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Cabinet **News and Views**

Informed analysis for the financial services industry

Moving Forward

March 16, 2023

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Well, that escalated quickly.

It's hard to believe that just a week ago we were talking about crypto, ESG, fintech and other ongoing bank regulatory and financial services topics. Then came the sudden, lightning-quick collapse of Silicon Valley Bank, followed over the weekend by Signature Bank, and everything turned upside down.

In this past week, we talked with clients, regulators, lawyers at other firms and so many more participants in the financial services industry, and also amongst ourselves – all in an attempt to fully comprehend the impact of these developments and to provide the best possible guidance directly to our clients and in our thought leadership.

The SVB and Signature bridge banks are open, and transactions are moving forward. We are all following the news to try to prognosticate what the near- and longer-term future will hold – but crystal balls always tend to be a bit foggy.

So we'll continue to tell you everything we know and will continue to update our "Financial Markets Resource Center" over the coming days and weeks (and months?). One resource in the Center worth highlighting, if you haven't seen it already, is our interdisciplinary "Quick Take" produced on Monday.

And, oh, by the way, life goes on in the financial services world, and today Mercedes Tunstall looks at the coming FedNow instant payment service and Alix Prentice covers a couple of noteworthy UK developments.

As always, and perhaps now more than in recent weeks, just drop me a line here if there's anything on your mind.

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

We're Here to Help

We have created a "Financial Markets Resource Center" to serve as a central point of access for our firm's insights regarding the SVB- and Signature-related market developments.

The resource center features our best thinking on the banking industry – in the form of *Clients & Friends Memos* and special issues of *Cabinet News and Views*, *Fund Finance Friday* and *REF News and Views*. We are also populating the resource center with additional informational resources and will continue to develop this resource center with timely content as it is produced.

And, of course, our best resource of all is our transatlantic team. Our full complement of lawyers – from financial services and financial regulatory to transactional and financial restructuring – have been working around the clock and around the globe to monitor developments and to advise our clients on active transactions and the broader implications of the ever-changing developments.

We're here to help.

FRB Establishes Bank Term Funding Program to Aid Liquidity Availability

By **Daniel Meade**
Partner | Financial Regulation

As we noted very briefly on Monday in our "Quick Take on a Sudden Change in the Banking Landscape," among the various actions the government took Sunday evening to try to stabilize the banking market, the Federal Reserve Board ("FRB") invoked its authority under Section 13(3) of the Federal Reserve Act to establish the Bank Term Funding Program ("BTFP") "to support American businesses and households by making additional funding available to eligible depository institutions to help assure banks have the ability to meet the needs of all depositors."

As articulated in the posted term sheet and the FAQs about the program released yesterday, the FRB has designed this program with generous terms for insured depository institutions (including credit unions). The program differs from regulatory discount window lending – for example, one of the major ways is that eligible collateral is valued at par, with no haircut and no marking to market. This feature of the program is important to encourage use and is an important feature that alleviates some of the reported stress experienced by Silicon Valley Bank. However, loans made under the program are made with recourse to the eligible borrower beyond the eligible collateral.

Examples of eligible collateral include the following direct obligations:

- U.S. Department of the Treasury;
- Federal Agricultural Mortgage Corporation (Farmer Mac);
- Federal Farm Credit Banks Funding Corporation (Farm Credit System);
- Federal Home Loan Bank (FHLB) System;
- Federal Home Loan Mortgage Corporation (Freddie Mac);
- Federal National Mortgage Association (Fannie Mae);
- Financing Corporation (FICO);
- Resolution Funding Corporation (REFCO);
- Student Loan Marketing Association (SLMA); and
- Tennessee Valley Authority.

Mortgage-backed securities issued or guaranteed by Ginnie Mae, Freddie Mac and Fannie Mae are also eligible collateral under the program.

The program will be open until at least March 11, 2024.

July Launch of FedNow Service

By Mercedes Kelley Tunstall
Partner | Financial Regulation

This week the Federal Reserve reported that its instant payment service, FedNow, will be available for all participating financial institutions to use starting in July 2023.

Access to the service will be provided through the Federal Reserve's FedLine network, which presently serves more than 10,000 financial institutions. Instant payment services, until now, have been offered mainly by fintechs and, to the extent those services have been adopted by depository institutions, there have been significant limitations on dollar amounts than can be transferred and the number of transactions that are permitted.

The FedNow service will allow depository institutions to have greater confidence regarding how the instant payment system works, which means that the average dollar amount and overall number of instant payments will most likely increase. This can be very good news for businesses in particular, but also presents opportunities for consumers to be able to instantly pay important bills, instead of having to schedule payments a few days in advance. As Tom Barkin, president of the Federal Reserve Bank of Richmond and FedNow Program executive sponsor, observed, "With the FedNow Service, the Federal Reserve is creating a leading-edge payments system that is resilient, adaptive, and accessible. The launch reflects an important milestone in the journey to help financial institutions serve customer needs for instant payments to better support nearly every aspect of our economy."

Financial Conduct Authority Updates its Statement on the London Metal Exchange's Suspension of the Nickel Market

By **Alix Prentice**
Partner | Financial Regulation

In an announcement on 3 March 2023, the UK's Financial Conduct Authority ("FCA**"**) confirmed that it has opened an enforcement investigation into the London Metal Exchange's ("LME") decision to suspend its nickel market.

Background

Between 8 and 16 March 2022, and in the wake of "challenging" market conditions following the Russian invasion of Ukraine, the LME suspended nickel trading and cancelled trades due to a disorderly market in which prices doubled to more than $100,000 per tonne. The FCA undertook to review the LME's management of the suspension (following an appropriate period of market stability) and determine whether there were any lessons to be learned about the LME's governance and market oversight processes.

Current FCA enforcement review

While encouraged by the LME's drive to increase the transparency of OTC trading in order to support risk management of on-exchange trading, the FCA has been clear with the LME that it should consider how the events of 2022 can inform its future work on market structure and risk management and the part transparency plays. It has now decided to open an enforcement investigation into elements of the LME's conduct and its systems and controls in place at the relevant time.

The UK's Prudential Regulation Authority Proposes Changes to Deductions for Non-Performing Exposures

By **Alix Prentice**
Partner | Financial Regulation

On 14 March 2023, the PRA launched a consultation on the *Deductions for Non-Performing Exposures (Revocations) (CRR) Instrument 2023* to remove the current Common Equity Tier 1 ("CET1") deduction requirement for NPEs that are treated as insufficiently covered by firms' accounting provisions, along with associated regulatory reporting requirements.

Background and proposed changes

In April 2019, the EU Capital Requirements Regulation ("CRR") was amended to require CET1 deductions for all new NPEs held by EU institutions that were subject to accounting provisions below CRR levels. This requirement was intended to encourage a reduction in NPE positions and to prevent future excessive accretion as part of an overall drive to prevent systemic risk in the non-banking sector. Following Brexit, and the onshoring of CRR into UK law and the PRA Rulebook, the PRA now considers that the NPE deduction is no longer appropriate for UK CRR firms, largely because the requirement does not recognise collateral charged against an NPE and requires the calculation of a provisioning shortfall based on gross exposure amounts. The PRA has concluded that the deduction does not actually reflect expected recovery values for exposures, and that its own powers to address potential risks of under-provisioning are a sufficient backstop to deal with provisioning shortfalls when necessary.

Responses to the consultation are due by 14 June 2023.