March 12, 2023 • Advisory • www.atllp.com

GOVERNMENTS EXTEND A SAFETY NET FOR SVB DEPOSITORS WHILE SIGNATURE BANK SHUTTERS

UPDATED: March 13, 2023

On March 12, 2023, the U.S. Treasury Department (Treasury), Federal Reserve (Fed) and Federal Deposit Insurance Corporation (FDIC) released a "Joint Statement" confirming that depositors of Silicon Valley Bank (SVB) "will have access to all of their money starting Monday, March 13." From that statement, it appears that SVB deposits in excess of the FDIC's $250,000 insurance limit will be accessible by depositors Monday morning. How many depositors take advantage of this opportunity and withdraw their funds in full remains to be seen.

At nearly the same time, New York regulators and the FDIC shuttered Signature Bank (Signature) and transferred "all the deposits and substantially all of the assets of Signature Bank to Signature Bridge Bank, N.A. . . ." Prior to March 12, Signature was a leading institution for many cryptocurrency related entities and law firms, and it had a market value of approximately $4.4 billion. According to Signature's latest Form 10-K, as of Dec. 31, 2022, Signature had $110.4 billion in total assets and $88.6 billion in total deposits. Depositors at Signature, like those at SVB, are expected to have full access to all of their bank deposits, regardless of their value, on March 13, 2023.

Regulators are taking additional decisive action. For example, the Fed announced its intent to "make available additional funding to eligible depository institutions to help assure banks have the ability to meet the needs of their depositors." Specifically, "additional funding will be made available through the creation of a new Bank Term Funding Program (BTFP), offering loans of up to one year in length to banks, savings associations, credit unions, and other eligible depository institutions pledging U.S. Treasuries, agency debt and mortgage-backed securities, and other qualifying assets as collateral." Pledged assets will be valued at par and are being made available to eliminate the banks' need to liquidate securities for the purpose of covering deposits. The Treasury is providing up to $25 billion from its Exchange Stabilization Fund as a backstop for any potential losses from the BTFP.

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Once again, while the actions of the Treasury, Fed and the FDIC are reassuring, the Fed's decision to make additional funding available for the purpose of guaranteeing that depositors can access their accounts clearly demonstrates their concern regarding further contagion—which may still occur. SVB and Signature may not be the only banks to fail.

Accordingly, businesses and investors should be wary of the continuing risk from the potential unrealized losses at affected institutions. By one estimate, various institutions possess $600 billion in unrealized losses in held-to-maturity Treasuries and mortgage-backed securities. While valuing securities at par rather than market value may provide some relief, companies and investors should continue to take all necessary action and precautions to ensure their assets are protected.

Additionally, businesses and investors should pay careful attention to the classes of assets that the Fed *has not* taken steps to protect and act accordingly. Although uninsured deposits at SVB and Signature appear to be covered, according to the Joint Statement, "[s]hareholders and certain unsecured debtholders will not be protected."

As such, our prior guidance with respect to general unsecured creditors (e.g., landlords, service providers, shareholders, unsecured debtholders, etc.) remains in place, with the goal of avoiding unnecessary losses. In addition, there are specific steps that must be followed to preserve one's rights, including filing claims with the FDIC.

The risk of enforcement action by state and federal regulators remains a serious concern for issuers and investors alike. While state regulators have remained largely silent, SEC Chair Gary Gensler announced the SEC's intent to identify and prosecute "any form of misconduct that might threaten investors, capital formation, or the markets more broadly" related to the collapse of SVB and Signature. The SEC intends to "investigate and bring enforcement actions if [it] find[s] violations of the federal securities laws."

As we detailed at the outset of this crisis, companies and investors affected by the collapse of SVB and Signature should perform an immediate and comprehensive review of their public disclosures and private placements to ensure compliance with state and federal, as well as U.K., regulations concerning material changes to their businesses and operations. A review of prior disclosures is especially critical for entities that will not benefit from the guarantee of deposits, such as shareholders of SVB and Signature, unsecured creditors, and landlords. At this critical juncture, amendments to public disclosures is critical both to provide investors with accurate information and to demonstrate good faith to regulators.

Separately, in the U.K., HSBC has acquired SVB's British subsidiary, SVB UK for

£1, resulting in business as usual for SVB UK's customers. The Bank of England confirmed that no other U.K. banks are "directly materially affected by these actions, or by the resolution of SVBUK's U.S. parent bank," adding that the wider British banking system remains "safe, sound and well capitalised."

Despite the rapid developments, lawyers at Armstrong Teasdale have been working continuously with businesses, investors, venture debt banks, and funds across the U.S., U.K. and Ireland for the purpose of accessing and funding sufficient credit and equity to fund ongoing business operations and amending public disclosures. As events continue to develop, preparation, flexibility and quick reaction time will remain critical to successfully weathering inevitable challenges. We encourage businesses and investors alike to start planning today.

We will continue to monitor events as they develop. If you have any questions specific to your organization, please contact your regular Armstrong Teasdale lawyer or one of the authors listed below.