

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

October 6, 2023



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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).

Fed Issues FAQs Clarifying That Credit-Linked Notes Can Serve as Valid Capital Relief Tools for U.S. Banks

October 6, 2023



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On September 28, the Federal Reserve Board (“FRB”) posted [three new FAQs](#) to its website regarding Regulation Q ([Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks](#)). The FAQ guidance provides additional clarity on the use of credit-linked notes (“CLNs”) to transfer credit risk and offer capital relief to U.S. banks. While in some respects the FAQs merely confirm positions that the FRB has already taken in regard to individual CLN transactions, these FAQs are nevertheless important inasmuch as they publicly memorialize the FRB’s view of these products as valid capital management tools.

The FAQs speak to two different formats of CLNs: those issued by special purpose vehicles (“SPV CLNs”) and those issued directly by banks (“Bank CLNs”). The FRB’s view of SPV CLNs is relatively straightforward: per the FAQs, the FRB recognizes that properly structured SPV CLNs constitute “synthetic securitizations” for purposes of Regulation Q and that the collateral for such SPV CLNs can serve as a credit risk mitigant that banks can use to reduce the risk-weighting of the relevant assets.

The FRB’s posture toward Bank CLNs, however, is more nuanced. According to the FRB, unlike SPV CLNs, Bank CLNs do not technically satisfy all of the definitional elements and operational criteria applicable to “synthetic securitizations” under Regulation Q, such that banks that issue Bank CLNs would not be able to *automatically* recognize the capital benefits of such transactions (as would be the case with properly structured SPV CLNs). The reasons for this are twofold: first, Bank CLNs are not executed under standard industry credit derivative documentation; and second, the issuance proceeds from Bank CLNs generally are owned outright by the issuing bank (rather than held as collateral in which the issuing bank has a security interest). Nevertheless, the FRB recognized that Bank CLNs can effectively transfer credit risk; as such, the FRB is willing to exercise its “reservation of authority” to grant capital relief on a case-by-case basis for Bank CLNs where the only two features of the Bank CLNs that depart from the strictures of Regulation Q are those described above. In other words, Bank CLNs can offer capital relief, but only if the issuing bank specifically requests such relief from the FRB and the FRB decides to grant such relief under its reservation of authority powers.

In his [statement](#) dissenting on the issuance of the U.S. Basel III endgame proposed rules—our discussion of which is available [here](#)—Federal Deposit Insurance Corporation (“FDIC”) Director Jonathan McKernan argued for increased clarity on the FRB’s position with respect to CLNs in order to provide U.S. banks with better parity in relation to their European counterparts (which routinely issue CLNs in different formats). While these FAQs may not fully address FDIC Director McKernan’s concerns, they do begin to provide some clarity concerning the effective use by banks of CLNs as capital management tools.

(This article originally appeared in [Cadwalader Cabinet News & Views](#) a weekly newsletter)

Meet Our 2023 Finance Forum Keynote Speaker

October 6, 2023



Meet us on Thursday, October 19, at The Ritz-Carlton in Charlotte for the **2023 Cadwalader Finance Forum!** Hear from thought leaders and top executives including our keynote speaker, Michael Dryden.

"The Main Forum: A Conversation With Michael Dryden," will cover:

- The Evolution of Finance: The outlook for alternating lending and structured products.
- Deploying Capital: What are the most interesting risk/return opportunities across the credit landscape?
- Help or Hindrance: Does the impressive growth in direct lending come at the expense of securitization?
- Different Strokes: The bank process compared to private credit approach.

For the latest full list of panels, speakers and other details, visit our event's [website](#).

Register Now for the European Finance Forum

October 6, 2023



Please join us for our inaugural European Finance Forum on 12 October 2023 focussing on bringing together fund managers, financial institutions and alternative lenders across the European finance industry to discuss some of the most topical issues across our industry today. We have some of the leading private capital, debt finance and advisor representatives on our panels (more details to be announced) and are delighted to be joined by a surprise keynote speaker for a fireside chat.

When: 12 October 2023

Where: The Biltmore Mayfair, 44 Grosvenor Square, London, W1K 2HP

Agenda:

- 14:00 - 14:30: Registration
- 14:30 - 14:40: Welcome and Opening Remarks
- 14:40 - 15:10: ESG Outlook: What's Next for ESG Investment and Finance?
- 15:20 - 16:05: Liquidity Challenges for Private Markets Funds
- 16:15 - 17:00: Private Credit: Driving Deal Making in Today's Economy
- 17:10 - 17:55: Leveraging Loan Portfolios: Trends and Opportunities in the Broadly Syndicated and Middle Markets
- 18:00 - 18:30: Keynote Speaker Fireside Chat
- 18:30 - 22:00: Networking Drinks

For more information, please contact Michelle Da Costa, michelle.dacosta@cwt.com.

Congratulations to The Legal 500 United Kingdom 2024

October 6, 2023

Cadwalader Recognized Among Leading Law Firms in The Legal 500 United Kingdom 2024

Cadwalader has been recognized across a broad range of practice areas in the 2023 edition of *The Legal 500 United Kingdom*.

Congratulations to our UK team for being ranked in Tier 1 of Fund Finance. Samantha Hutchinson, Nathan Parker, James Hoggett, Mathan Navaratnan and George Pelling are all ranked in Fund Finance as a Leading Individual, Next Generation Partner and Recommended Lawyers, respectively.

You can see the full rankings [here](#).