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July 2020

Current Trends in the Distressed Debt Market

Discussing:

The current economic situation, trends and implications, and key differences in how this pandemic compares to other distressed times in the market.

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Agenda

1. Introduction
2. What happened? How COVID-19 turned the lending market upside down
3. Current trends: What are we seeing day to day?
4. How does the current situation differ from prior recessions?
5. What implications does this have for companies seeking new credit facilities?
6. Questions for the panel

Panelist Introductions

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SRS Acquiom Presenters

Renee Kuhl

Executive Director, Loan Agency

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Renee is the Executive Director for Loan Agency at SRS Acquiom. As an accomplished financial industry professional, she leads the loan agency product.

Before joining SRS Acquiom, Renee served as an Administrative Vice President at Wilmington Trust, N.A., most recently leading the loan agency and restructuring products. In addition to her 10 years at Wilmington Trust, she also worked for Wells Fargo Bank, N.A., in the corporate trust and shareholder services departments.

Renee has a Juris Doctorate from Mitchell Hamline School of Law in Minnesota and a B.A. in political science and history from Azusa Pacific University in Azusa, California.

Eric McDonald

Director, Loan Agency Business Development

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Eric is the Director of Loan Agency Business Development for SRS Acquiom. Eric works closely with deal parties such as lenders and outside counsel to provide education and guidance on the services offered by the SRS Acquiom Loan Agency team.

Before joining SRS Acquiom, Eric was an Account Services Director for Aptify, selling enterprise software and related services to the largest nonprofit, member-based associations around the world. Before that, Eric provided analysis and recommendations for power-generation needs for Entergy New Orleans and even had a stint as a radio-show host for numerous stations across New England.

Eric received his BA in government from Dartmouth College and his MBA with finance specialization from Tulane University.

Kirkland & Ellis Presenter

KIRKLAND & ELLIS

Samantha Good, P.C.

Partner, Kirkland & Ellis

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Samantha Good is a corporate partner in Kirkland's San Francisco office. Samantha concentrates her practice on debt financing transactions, including secured and unsecured financings, cross-border transactions, workouts, restructurings, DIP and exit financing. She represents corporate borrowers, private equity funds, creditor groups, and hedge funds.

Samantha has been recognized by Chambers USA: America's Leading Lawyers for Business since 2011, in the area of Banking & Finance. According to the 2017 edition of Chambers, one client praised that she is "the best financing attorney we have encountered anywhere; she is simply amazing," while another client commented that "she can be very creative, so if you have a complex issue, then she can step back and figure out a way to address it." In a prior edition of Chambers, a client commented that "she is super-responsive, enormously practical and the most proactive lawyer we have encountered." Samantha was also recognized in the 2013-2019 editions of *U.S. News and World Report*, Best Lawyers®, as a leading banking and finance lawyer. The 2016 edition of *The Legal 500 U.S.* recognized Samantha in the area of Commercial Lending, and the 2015 edition recognized her in Bank Lending, commenting that she "provides practical guidance and great results." Prior to relocating to San Francisco, Samantha was repeatedly recognized in the *Los Angeles Business Journal's* "Who's Who in Law" as one of the top 10 corporate attorneys in Los Angeles.

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Seaport Global Presenter

Paul St. Mauro

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Paul St. Mauro is Co-Head of Bank Loan Agency Services at Seaport Global. Prior to joining the firm, Paul was a Senior Vice President at Amroc Investments where he traded syndicated bank loans. Previously, he was a commercial lending officer with NatWest and Toyo Trust and Banking.

Paul holds a BBA in finance from St. Bonaventure University.

White & Case Presenter

Harrison Denman

Partner, Restructuring and Insolvency
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Harrison Denman is a partner in the New York office of White & Case's Financial Restructuring and Insolvency Practice. His practice focuses on representing investors in distressed debt and equity in Chapter 11 proceedings and out-of-court restructurings. Prior to joining White & Case, Mr. Denman clerked for Judge James M. Peck of the United States Bankruptcy Court for the Southern District of New York. Mr. Denman was selected in 2016 as an Outstanding Young Restructuring Lawyer by Turnarounds and Workouts.

White Oak Global Advisors Presenter

Thomas Finnigan IV

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WHITE OAK

Mr. Finnigan serves White Oak as Head of Complex Credits with primary responsibility for managing complex situations and credits for White Oak's private debt funds. He previously served at McNamee Lawrence & Company, a boutique investment bank. Mr. Finnigan received a B.A. in economics from Dartmouth.

