Lowenstein Sandler

Anti-Money Laundering

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Getting Acquainted with the FDIC Claims Process Now to Protect Your Deposits in the Future

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A little over a week has passed since the Federal Deposit Insurance Corp. (FDIC) became receiver of Silicon Valley Bank[1] (SVB) and Signature Bank[2] (Signature), and since the issuance of the joint statement by the FDIC, the U.S. Treasury, and the Federal Reserve Board (Fed) advising that all deposits held by SVB and Signature would be bailed out by the government.[3] While the regulators' unexpected decision to protect all deposits gave customers of SVB and Signature reprieve, additional fallout continued to impact the U.S. banking system.

The finances of First Republic Bank (FR) needed to be supported following the collapse of SVB, resulting in the receipt of an additional $70 billion in liquidity from the Fed and JPMorgan Chase to fund FR's operations.[4] Subsequently, FR received a $30 billion cash infusion sourced from a syndicate of major banks including JPMorgan Chase, Citigroup, and Bank of America.[5] Impact was also felt internationally with the Central Bank of Switzerland agreeing to provide a liquidity backstop to Credit Suisse after depositors fled when the bank's stock fell 30% in a sell-off in the U.S. and European markets.[6] UBS has agreed to buy Credit Suisse.[7]

A recent Social Science Research Network report found that 186 U.S. banks were at risk of becoming impaired to the point of being unable to make *insured* depositors whole if half of *uninsured* depositors quickly withdrew their funds from such banks, likely requiring the FDIC to step in as receiver as the need arises.[8] Should additional banks experience failures similar to those of SVB and Signature, there is no guarantee that U.S. regulators would offer to backstop such banks, and the customers of those failed FDIC insured banks with uninsured deposits would have to undergo the FDIC claims process (Claims Process). This Client Alert sets forth the Claims Process in the event the FDIC is appointed as receiver of a failed bank and clients have funds in excess of the FDIC insurance coverage.

FDIC Insurance Coverage

FDIC insurance covers up to $250,000 per depositor, per bank, for each deposit account specific ownership category. As a result, customers maintaining multiple deposit-holding accounts (i.e., savings and checking) (Accounts) at a failed bank in the same name should expect the FDIC to pay only up to $250,000 in the aggregate, regardless of how many Accounts such customer may maintain.

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[1] https://dfpi.ca.gov/2023/03/10/california-financial-regulator-takes-possession-of-silicon-valley-bank/
[2] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20230312
[3] https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm
[4] https://www.wsj.com/articles/first-republic-gets-additional-funding-from-fed-jpmorgan-d11e68ca
[5] https://www.wsj.com/articles/jpmorgan-morgan-stanley-and-others-in-talks-to-bolster-first-republic-4f9eeb76
[6] https://www.ft.com/content/0324c5a6-cecd-4fb3-85b3-7cdc99a33e4e
[7] https://www.wsj.com/articles/ubs-offers-1-billion-to-take-over-credit-suisse-bfac51fa?mod=Searchresults_pos3&page=1
[8] https://www.wsj.com/livecoverage/stock-market-news-today-03-17-2023/card/dozens-of-banks-may-have-risks-similar-to-silicon-valley-bank-economists-find-PLIFEYfTTer5HvixzEx6
[9] For purposes of this alert, "corporate" will broadly refer to entities classified as corporations, partnerships, or unincorporated associations, but not sole proprietorships.

As an example:

- If a single corporate[9] entity has two Accounts, whether with separate titles or not (e.g., operating account or expense account), each with $250,000 in deposits, the FDIC will aggregate the two Accounts and release access only to $250,000.
- If a single corporate parent entity has Accounts for itself and its separately incorporated subsidiaries, and such accounts are properly titled in the parent company's name and separately in the subsidiary's name, each with $250,000 in deposits, the FDIC will not aggregate the corporate Accounts and will release access to $250,000 to each corporate entity.
- If a single corporate entity has one Account with $250,000 in deposits, but the corporate entity's individual partners, members, stockholders, etc. also have personal accounts at the same bank, the FDIC will not aggregate such accounts (absent special circumstances, as described below). The FDIC will cover separately the corporate entity's and individual accounts up to $250,000.

As reflected above, all deposits owned by a single corporate entity at the same bank are aggregated and insured up to $250,000. Corporate accounts are treated separately from the personal accounts of any owners or members of the corporate entity. Accounts set up as sole proprietorships are considered part of the single account ownership category and are calculated with the owner's personal accounts.

An additional requirement for Accounts is that the corporate entity must be engaged in an "independent activity," meaning that the entity is operated primarily for a legitimate business purpose and not solely to increase deposit insurance coverage. If a corporate entity is not engaged in an independent activity, the FDIC considers such deposits to be owned by the person(s) who established the Account or who own or control the corporate entity, based on the specific facts and circumstances, and will be aggregated with such person's personal accounts at the bank for purposes of determining the FDIC's deposit insurance coverage.[10]

For customers with less than $250,000 in a single Account or in aggregate across multiple Accounts, no further filing of a claim is required unless questions or other matters arise needing clarification. We urge such customers, however, to review amounts accessible on the next business day of the FDIC's receivership against their internal records, as the FDIC will use the records of the bank to make deposit insurance determinations.

