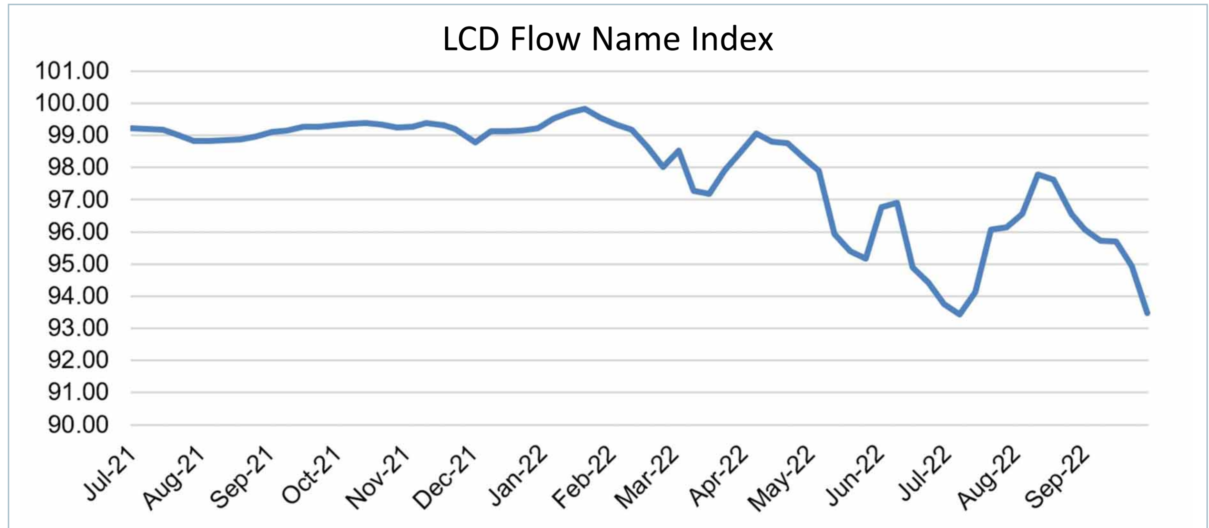
Primary Market Institutional First-Lien Loan Yields
New issue prices for institutional first lien term loans fell in July 2022 with the average yield rising above 9.3% in July 2022 for an increase of approximately 460 bps year over year. The average yield remained above 8.0% in August 2022 and September 2022 for an increase of approximately 290 bps and 410 bps year over year respectively.



Data Source: Leveraged Commentary & Data (LCD)