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What Happened?

How COVID-19 turned the lending market upside down

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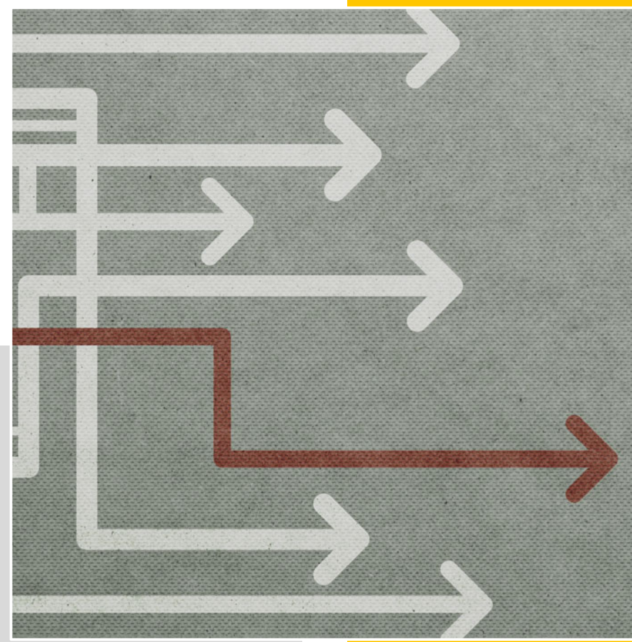
What Happened?

1. COVID-19 creates economic shift for businesses across nearly all industries
2. PE and debt investors respond
3. New issuance pullback
4. Stimulus package



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Current Trends

What are we seeing day to day?

Current Trends

1. Flight to safety
2. Increasing defaults
3. Cash is king
4. Liquidity
5. Remote

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Current Trends

1. Exploit documents to mitigate leverage
2. Drop-down transfers to unrestricted subs
3. Coercive re-tranchings of 1L debt

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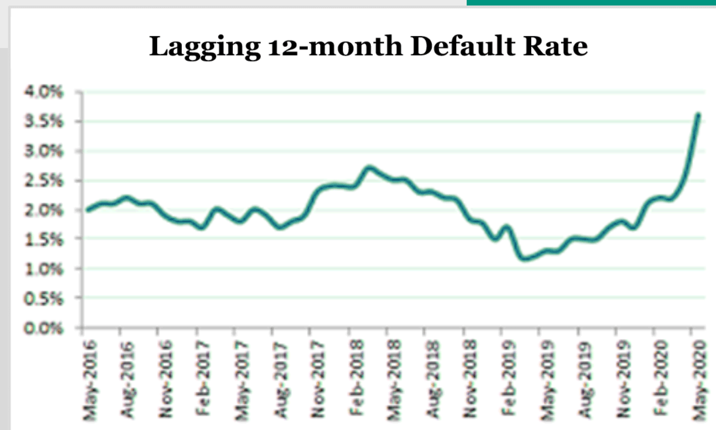
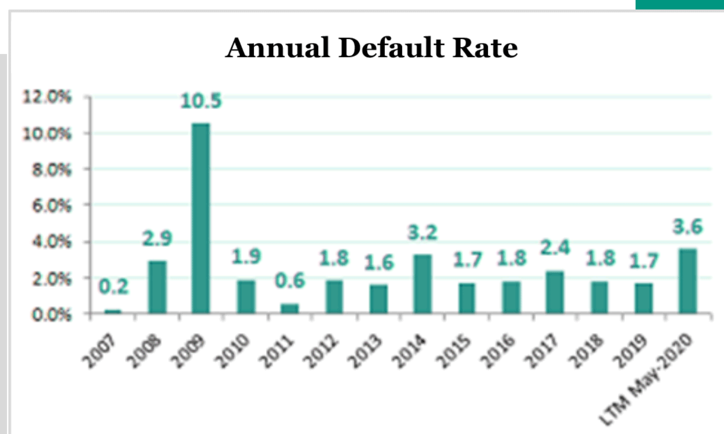
Current Trends

