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Cabinet News and Views

Informed analysis for the financial services industry

Onward and Upward?

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In This Issue ...

It's unclear how much of the 24/7 news cycle has been devoted to the SVB and Signature Bank receiverships, with the added news about reverberations in Europe. Let's just say: a lot.

We're working very closely with our clients to address current challenges and to consider longer-term issues as the smoke clears. We also continue to track recent developments and to provide timely thought pieces on these matters in real time. Case in point: In this week's *Cabinet News and Views*, we address SVB and Signature in a couple of our articles, and you can find additional information by visiting our Financial Markets Resource Center.

There are several other news items worth reading this week, including some ESG-related climate news items.

As always, please reach out here if there's anything on your mind.

Daniel Meade
Partner and Editor, *Cabinet News and Views*

FDIC Seeks More Bids for SVB Receivership Assets

By **Daniel Meade**
Partner | Financial Regulation

As we have previously discussed, after the failure of Silicon Valley Bank ("SVB"), the FDIC is operating the Silicon Valley Bridge Bank, N.A. ("Bridge Bank") in many ways as if it's business as usual to help preserve as much value as it can for the resolution of SVB. Given the speed of SVB's failure, the FDIC did not have the time it usually does to arrange for the sale of assets and assumption of deposits that you typically see on a Friday evening when a bank is usually closed. Numerous press outlets reported that the FDIC did not obtain adequate bids on the first weekend after the closure of SVB.

This past Monday, the FDIC announced that it was extending the bid window for the Bridge Bank. Rather than just accepting bids for all or substantially all of the Bridge Bank, "the FDIC will allow parties to submit separate bids for [the Bridge Bank] and its subsidiary Silicon Valley Private Bank." The FDIC also noted that "[b]ank and non-bank financial firms will be permitted to bid on the asset portfolios." Bids for the private bank sub were due Wednesday night, and bids for the Bridge Bank are due tomorrow (Friday, March 24) by 8:00 p.m. EDT.

The extension of the bid window suggests that the FDIC has not found a solution that it deems adequate. It also suggests that while the FDIC's hope may have initially been to have a whole-bank purchase, the FDIC may be coming to a realization that selling the Bridge Bank in pieces may bring more value to the resolution of SVB.

SVB Financial Group Chapter 11 Case – Issues with the FDIC May Be Front and Center

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This Clients & Friends Memo provides a general overview of the SVB Financial Group chapter 11 case, the first day hearing, and certain issues that may arise in connection with the bankruptcy proceedings. The memo highlights potential complications that may arise among SVB Financial Group (the Debtor), the Bridge Bank, and the FDIC, particularly due to the interrelatedness of the Bridge Bank and SVB Financial Group.

Read it here.

Central Banks Band Together for U.S. Dollar Liquidity

By **Daniel Meade**
Partner | Financial Regulation

The Federal Reserve Board ("FRB") announced last Sunday that it was coordinating with the Bank of Canada, Bank of England, Bank of Japan, the European Union Central Bank, and the Swiss National Bank to "enhance the provision of liquidity via the standing U.S. dollar liquidity swap line arrangements." The coordinated actions will mostly be through daily operations of the various swap lines instead of the weekly frequency before this announcement.

Since 2013, the central banks noted above have engaged in coordinated standing swap line arrangements. Before that, central banks would have individual bilateral agreements. The announcement stated that "[t]he network of swap lines among these central banks is a set of available standing facilities and serve as an important liquidity backstop to ease strains in global funding markets, thereby helping to mitigate the effects of such strains on the supply of credit to households and businesses."

Banks in the United States have seen tangible liquidity challenges for at least the last two weeks. Some of that stress (for apparently different reasons) has reared its head in Europe. As the U.S. Dollar is generally viewed as the reserve currency of the world, this coordinated action by these central banks is a concerted effort to mitigate any U.S. Dollar liquidity challenges across the globe.

The FCA Discusses the Future Framework of Asset Management Regulation

By **Alix Prentice**
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Under the Future Regulatory Framework (the legislative structure for a post-Brexit UK regulatory system proposed under the Financial Services and Markets Bill currently before Parliament) the UK's Financial Conduct Authority ("FCA") is going to become responsible for retained European laws that set requirements for firms. In a Discussion Paper on *"Updating and improving the UK regime for asset management"* ("DP23/2") it is taking the opportunity to discuss and eventually consult on modernisations and revisions to the regulatory framework around the asset management industry, in particular those that are necessary to recognise the substantial and rapid changes technology has brought.

DP23/2 covers a number of topics, including:

1. *Overlapping and duplicative rules create unnecessary complexity:* within the asset management sector, differing rules apply to authorised funds, managers and depositories of authorised funds and non-authorised funds and portfolio managers and derive from a number of pieces of legislation. In areas covered by core conduct rules, including organisational requirements, conflicts and outsourcing, this has led to duplication and differences of both substance and those that are technical in nature. While pulling back from suggesting a single rule book for all asset management, DP23/2 asks for opinions on the merit of a common framework of rules that sets standards for all types of asset manager.

