SILICON VALLEY BANK AND SIGNATURE BANK CLOSURES; FEDERAL REGULATORS ANNOUNCE PLAN TO PROTECT DEPOSITORS

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On Friday, March 10, 2023, the California Department of Financial Protection & Innovation, aided by the Federal Deposit Insurance Corporation ("FDIC") shuttered Silicon Valley Bank ("SVB") over concerns surrounding its solvency. This marked the first large bank collapse since 2008, and the second largest FDIC-insured bank to ever fail.

Prior to its shutdown, SVB was the 16th largest bank in the United States with approximately $209 billion in assets and $175 billion in deposits as of December 31, 2022. SVB was a major source of depository services and liquidity, including as a lender, to companies, investment funds and investors in the technology, fintech and life sciences sectors, among many others.

On Sunday, March 12, 2023, the federal regulators announced that the New York State Department of Financial Services had closed Signature Bank, a New York state-chartered bank ("Signature") which had total assets of approximately $110.36 billion and total deposits of approximately $88.59 billion as of December 31, 2022, and appointed the FDIC as receiver. Signature Bank was a commercial bank with diverse business lines, including commercial real estate and cryptocurrency banking.

On Sunday, a joint statement by Secretary of the Treasury Janet L. Yellen, Federal Reserve Board Chair Jerome H. Powell, and FDIC Chairman Martin J. Gruenberg announced that the FDIC will resolve both SVB and Signature in a manner that fully protects all depositors, meaning that customers will not be subject to the usual $250,000 FDIC deposit insurance limit. Depositors of SVB will have access to all of their money starting Monday, March 13th. This is a significant step that will allow bank customers continued ability to operate in the ordinary course, including meeting their payroll and other obligations without waiting until a buyer is found for SVB's and Signature's assets, which may happen at an uncertain time in the future, if at all.

What happens to funds held at SVB and Signature?

The FDIC was appointed as receiver for SVB's assets and created the Deposit Insurance National Bank of Santa Clara (DINB) and transferred to the DINB all insured deposits of SVB. A similar process will be implemented for Signature. This temporary measure protects insured depositors and, coupled with Sunday's announcement that depositors' funds will be fully protected, will allow bank customers to transition to a new financial services institution in an orderly manner and limit disruptions to the economy caused by uncertainty around the timing and amount of funds that customers will be able to access.

The FDIC has stated that bank branches and online banking will reopen as of Monday, March 13th, and that ATMs, checking and direct deposit services should be available on that date as well for a limited period of time. Clients with banking relationships with SVB should begin making plans to open accounts at an alternative financial institution and transfer funds as they become available.

What happens to loans, lines of credit, letters of credit or credit cards issued by SVB?

The FDIC, through DINB, has assumed responsibility for servicing existing loans held by SVB and will likely announce plans to do the same with respect to Signature. The FDIC has stated that current SVB borrowers should continue to make payments under their existing loan facilities and credit cards, subject to possible set-off rights against uninsured account balances. However, the FDIC has no obligations to fund additional loans or draws on existing loan facilities with SVB. This may change in the coming days if an acquirer is found for the bank or its assets.

If you have an existing loan, line of credit, letter of credit or credit card with SVB or Signature, or are the beneficiary of a letter of credit drawn on SVB or Signature, please consult your RCCB attorney for guidance before taking any action, including making payments on existing loans or credit cards. If you have an imminent need for liquidity beyond your insured balance, you will need to seek new financing sources.

Should I be concerned if my company did not have direct exposure to SVB or Signature?

Even companies that did not have direct banking relationships with SVB need to assess whether they have any indirect exposure through their relationships with their investors, lenders or contractual counterparties.

- Private equity and venture capital funds should evaluate whether any of their portfolio companies had banking relationships, including loans or other credit facilities with SVB or Signature, and as a result, will have difficulty meeting payroll or other obligations. In addition, lenders to or limited partners of these funds may have had banking relationships with SVB and may have difficulty funding draws or meeting capital calls that relied upon the availability of credit.
- Companies with upcoming investments, acquisitions or dispositions of businesses or real estate or other significant corporate transactions should determine if SVB or Signature was a direct or indirect debt or equity funding source and evaluate the effects of the closures on sources of cash and timing for these transactions as well as consider alternative financing arrangements as necessary.
- Certain other community and regional banks have also suffered significant market declines in the past few days. CFOs and other financial executives should continue to monitor market developments and consider, together with their boards, whether it is in their best interest and within their fiduciary duty to move some or all of their accounts to another financial

institution, or at a minimum, to establish a relationship and accounts with a secondary bank in case they need to move funds quickly.

- The FDIC has advised that customers should be on alert for potentially fraudulent activity and stated that the FDIC will not contact anyone asking for confidential information.

RCCB will provide additional updates and client guidance as more information becomes available. If you have questions, please contact Alyssa Brodzinski (abrodzinski@rccblaw.com) or Jennifer Tintenfass (jtintenfass@rccblaw.com).

PROFESSIONALS

Alyssa J. Brodzinski

Jennifer Ilana Tintenfass

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