In the three days since federal authorities announced sweeping measures to protect depositors of Silicon Valley Bank (SVB) and Signature Bank and help prevent additional bank failures (as discussed in our update of March 12, 2023), the U.S. banking system appears to have stabilized, at least temporarily.

However, as of 4:00 p.m. ET on March 16, 2023, market conditions remain stressed, including outside the United States, with the fate of at least one global systemically important bank, Credit Suisse, a particular point of focus. The latest developments are summarized below.

Silicon Valley Bridge Bank, N.A. Begins Operations

On March 13, 2023, the FDIC appointed Timothy Mayopoulos as CEO of the successor to SVB, Silicon Valley Bridge Bank, N.A. (SVB Bridge Bank). A lawyer by training, Mayopoulos is a banking veteran who formerly served as CEO of Fannie Mae from 2012-2018 and, earlier in his career, general counsel of Bank of America.

The SVB Bridge Bank is a national association regulated by the Office of the Comptroller of the Currency (OCC) and was created in accordance with the Federal Deposit Insurance Corporation (FDIC) receivership process to assume "all the deposits and substantially all of the assets of [SVB]" and "be operated by the FDIC as it markets the institution to potential bidders." The FDIC released the governing Transfer Agreement, which provides a helpful point of reference for understanding SVB Bridge Bank's authority and obligations as SVB's successor in interest.

Less than a day after SVB Bridge Bank's creation, on March 14, CEO Mayopoulos made the unusual announcement that SVB Bridge Bank is "open for business" and depositors have full access to all of their money (by virtue of regulatory actions taken on March 13). He also explained that the bank is "making new loans and fully honoring existing credit facilities" and, perhaps most surprisingly, encouraged current and former customers to "leav[e] deposits with [SVB Bridge Bank] and transfer[] back deposits that left over the last several days."

Although its earlier attempts did not succeed, the FDIC is reportedly continuing to seek buyers for the SVB Bridge Bank and/or SVB's assets (in whole or part) and may be considering another auction later this week. The agency's apparent difficulty finding a buyer contrasts with events on the other side of the Atlantic, where the Bank of England brokered a sale of SVB's UK operations to HSBC over the weekend.

Open Questions for SVB Customers and Counterparties

Also on March 14:

- The Bridge Bank informed counterparties that it has "stepped into the shoes" of SVB and, among other things, is "honoring existing credit agreements" and performing all agency and administrative functions and that all counterparties of SVB "may transact with, settle transactions and otherwise conduct business with" it.
- The FDIC issued guidance to *financial institutions* explaining that "vendors and counterparties" should continue to perform under contracts with SVB and that, under federal statute, the FDIC "as receiver is authorized to enforce such contracts . . . and to transfer the contract notwithstanding any apparent limits on transfer in the contract."

Although these statements suggest that SVB customers and counterparties may not experience the widespread disruptions in service or access to funding that appeared likely just days earlier, important questions remain open. Chief among these is the status of loan and deposit covenants running to SVB.

In a failed bank scenario, the FDIC is entitled to enforce all loan documents (including collateral pledges) as written. The extent to which the FDIC (or SVB Bridge Bank) will in fact seek to enforce these or similar covenants and, if so, their likelihood of success is not clear. Statements by SVB Bridge Bank and CEO Mayopoulos indicating that the bank is operating normally complicate the calculus.

Given the novel issues presented and the evolving state of play, SVB customers that in recent days deposited funds at another bank, or secured another source of credit for liquidity needs, should consult legal counsel before determining how to proceed, especially in cases where a notice of default has been issued. For customers used to relationship-based banking that may have involved informal assurances about how the bank would respond under certain circumstances, we recommend caution about relying on such statements in the current environment.

Fates of SVB's Investment Bank and Venture Capital Business Remain Uncertain

SVB Securities (the investment bank) and SVB Capital (the venture capital and credit investment business) are *not* in FDIC receivership. SVB Financial Group is reportedly exploring several strategic options for SVB's nonbank affiliates. Their fates remain uncertain.

Signature Bank Status

In stark contrast to the SVB scenario, there is relatively little information available about Signature Bank following its failure on March 12. Its website has been updated with a link directing visitors to an FDIC site for more information about its successor in interest, Signature Bridge Bank. The FDIC notes on this site that depositors may continue to use checks and ATM/debit cards, and that direct deposits will also continue as usual.

Large Banks Show Support for First Republic

On March 16, 11 of the largest U.S. banks announced that they had each made an uninsured deposit of between $1 billion and $5 billion into First Republic Bank for a total deposit of $30 billion. The banks' joint press release described the action as show of confidence "in First Republic and in banks of all sizes."

The Regulatory Postmortem Begins

Fast on the heels of the past weekend's events, questions began about how highly regulated banks such as SVB and Signature could fail so quickly. The Federal Reserve proactively announced on March 13 that that it would undertake a "review of the supervision and regulation of Silicon Valley Bank, in light of its failure," led by Vice Chair for Supervision Michael Barr.

At the same time, members of Congress and federal financial regulators are reportedly looking to determine what rule changes may be required to prevent future bank failures like these and, especially, the extent to which adjustments to capital, liquidity, and stress testing rules enacted in 2018 and implemented in 2019 may have contributed to events at SVB and Signature.

In addition to the above concerns, news media reports indicate that the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) have already initiated preliminary investigations into SVB's collapse.

Please contact your Perkins Coie lawyer or email PCBankingTaskForce@perkinscoie.com with questions or for assistance.

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