THE COLLAPSE OF SILICON VALLEY BANK AND SIGNATURE BANK AND FDIC RECEIVERSHIPS GENERALLY

Hodgson Russ Banking & Finance Alert
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On Friday, March 10, 2023, the California Department of Financial Protection and Innovation closed Silicon Valley Bank ("SVB") and appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver. To protect depositors, the FDIC created the Deposit Insurance National Bank of Santa Clara ("DINB") and the FDIC, as receiver of SVB, immediately transferred all SVB deposits and assets to the DINB.

In the aftermath of the closure of SVB, the New York State Department of Financial Services closed New York-based Signature Bank on Sunday, March 12, 2023, and the FDIC was named receiver. Similarly to the closure of SVB, the FDIC transferred all the deposits and substantially all of the assets of Signature Bank to Signature Bridge Bank, N.A. (together with DINB, a "Bridge Bank").

Although there is still much that remains to be determined, here are some things you should know about the FDIC and bank failures generally. If you are a creditor or depositor of SVB or Signature Bank, you should be aware that the FDIC announced today that it will backstop all deposits even though it typically only insures up to $250,000. The FDIC has also indicated that customers will continue to have uninterrupted access to their funds and to full banking operations with both Bridge Banks. The information below is based upon the standard protocols of the FDIC which, as noted below, may not be applicable to the closures of SVB and Signature Bank.

What is the FDIC?

The FDIC is an independent agency of the United States government created by Congress to maintain stability and public confidence in the nation's financial system. As part of its mandate, the FDIC protects depositors of insured banks located in the United States, such as SVB and Signature Bank, against the loss of their deposits if an insured bank fails. FDIC insurance is backed by the full faith and credit of the United States government.

Who is covered by FDIC insurance?

Attorneys

Jessica Chue
Brandon Cottrell
Krystal Daniels
Collin Doane
Christofer Fattey
Amy Fitch
Andrea Gervais
Meredith Morgan
Rafael Pignataro
Chelsea Reinhardt
Frank Sarratori
Valerie Stevens
Melissa Subjeck
Brianne Szopinski
James Thoman
Shannon Wagner
Dylan Weber
Sujata Yalamanchili

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Any depositor, whether it be a natural person or entity, is covered by FDIC insurance coverage in an insured bank. A depositor does not have to be a U.S. entity, citizen or resident to have its deposits insured by the FDIC. FDIC insurance only protects depositors, although some depositors may also be creditors or shareholders of an insured bank.

What is covered by FDIC insurance?

FDIC insurance covers depositors' accounts at each insured bank, dollar-for-dollar, including principal and any accrued interest through the date of the insured bank's closing, up to $250,000 (as further described in the next question).

FDIC insurance covers deposits in the following types of accounts:

- Checking accounts
- Negotiable Order of Withdrawal accounts
- Savings accounts
- Money market deposit accounts
- Time deposits such as certificates of deposit
- Cashier's checks, money orders, and other official items issued by a bank

FDIC insurance does NOT cover securities and investments, including stocks, bonds, mutual funds, crypto assets, life insurance policies, annuities, or municipal securities; it also excludes coverage for safe deposit boxes and its contents. As of the date of publication of this Client Alert, SVB Securities, the investment bank arm of SVB, announced that it will continue its operations unimpeded by SVB's receivership proceedings.

How much does the FDIC insurance cover?

As mentioned above, the FDIC has announced that it will insure all deposits at both SVB and Signature Bank regardless of how much each depositor held at each bank. However, the standard FDIC insurance amount is $250,000 per depositor, per insured bank. Additionally, the FDIC provides separate insurance coverage for funds deposited into different "ownership categories" which include the following:

- Single Accounts
- Certain Retirement Accounts
- Joint Accounts
- Revocable Trust Accounts
- Irrevocable Trust Accounts
- Employee Benefit Plan Accounts
- Corporation/Partnership/Unincorporated Association Accounts
- Government Accounts

This means that a bank customer who has multiple accounts may qualify for more than $250,000 in insurance coverage if the customer's funds are deposited in different ownership categories and the requirements for each ownership category are met.[1]

However, if a bank customer has multiple accounts of the same type, for instance, checking accounts, the FDIC would only insure a total of $250,000 of deposits in all such checking accounts. Additionally, deposits in separate branches of an insured bank are not separately insured.

The accounts of separate persons or legal entities such as affiliates or subsidiaries of another depositor each have their own limit, provided that such persons or legal entities have their own business purpose (i.e. such entity was not set up solely for the purpose of obtaining additional FDIC insurance).

What if I have deposits exceeding the insured amount?

