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Information for Borrowers with Loans from Silicon Valley Bank or Signature Bank

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This alert provides information for borrowers with loans from Silicon Valley Bank ("SVB") or Signature Bank ("Signature") based on information available from the FDIC and our clients' experiences over the last few days. We have also included information regarding the FDIC's general policies and procedures when selling and administering loans of failed banks. We will update this alert as additional information becomes available.

Borrowers with loans from SVB or Signature continue to wait for information from the FDIC, and the new bridge banks it formed, with respect to their loans, including any information regarding the sale of their loans, new bank contact information and updates to borrowing procedures and payoff logistics. At present, we understand that the bridge banks are attempting to operate in the same manner with respect to their borrowers (and depositors) that SVB and Signature operated prior to their failures, including through use of the existing relationship managers/bank contacts and online platforms and consistent borrowing and payment mechanics.

Systemic Risk Exception

As widely reported, on Sunday, March 12, the Federal Reserve, the FDIC and the Treasury Secretary announced a systemic risk exception and created Silicon Valley Bridge Bank, N.A. and Signature Bridge Bank, N.A. (together, the "Bridge Banks"). The systemic risk exception is an attempt to avoid a widespread bank run and to ensure that all of SVB and Signature Bank's depositors would be made whole after the failures of the two banks. The systemic risk exception is an exception to federal law that otherwise would require the FDIC to resolve a bank failure at the lowest cost to the Government's deposit insurance fund. See Crisis and Response: An FDIC History, 2008-2013, p. 36. Otherwise, the FDIC would not have been in a position to backstop uninsured deposits beyond the $250,000 insured limit per depositor per ownership category. For more information about FDIC deposit insurance limits please see our prior alert: SVB Receivership – What You Need to Know.

Prior to Sunday, the only uses of the systemic risk exception occurred in 2008 and 2009. Id., pp. 35-36. The systemic risk exception has never before been used to create bridge banks at which loans at failed institutions would then be sold or administered by the FDIC.

Sale of SVB and Signature Loans

The general expectation after a bank failure is that the failed bank's loans will be sold to a new lender as expeditiously as possible. The FDIC conducted an auction for the assets of SVB (including its loan portfolio) on Sunday, March 12. The Wall Street Journal reported on Monday, March 13 that, while none of the largest U.S. Banks bid on SVB at the initial auction, there was at least one offer which was declined by the FDIC. The WSJ is also reporting that regulators are planning to hold another auction of SVB's assets. We also anticipate an auction of Signature's assets. The timing of these auctions remains unclear.

In the event that either or both of these auctions produce buyers of the Bridge Banks' respective assets in bulk, those buyers will become the lenders under the failed banks' loans. In that case, the applicable successor lender will advise its new borrowers of their new bank contacts and provide relevant loan administration information including loan payment procedures.

If either or both of the auctions fail to produce a buyer for all of the bank's assets, a bank's loan portfolio may be split up and sold piecemeal. In this event it may take longer before borrowers know the identity of their new lender. If some or all of the loans are not purchased, they will continue to be administered by the respective Bridge Banks or the FDIC. As noted above, the intent of the FDIC is to continue to operate the Bridge Banks pending substantial completion of the sale process.

Borrowing Under an SVB or Signature Line of Credit

In general, when the FDIC is appointed receiver, it immediately begins analyzing loans that require special attention, such as unfunded and partially funded lines of credit, and construction and development loans. Typically speaking, the role of receiver generally precludes the FDIC from continuing the lending operations of a failed bank; however, the FDIC will 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. See A Borrowers Guide to an FDIC Insured Bank Failure.

When the FDIC is operating as receiver, its general procedures provide that if a borrower submits a request for additional funding, the FDIC will conduct a thorough analysis to determine the best course of action for the receivership. The FDIC uses information contained in the failed bank's loan files to the extent available and considered reliable. Because the files of failed banks are often incomplete or poorly documented, the FDIC may require additional financial information to perform its analysis and make decisions.

In the current circumstances, with the Bridge Banks operating under the systemic risk exception, these general FDIC rules appear to have been relaxed, at least for the time being and our clients are reporting that borrowing (and deposit) operations are generally functioning in the ordinary course. We have not yet heard from any clients that additional information has been required in connection with advances from the Bridge Banks.

SVB Contact Information

The FDIC is currently directing SVB borrowers with questions about drawing on lines of credit to contact their existing relationship manager/bank representative at SVB. SVB also has a call center at 800-774-7390 open from 5:00 AM to 5:30 PM (Pacific) with representatives that can assist borrowers.

Signature Contact Information

The FDIC is currently directing Signature borrowers with questions about drawing on lines of credit to contact their existing relationship manager/bank representative at Signature Bank. Signature Bank also has a 24-hour call center at 866-744-5463 with representatives that can assist borrowers.

On Monday, March 13, our clients had mixed results contacting their existing bank relationship managers and drawing on lines of credit. Some clients requested online draws but have not been successful as a result of system malfunctions (and we heard the same reports with respect to some attempts to access and move deposits). On the other hand, we heard reports from our clients that automatic draws and account sweeps have continued to function (and many borrowers successfully accessed their accounts). Today (March 14), clients appear to be having more success in accessing their lines of credit. We will continue to gather information about borrowers' ability to access their lines as it becomes available.

Loan Payoff/Lien Release Information

Many clients have inquired about the mechanics for arranging a loan payoff/refinancing of their SVB loan or Signature loan. In the event that the loan is sold, the borrower can coordinate payoff with the new lender that purchased the loan. In the meantime, borrowers should reach out to their relationship managers or otherwise contact the bank using the means provided above to arrange any payoff and/or lien release. Further information regarding lien releases may also be found on the FDIC lien release website. In the event that borrowers' loans are not sold quickly by the FDIC to a new lender, we expect that those borrowers will be strongly encouraged by the FDIC to arrange for a refinancing. See A Borrowers Guide to an FDIC Insured Bank Failure.

Continue Performing Obligations under Loan Documents

Notwithstanding the failures of SVB and Signature, their borrowers should continue to abide by their loan documents, including submitting payments as required by their loan documents at the same addresses and complying with all other covenants and agreements. Borrowers will be advised by the FDIC, the Bridge Banks or a subsequent purchaser of their loan if there are any updates to payment mechanics or bank contact information.