BANKING LAW ALERT
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Financial System in Distress-Silicon Valley Bank and Signature Bank Closures Create Uncertainty for Businesses, Boards and Fiduciaries

On March 10, 2023, following a large increase in deposit withdrawals at Silicon Valley Bank ("SVB") stemming from the perception of depositors of liquidity issues, the California Department of Financial Protection and Innovation closed SVB. The FDIC implemented the "systemic risk exception", and transferred all deposits insured and uninsured, and substantially all of the assets of SVB to an FDIC-operated bridge bank, Silicon Valley Bridge Bank, NA. Silicon Valley Bridge Bank opened for business on Monday, March 13, 2023 and resumed normal banking activities.

Two days later, on Sunday, March 12, 2023, the New York State Department of Financial Services closed Signature Bank ("Signature"), which was at risk of experiencing withdrawals in excess of its readily available liquid funds. As with SVB, the systemic risk exception was applied, and the FDIC transferred all deposits and substantially all of the assets of Signature to Signature Bridge Bank, NA. On Monday morning, all banking activities resumed.

In order to assure depositors of availability, the Federal Reserve has created a new bank funding program under which it would provide loans to financial institutions at risk of sustaining liquidity issues. These government loans would be collateralized by high-quality, longer-term investments owned by such institutions (such as U.S. treasuries, mortgaged-backed securities, etc.) at face value rather than market value.

These drastic actions approving the systemic risk exception, protection of depositor funds, and providing additional liquidity to affected financial institutions was done in an effort to protect the financial system and to limit potential contagion that may have flowed from SVB and Signature failures. While it seems that depositors at SVB and Signature can breathe a sigh of relief, businesses, entrepreneurs, fiduciaries, managers and Boards still face a myriad of legal issues in the continued operation of their respective businesses, including but not limited to:

- Ongoing ability of your financial institution to make advances or loans on existing credit facilities;
- Stability of counterparties to SWAP agreements;
- Form of Escrow deposits and associated disclosures;
- Enforcement of letters of credit;
- Fiduciary obligations and potential fiduciary liability;
- Financial Statement disclosure obligations;
- Availability of, and the ability to raise capital, and/or increase liquidity;
- Status of current transactions including, but not limited to, new loans and credit facilities;
- Availability and status of authorized/approved depositories in insolvency matters; and
- Obligations and claims related to pre-existing contractual obligations with SVB and Signature.

Ruskin Moscou Faltischek P.C. has created an interdisciplinary group chaired by Michael L. Faltischek, with the requisite experience, skill and capability to address these and additional issues that arise from the present banking crisis, including members Steven J. Kuperschmid, Peter Marullo, Michael S. Amato, Sheryl P. Giugliano, Lois Bladykas and Daniel L. McAuliffe.

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