1. Stimulus package
2. Operational changes
3. Unemployment
4. Defaults





Data Source: LevFin Insights

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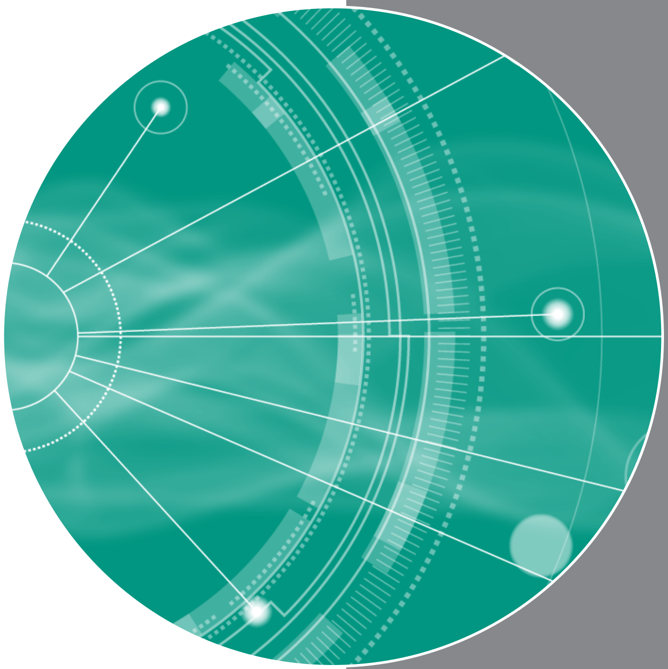
Current Trends

1. EBITDA adjustments
2. Increasing defaults
3. Amendments
4. 2nd restructuring wave



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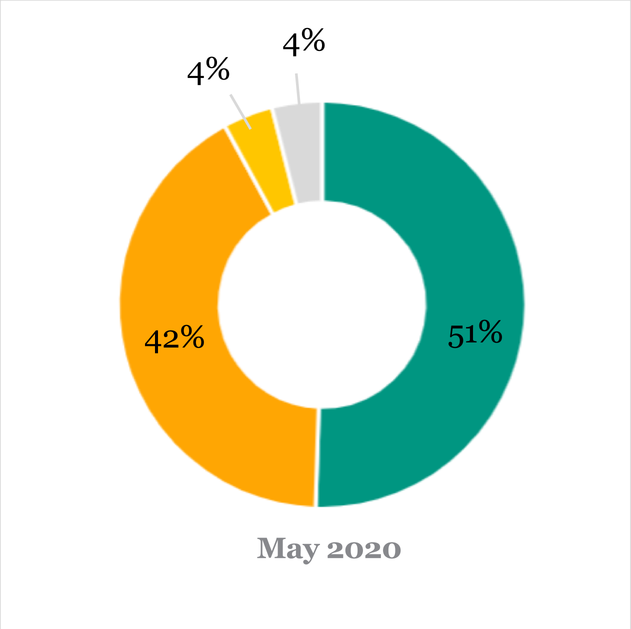
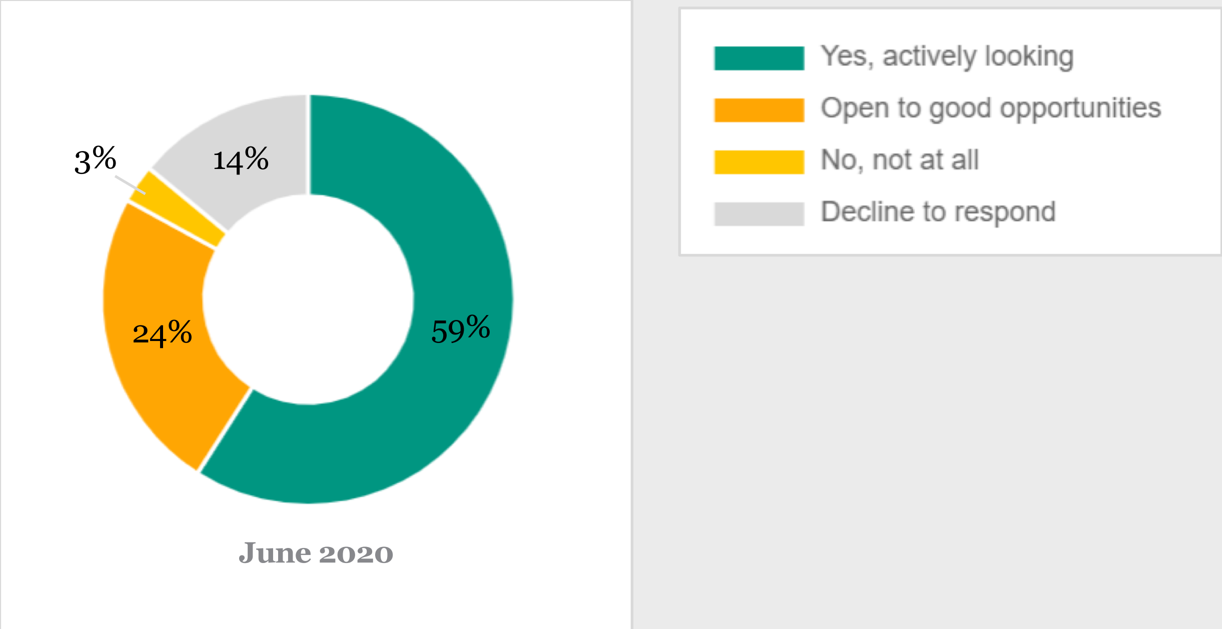
Current Trends: SRS Acquiom Barometer