Secondary Market Pricing

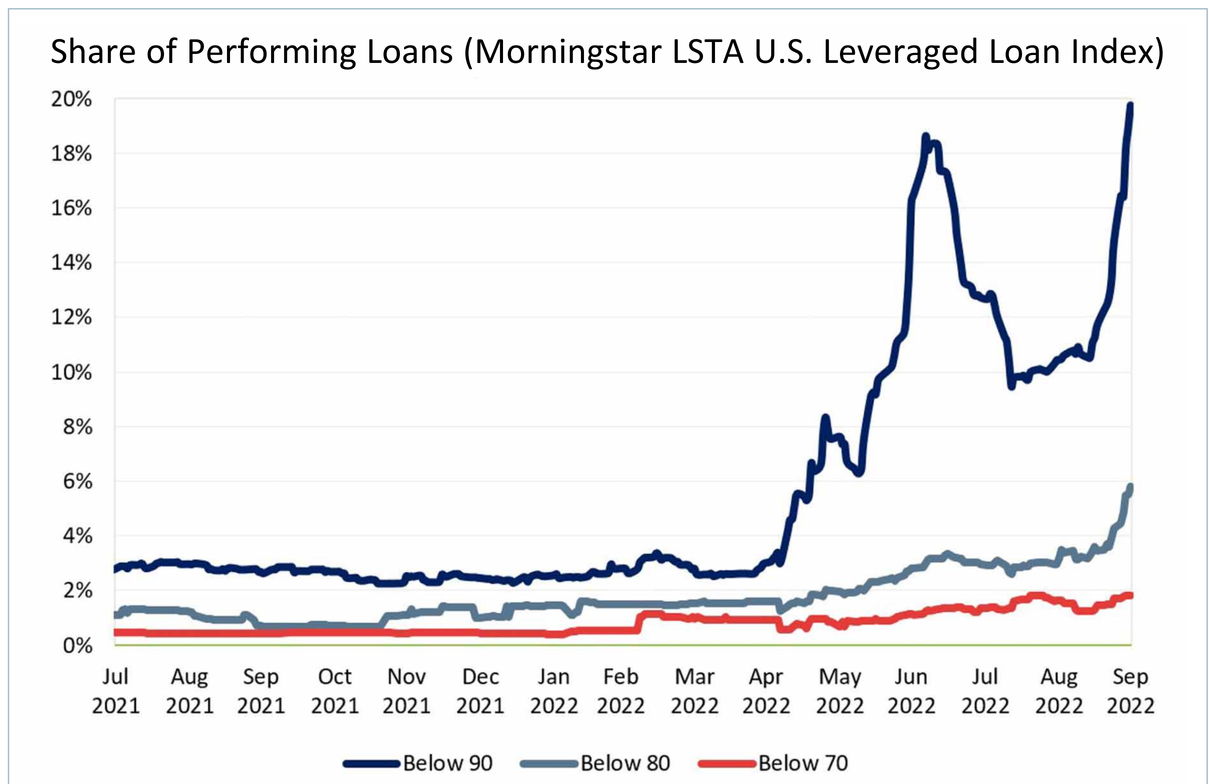
The average bid price of the LCD Flow Name Index[1] increased in July and August 2022, crossing the 97.7 threshold in August 2022. However, the average bid price decreased in September 2022, crossing the 93.5 threshold in September 2022, for a decrease of 404 bps year over year.



Data Source: Leveraged Commentary & Data (LCD)

Share of Performing Loans

The percentage of loans in the Morningstar LSTA U.S. Leveraged Loan Index priced below 90 cents on the dollar dipped before rising dramatically at the end of the third quarter, increasing from 16.19% at the end of the second quarter to 19.74% at the end of the third quarter. The percentage of loans priced below 80 cents on the dollar more than doubled, from 2.81% at the end of the second quarter to 5.79% at the end of the third quarter.