2. *Improving the regulatory regime to deliver good outcomes for retail and professional investors:* ideas here include strengthening rules around dilution adjustments and other anti-dilution mechanisms, and making sure liquidity risk is effectively managed. Investment due diligence, including credit assessment, is a priority, and current practice is reported as inconsistent. DP23/2, therefore, asks whether the FCA should set out regulatory expectations around due diligence for all types of asset management activity and give clearer standards to back up those expectations.

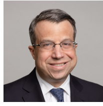
3. *Clarifying rules for depositaries:* particularly around intervention on and challenge to managers and achieving effective outcomes when discharging oversight obligations.

4. *Technology and innovation:* proposals include working towards rule changes to establish the Investment Association's "Direct2Fund" product that enables investors to transact directly with a fund when buying and selling units. Also under discussion is fund tokenisation, which the FCA understands as meaning the ability to issue participations in funds to investors as digital tokens.

This is a broad, structure-focused discussion paper, but it does tally with the post-Brexit regulatory drivers of rationalisation, simplification and keeping pace with market and technological innovations.

Comments are due by 22 May 2023.

Beyond the Headlines – Three Global Banks Update Emissions Financing Reduction Targets


By **Jason M. Halper**
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Between February 23 and March 3, three leading global financial institutions announced updated environmentally linked targets aimed at reducing by 2030 their financed emissions in carbon intensive sectors, including oil & gas, cement, iron, steel and aluminum.

The new interim targets announced by Citi include the following reductions: auto manufacturing (31% reduction in emissions intensity); commercial real estate (41% reduction in emissions intensity); energy (29% reduction in absolute emissions); power (63% reduction in emissions intensity); and thermal coal mining (90% absolute emissions reduction).

Deutsche Bank has reported that its financing of oil and gas sector declined by more than 20% in 2022, thermal coal sector by around 18% and there were year-over-year reductions in all sectors where the bank had identified an emissions reduction target. Current targets include oil and gas (23% reduction in Scope 3 upstream financed emissions by 2030 and 90% by 2050), power generation (69% reduction in Scope 1 physical emission intensity by 2030 and 100% reduction by 2050), automotive – light duty vehicles (59% reduction in tailpipe emission intensity by 2030 and 100% reduction by 2050) and steel (33% reduction in Scope 1 and 2 physical emission intensity by 2030 and 90% reduction by 2050).

HSBC disclosed updated targets of a 34% reduction in absolute on-balance sheet financed emissions in the oil and gas sector and a 75% reduction in on-balance sheet financed emissions intensity in the power and utilities sectors by 2030. HSBC added that "the choice to adopt an emissions intensity metric for Power and Utilities reflects the need to reduce global greenhouse gas emissions from power generation while also meeting growing electricity demand." Emissions intensity is a metric that sets a target relative to an economic or operational variable. Absolute emissions reduction aims for a set target reduction.

In commenting on the process of reducing emissions financing, the banks emphasized the importance of a *transition* to a green economy that recognizes the current need for energy from fossil fuels and that issuers themselves are charting unfamiliar terrain in navigating a green transition. For example, Christian Sewing, CEO of Deutsche Bank commented on the revised targets noting that "[i]n most cases we can contribute more to reducing greenhouse gas emissions by working with our clients. But in cases where we saw no willingness on the part of a client to embark on a credible transition, we would not shy away from exiting a relationship."

Jane Fraser, CEO of Citi, noted that the "global economy still runs primarily on oil and natural gas" and that energy security is still an important issue in developing nations where the resources and infrastructure to "make a quick shift to renewables" is limited.

Taking the Temperature: While at this point there is nothing particularly novel about banks setting and updating emissions financing reduction targets, some additional insights from the Citi, Deutche Bank and HSBC announcements bear mention. First, while media focus tends to rest on climate risk, there are opportunities as well. For example, a model jointly developed by Deutsche Bank and Bain & Company showed that additional investment of "$1.4 trillion per year will be required, by the end of 2030, to meet the target of limiting global warming to 1.5 degrees Celsius by 2050," but also that the additional "annual revenue potential for banks is more than $40 billion worldwide."

