

CLIENT ALERT

FDIC Client Alert - Next Steps for Equity Clients

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AUTHORS

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On March 10, 2023, the California Department of Financial Protection closed Silicon Valley Bank (“SVB”). Two days later, the New York State Department of Financial Services took possession of Signature Bank (“SB” and, together with SVB, the “Affected Banks”). In both cases, the Federal Deposit Insurance Corporation (“FDIC”) was appointed receiver.

To protect depositors and preserve the value of the assets of the Affected Banks, the FDIC created two full-service bridge banks (“Bridge Banks”):

- (i) Silicon Valley Bridge Bank, N.A.; and
- (ii) Signature Bridge Bank, N.A (both operated by boards appointed by the FDIC).

On March 12, 2023 and March 13, 2023, the FDIC transferred all deposits (both insured and uninsured) and virtually all assets of SB and SVB, respectively, to the Bridge Banks.

Numerous reports speculate on potential liquidity concerns with other banks as well. See:

<https://www.marketwatch.com/story/the-10-banks-that-may-face-trouble-in-the-wake-of-the-svb-financial-group-debacle-50d6e49e>.

Banking system impacts, affected institutions, and federal actions remain uncertain. However, considering the current situation, this update aims to answer general questions and provide suggestions on next steps.

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1. LOANS, CASH MANAGEMENT ACCOUNTS AND DEPOSIT ACCOUNTS WITH AFFECTED BANKS

A. Loans with an Affected Bank

Loan agreements are currently held by the Bridge Banks, which does not change a borrower's obligations. Parties with loans with one of the Affected Banks should remain compliant with all loan payments and obligations. Failure to pay or comply with your contractual obligations will likely constitute a default in accordance with your loan documents. Should a sale of your loan occur, you will be notified by mail in advance of the sale. If feasible, consider refinancing your loan with another institution.

If an Affected Bank was the agent for your loan, please look out for updated payment instructions on that loan.

If an Affected Bank is one of many lenders on your loan, please review loan documents to understand implications of a "defaulting lender" and the range of consequences, including any concerns around future funding and timing.

B. Cash Management Account or DACA with an Affected Bank

If an Affected Bank is your cash management or deposit account bank, the FDIC has indicated that depositors will have access to both their insured and uninsured funds for now. If you decide you would prefer to move your accounts out of the Bridge Bank, please review loan documents to understand your ability to transition such accounts with new institutions. Please also consider any surviving liability and indemnification obligations to the Bridge Bank.

C. Questions about your loan?

If you have a pending loan application with an Affected Bank, are owed a payment pursuant to your loan or have other loan-specific questions, you can contact a FDIC loan representative at: FDIC_Loans@fdic.gov.

2. LINES OF CREDIT/LETTERS OF CREDIT

In a joint statement by the Treasury, Federal Reserve and FDIC, a clear position was taken that shareholders and unsecured debtholders will not be protected. There is no further guidance on who is an unsecured debtholder, but it is prudent to assume a landlord or company with an open line of credit likely is. This places landlords with letters of credit or companies with lines of credit at one of the Affected Banks in a precarious position as unsecured debtholders.

See: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm>.

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The FDIC's FAQ page for each of the Affected Banks states lines of credit have been transferred to the appropriate Bridge Bank. Please reach out to your appropriate Bridge Bank for questions: For SVB (1-800-774-7390); For SB (1-866-744-5463).

For landlords, there may be a few options to consider:

- A. Collaborate with tenant in obtaining a new letter of credit: Most leases require tenants to provide a letter of credit from a credit-worthy institution. Review your lease provisions to understand what rights you might have to require tenants to obtain a new letter of credit.
- B. Contact the Bridge Bank: We are aware that some clients have been able to draw on credit without filing a claim. Please contact your ordinary contact at the Affected Banks or Bridge Bank to get more details: For SVB (1-800-774-7390); For SB (1-866-744-5463).

The FDIC has the power to repudiate letters or lines of credit at any time, available options are not guaranteed. Less options are also likely in a scenario where a third-party acquires one of the Affected Banks, as it likely will not assume the Affected Bank's liabilities. However, if the FDIC locates a buyer willing to acquire an Affected Bank's assets and liabilities, more options may be available.

3. DEPOSITS

According to the FDIC's official statements, all depositors of the Affected Banks will be made whole, regardless of the ultimate resolution of the Affected Banks.

- A. Availability of insured and uninsured funds?

While the FDIC's initial statement contemplated only making \$250,000 available to depositors, to protect all depositors and strengthen the public's confidence in the banking system, the FDIC announced a systemic risk exception for both of the Affected Banks. Effective as of March 13, 2022, all depositors' funds (insured and uninsured) were transferred to the appropriate Bridge Bank and are available to depositors. Normal banking activities and hours also resumed to normal on March 13th.

See: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm>.

- B. How and when can insured depositors access their funds?

Effective as of Monday, March 13, Affected Bank's depositors will have full access to their funds.

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Depositors can access their money by ATM, use of debit cards, or checks (which will continue to clear). Online banking activities are also available as usual.

Access to their funds will be during regular banking hours in the case of SVB customers and uninterrupted in the case of SB depositors.

C. Should the Affected Bank's customers enroll in the Bridge Bank?

Each affected Bank's customers automatically became Bridge Bank clients.

4. ACTION PLAN

A. For all depositors: Consider transitioning funds with the Bridge Bank to accounts at new institutions.

B. For borrowers: Adhere to your loan payments and obligations, and consider refinancing with a new institution. For any questions, reach out to an FDIC Loan Agent: FDIC.Loans@fdic.gov.

C. For landlords: Work with your tenant to replace their current letter of credit. Contact the Bridge Bank - for SVB (1-800-774-7390); for SB (1-866-744-5463).

D. For companies with open lines of credit: Contact the Bridge Bank - for SVB (1-800-774-7390); for SB (1-866-744-5463).

The current banking situation is rapidly changing, with frequent updates occurring daily. For further questions or updates, please reach out to Misty Sanford at msanford@willkie.com.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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