Morgan Lewis

GLOBAL PUBLIC COMPANY ACADEMY

RECENT DEVELOPMENTS IN DEBT AND EQUITY OFFERINGS

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AGENDA

- Debt and equity capital markets in 2019 and during COVID-19
- Preferred equity offerings during COVID-19
- Current trends in debt markets

DEBT CAPITAL MARKETS IN 2019

- US issuers sold $2.5 trillion in 2019
  - 17% higher than in 2018
- Leading sectors:
  - Healthcare ($139 billion)
  - Utility & Energy ($136 billion)
- Globally: close to another record year
  - $7.1 trillion worth of bonds issued
  - 22,188 deals
  - $322 million average deal size

DEBT ISSUANCES DURING COVID-19

March 2-6: Markets start March on normal footing

March 9-13: Markets froze as economy started to shut down

March 16-20: Concessions blow out, few issuers access the market

March 23-27: Fed to buy investment-grade bonds

March 23-27: Record amount of bonds issued; concessions shrink

Mar. 30-Apr. 3: Riskier companies access the markets

April 6-17: Issuances continue

April 20-24: Issuances slow briefly due to oil volatility

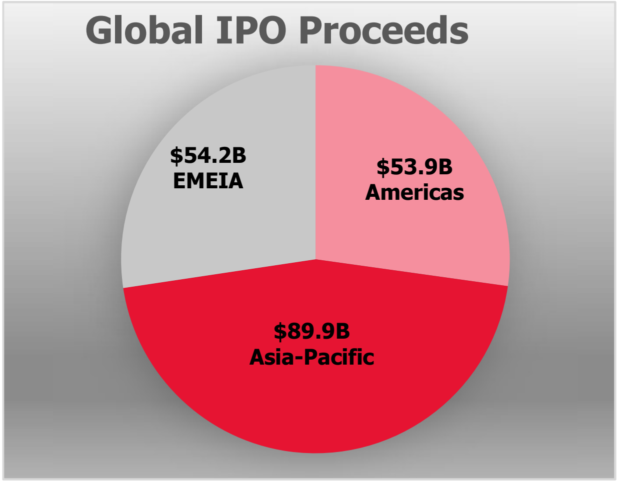
April 27-May 7: Surge of issuances continues

DEBT ISSUANCE TRENDS DURING COVID-19

- Concessions are larger, but access to capital is still affordable even for issuers hit harder by the COVID-19-related shutdown
- Globally, Q1 2020 saw $2.1 trillion in bonds (5% increase compared to Q1 2019)
  - North America and Latin America experienced growth
  - Volume decreased for Asia Pacific and EMEA
- High-yield Debt Market:
  - Stronger headwinds due to COVID-19, $81.1 billion issued in January → $5.4 billion issued in March
  - Quiet March, with no activity between March 4 and March 31 (Yum Brands pricing and upsizing of $600M 5-year notes)
  - Fed's bond-buying policy does not include high-yield bonds

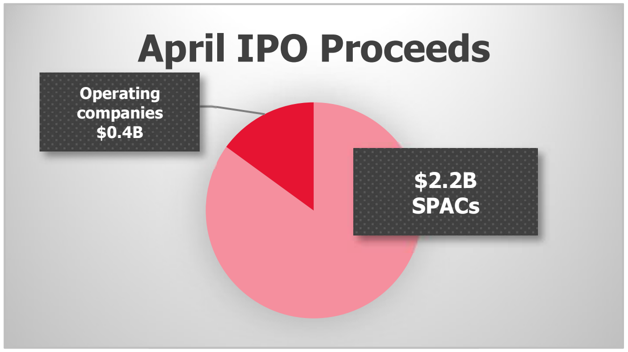
EQUITY MARKETS IN 2019

- Another strong year for US IPOs
  - 165 IPOs (compared to 205 in 2018)
  - $50 billion proceeds (compared to $52.8 billion in 2018)
- Leading IPO industry sectors:
  - Number of deals: Healthcare (73)
  - Amount of proceeds: Technology ($27B)
- SPAC IPOs surpassed healthcare in number of deals and amount of proceeds
- Global activity:
  - 1,115 IPOs (1,383 in 2018)
  - $198 billion in proceeds ($206 in 2018)