Second, as we previously discussed with respect to HSBC, the Citi and Deutsche Bank reports devote considerable attention to climate-related governance. For example, Citi states that it "expanded [its] Board of Directors' oversight of certain climate-related matters such as climate risk and climate and ESG disclosures;" "[c]odified the integration of climate-related issues with certain Board committees, including incorporating oversight of our climate disclosure risk and controls environment into the Audit Committee (AC) charter and climate risk oversight into the Risk Management Committee (RMC) charter;" "[c]ommenced an ESG Disclosure Committee to support the Board and AC and provide oversight of Citi's disclosure controls and procedures;" and "[e]xpanded and realigned our Climate Risk team to be part of the Enterprise Risk Management function within Risk and further added subject matter expertise." Citi added that it also continues to "educate [its] entire Board, as well as senior management, to build out climate-related expertise and capabilities," and that "sustainability and climate-related goals are incorporated into several executive scorecards, which are key elements of performance management tied to the determination of incentive compensation for these executives." Deutsche Bank similarly has multiple organizational structures at the board and management levels devoted to sustainability governance, a focus that, in our view, is essential to assess and act on enterprise-wide climate-related risks, opportunities and data collection.

Third, we often have commented on the challenges companies confront in obtaining quality climate metrics, such as Scope 1, 2 and 3 emissions. These reports underscore the complexity involved, including the lack of consensus on how to measure emissions, use carbon offsets, chart progress on a net-zero path, and otherwise proceed on a green transition pathway while accurately reporting on that progress. The Citi report, for example, states that "the quality and availability of climate-related data continues to be a significant challenge. At the time of the analysis disclosed in this report, the data available for calculating financed emissions and emissions intensity and measuring progress was nearly two years old, given the availability of the data at the time." The report adds that "currently, there is no single, global, cross-sector data provider that adequately and consistently covers our needed scope for data to analyze emissions and assess physical and transition risks across our operations and portfolios." Moreover, according to Citi, climate-related reporting from the bank's clients "continues to fall short of the necessary quality, quantity and consistency to permit comparability across clients, industries and sectors, which underscores the necessity of client-

level engagement." As we have discussed, these challenges reinforce the need for active board and management climate-focused engagement and accurate disclosure of the limitations on climate disclosure.

(This article originally appeared in Cadwalader Climate, a twice-weekly newsletter on the ESG market.)

EU Publishes Green Bond Standard

By **Sukhvir Basran**
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On February 28, the Council of the European Union and the European Parliament reached a deal to draw up European Green Bonds Standards ("EUGBS"). The aim of the EUGBS is to establish the leading global framework for green bonds. According to Paul Tang, rapporteur, this creates "a gold standard that green bonds can aspire to." The EUGBS have been designed to facilitate the financing of sustainable investments by companies and public authorities that issue green bonds, while meeting rigorous sustainability requirements and protecting investors against greenwashing.

Although the provisional agreement's full wording and details have not yet been disclosed, the key details announced to date are:

- **Transparency.** Companies that use the EUGBS when marketing a green bond must be engaged in a green transition, as they will be required to disclose substantial information about how the bond's proceeds will be used and how those investments feed into the transition plans of the company as a whole.

  In addition, "[t] he disclosure requirements, set out in template formats, will also be open to be used by companies issuing bonds which cannot fulfil all the requirements to qualify for the EUGBS. These companies would thereby subject themselves to ambitious transparency requirements and, as a result benefit from better trust among investors."

- **External reviewers.** The EUGBS establishes a registration system and supervisory framework for external reviewers of European green bonds. It is envisaged that independent entities will be responsible for assessing whether a bond is green. The EUGBS "stipulates that any actual or even potential conflicts of interest are properly identified, eliminated or managed, and disclosed in a transparent manner. Technical standards may be developed specifying the criteria to assess the management of conflicts of interest."

- **Flexibility.** Until the EU taxonomy framework is "fully up and running," which is projected to be January 2027, "legislators agreed to allow 15% of the proceeds from a green bond to be invested in economic activities that comply with the taxonomy requirements but for which no technical screening criteria have yet been established to determine if that activity contributes to a green objective (technical screening criteria)."

In its accompanying press release, the European Parliament acknowledges that the EUGBS will (i) "enable investors to identify high quality green bonds and companies, thereby reducing 'greenwashing,'" (ii) "clarify to bond issuers which

economic activities can be undertaken with the bond's proceeds," (iii) "set in place a clear reporting process on the use of the proceeds from the bond sale," and (iv) "standardize the verification work of external reviewers which will improve trust in the review process."

Taking the Temperature: The agreement on EUGBS is still provisional as it needs to be confirmed and adopted by the Council and the European Parliament before it is final. The overall effect of the EUGBS could be a sharp reduction in the volume of debt allowed to carry a sustainable label and, potentially, reducing misleading claims or greenwashing in the bond market. The framework is significant given that this is a large, and largely unregulated, asset class – over $400 billion of green bonds were issued in 2022, and nearly $600 billion of green bonds were issued in 2021.

However, given that the agreement is provisional, there remain various aspects of the EUGBS that are unclear. To cite just one example, it is unclear whether securitizations will be part of the EUGBS as per the European Banking Authority's report on developing a framework for sustainable securitization. Further assessment will be required once the final text of the EUGBS is publicly available.

(This article originally appeared in Cadwalader Climate, a twice-weekly newsletter on the ESG market.)