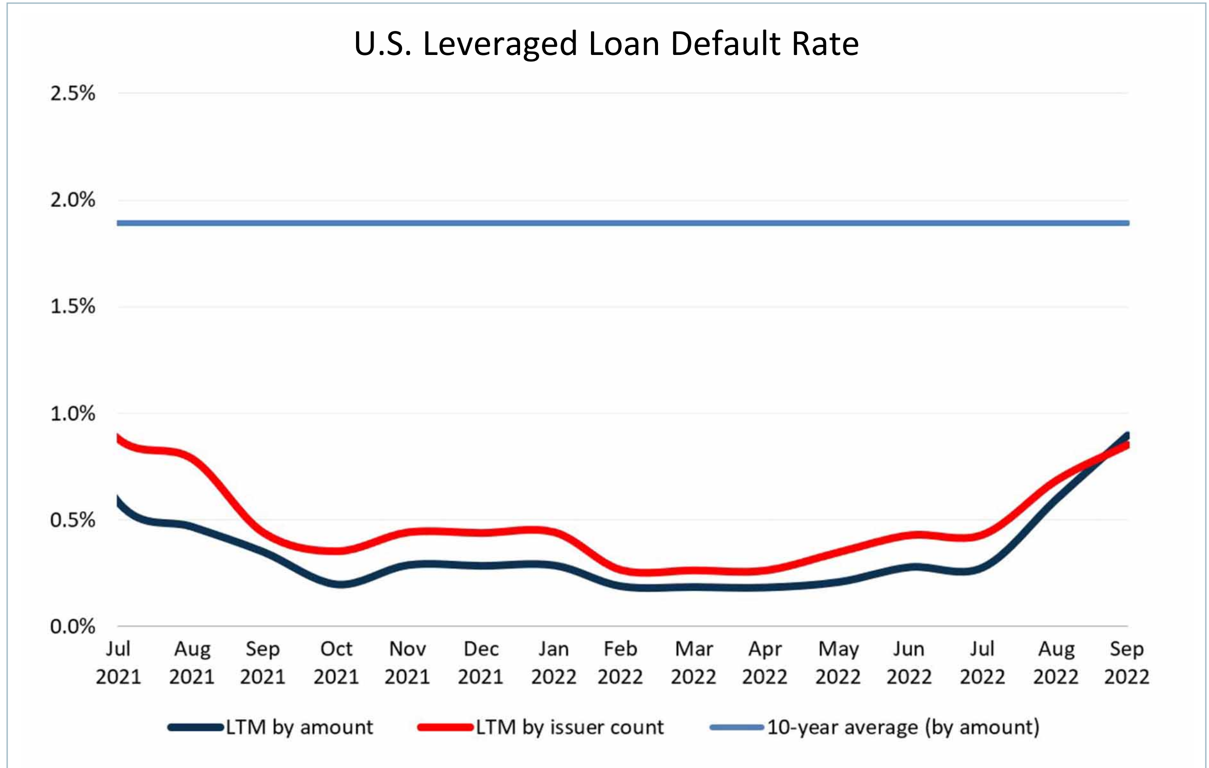
Source: Leveraged Commentary & Data (LCD); Morningstar LSTA U.S. Leveraged Loan Index

[1] The composite index of fifteen institutional borrower names published on a twice-weekly basis by Leveraged Commentary & Data (LCD).

RESTRUCTURING

U.S. Leveraged Loan Default Rates

The default rate for U.S. leveraged loans continued to increase in the third quarter. The default rate ended the quarter at 0.90% by amount and 0.85% by issuer count for the LTM period ending September 30, 2022, compared to 0.28% by amount and 0.43% by issuer count for the LTM period ending June 30, 2022.



Data Source: Leveraged Commentary & Data (LCD); Morningstar LSTA U.S. Leveraged Loan Index

U.S. Bankruptcy Filings

The number of U.S. bankruptcy filings remained relatively stable in the third quarter. The industrials, consumer discretionary and healthcare sectors continue to have the most filings in 2022 year-to-date.

Data Source: S&P Global Market Intelligence

Note: Bankruptcy filing data limited to public companies or private companies with public debt where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to $2 million, or private companies where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to $10 million.

Additional Observations

In this challenging environment of rising interest rates and severely depressed levels of market activity, a few trends have emerged that may be relevant to borrowers, lenders and other market participants:

- Given the severely challenged state of the high-yield bond and institutional term loan markets, prospective acquirors (and by extension sellers) and their respective advisors are increasingly searching for creative solutions to minimize the amount of new debt capital needed to complete an acquisition, including by rolling over existing target debt, either by taking advantage of "portability" features in the target's debt documentation or by seeking consents of the existing lenders. In either case, acquirors may seek to add a condition to closing the M&A transaction that there be no defaults or events of default under the existing target debt (so that it not be forced to close into a default) — the ultimate outcome is of course subject to negotiation but it is an additional deal point that is not an issue in the typical LBO structure of a complete refinancing. In this context, strategic acquirors should review the covenants in their own debt agreements to ensure that the covenants in the assumed target debt and the acquiror's existing debt can coexist.

- In a similar vein, given the current challenges in the leveraged loan and high-yield markets, sponsors have increasingly financed acquisitions without third-party debt, hoping to consummate a debt financing in the future whenever markets (and pricing/terms) improve. Acquirors have also turned to seller financing as an alternative financing source in light of the unavailability or unattractiveness of traditional third-party debt financing.