Are you or your clients looking for new lending opportunities?





Data Source: ***June 2020 SRS Acuiom Barometer on Distressed Debt and Lending:*** https://www.srsacquiom.com/resources/loan-agency-barometer/

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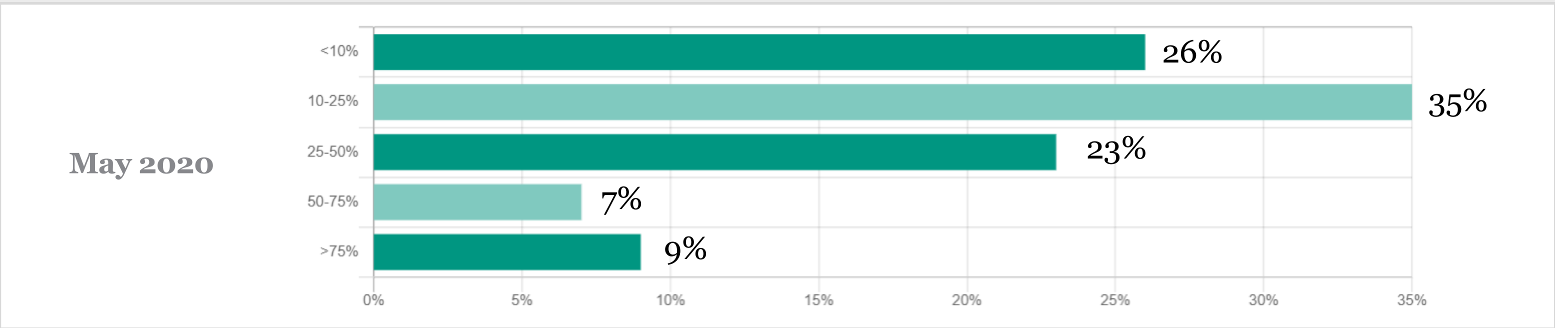
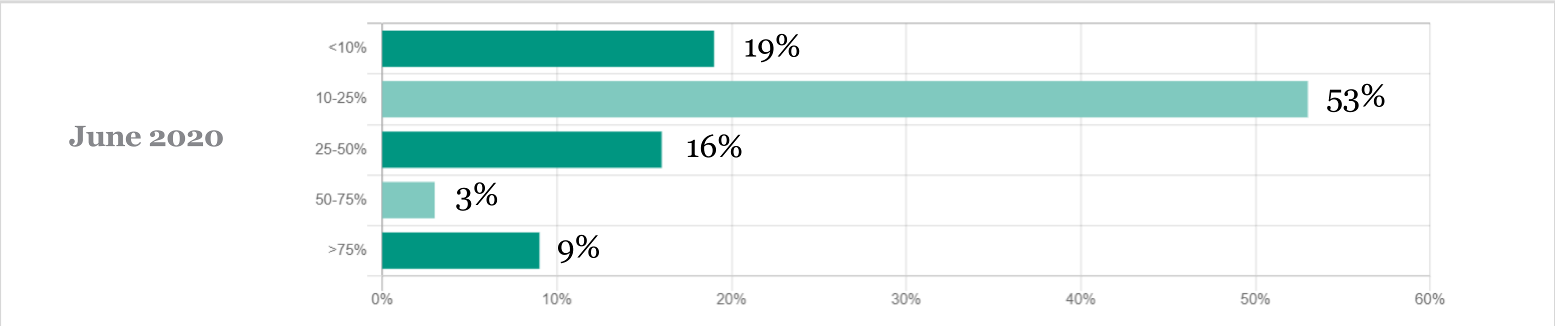
Current Trends: SRS Acquiom Barometer

What percentage of the loan portfolio you work on is in default or has a waiver in place?





