Holland & Hart

There's A New Banker in Town for Silicon Valley Bank and Signature Bank



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The Federal Deposit Insurance Corporation ("FDIC") is the federal agency charged with providing deposit insurance for insured financial institutions in the United States. Specifically, FDIC insurance covers certain deposit accounts in an amount of up to $250,000 per depositor for the aggregate of all deposits held in an insured bank, per each account ownership category.

Over the last week, regulators announced the shutdown of two financial institutions, Silicon Valley Bank (SVB) and Signature Bank (SB), and appointed the FDIC as receiver. The FDIC concurrently created the Deposit Insurance National Bank of Santa Clara, California (DINB), a temporary bank, and transferred to the DINB all insured deposits in order to protect depositor funds.

The FDIC formed the DINB as an initial response to the SVB collapse due to the complexity of the bank's loan structures, but quickly canceled the DINB in favor of a bridge bank structure that consolidated insured and uninsured deposits into a single institution: Silicon Valley Bridge Bank, N.A. The bridge bank structure is viewed as more attractive to prospective buyers because it consolidates deposits and all other bank assets and is operated under a board appointed by the FDIC. In the last few days, the FDIC also established a bridge bank in response to the collapse Signature Bank, N.A.: Signature Bridge Bank, N.A.

The two bridge banks have been established as full-service banks to assume the deposits and the obligations of the two failed banks. Neither bank is in receivership. These new banks have stepped into the shoes of the former institutions and are regulated by the Office of the Comptroller of the Currency, which means, among other things, that all depositors and borrowers automatically became customers. Total balances in all accounts, according to the FDIC, "will be available for transactions daily" to the extent they were available at predecessor banks. In addition, all vendors and counterparties to contracts with SVP and SB are legally obligated to satisfy contract terms. It is important to recognize, however, bridge banks are temporary institutions designed to "bridge" the gap between the failure of a bank and the time when the FDIC can stabilize the institution and implement an orderly resolution. As temporary institutions, the life of a bridge bank is limited by statute to a maximum of two years (subject to extension for three additional one-year periods) (see 12 U.S.C. § 1821).

Highlights of Bridge Bank Implications:

The FDIC has issued a number of releases and letters since the collapse of the financial institutions in an attempt to stabilize the banks and the market. The FDIC provided the following guidance:

- All obligations and loan positions, including as lender, issuing bank, administrative agent, and any other function that was formerly performed by SVB and SB, have now been assumed by the applicable bridge bank.
- All commitments to advance under existing credit agreements will be honored in accordance with their terms.
- All counterparties may transact business with, settle transactions, and conduct business with the banks.
- All vendors and counterparties to contracts are expected to make payments and fulfill contractual obligations.
- All obligations of vendors and counterparties to contracts may be enforced by the FDIC as receiver (12 U.S.C. § 1821(e)(13)).
- All contracts may be transferred by the FDIC as receiver notwithstanding any apparent limits on transfer in the contract itself (12 U.S.C. § 1823(d)(2)).
- All obligations of the bridge banks are backed by the FDIC and the full faith and credit of the United States government.

It is noteworthy to point out, however, that the applicable transfer agreements between the FDIC and the bridge banks grant the receiver the right to reassign any transferred asset or assumed liability upon notice within a specified time period (Transfer Agreement, §§ 2.04 and 2.05). Moreover, contractual obligations assumed and to be assumed are those identified on a Schedule that still remains in process—which provides little comfort to beneficiaries of letters of credit.

Relevant Links:

Silicon Valley Bridge Bank, N.A. in Operations – Details for Counterparties (March 14, 2023): https://www.svb.com/news/company-news/silicon-valley-bridge-bank-n.a.-in-operation-details-for-counterparties

FDIC Confirmation That Bridge Bank Open and Operating (March 14, 2023): https://www.svb.com/globalassets/bridge-bank/fdic-confirmation-that-bridge-bank-open-and-operating-new.pdf

FDIC Financial Institution Instruction Letter (March 14, 2023): https://www.fdic.gov/news/financial-institution-letters/2023/fil23010.html

Silicon Valley Bridge Bank Press Release (March 14, 2023): Update from Silicon Valley Bridge Bank CEO https://www.svb.com/news/company-news/update-from-silicon-valley-bridge-bank-ceo

FDIC Press Release: FDIC Acts to Protect All Depositors of the former Silicon Valley Bank, Santa Clara, California (March 13, 2023):

https://www.fdic.gov/news/press-releases/2023/pr23019.html

Transfer Agreement: FDIC and Silicon Valley Bridge Bank, NA (March 13, 2023): https://www.svb.com/globalassets/bridge-bank/silicon-valley-bdi-transfer-agreement-03.13.23sign.pdf

Transfer Agreement: FDIC and Signature Bridge Bank, NA (March 12, 2023): https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/signature-ny-transfer-agreement.pdf

FDIC Press Release (March 12, 2023): FDIC Establishes Signature Bridge Bank, N.A., as Successor to Signature Bank, New York, NY https://www.fdic.gov/news/press-releases/2023/pr23018.html

Failed Bank Information for Signature Bank, New York, NY (March, 2023): https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/signature-ny.html

Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC (March 12, 2023): https://www.fdic.gov/news/press-releases/2023/pr23017.html

FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California (March 10, 2023): https://www.fdic.gov/news/press-releases/2023/pr23016.html

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