- When examining refinancing possibilities for high-yield bonds, it is a common reflex to view the payment of a "make-whole" (as opposed to a fixed redemption premium) as being expensive, sometimes prohibitively so. One perhaps underappreciated effect of today's higher interest rate environment is that higher treasury rates mean that the discount rate used to calculate make-whole premiums will also rise, which will make exercising a make-whole call a more attractive option to issuers than it was in the low interest rate environment of the past several years.

- In each of the equity, bond and loan markets, issuers and borrowers with ample liquidity may be able to take advantage of buy-back opportunities. In the case of equities, depressed equity valuations (and to a lesser extent, the 1% excise tax on stock buy-backs that will commence next year) may give issuers an incentive to engage in stock buy-backs this year. In the case of bonds, rising interest rates have resulted in low trading prices in the secondary market, creating attractive opportunities for issuers with ample liquidity to capture value by repurchasing bonds below par. And similarly, in the loan market, below-par trading prices in the secondary market are providing well-capitalized borrowers with attractive repurchase opportunities.

Regulatory Updates

SEC Adopts Amendments to Pay Versus Performance Disclosure Rules

On August 25, 2022, the SEC adopted new disclosure rules to implement the "pay versus performance" disclosure requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The new rule will require companies to quantify and describe (in both tabular and narrative format) the relationship between compensation actually paid to executives and company financial performance across multiple metrics. The new rule is applicable to all registered issuers (other than emerging growth companies, registered investment companies and foreign private issuers), although smaller reporting companies are permitted to provide a scaled-back version of disclosure. All proxy and information statements that include Item 402 executive compensation disclosures for fiscal years ending on or after December 16, 2022 will be required to include the new disclosure requirements. Most companies (*i.e.*, companies with calendar fiscal years) will therefore generally have to comply with the pay versus performance disclosures in their upcoming 2023 proxy statement. Disclosure will cover the last five fiscal years, although for the first year that the new disclosure is provided, only the last three fiscal years are required, with an additional year added over the next two years of disclosure. The SEC first proposed pay versus performance disclosure rules in 2015 and reopened the comment period in January 2022.

SEC Revises Fee Rate Advisory for Fiscal Year 2023

On August 26, 2022, the SEC revised the fees that public companies and issuers must pay to the SEC in order to register their securities. The fee will increase to $110.20 per million dollars, effective October 1, 2022 for fiscal year 2023. The fee was previously $92.70 per million dollars. The fee rate is applicable to the registration of securities pursuant to Section 6(b) of the Securities Act of 1933, as amended (the "Securities Act"), the repurchase of securities pursuant to Section 13(e) of the Exchange Act and proxy solicitations and statements in corporate control transactions pursuant to Section 14(g) of the Exchange Act.

SEC Creates Office of Crypto Assets and Office of Industrial Applications and Services in Division of Corporation Finance Disclosure Review Program

On September 9, 2022, the SEC announced that it will add two new offices—the Office of Crypto Assets and the Office of Industrial Applications and Services—to the Division of Corporation Finance's Disclosure Review Program. As a result, there will be nine offices based on issuer industries to review filings. The Director of Corporation Finance, Renee Jones, noted the need for the two new industry expertise groups "as a result of recent growth in the crypto asset and the life sciences industries". The Office of Crypto Assets will review filings pertaining to crypto assets, while the Office of Industrial Applications and Services will review non-pharma, non-biotech and non-medicinal product issuers that are currently allocated to the Office of Life Sciences.

SEC Amends Whistleblower Rules

On August 26, 2022, the SEC announced the adoption of two amendments to the rules governing its whistleblower program. The first amendment expanded the circumstances in which the SEC can pay whistleblowers for their information and assistance in connection with non-SEC actions, reversing limits set during the Trump administration. Specifically, the SEC amended Rule 21F-3 to allow the SEC to pay whistleblower awards for certain actions brought by other entities, including designated federal agencies, in cases where those awards might otherwise be paid through that other entity's whistleblower program. The SEC will now be able to pay such awards when the other entity's program is not comparable to the SEC's own program or if the maximum award the SEC could pay on the related action would not exceed $5 million. The second amendment clarified that the SEC has authority to consider the dollar amount of a potential whistleblower award for the limited purpose of increasing an award, but not to lower an award.

