

Fund Finance Friday



Win the Bid – What’s Next in Moving On?

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On March 12, 2023, the New York State Department of Financial Services appointed the FDIC as receiver for Signature Bank. The FDIC created a bridge bank, Signature Bridge Bank (“Bridge Bank”), and transferred all deposits and substantially all of Signature Bank’s assets to the Bridge Bank. No consents or other restrictions on transferring rights and obligations of Signature Bank are applicable for the transfer to the Bridge Bank. The receivership is governed by the Federal Deposit Insurance Act (“FDIA”). Under the FDIA, the FDIC succeeds to the rights and powers of Signature Bank. The Bridge Bank is authorized to sell the assets of Signature Bank to another person. Additional information on FDIC receivership can be found [here](#).

In September, the FDIC held an auction to sell multiple portfolios of loans held by the Bridge Bank to the highest bidders. The portfolios of loans included subscription credit facilities. Many fund finance lenders participated in the process and submitted bids. You may be wondering if the restrictions on assigning a lender’s rights and obligations under the governing loan documents could present a barrier to assigning the relevant loans from the FDIC as receiver to Signature Bank to the winning bidder(s). This is a question that is very important for those bidding to purchase these loans and for those financial institutions that act as administrative agent for syndicated deals that former Signature Bank participated in as a lender.

As we previously discussed [here](#), in general there are conditions to a participant lender assigning its rights and obligations as a lender under governing loan documents. Typically, an assignment will require the consent of the administrative agent and the credit parties. There are certain assignees that permit an assignment without the consent of the administrative agent and there are certain exceptions, including an event of default (or limited events of defaults) and certain assignees, that permit an assignment without the consent of the credit parties. The governing loan document generally provides that the assignment of any rights or obligations that do not comply with the relevant conditions is neither effective nor enforceable. However, the FDIA provides that the FDIC as receiver may transfer any asset or liability of Signature Bank without “any approval, assignment, or consent with respect to such transfer.” ^[1]

For those lucky financial institutions that were able to win the bidding for one or more of the portfolios of loans being sold by the FDIC as receiver, the relevant loans will not be subject to assignment restrictions found in the relevant governing loan documents. Note, though, that any subsequent assignment by the winning bidders to another institution would be subject to the assignment restrictions.

^[1] See 12 USC 1821(d)(2)(G)(i)(II).