*Data Source: **June 2020 SRS Acuiom Barometer on Distressed Debt and Lending**:* https://www.srsacquiom.com/resources/loan-agency-barometer/

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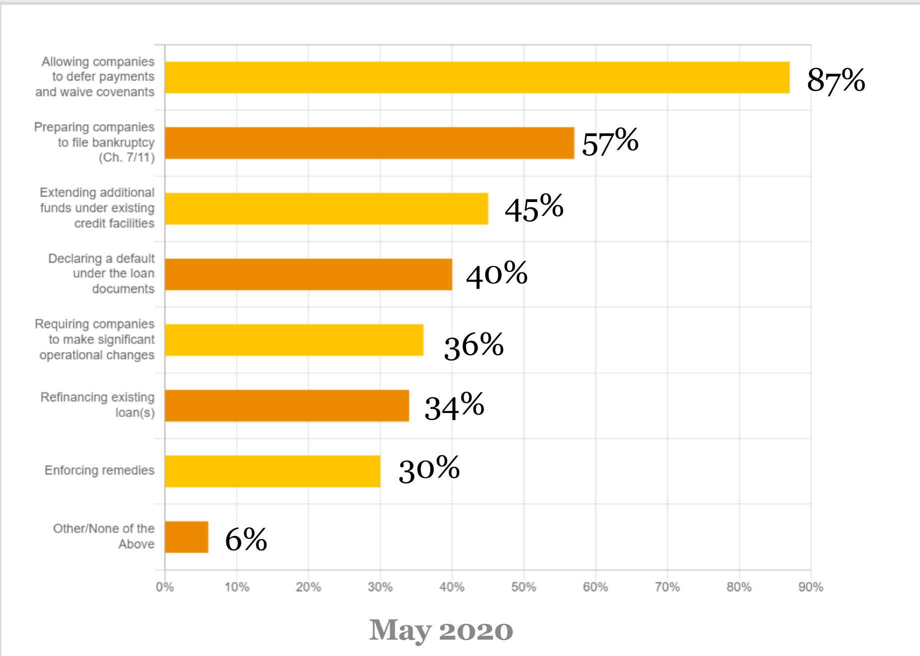
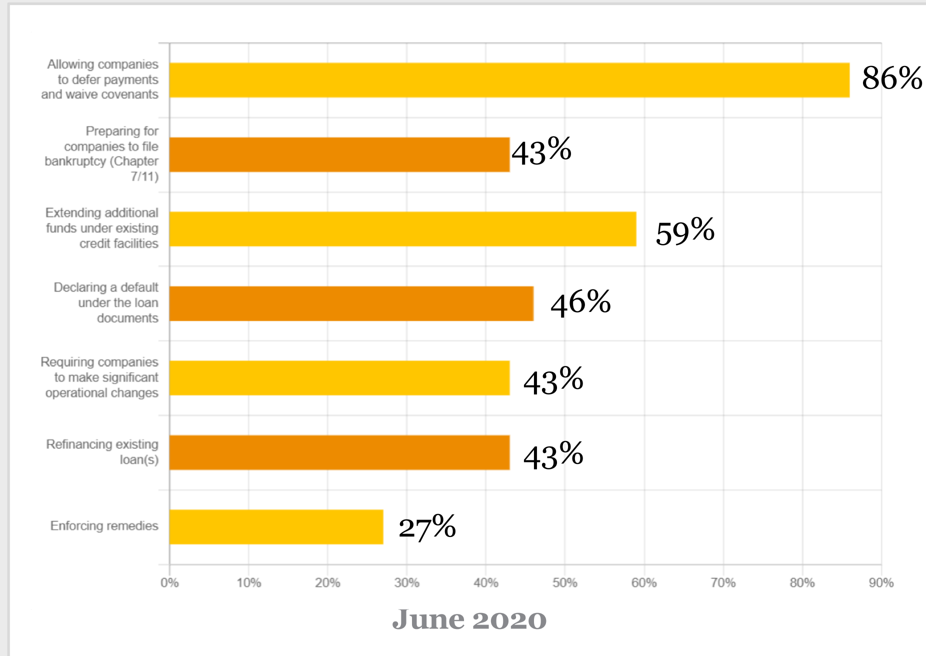
Current Trends: SRS Acquiom Barometer

Which actions are lenders taking in your portfolio?