IPO MARKET DURING COVID-19

- Expectations for 2020 was for another strong year for IPOs
- Globally, Q1 2020 deals and proceeds rose YoY despite COVID-19 concerns
  - 235 deals, $28.5 billion in proceeds worldwide
- US, Q1 2020 deals are on par with Q1 2019, but proceeds are higher by 39%
  - $7.3 billion IPO proceeds in Q1 2020
- SPACs: a growing presence
  - $6.4 billion raised in 2020 so far
  - Bodes well for potential targets
  - Recent SEC trend: use of Form S-1 vs Form S-3 post-business combination



Impact of COVID-19

- Raising capital through a public offering has become more difficult as a result of market conditions, business uncertainty and overall market volatility
- Sale of equity may remain strategically important for issuers either to provide growth capital for issuers whose business are expanding during the pandemic or to strengthen the balance sheet for issuers who need to manage through the pandemic
- Issuers are looking to reduce or eliminate market exposure

Equity Offerings During COVID-19

- CMPO - Confidentially Marketed Public Offering
- PIPE – Private Investment in Public Equity
- RDO - Registered Direct Offering
- ATM – At-The-Market Offering
- Equity Line

CMPO and PIPE Transactions

- At our Global Public Academy webinar on April 29, 2020, we reviewed CMPO and PIPE transaction in detail including the process, documentation and benefits which you can find at:
  - Raising Equity Capital as a Public Company: From PIPE to CMPO: https://www.morganlewis.com/-/media/files/publication/presentation/webinar/2020/public-company-academy/raising-capital-as-a-public-company-cmpo-and-pipe.pdf
- Important considerations in these offerings:
  - Nasdaq Additional Listing Notification – file 15 days prior to issuance
  - Securities offered: Common Stock, Preferred Stock, Warrants and Pre-Funded Warrants
  - Use of conversion and exercise blockers – 4.99%, 9.99% and 19.99%

Important considerations in these offerings (Cont.)

- Nasdaq Shareholder Approval Rules:
  - Public Offering Exemption - Nasdaq staff will consider all relevant factors, including the type of offering, manner in which the offering is marketed; the offering's distribution (number, type and relationship of investors to issuer), offering price (and size of discount) and the extent to which the issuer controls the offering and its distribution.
  - Definition of Minimum Offer Price for 20% rule - lesser of last closing price immediately preceding the signing of a binding agreement and average closing price on Nasdaq for five trading days immediately preceding the signing of the binding agreement
    - Impact of Warrants on pricing
  - Integration – Multi-factor test including timing of the issuance, commonality of investors, existence of contingencies between the issuances or transactions, commonality in use of proceeds and timing of board approval

Registered Direct Offerings

- RDO is a negotiated sale of registered securities to one or more investors which may involve a placement agent on a best efforts basis
- Shares issued pursuant to an already effective registration statement
- Hybrid between a underwritten offering and a PIPE
  - Similar to a PIPE except investors receive registered securities
  - Similar to underwritten offering because unaffiliated investors have no restrictions on resale
- Process and documentation is similar to a PIPE except:
  - Prospectus Supplement
  - Comfort Letter
- Since it is a public offering under SEC rules, baby shelf rule apply
  - Company can sell up to 1/3 of its public float during a 12-month period
- Since it is a private placement under Nasdaq rules, shareholder approval rules apply

ATMS AND EQUITY LINES

- Alternatives to traditional equity offerings
- Designed to provide flexible and efficient access to capital, as needed, for companies that may face obstacles in utilizing traditional structures
- Cost-effective, both as to fees and discounts
- Relatively easy to establish
- Allow issuers to be opportunistic in response to market conditions
- Eliminate need to engage in extensive marketing/selling efforts
- May allow company facing liquidity issues to establish access to capital and address concerns

AT-THE-MARKET (ATM) OFFERINGS

- Offering made from shelf registration statement (existing or newly effective)
- Issuer must meet certain requirements:
  - Equity securities listed on U.S. securities exchange
  - Eligible for primary offering on Form S-3
    - May include issuers eligible under "baby shelf" rules (Form S-3 General Instruction I.B.6)
    - Can be for common or preferred stock (or both)
    - Offering announced at establishment of ATM program
  - Issuer files prospectus supplement and enters into sales agreement at inception of program
  - Sales agreement similar to underwriting agreement for traditional shelf offering
- Due diligence undertaken at establishment of program
  - Similar process to traditional shelf offering (comfort letter, opinions, etc.)