SEC and CFTC Propose Amendments to Form PF

On August 10, 2022 the SEC and Commodity Futures Trading Commission ("CFTC") jointly proposed amendments to Form PF, the confidential reporting form for certain SEC-registered advisers to private funds. The amendments are intended to enhance the ability of the Financial Stability Oversight Council to assess systemic risk and bolster the SEC's oversight of private fund advisers in light of the growth of the private fund industry.

Among other things, the amendments would:

- Enhance reporting by large hedge fund advisors of qualifying hedge funds (*i.e.* hedge funds with a net asset value of at least $500 million) by requiring information regarding investment exposures, borrowing and counterparty exposure, market factor effects, currency exposure reporting, turnover, country and industry exposure, central clearing counterparty reporting, risk metrics, investment performance by strategy, portfolio correlation, portfolio liquidity and financing liquidity;

- Require additional reporting about advisers and the private funds they advise, including identifying information, assets under management, withdrawal and redemption rights, gross asset value and net asset value, inflows and outflows, base currency, borrowings and types of creditors, fair value hierarchy, beneficial ownership and fund performance;

- Require more detailed information about the investment strategies, counterparty exposures and trading and clearing mechanisms employed by hedge funds;

- Amend how advisers report complex structures to eliminate the option to report complex structures in the aggregate and instead require reporting separately each component fund in complex fund structures; and

- Remove the aggregate reporting requirement for large hedge fund advisers, which currently requires such advisers to report certain aggregated information about the hedge funds they advise.

Litigation Developments

Second Circuit Reverses Revlon Erroneous Payment Decision

On September 8, 2022, shortly after the second anniversary of the erroneous payoff of Revlon's term loan facility, a three-judge panel of the United States Court of Appeals for the Second Circuit reversed the decision of the Southern District of New York that held the term lenders were permitted to retain the erroneous payments under the "discharge for value" doctrine. The Second Circuit's decision clarified the application of the "discharge for value" doctrine, finding that (1) at the time the term lenders received the erroneous payments they were on inquiry notice (*i.e.,* that the lenders were aware of certain facts and circumstances that would have led a prudent person to make further inquiries, and by not making such inquiries the lenders were charged with the knowledge they would have obtained had they inquired), and had they inquired they would have been informed that the payments were made in error, and (2) in any event, the term lenders were not entitled to repayment at that time pursuant to the term loan documentation and thus the defense of the "discharge for value" doctrine did not apply.

As background, in August 2020, the administrative agent of Revlon's syndicated term loan facility erroneously transferred to term lenders the full principal balance of approximately $900 million in addition to the intended scheduled interest payment of $7.8 million. The principal payment was not a noticed prepayment, and was made three years in advance of the maturity date at a time when the loans were trading at distressed levels against the backdrop of a series of "liability management" transactions. While a number of the term lenders quickly returned the payments, term lenders holding approximately $560 million of the term loans refused, and the agent sued. Following a bench trial, on February 16, 2021, the lower court held that because the term lenders were bona fide creditors at the time of the erroneous payment and did not have constructive notice that the payments were made in error, they were not obligated to return the payments under the "discharge for value" doctrine.

On review, the Second Circuit pointed to a number of red flags, including the lack of a prepayment notice, the distress trading levels of the term loan and the recent liability management transactions, that would have led a reasonably prudent investor to inquire whether the payments were made in error and, had the lenders done so, they would have learned of the error. Further, the Second Circuit noted that the defense of the "discharge for value" doctrine only applies to recipients who are presently entitled to payment, and found that at time of the erroneous payments the term lenders were not entitled to the payment of principal.

