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SVB Receivership – What You Need to Know

March 12, 2023

On Friday, March 10th, at the request of the California Department of Financial Protection & Innovation, the FDIC was appointed as receiver of Silicon Valley Bank (SVB)[1]. To protect insured depositors, the FDIC created the Deposit Insurance National Bank of Santa Clara (DINB). At the time of closing, the FDIC as receiver immediately transferred to the DINB all insured deposits of Silicon Valley Bank.

For up-to-date information, we suggest using the FDIC's link for the SVB receivership. The FDIC is instructing customers with deposit accounts in excess of the $250,000 insured amount to call 1-866-799-0959 to schedule a telephone appointment with an FDIC Claims Agent. Expect long hold times. As an alternative, clients have received responses to questions sent to DepositorServices@FDIC.gov. There is also an online portal for filing claims.

The FDIC has not determined whether there will be sufficient assets to cover all of SVB's depository and lending obligations. We expect that there will be a delay in disbursing funds and, worst case, pro rata recoveries by depositors. As of now, all deposits are frozen. Draws on loans and letters of credit are frozen. Interest stopped accruing on frozen accounts on Friday.

Information for Depositors

The FDIC reports that it plans to re-open SVB on Monday, March 13, 2023, and make funds available to depositors up to their $250,000 insured limits. Below is a table explaining those limits.

Absent an acquisition and assumption of the deposit accounts by another bank, the excess over the insured limits will be distributed over time as part of the receivership process. Experience tells us that if there are sufficient assets, an advance dividend to depositors of the excess over insured limits could be made sooner (the FDIC is predicting a distribution next week). Depositors will then be provided with a receivership certificate setting forth the remaining amount of their excess uninsured deposits after the initial dividend payment is made. The information in the certificates will be based on SVB's books and records. As the FDIC sells remaining assets, future dividend payments may be made to depositors up to the amounts on deposit.

After payment of administrative expenses, depositors will be paid on the uninsured portion of the allowed claim in the following order of priority:

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

4. Stockholders

A follow-up notice from the FDIC clarified that a depositor does not have to file a claim immediately in order to be eligible to access the insured portion of their accounts or the advance dividend expected to be made available in the next week. The FDIC has not announced whether access to funds will be through the SVB/FDIC banking system or through the distribution of paper checks.

As noted above, depositors should have access to the insured portion of their accounts starting on Monday. The insured portion is $250,000 per depositor per ownership category. FDIC deposit insurance only covers certain deposit products, such as checking and savings accounts, money market deposit accounts (MMDAs), and certificates of deposit (CDs). Brokerage accounts are governed under a different statutory scheme. The most common deposit account ownership categories are as follows:

Single Accounts (Owned by One Person)	$250,000 per owner
Joint Accounts (Owned by Two or More Persons)	$250,000 per co-owner
Certain Retirement Accounts (Includes IRAs)	$250,000 per owner
Revocable Trust Accounts	$250,000 per owner per unique beneficiary
Corporation, Partnership, and Unincorporated Association Accounts	$250,000 per corporation, partnership, or unincorporated association
Irrevocable Trust Accounts	$250,000 for the noncontingent interest of each unique beneficiary
Employee Benefit Plan Accounts	$250,000 for the noncontingent interest of each plan participant

Information for Borrowers

If the FDIC is able to sell its loans, the commitment to continue making advances will be assumed by the new bank. The timing of the loan sales remains uncertain. Meanwhile, the FDIC has the discretion to decide when and whether to make interim advances, such as for health and safety reasons. The FDIC also has the right to repudiate a loan agreement. Repudiation is similar to a bankruptcy rejection and relieves the FDIC of any continuing obligation under a loan arrangement to make future advances. For the immediate future, it may be advisable for a borrower to wait and see if there is a prompt sale of its loan. If not, the borrower may consider obtaining bridge or replacement financing, subject to restrictions contained in its existing loan agreement.

For term loans, the FDIC will notify the borrower with updated payment instructions. One thing is clear – an FDIC receivership does not relieve the borrower of its loan obligations (although it permits the lender/FDIC to repudiate).

Information for Landlords

Similarly, if SVB (the bank entity) is a tenant in one of your properties, the FDIC as receiver has the right to repudiate (similar to a rejection) the lease. The statute requires the FDIC to make this decision in a "reasonable time period." If the FDIC does repudiate the lease, the landlord is entitled to a claim for any unpaid rent through the date of repudiation. As noted above, depositors have priority over general claims such as unpaid rent. However, rent accruing for the period from March 10, 2023, to the date of repudiation may be entitled to administrative priority if the receiver determines the premises was necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the bank.

Developments related to SVB, and certain other financial institutions, are moving quickly, and numerous complicated issues may arise with respect to, among other things, lines of credit, revolvers, construction lines, and letters of credit. We encourage our clients to please contact us with specific issues or concerns, and we will schedule a time to speak with you.

[1] This summary is limited to FDIC receivership rules and does not purport to summarize laws, rules or regulations applicable to broker dealers, orderly liquidation proceedings and/or Chapter 11 proceedings.