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Silicon Valley Bank Collapse: Navigating Risk and Implications

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No business is immune from the possibility that things can go wrong—horribly wrong. On Friday, March 10, 2023, Silicon Valley Bank (SVB), the go-to bank for US tech startups, was shut down and taken over by federal regulators after the lender suffered a modern day run on the bank. The shutdown of SVB is the largest bank failure since the 2008 financial crisis and the second largest failure in US history. The collapse has sent shockwaves across the banking industry and created capital problems for start-ups and other tech companies that have been doing bread-and-butter banking with SVB, necessitating patience and thoughtful strategies.

The FDIC has announced that those with insured deposits at SVB, typically up to \$250,000, will be able to access their money no later than Monday. The fate of those with uninsured deposits is not, at this point, clear although the FDIC has indicated that these depositors will receive an “advance dividend” for the portion of funds not covered by insurance along with “certificates” accounting for those uninsured funds.

In the near term, one of the biggest problems is that early-stage companies and others that have established banking relationships with SVB might not be able to access critical capital. Cash on deposit and funds from revolving credit facilities that may be needed to make payroll and satisfy working capital needs may not be available in the coming days and may be at risk. Landlords, beneficiaries of letters of credit issued by SVB, and other creditors also will be required to address issues that may naturally flow from the challenges, and potential losses, of their customers.

Among the many questions relating to the consequences of the SVB implosion, borrowers, depositors, creditors, and investors need to consider:

- Will the government step in and push another bank to take over the failed institution?
- Will customers of SVB face losses?
- What are the implications for a customer's current credit facility and access to needed funds?
- Will a customer have to make payments on its loans, particularly when its lender has defaulted on its obligations and the customer has uninsured deposits?
- What is the impact on letters of credit that have been issued by SVB and cash collateral supporting letter of credit obligations in excess of uninsured deposits?

- Will funds in money market and other accounts held by affiliates and by broker-dealers be accessible?
- How quickly can an alternative credit facility be put in place?
- Are deposits at a foreign subsidiary of a US bank, such as Silicon Valley Bank UK, FDIC-insured?
- What are the implications for deposits and loans at other financial institutions?
- Are all depositors on the same footing or are there things that can be done to improve payment priority?
- What concerns should a board of directors have in dealing with credit availability and capital shortfall issues?

Treasury Secretary Janet L. Yellen indicated on Sunday, March 12, that a federal bail out of the bank is not in the cards, but regulators are mindful that many small businesses are counting on funds held at SVB that are now frozen and have been working to swiftly address the fallout from the collapse. In the face of concerns of increasing interest rates and the banking system in general, Treasury Secretary Yellen emphasized the strength of the economy and the tools put in place following the financial crisis in 2008 to solidify the banking system.

The full impact of the Silicon Valley Bank collapse is not clear at this point and the situation is continues to evolve. Holland & Hart's professionals who assist clients in the financial institutions industry in connection with regulatory issues, financial and credit transactions, debt and equity financings, capitalization, insolvency issues, restructuring matters, and risk management, will continue to monitor and update clients as developments occur.

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