On September 22, 2022, certain of the subject term lenders filed a petition for a rehearing en banc of the Second Circuit decision. On October 12, 2022, the Second Circuit denied the term lenders' request for a rehearing.

As syndicated loan market participants are well aware, in response to the S.D.N.Y. decision, market standard erroneous payments provisions requiring the return by lenders to agents of such erroneous payments have been widely adopted in syndicated loan agreements. Notwithstanding the Second Circuit decision, such contractual arrangements are expected to remain in place.

Restructuring Update

Mass Tort Strategies: *In re Aearo Technologies, LLC*

On July 26, 2022, Aearo Technologies LLC ("Aearo"), a subsidiary of 3M Corporation ("3M"), and six related entities commenced chapter 11 cases in the United States Bankruptcy Court for the Southern District of Indiana. The bankruptcy cases were intended to resolve mass tort claims arising from allegedly defective earplugs sold by Aearo and 3M, which have resulted in the largest multi-district litigation in U.S. history.

Notably, unlike the "Texas Two-Step" cases that recently have received a great deal of attention, the Aearo case is not a Texas Two-Step case, as no pre-bankruptcy divisional merger occurred. However, like the Texas Two-Step cases, the *Aearo* case involved a funding agreement between the operating entity (3M), which remained outside of bankruptcy, and the debtor (Aearo), which

provided that the operating entity would fund a trust for the benefit of the tort claimants. And, like the Texas Two-Step cases, the Aearo case included a request for the court to extend the protection of the automatic stay (which prevents the commencement or continuation of any actions against the debtor upon a bankruptcy filing) to the non-debtor entity that would fund the trust (3M).

Courts that have extended the stay to non-debtors do so sparingly, with the justification that the debtor's prospects for reorganization would be imperiled by allowing actions against non-debtors to continue. For example, in *LTL Management, LLC*, the court extended the stay to protect the non-debtor entity that would fund the tort claimants' trust in large part because it found that continued litigation against the non-debtor would deplete the funds available to compensate claimants through the funding agreement.

By contrast, Judge Jeffrey J. Graham denied the request to extend the automatic stay to 3M, as the debtors failed to present evidence that 3M would not be able to fulfill its obligations under the funding agreement if litigation proceeded against it. In fact, the debtors *objected* to expert testimony suggesting that 3M could not withstand the financial impact of continued litigation. The court noted that, had the debtors presented such evidence as their own, it could have "readily conclude[d] that continuation of the Pending Actions as to 3M would have a significant, if not disastrous, effect on Aearo's bankruptcy". Instead, since the debtors only presented evidence of 3M's financial wherewithal (rather than the lack thereof), they failed to carry their burden of proof to show that continued litigation against 3M would "endanger or otherwise impair Aearo's reorganization".

While the final word on the *Aearo* case is yet to be written (as Judge Graham's decision is pending appeal), it is a cautionary tale for companies seeking to effectuate a global resolution of mass tort claims while keeping their operating assets out of bankruptcy. At a minimum, such companies should recognize that, in order for the non-debtor entity to receive the protection of the automatic stay, it will most likely need to show that its continued viability will be endangered if such protection were not granted.

Make-Wholes and Post-Petition Interest: *In re Ultra Petroleum Corporation; In re PG&E Corporation*

On October 14, 2022, the United States Court of Appeals for the Fifth Circuit issued the latest in a long string of opinions in *In re Ultra Petroleum Corporation*. The Fifth Circuit made three significant rulings in its decision: (1) a make-whole that is the "economic equivalent" of unmatured interest is disallowed by the Bankruptcy Code under section 502(b)(2); (2) despite the Code's disallowance of unmatured interest under section 502(b)(2), the historic "solvent debtor exception" requires payment of a make-whole in a solvent debtor case; and (3) unimpaired creditors in a solvent debtor case must receive post-petition interest on their claims at the contractual rate.

