



ALERTS

Silicon Valley Bank And Signature Bank Fallout – Legal Considerations For Borrowers, Syndicated Lenders And Trade Creditors

March 17, 2023

Highlights

Counterparties should continue to follow their current contractual obligations

Silicon Valley Bank's parent company bankruptcy filing will not impact contractual rights

Counterparties should be vigilant and consider alternate financing arrangements

As the fallout from the failures of Silicon Valley Bank and Signature Bank continue to be absorbed by the market, contract counterparties to these banks are assessing their legal rights and options now that 1. the Federal Deposit Insurance Corporation (FDIC) has established two successor "bridge banks," which have assumed the deposits and obligations of each failed bank, and 2. Silicon Valley Bank's parent company filed for bankruptcy.

On March 13, the FDIC receiver [transferred substantially all the assets of Silicon Valley Bank](#) (SVB) to a newly created bridge bank, Silicon Valley Bridge Bank, N.A. (SVB Bridge Bank). Similarly, on March 12, the FDIC

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receiver transferred substantially all of the assets of Signature Bank (Signature Bank) to Signature Bridge Bank, N.A. (Signature Bridge Bank).

Additionally, on March 14, the FDIC issued a financial institution letter declaring that all contracts entered into with SVB and Signature Bank before they failed, and their counterparties, were transferred into, and assumed by, each bridge bank. This includes all qualified financial contracts (QFCs as defined in 12 USC 1821(e)) and vendor agreements. The definition of qualified financial contracts is very broad and includes, among other things, swaps and forward foreign exchange, futures contracts, repurchase transactions, stock loans, forward securities purchases or sales, certificates of deposit and mortgages, forward commodity trades and guarantees or credit enhancements of the those transactions.

Notably, on March 17, Silicon Valley Bank's parent company, SVB Financial Group, filed for bankruptcy in the U.S. Bankruptcy Court for the Southern District of New York. The bankruptcy filing did not include the following affiliated entities: 1) SVB Bridge Bank, which continues to be operated by the FDIC, 2) SVB Securities, a regulated broker-dealer, or 3) SVB Capital, a venture capital and private credit fund. According to a press release issued on the same day, "SVB Financial Group's funded debt is approximately \$3.3 billion in aggregate principal amount of unsecured notes, which are only recourse to SVB Financial Group and have no claim against SVB Capital or SVB Securities."

Counterparties to these banks, including borrowers, syndicated and other lenders, and creditors of the failed banks have been dealing with many questions like these regarding their rights.

How does the bankruptcy filing of SVB Financial Group impact my rights as a borrower, syndicated co-lender or creditor of SVB or SVB Bridge Bank?

SVB's successor, SVB Bridge Bank, is operating under the jurisdiction of the FDIC and is not included in the bankruptcy filing of SVB Financial Group. Accordingly, your rights against SVB Bridge Bank are not impacted.

Should borrowers continue to perform under their loan and other financial arrangements?

The FDIC has stated that all contract counterparties should continue to comply with their obligations under funded loan agreements, including payment obligations and other covenants (including, if applicable, maintaining an account at the banks). According to the FDIC, all of the bridge bank's obligations are "backed by the FDIC and the full faith and credit of the U.S. government."

At the moment, it is unclear what will ultimately happen with loan facilities that are not fully drawn. Loan facilities may be maintained for a period of time while the FDIC is seeking to transfer these loans to another financial institution. Where facilities are not fully drawn, borrowers should act cautiously not to default before they have confirmed that the FDIC will fund or until further guidance emerges. Borrowers should also consider

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seeking back-up or alternative financing.

Should syndicated lenders continue to fund in response to borrower draw requests where a failed bank is the agent or a co-lender?

The FDIC has indicated that counterparties “are legally obligated to continue to perform under the contracts, and the bridge bank is obligated to and has the full ability to make timely payments to vendors and counterparties and otherwise perform its obligations under the contract.” The FDIC further noted that failure to meet these obligations may result in legal action by the U.S. government.

Similar to borrowers, all parties should continue to follow their contractual obligations. Failure to do so risks action by various counterparties under syndicated loan documents as well as potential action by the FDIC. This means that syndicate banks and borrowers should respond to funding requests in the ordinary course, and borrowers and any other party with payment obligations to SVB or Signature should continue to fulfill those obligations.

Syndicated loan documents typically contain defaulting lender provisions that, among other things, provide the borrower and other lenders under the facility with a course of action in the event that one or more lenders is unwilling or unable to meet its funding obligations, including situations where the affected lender is placed into receivership with the FDIC. Despite SVB’s and Signature’s status as defaulting lenders under their credit agreements while in receivership, federal rules and regulations may restrict borrowers and other lenders from exercising certain of their rights under the defaulting lender provisions. Moreover, the assignment and transfer of loans and commitments to the bridge banks do not necessarily give rise to enforceable rights unless the bridge bank further defaults under the loan agreement.

Can I terminate a QFC at this time?

Pursuant to applicable federal law, your right to terminate any QFC due to the appointment of the receiver was initially stayed for one business day after the receiver was appointed and then permanently stayed as the QFCs were transferred to the bridge banks. As such, you may not terminate a QFC due solely to the appointment of a receiver or because the QFC has been transferred to the bridge bank without your consent. If the bridge bank subsequently defaults under the applicable QFC, your QFC may contain certain termination rights. You should consider contacting your counsel to review these potential rights and remedies.

My SVB account has been pledged to secure a loan with another lender. Should I take any action at this time?

Although your account is now with a bridge bank, the secured lender is still perfected. If there is a deposit account control agreement (DACA) in place over the account, then the bridge bank should have assumed the obligations of the control bank and should abide by any written instructions by your secured lender. You or your secured lender may wish to amend the agreement to reflect the new account bank name or

account. A secured lender may also request that you move your pledged accounts to a new bank and provide the secured lender with a new DACA over those accounts.

What should creditors of a failed bank do next?

The FDIC has stated that all vendors should continue to provide services pursuant to their contracts. Creditors may be eligible to file a claim against a failed bank if they have not been paid for services rendered prior to March 10, 2023, for SVB and March 12, 2023 for Signature. All creditors with claims must submit their claims to the [online claims portal](#) established by the FDIC or by mail.

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