

Insights

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

Mar 14, 2023

Here is the latest regarding the former Silicon Valley Bank of Santa Clara, California (“SVB”) and Signature Bank of New York, NY (“SB”) as of Monday, March 13, 2023 according to the FDIC and other regulators. We expect to learn more as the situation develops and will make further updates available as soon as possible.

SVB and SB depositors should have uninterrupted access to all of their funds. With chartering help from the Office of the Comptroller of Currency (“OCC”), the FDIC effectively made its own “whole bank” deal for the deposits, qualified financial contracts (“QFCs”), and “substantially all” of the assets of SVB and SB, by creating bridge banks for both SVB and SB. QFCs are comprised of sweep, repurchase, forward, and other securities contracts and similar arrangements that can often have deposit-like qualities or be bundled with deposit products.

This action was taken pursuant to special authority for the FDIC (with requisite Treasury and Federal Reserve concurrence) to implement steps to address “systemic risk” to the financial system. All insured and uninsured SVB and SB deposits are being transferred to the applicable bridge bank. As a result, **depositors should have uninterrupted access to all of their funds on deposit, even in excess of the standard \$250,000 per depositor, per ownership category, per institution limit.** This should provide for a much more certain and stable transition for all parties.

The SVB bridge bank is a different entity than the deposit insurance national bank that was originally created for SVB, and will function more comprehensively like a successor institution to SVB, though it will still work to liquidate assets and shift deposit liabilities over time. This special action followed a period of uncertainty following the closing of SVB that evidently included failed efforts to arrange a traditional private bank acquisition. Similar action was taken in connection with the abrupt closing of SB. In both cases, the FDIC will continue to work separately to liquidate the banks’ respective assets that have been retained by their receivers. These may be sold to one or more purchasing banks, or could ultimately be pooled or auctioned to bank and non-bank investors. Until that happens, the receivers will continue to administer those assets that were retained.

SVB Background. On Friday, March 10, 2023, the California Department of Financial Protection & Innovation closed SVB and the FDIC was named receiver. The FDIC initially created the Deposit Insurance National Bank of Santa Clara (DINB) to facilitate access to insured deposits and continuity of certain financial transactions, but has since transferred all deposits, QFCs and “substantially all” of the assets of the former SVB to the new, full-service, FDIC-operated Silicon Valley Bank, N.A. bridge bank. This action is unprecedented in recent history in terms of size and complexity.

SB Background. On Sunday, March 12, 2023, the New York State Department of Financial Services closed SB and appointed the FDIC as receiver. As noted above, under the same special authority referenced with respect to SVB, the FDIC then transferred all deposits, QFCs and “substantially all” of the assets of SB to a newly created bridge bank, Signature Bridge Bank, N.A., operated by the FDIC.

Impact to commercial counterparties of either SVB or SB. The FDIC as receiver has authority to repudiate certain contracts to which the former banks have been party, and to limit the damages available to parties to such repudiated contracts. 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).

SVB and SB borrowers. We would presume, given the transfer of “substantially all” of the assets of both banks, that loans made by the former SVB and SB were in most cases transferred to the respective bridge banks. Based on historical receiverships, we would expect the receiverships to retain certain assets where the receiver may believe that it is better positioned to realize value to the deposit insurance fund than through immediate transfer to the bridge bank (such as in connection with claims that it may be able to assert). Unless and until you hear otherwise, you should continue to make your loan payments to SVB and SB as you have in the past. All escrow services previously performed related to loans will continue. We would expect the bridge banks to take a variety of approaches to loan assets, in some cases holding and working those assets, but we would also not be surprised by subsequent secondary market sales of loans or pools of loans by the bridge bank.

No access to line of credit. All SVB lines of credit, including overdraft lines, were frozen as of the closing on March 10, 2023, and it is believed that similar action was taken in respect of SB lines of credit. However, recent changes to the FDIC’s press releases now indicate that lines of credit have been transferred to the bridge banks, and invite dialogue with borrowers. What position the bridge banks will ultimately take in respect of these instruments is unclear.

What do I do if I am a counterparty to a non-account arrangement with SVB or SB? We know many parties are evaluating existing relationships with SVB or SB – by way of example, we are aware of multiple situations where SB or SVB holds collateral accounts in which proceeds of operations are deposited on a periodic basis. We are working with many clients in evaluating their options but

unfortunately, there is not a “one-size-fits-all” approach that might exist in a U.S. Chapter 11 bankruptcy scenario (whereby someone could terminate a contract with a Chapter 11 debtor by seeking relief from the automatic stay). The rights and remedies that may exist will be very specific to both the contracts between the failed bank and the counterparty, and the format/extent of the relationship between the parties. For these kinds of issues, we suggest contacting your BCLP relationship attorney, as they can direct you to our internal experts. By way of example, we are currently advising third party clients with respect to a variety of different commercial relationships that go beyond account holders, including lending arrangements, servicing, cash management, escrow accounts and control agreements held at or by SVB or SB.

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

SVBUK. SVBUK is a separate corporate entity of SVB regulated in the UK by the Prudential Regulation Authority. UK Chancellor, Jeremy Hunt, announced earlier today that, following urgent talks throughout Sunday night with the Bank of England and HSBC, SVBUK was to be rescued by HSBC in a £1 sale transaction, staving off the potential collapse of thousands of UK tech startups and big losses for their investors.

Prior to striking the deal with HSBC, over the weekend the Bank of England had been lining up a bank insolvency process to provide for the orderly winding up of SVBUK, which would have activated the UK deposit protection scheme for eligible depositors under the Financial Services Compensation Scheme. This scheme would have paid out eligible depositors up to the protected limit of £85,000 or up to £170,000 for joint accounts. Claims in excess of these guaranteed amounts would then be dealt with as part of the UK statutory bank insolvency process.

Distributions to such creditors would have depended on the extent of asset realizations after payment of fixed charge holders and insolvency costs and expenses, so would be somewhat uncertain.

The HSBC takeover has the effect of protecting SVBUK's 3,500 customers which were at risk of being wiped out due to immediate cash flow solvency concerns, although the UK Government was planning to provide some kind of cash flow support on an emergency basis in the form of Government guaranteed loans for the UK tech sector similar to those offered to businesses during COVID-19. The UK Government however preferred to see an outcome involving a private deal after a short tender process, and this was achieved with the sale of SVBUK to HSBC. The acquisition by HSBC will see deposits protected and the stabilization of SVBUK's operations without involving the UK taxpayer.

BCLP is closely monitoring the aftermath of the Silicon Valley Bank (SVB) and Signature Bank (SB) closures as well as SVBUK and the 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 these financial institutions is fluid and fast moving; accordingly, this alert is based on the information that is available at the time of posting. We also know that everyone has unique circumstances that cannot be answered by a simple alert. The names of our SVB, SVBUK and SB team members are below and we are happy to discuss your specific situation.

RELATED CAPABILITIES

- Finance
- Financial Institutions
- Financial Services Corporate & Regulatory Team

MEET THE TEAM



Kenneth M. Achenbach

Atlanta

ken.achenbach@bclplaw.com

+1 404 572 6808



Richard Obank

London

richard.obank@bclplaw.com

+44 (0) 20 3400 2207



David J. Chambers

St. Louis

david.chambers@bclplaw.com

+1 314 259 2123

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.