The *Ultra Petroleum* opinion holds particular importance as it is the first ruling by a Court of Appeals on the allowability of make-wholes in bankruptcy. While the make-whole in *Ultra Petroleum* was ultimately allowed as a result of the solvent debtor exception, solvent debtor cases are exceedingly rare, and therefore make-wholes that are the economic equivalent of unmatured interest are likely to be disallowed in the vast majority of bankruptcy cases in the Fifth Circuit.

The Fifth Circuit's first holding agreed with another recent and already influential opinion from the District of Delaware in *In re The Hertz Corporation*, in which the bankruptcy court similarly held that a make-whole that is the "economic equivalent of unmatured interest" should be disallowed under section 502(b)(2). Both courts found that the question of whether a make-whole is the economic equivalent of unmatured interest (and therefore should be disallowed) is a question of fact. As the Fifth Circuit explained, "[t]he relevant consideration is whether the make-whole amount merely compensates the [lender] for the search and transaction costs of seeking to find someone else to use the capital," in which case the make-whole would not constitute unmatured interest, "or goes further and compensates creditors for the loss of future interest through the guise of a make-whole premium", in which case the make-whole would be disallowed as the economic equivalent of unmatured interest.

However, while the Fifth Circuit viewed the solvent debtor exception as reviving a creditor's contractual right to a make-whole despite the disallowance of unmatured interest under section 502(b)(2), the *Hertz* court held precisely the opposite, stating that the solvent debtor exception "do[es] not reinstate the creditors' contract or state law rights to unmatured interest that ha[ve] been disallowed by section 502(b)(2)".

Finally, the Fifth Circuit's holding with respect to the rate of post-petition interest owed on unimpaired claims in a solvent debtor case is consistent with an opinion issued just weeks before by the Ninth Circuit in *In re PG&E Corporation*. Both Courts of Appeal held that the proper rate of post-petition interest on unimpaired claims in a solvent debtor case is the contractual rate. Other courts, including the bankruptcy court in Hertz, have found that the proper rate of post-petition interest on claims in a solvent debtor case is the federal judgment rate. (Notably, the Ninth Circuit had previously held in *In re Cardelucci* that post-petition interest accrues at the federal judgment rate in a solvent debtor case. However, in PG&E, the Ninth Circuit cabined the holding of *Cardelucci* to apply only to *impaired* claims in solvent debtor cases.)

While most courts remain divided on the allowability of make-wholes in bankruptcy and the applicable rate of post-petition interest in solvent debtor cases, the Fifth and Ninth Circuit's opinions are major steps toward clarity and predictability in the law.