Although not applicable to the closure of SVB or Signature Bank, the FDIC typically provides customers of a failed bank with a receivership certificate for all uninsured funds in excess of the $250,000 per depositor, per account in different ownership categories. As the FDIC liquidates assets of the failed bank, it makes dividend payments to all certificate holders on a pro rata basis, similar to payments made out of a bankruptcy proceeding.

When can I expect to withdraw my deposits?

All depositors with both SVB and Signature Bank should have access to its deposits as of Monday, March 13, 2023. In a more typical FDIC receivership, an "interim" distribution of some portion of the account balance may be made based upon the FDIC's review of the assets and liabilities of the failed bank.

General Unsecured Creditors:

If you have provided goods and services to either SVB or Signature Bank or leased office space or equipment to either Failed Bank, you may be eligible to file a claim against the FDIC as Receiver.

If you are a creditor of SVB and have not been paid for goods or services rendered prior to March 10, 2023, you should review information about how to file claims on the FDIC's claims portal which can be found here: FDIC SVB Claims Portal.

If you are a creditor of Signature Bank and have not been paid for goods or services rendered prior to March 12, 2023, you should review information about how to file claims on the FDIC's claims portal which can be found here: FDIC Signature Bank Claims Portal.

A failure to properly submit a proof of claim could lead to a waiver of rights and/or recoveries. As a result, any creditor or potential creditor of either Failed Bank should continue to actively monitor the situation and consider any rights that may exist under specific contractual arrangements with such Failed Bank.

Additionally, creditors that received money prior to the appointment of the receiver should be mindful of potential clawback actions for those creditors that received preferential treatment before withdrawals and transfers were halted.

What is the order of payment among different classes of creditors?

In accordance with Federal law, allowed claims will be paid, after administrative expenses, in the following order of priority:

1. Depositors
2. General Unsecured Creditors
3. Subordinated Debt
4. Stockholders

What if I have a loan with one of the Failed Banks?

Borrowers should continue making payments on their loans in accordance with the terms of their loan agreements. It is not advisable to risk a default even though your lending institution is closed.

If you hold a line of credit or construction or development loan with either Failed Bank, you should not expect additional advances. While guidance is still developing and polices can change, when the FDIC is appointed as receiver, it does not generally continue lender operations of a failed bank. However, in very limited circumstances, the FDIC can consider advancing funds if it determines an advance is in the best interest of the receivership, such as to protect or enhance collateral, or to ensure maximum recovery to the receivership. Additionally, the FDIC can consider emergency funding needs required to ensure the short term viability of a borrower, to protect or enhance collateral value, or for public safety.

It should also be noted that, as Receiver of SVB and Signature Bank, the FDIC has the right to sell your loan to another banking institution without your consent. The FDIC also has the right to undertake discussions with you to mutually restructure or modify your loan and funding commitment, and exercise its statutory right as receiver to repudiate its funding obligations with respect to the loan if it determines that these obligations are burdensome to the receivership and that repudiation would promote the orderly administration of the receivership.

Can the FDIC setoff my deposits against my loan?

According to the FDIC guidance, if you have a delinquent loan, the FDIC will set off the loan against the borrower's deposits (if any) before paying deposit insurance. In the case of a non-delinquent loan, the depositor might elect to set off the loan against its deposits in order to receive full value for any uninsured funds (*i.e.*, funds in excess of the $250,000 insurance limit).

What happens to any payments (wires/ACH/checks) that are outstanding?

Payments drawn on accounts will paid by the Bridge Banks. In a typical bank failure, the FDIC would only process payments up to the $250,000 insurance limit but we believe all deposits with SVB and Signature Bank will be honored.

Additional resources:

- For other FAQs, see the FDIC's website: FDIC: Silicon Valley Bank FAQs
- The pertinent provisions of the Federal Deposit Insurance Act can be found here: FDIC Law, Regulations, Related Acts - Federal Deposit Insurance Act
- The FDIC rules can be found here: http://www.fdic.gov/regulations/laws/rules/2000-7800.html
- The FDIC Resolution Handbook which reflects the FDIC's high level description of the receivership process, including a contrast with the bankruptcy framework can be found here: Crisis and Response: An FDIC History, 2008–2013

Disclaimer:

This Client Alert addresses general issues relating to the SVB and Signature Bank collapse and FDIC receiverships generally. Your particular circumstances may differ from the general ones described herein and you should not take any action based on this alert alone without consulting a licensed legal professional who can assist you with your specific circumstances.

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[1] For more information on ownership categories, see the FDIC's brochure "Your Insured Deposits" which can be accessed at https://www.fdic.gov/deposit/deposits/brochures/your-insured-deposits-english.html.