*Data Source: **June 2020 SRS Acuiom Barometer on Distressed Debt and Lending:*** https://www.srsacquiom.com/resources/loan-agency-barometer/

Key Differences

How does the current situation differ from prior recessions?

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Key Differences

1. CS leveraged loan index trends
2. Subprime differences
3. Uncertainty
4. Scale of government intervention
5. Resiliency of equity

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Implications

What implications does this have for companies seeking new financing?

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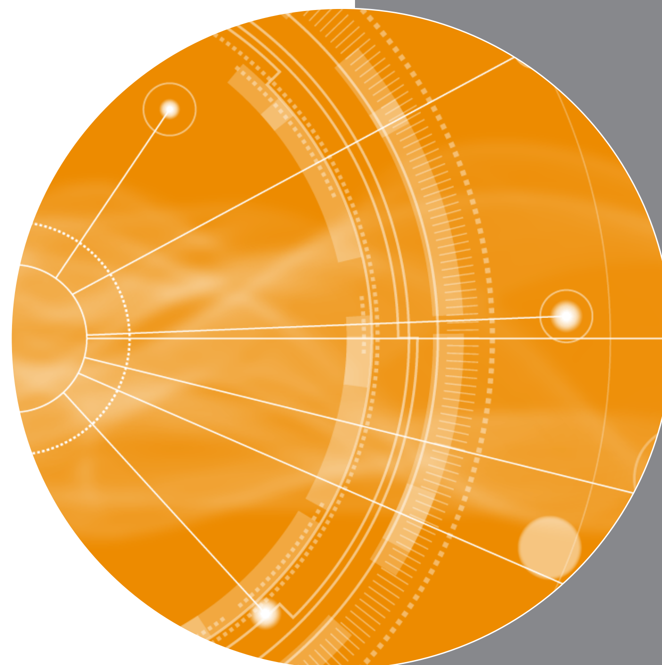
Implications

1. Dry powder, private credit funds
2. No toxic balance sheets
3. Pricing is increasing, leverage is decreasing
4. More selective lending, tighter documentation
5. Patience
6. Recovery



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Thank you.
Questions?

SRS ACQUIOM ELEVATE YOUR GAIN

By Joshua James
Senior Director,
Loan Agency
SRS Acquiom

Best Practices When Hiring a Replacement or Successor Agent for a Distressed Credit Facility

Introduction

Administrative agents on distressed credit facilities periodically resign or are removed by the lenders. An administrative agent may resign or be removed for a number of reasons, including because it has sold its position in the credit, it is reluctant or unwilling to take certain actions that would damage its relationship with the borrower, or because of a perceived or actual conflict of interest.

Administrative agents handle the routine responsibilities and duties necessary for the orderly administration of a syndicated loan. Once a syndicated loan closes, payments between the borrower and lenders are made through the administrative agent. Other duties of the administrative agent include coordinating with the lenders and lenders' counsel, setting interest rates, maintaining the loan register, and processing loan trades. In a restructuring or bankruptcy scenario, the administrative agent may also coordinate with lender ad-hoc steering committees, file proofs of claim, communicate with the claims agent, and disburse collateral or sale proceeds. Acting at the direction of the lenders, administrative agent's declare events of default, enforce remedies, and foreclose on collateral.

"The resignation or removal of an administrative agent can interrupt the orderly administration of a credit facility if not handled correctly.

The resignation or removal of an administrative agent can interrupt the orderly administration of a credit facility if not handled correctly. Fortunately, credit facilities are flexible and the process of appointing a new administrative agent, often referred to as a successor agent or replacement agent, can be managed smoothly.

Why Would an Administrative Agent Resign or be Removed?

"Many banks will sell their position in a syndicated loan to distressed debt investors if the borrower's loan becomes distressed or otherwise becomes too risky for the bank.

Not a Lender. The most common reason an administrative agent resigns is that it has sold the position it once held in the credit. Many lenders are not willing to serve as an administrative agent on loan facilities in which they are not a lender. This scenario often occurs when the administrative agent acted as the arranger of the loan, but the circumstances under which the administrative agent originally decided to make the loan have changed. Many banks will sell their position in a syndicated loan to distressed debt investors when the borrower's loan becomes distressed or otherwise becomes too risky for the bank.