The FDIC will likely advise that customers with Account balances in excess of the $250,000 FDIC insured limit (Uninsured Deposits, and the owners of such Uninsured Deposits, hereinafter referred to as Uninsured Depositors) should expect to be paid an advanced dividend sometime during the initial weeks of the FDIC becoming receiver. Such advanced dividend should be automatically added to Accounts without any need to file a claim.

Uninsured Depositors will likely receive a receivership certificate for the remaining amount of their Uninsured Deposits. Specifically, the FDIC should mail all Uninsured Depositors a Notice of Insurance Determination Letter (NIDL), and the NIDL will provide a "Receiver's Certificate Number" that will entitle the holder to share proportionately in any funds recovered through the sale of the failed bank's assets. Whether Uninsured Depositors will receive the full value of their deposits through future dividend payments is contingent upon the amount of money the FDIC can receive from the sale of a failed bank's assets or if another bank takes ownership of the remaining assets.

FDIC Claims Process

Customers should expect the FDIC to publish information clarifying who will need to file a claim in the early days of the FDIC becoming receiver of a failed bank. We recommend, however, that all Uninsured Depositors (both individuals and entities that used an EIN to open their account) call the FDIC hotline at 1-866-799-0959 to schedule a telephone appointment with an FDIC Claims Agent and/or submit questions using the FDIC Claims Portal as soon as it becomes available.[11]

Uninsured Depositors should take the below steps to claim, view, and address amounts above $250,000:

- Create a Login.gov login ID and undergo the identification verification steps.
  - The FDIC verifies your identity using Login.gov and will require submission

[10] https://www.fdic.gov/resources/deposit-insurance/diguidebankers/corporation-partnership-unincorporated/index.html
[11] Questions submitted through the FDIC's Claims Portal require the filing of a claim. We recommend that the description of the claim be noted as "Additional clarification needed with respect to my accounts at [Name of Bank]."

of a state-issued ID. Limited access is available for those without a state-issued ID.
    - We recommend steps be taken to create a Login.gov account to ensure timely access to the FDIC Claims Portal.

- Contact the FDIC at 1-866-799-0959 to schedule an appointment with an FDIC Claims Agent.
    - Callers should expect to experience long delays and wait times.
    - Designate an individual to call the FDIC until they can reach a live person.

- Access your Account information, document your balance and recent transactions, and compare them against your internal records for discrepancies, as the FDIC will pay Uninsured Depositors based on the bank's records.
    - Uninsured Depositors should expect the bank's online portal to experience intermittent outages and slow performance.
    - We recommend taking screen shots in addition to downloading your information.
    - We anticipate the FDIC will request additional confirmation information in the event the bank's records do not match your internal records.

- Review your account information to ensure that it matches exactly with your documents.
    - Have a clear record of account title, balances, authorized parties and filing status.
    - The FDIC may deny claims for Uninsured Deposits where the customer information in the bank's records does not match such customer's documents to avoid additional delays in the claims process (e.g., claim denied or held due to bank records noting an entity customer as "Company, *L.P.*" when the customer's organizational documents have the name as "Company, *LP*").

- We recommend transferring the balance to another bank account as access to deposits are gained or funds are transferred into your Account(s).
    - To the extent you do not have an account at another bank, we recommend that you begin an account opening process immediately at another bank, including addressing related anti-money laundering and know your customer requirements. The Lowenstein team can assist with the transfers, the opening of accounts, and AML/KYC requirements. See Lowenstein's recent Client Alert: "*Silicon Valley Bank Fallout: Navigating and Managing the Account Opening Process at Other Financial Institutions*."
    - If the Account(s) are subject to liens or other security interest in connection with a loan with the bank, we recommend consulting with Lowenstein counsel prior to opening such new accounts, as there may be additional restrictions to consider.

- The closure of a bank impacts not only the deposits but also credit facilities and other forms of financing. The FDIC will likely expect loan customers of the bank to continue to make their payments as normal.
    - It may be possible to offset Uninsured Deposit amounts against a loan in the same name as the Uninsured Deposit Account.
    - If applicable, we recommend making an appointment with an FDIC Claims Agent at 1-866-799-0959 or through the FDIC Claims Portal to discuss specific questions upon consulting with your counsel.
    - The Lowenstein team can assist with opening accounts, satisfying AML/KYC requirements, and negotiating agreements with new banks that will service your loans originated from the failed bank.

Lowenstein Sandler can assist clients with navigating the FDIC Claims Process in an efficient and effective manner. Clients are encouraged to contact one of the listed authors on this Client Alert, the Lowenstein Anti-Money Laundering team at LSAMLTeam@lowenstein.com, or your regular Lowenstein Sandler representative should you require assistance with reviewing or assessing your depositor rights in a bank failure.

To see our prior alerts and other material related to the collapse of Silicon Valley Bank, please visit our resource page by clicking here.

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