AT-THE-MARKET (ATM) OFFERINGS

- ATM will allow sales up to maximum number of shares or maximum gross proceeds
- Sales are at discretion of issuer; establishing program does not require issuance
  - Sales may be restricted during quarterly "blackout" periods
  - Sales agent does have limited ability to decline instructions to sell
- Periodic bring-downs involving due diligence updates, delivery of opinions and comfort letter
- Restrictions on other transactions by issuer may be established
- ATM can typically be terminated by issuer at any time
  - Some programs establish minimum fee obligation if agreed sales threshold not met
- Regulation M and FINRA issues must be addressed

EQUITY LINES

- Offering made either as a public offering from shelf registration statement (existing or newly effective) or as a private placement with subsequent resale registration obligation
- Issuer in public equity line must meet certain requirements:
  - Equity securities listed on U.S. securities exchange
  - Eligible for primary offering on Form S-3
    - May include issuers eligible under “baby shelf” rules (Form S-3 General Instruction I.B.6)
- Issuer in private equity line may meet fewer requirements, but programs have more limits on structure and operation
- Offering announced at establishment of equity line program
  - For public equity line, issuer files prospectus supplement and enters into sales agreement at inception of program
  - Sales agreement similar to securities purchase agreement in a RDO (for public equity line) or PIPE (for private equity line)
- Commitment fee (generally payable in common stock) typically due at establishment of program

EQUITY LINES

- Due diligence undertaken at establishment of program
  - Similar process to traditional shelf offering (comfort letter, opinions, etc.)
- Equity lines will allow sales up to maximum number of shares or maximum gross proceeds, but may have additional terms such as length of the facility, number of draws, etc.
- Selling price is formula-based, often tied to the market price of shares over a pricing period
- Sales are at discretion of issuer; establishing program does not require sales
  - Generally limited restrictions on sales
- Limited periodic maintenance involving due diligence updates, delivery of opinions and comfort letter
- Restrictions on other transactions by issuer may be established
- Equity line can typically be terminated by issuer at any time
- Section 16, SEC Regulation M and FINRA issues must be addressed

What impact has COVID-19 had on debt offerings?

- Debt capital markets have remained largely open since the onset of COVID-19 for investment-grade issuers.
- Companies have been accelerating debt issuances scheduled for later in the year.
- Focus has been on larger deals.
- Pricing has generally been attractive despite significantly increased spreads to Treasuries.

Has COVID-19 impacted the deal process?

- Focus on COVID-19 disclosure in recent developments/risk factors (prior to filing of first quarter Form 10-Q).
- Trustee signatures – most indentures require that the trustee manually authenticate the notes, so need to coordinate in advance.
- Other than above, we haven't seen any other noteworthy impacts on the deal process.

COVID-19 disclosure considerations going forward

- As the length and severity of the COVID-19 pandemic become clearer, the potential impact on a particular company will likely become clearer as well.
- As a result, we expect that companies will need to consider whether they have to update their COVID-19 disclosures in order to be able to access the capital markets.
- An assessment of the materiality of COVID-19 is particularly challenging given that the factors are beyond the company's control.

Q&A

Thomas P. Giblin

Thomas P. Giblin, Jr., advises clients on securities law matters, with a particular focus on representing utility and energy clients in capital markets transactions. Tom's practice includes representing clients in registered offerings of debt and equity securities, Rule 144A and Regulation S transactions, and private placements. Tom also advises public companies on Securities Exchange Act of 1934 disclosure obligations and assists clients with compliance with the Sarbanes-Oxley Act of 2002 and other corporate governance requirements.

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Joanne R. Soslow counsels public companies, emerging growth businesses, and corporate venture capital groups on corporate and securities matters. Deputy leader of the firm's corporate practice and former chair of the securities and corporate governance practice, Joanne advises clients primarily in the energy, biotechnology, financial services, technology, medical device, specialty pharmaceutical industries. In her transactional practice, Joanne guides companies in their complex public and private equity and debt securities activities, venture capital initiatives, and mergers and acquisitions (M&A).