Conflict of Interest. An administrative agent may resign because of a conflict of interest or the perception of a conflict of interest. For example, when a party acts as the administrative agent on multiple loan facilities for a borrower and the borrower is in default under one or more of the loan facilities, a conflict of interest between the creditor groups may compel the administrative agent to resign on one or more of the loan facilities.

Disagreement with Lenders. An administrative agent may also resign if lenders direct it to take action that it is not willing to take. An administrative agent may not be willing to follow the direction of the lenders because of liability concerns or because the agent has a long-standing business relationship with the borrower that it is reluctant to damage. The existing administrative agent may be willing to provide the borrower with more flexibility or concessions than other lenders due to its relationship with the borrower. By resigning, the administrative agent can maintain its relationship with the borrower and the lenders are able to appoint a new administrative agent that will execute the lenders' directions.

Removal by Lenders. Administrative agents may also be removed by the lenders under some credit agreements. The motivation for lenders to remove an administrative agent generally relates to a disagreement between the agent and the other lenders on a major issue. For example, if lenders direct an administrative agent to enforce remedies against the borrower and the agent does not promptly carry out the lenders directions, the lenders may decide to remove the agent. Credit agreements that permit the removal of the administrative agent by the lenders typically require lenders holding a majority of the debt to consent to the removal of the administrative agent.

The Administrative Agent in a Restructuring or Distressed Credit

"It is critical on distressed credits that the administrative agent work hand in glove with the lenders to carry out the lenders' directions.

The administrative agent is the agent of the lenders. The role of the administrative agent is spelled out in the credit agreement. On healthy credits, the agent's role is limited to carrying out those administrative responsibilities specifically set forth in the credit agreement, plus periodically assisting with ad-hoc matters such as processing amendments. However, on distressed credits, there is a need for the lenders, as the economic stakeholders of the credit, to exercise their business judgment regarding defaults, waivers, forbearances, restructurings, enforcement of remedies and the like. It is critical on distressed credits that the administrative agent work hand in glove with the lenders to carry out the lenders' directions. This expands the scope of the administrative agent's role from the narrow confines of the credit agreement to the much broader potential array of options available to the lenders as they seek to maximize their recovery. It is imperative that the lenders select a successor or replacement agent that is able to promptly give effect to the lenders directions and has the experience and systems in place to effectively carry out the directions of the lenders.

How is the Resignation or Removal Process Initiated?

If the administrative agent is resigning voluntarily, the resignation process begins by an administrative agent delivering a notice of resignation to the borrower and lenders informing them of its intent to resign. Customarily, there is a thirty-day notice period, and the existing administrative agent is automatically discharged from its duties once the notice period has passed. Appointing a new administrative agent before the existing agent is discharged is preferable as the existing agent will have the register, direct lines of communication with the lenders, and can assist in the collection of signature pages and other administrative tasks related to the appointment of a new agent. While some existing administrative agents will voluntarily extend the notice period if the other parties are making progress in appointing a new agent, it is best to begin the process of appointing a new agent as soon as possible.

If a credit agreement allows for the removal of the administrative agent by the lenders, the process of removing an agent is substantially the same as with a voluntary resignation except that the removing lenders provide notice of the administrative agent's removal to the borrower, lenders, and administrative agent. As with the voluntary resignation provisions of a credit agreement, the removal provisions customarily provide for a thirty-day notice period before the removal is effective and the agent is discharged from its duties under the credit agreement. An administrative agent removed by the lenders is unlikely to cooperate more than is absolutely necessary, so it is advisable for the lenders to have selected a new agent before delivering a removal notice to the existing agent.

Appointing a New Administrative Agent

"The new administrative agent is typically appointed by lenders that hold a majority of the debt outstanding in the syndicated loan facility for the appointment to be effective, though some agreements have a higher threshold.

Required Consents. The new administrative agent is typically appointed by lenders that hold a majority of the debt outstanding in the syndicated loan facility for the appointment to be effective, though some agreements have a higher threshold. The borrower, if not in default, will often also need to consent to the appointment of a new administrative agent. Issuing banks on syndicated loan facilities that include a letter of credit facility may also need to consent to the appointment of a new administrative agent.

Successor Agent Agreement. In order to appoint the new administrative agent, the new agent and lenders holding a majority of the debt will enter into a successor agent agreement whereby the lenders holding a majority of the debt confirm that the resignation of the existing agent is effective, appoint the new administrative agent, and have the new agent accept the appointment.

