

Insights

SOME GOOD NEWS FOR DEPOSITORS OF SILICON VALLEY BANK AND SIGNATURE BANK

Mar 12, 2023

Here is the latest regarding Silicon Valley Bank (“SVB”) and Signature Bank as of Sunday, March 12th according to the FDIC. We expect to learn more by COB Monday, March 13th:

Depositors will have access to all of their money starting Monday, March 13.

In a Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC issued on Sunday, March 12, 2023, the US Federal Government approved actions that protect all depositors. Depositors will have access to all of their money starting Monday, March 13. No losses associated with the resolution of Silicon Valley Bank will be borne by the taxpayer.

Signature Bank, New York, New York was closed by regulators today (March 12, 2023). **All depositors of this institution will also be made whole**, with no losses borne by the taxpayer. We expect to have similar information available for Signature Bank very soon.

SVB Quick Background: On Friday, March 10, 2023, Silicon Valley Bank was closed by the California Department of Financial Protection & Innovation and the FDIC was named Receiver. The FDIC has created the Deposit Insurance National Bank of Santa Clara (DINB) to facilitate access to insured deposits and continuity of certain financial transactions, and immediately transferred to the DINB all insured deposits of SVB. All other assets and liabilities of the former SVB remain with the FDIC as-receiver. This action is unprecedented in recent history in terms of size and complexity.

In the UK/SVBUK: The Bank of England has announced it intends to apply to the High Court to place the UK subsidiary of SVB (“SVBUK”) into a Bank Insolvency Procedure. This would mean that eligible depositors will be paid out by the FSCS as quickly as possible up to the protected limit of £85,000 or up to £170,000 for joint accounts. SVBUK’s other assets and liabilities would be managed in the insolvency process by the bank liquidators and recoveries distributed in due course to creditors.

Impact on non-deposit accounts: These accounts generally include sweep or repurchase arrangements, securities or investment contracts, mutual funds, U.S. Treasury bills, bonds or notes.

Such products are not typically insured by the FDIC, and their treatment within the receivership process will vary based on the terms and conditions of the governing agreement and depending on SVB's role relative to such products, which may be repudiated by the FDIC. Holders of repudiated contracts are generally entitled to recover damages from the receivership subject to the availability of assets to cover those damages, subject to their relative priority to other claims (not dissimilarly to uninsured depositors, though subordinated to them). Certain financial contracts known as Qualifying Financial Contracts or "QFCs" are subject to additional rights and protections in favor of their holders, and additional amounts may be available to QFC counterparties (and/or the interests of those counterparties may be protected by valid securities interests or other rights). Whether any specific financial contract is a QFC is a facts-and-circumstances analysis. The FDIC may also elect not to repudiate QFCs (or other contracts), in its discretion, which discretion is a material component of how a receivership may impact specific counterparties to specific agreements.

SVB borrowers: You should continue to make your loan payments to SVB at the same address as you have in the past. All escrow services previously performed related to your loan will continue. Should you receive notification that any portion of your taxes or insurance was not paid, please notify your loan officer immediately. The FDIC expects to sell all loans, and it will be up to the new owner to determine the best method to collect the loan. If your loan is sold, you will be notified by mail in advance of the sale. You have the right to refinance your loan with another institution.

No access to line of credit: All lines of credit, including home equity lines, will be permanently frozen as of the closing on March 10, 2023. You will need to establish a new line of credit with your new bank.

Can I sue SVB? Generally no. Nor is it recommended at this time. Claims against the former SVB entity (such as claims as a depositor under the terms of a deposit agreement) are now claims against FDIC and would be dealt with through the statutory receivership claims process.

Auction status: We understand that the FDIC auction for the assets of SVB is underway; it began Saturday night; and final bids are due today (Sunday). It is unclear whether the joint release indicates that the FDIC was unable to find a "whole bank" buyer, since the usual playbook under that resolution would see that buyer purchasing substantially all of the assets of SVB, as well as agreeing to take on the vast majority, if not all, deposit liabilities, including uninsured deposits. That other approaches were used may mean that such a buyer didn't emerge on sufficiently favorable terms or at all, though that is speculation. In any event, this resolution brings some much-needed clarity for SVB (and Signature) depositors, although whether it will be the end of the broader story in the US financial industry remains to be seen.

Next steps: Monday, March 13, 2023 is a big day both in the US and in the UK. BCLP will provide an update as soon as possible.

BCLP is closely monitoring the aftermath of the Silicon Valley Bank (SVB) closure and its impact on our US and non-US clients. BCLP is dedicated to providing practical information and solution oriented advice as these events transpire. The situation with SVB is fluid and fast moving; this alert is based on the limited information that is currently available. In the meantime, we know that everyone has unique circumstances that cannot be answered by a simple alert. The names of our SVB team members are below and we are happy to discuss your specific situation.

RELATED PRACTICE AREAS

- Restructuring & Insolvency/Special Situations
- Finance
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