Counseling clients in every phase of their growth cycles, Joanne advises on startup strategies, initial public offerings, change-of-control transactions, exit strategies, and corporate governance matters along the way. She often serves as the primary outside counselor to many of her clients, advising them on securities matters, M&A transactions, corporate governance matters, board of director and fiduciary duty issues, Sarbanes-Oxley compliance, and other legal needs. She frequently speaks at client and industry events on such topics as security industry trends and US Securities and Exchange Commission (SEC) initiatives.

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Brian V. Soares counsels public companies with respect to public and private securities offerings, securities regulation, corporate governance, and activist shareholder campaigns. He assists clients in capital raisings, follow-on and secondary offerings, and tender offers. Before joining Morgan Lewis, Brian served as an attorney-adviser with the US Securities and Exchange Commission in the Division of Corporation Finance, where he worked on several transactional and securities compliance matters, including initial public offerings, M&A transactions, and proxy statements. Brian is a native Portuguese speaker.

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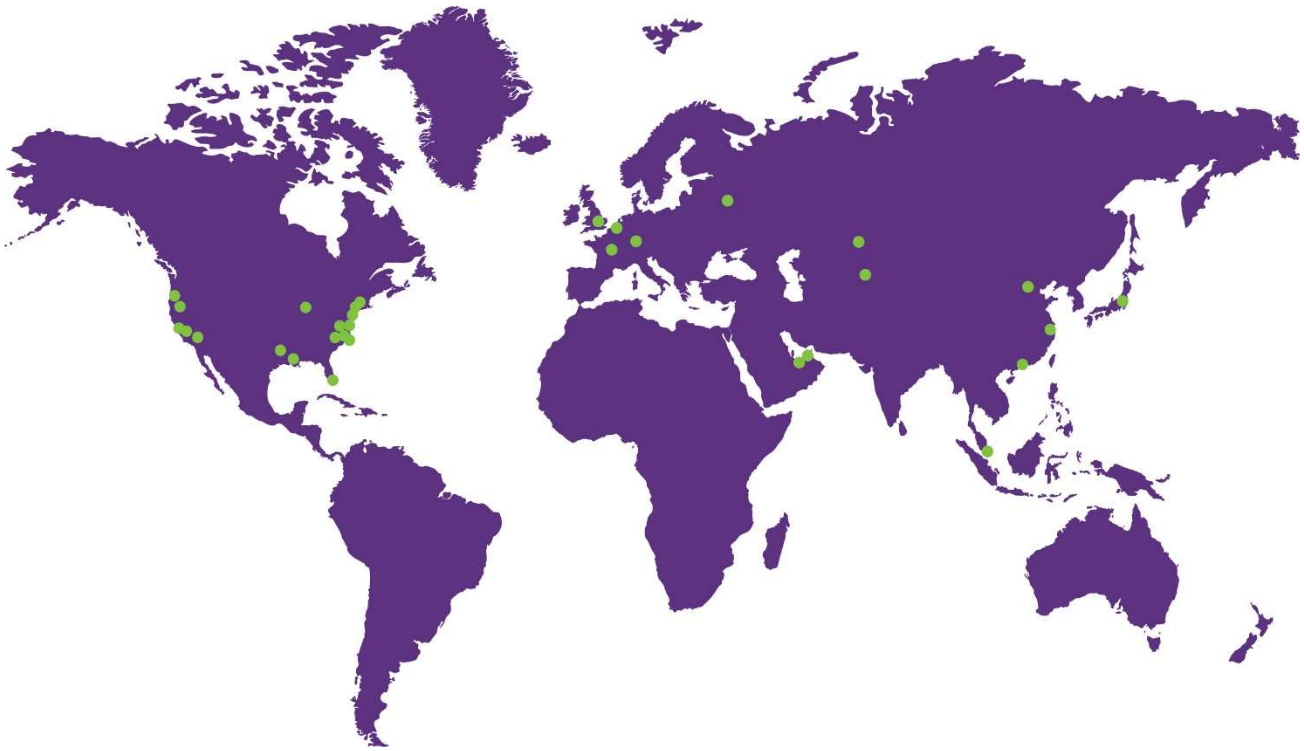

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