The successor agent agreement will often deal with administrative matters such as providing the new administrative agent with the loan's books and records, the assignment of any security interests, and the transfer of any possessory collateral. It is also common for the successor agent agreement to include minor mechanical amendments to the credit agreement such as updating the prime rate.

Preferably, the existing administrative agent and borrower will also enter into the successor agent agreement. However, if there are ongoing disputes between the parties, the existing administrative agent or borrower may refuse to be a party to the successor agent agreement. The existing administrative agent or borrower may instead be willing to enter into a side agreement with the new administrative agent to facilitate the appointment and provide, with respect to the borrower, any necessary consents.

Effectiveness of Appointment. The appointment of a new administrative agent is complete upon the effectiveness of a successor agent agreement executed by the lenders, the successor administrative agent, and if possible, the existing administrative agent and the borrower. Conditions to effectiveness that are included in the successor agent agreement are generally limited to items like payment of the new administrative agent's fees and expenses.

Conclusion

Credit facilities are valued for their flexibility. With the right partners, this flexibility allows for the appointment of a new administrative agent to be relatively painless.
Whether you are a borrower or a lender that has found itself in a situation where a new administrative agent needs to be appointed, there are a few steps you can take to increase the likelihood of a smooth appointment process:

Start Early. Appointing a new administrative agent is much easier when there is an existing administrative agent in place. Beginning the appointment process as soon as the need for a new administrative agent is known will increase the likelihood that the new agent will be appointed before the existing agent is discharged. The first step in this process is the selection by the lenders of who they wish to appoint as the new administrative agent.

Communicate. Borrowers and lenders are often accustomed to only communicating with the administrative agent rather than directly with each other. While this normally works well, administrative agents are usually not too concerned about the appointment of a new agent once it has given notice of its intent to resign. Borrowers and lenders can ensure that they are on the same page and prevent any duplication of effort by communicating directly with each other and the resigning administrative agent regarding the appointment of a new agent.

KYC. “KYC” or “Know Your Customer” requirements are ubiquitous these days. Despite this, or perhaps because of it, many borrowers drag their feet in responding to KYC requests. By responding promptly to any KYC requests, borrowers can ensure that KYC does not hold up the appointment of a new administrative agent.

Confirm Positions. Each of the lenders and the borrower should confirm that they agree with the existing administrative agent regarding the loan principal, accrued interest, and any fees that are outstanding. Too often it is not until the parties are ready to close on the successor agent agreement (and sometimes even later) that any loan position discrepancies are identified, potentially delaying the appointment of a new administrative agent.

“The appointment of a competent successor or replacement administrative agent on a distressed credit ensures that the lenders directions will be effectively and promptly carried out.

The appointment of a competent successor or replacement administrative agent on a distressed credit ensures that the lenders directions will be effectively and promptly carried out. When selecting a successor or replacement administrative agent on a distressed credit, it is important to select one with experience on distressed credits as well as experience working through the appointment process and stepping into the shoes of a former administrative agent.

About SRS Acquiom

SRS Acquiom offers the most comprehensive platform to help deal parties manage complex financial transactions within mergers & acquisitions and bilateral or syndicated loan deals. Our solutions include paying and escrow agent services, online pre-closing solicitation, representations and warranties insurance brokerage, professional shareholder representation, and for loan and credit transactions, administrative, collateral and sub-agent services. Since 2007, we have helped businesses, investors, lenders, and advisors complete transactions as efficiently and effectively as possible, so they can focus on building strong businesses, and maximizing value.

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About the Author

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Josh is a senior director in the loan agency group at SRS Acquiom. He is responsible for administering a portfolio of syndicated loans where SRS Acquiom has been appointed as administrative agent or collateral agent with an emphasis on distressed debt and transactions involving litigation or bankruptcy.

Prior to joining SRS Acquiom, Josh was with Wilmington Trust for 9-years where he was a vice president in its Corporate Trust division. Josh's responsibilities at Wilmington Trust included administering syndicated loans and managing a team of relationship managers.

Josh received a J.D. from Mitchell Hamline School of Law, and a B.A. in history from Gustavus Adolphus College in St. Peter, Minnesota.

Additional Materials to Review

SRS Acquiom Barometer™ on Distressed Debt and Lending

- https://www.srsacquiom.com/resources/barometer-distressed-debt-and-lending-1/
- https://www.srsacquiom.com/resources/barometer-distressed-debt-and-lending-1/