Other Developments

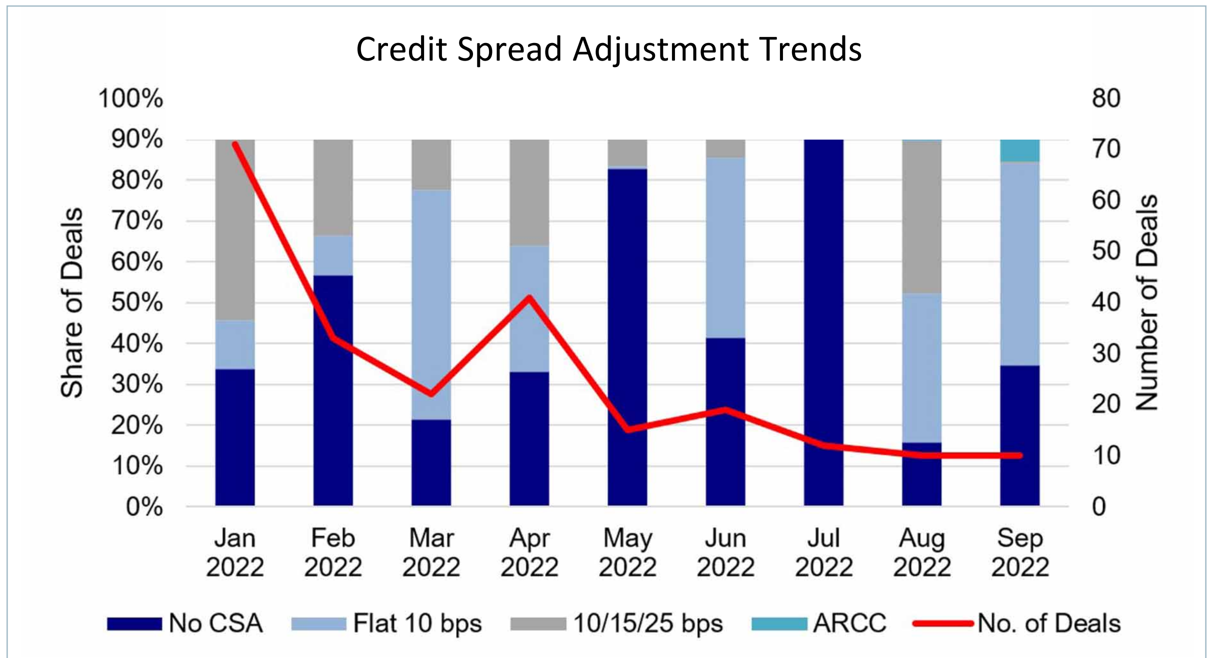
T+1 Settlement Update

As discussed in our Q1 2022 issue, in February 2022, the SEC proposed amendments to the securities clearing and settling process to shorten the settlement cycle for most broker-dealer transactions from two business days after the trade date (T+2) to one business day after the trade date (T+1). In light of these proposed amendments, in August 2022, the Securities Industry and Financial Markets Association ("SIFMA"), the Investment Company Institute ("ICI"), the Depository Trust & Clearing Corporation ("DTCC") and Deloitte & Touche LLP ("Deloitte") published the T+1 Securities Settlement Industry Implementation Playbook (the "T+1 Playbook"). The T+1 Playbook outlines a detailed approach to identifying the potential impacts, implementation activities and timelines, dependencies and risk impacts that market participants should consider as they prepare for the transition to a T+1 settlement cycle. The T+1 Playbook contemplates the transition to the T+1 settlement cycle occurring in the third quarter of 2024, though the actual transition date will be subject to regulatory approval, including final SEC rules concerning the shortening of the settlement cycle.

LIBOR Updates

SOFR Transition: In view of the June 30, 2023 phase-out of the overnight, 1-month, 3-month, 6-month and 12-month U.S. Dollar LIBOR settings for legacy contracts, the LSTA cautioned that as of the end of the second quarter of 2022 over $4T of syndicated loans remain on LIBOR and will need to be transitioned to a replacement rate. Given the depressed levels of new issuances, including in respect of refinancings, in the second and third quarters of 2022, the pace of SOFR transitions has slowed. With approximately 8 months of runway remaining before the phase-out, the LSTA encourages borrowers to coordinate SOFR transition plans with their lenders.

Credit Spread Adjustments: Credit spread adjustments (CSAs), which are designed to account for the fact that SOFR, as a secured risk-free rate, is generally lower than LIBOR, continue to be a topic of discussion and negotiation between borrowers and arrangers in the third quarter of 2022. While borrowers had found success in obtaining no credit spread adjustment, or smaller adjustments than the ARRC-recommended CSAs of 11.448/26.161/42.826 bps for 1-month/3-month/6-month Term SOFR, lenders have begun to push back in recent months, according to data from Leveraged Commentary & Data (through September 30, 2022). On a dollar-weighted basis, a majority of institutional deals reported by LCD in August and September 2022 had either a flat 10 bps across each interest period or 10/15/25 bps for 1-month/3-month/6-month Term SOFR. In addition, the share of deals with no CSA has dropped in August and September 2022 (26.8%), as compared to the end of the second quarter (41.6%) and July 2022 (92.4%).



Data Source: Leveraged Commentary & Data (LCD). Deal share calculated on a dollar-weighted basis