

Clients & Friends Memo

SVB Financial Group Chapter 11 Case – Issues with the FDIC May Be Front and Center

March 22, 2023

As many parties expected, on March 17, 2023 SVB Financial Group (“SVB Financial” or the “Debtor”) the holding company for Silicon Valley Bank, commenced a case under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the Southern District of New York. Judge Martin Glenn has been assigned to the chapter 11 case. Neither Silicon Valley Bank, currently in FDIC receivership, nor its successor Silicon Valley Bridge Bank, N.A. (“SV Bridge Bank”), were included in the chapter 11 filing.

One of the significant issues in the case will be SVB Financial’s relationship to Silicon Valley Bank and SV Bridge Bank. SVB Financial already has asserted that it is receiving little or no information from SV Bridge Bank, even though personnel at SV Bridge Bank provide key services to SVB Financial under a shared services agreement. SVB Financial states that it is working to obtain access to additional information from the FDIC receivership and from SV Bridge Bank. Both the FDIC as receiver to Silicon Valley Bank, and SV Bridge Bank already have appeared in the SVB Financial chapter 11 case, and the FDIC as receiver filed an objection to the Debtor’s Cash Management Motion, discussed below.

As part of its initial filings, SVB Financial stated it intends to use the chapter 11 bankruptcy to “evaluate strategic alternatives” for certain of the company’s assets including SVB Capital and SVB Securities, and SVB Financial claims those businesses already have attracted “significant interest” from third parties. SVB Financial filed certain customary “first day” motions for initial relief in its chapter 11 case, including a motion seeking authorization for the Debtor to continue to use its cash management system (the “Cash Management Motion”), and a motion establishing notification procedures. SVB Financial also filed the declaration of William C. Kosturos in support of the chapter 11 petition and first day motions. The Bankruptcy Court scheduled the first day hearing in the SVB Financial chapter 11 case for March 21st (the “First Day Hearing”).

Specifically, among other relief, the Cash Management Motion seeks authorization for the Debtor to transfer funds in certain bank accounts to new bank accounts that comply with Bankruptcy Code section 345(b). Bankruptcy Code section 345(b) requires a debtor to obtain a bond for any

deposit or investment account not insured or guaranteed by the U.S. government in order to protect from the loss of deposited or invested estate funds. Chapter 11 debtors frequently seek relief from section 345(b)'s requirement by detailing their diversified investments under a sophisticated cash management system. The Debtor also sought authority in the Cash Management Motion to fund certain loans and investments by its non-debtor subsidiary, SVP Capital.

The FDIC's objection to SVB Financial's Cash Management Motion states that there is no need for the Debtor to move its accounts to another bank, as any amounts due to the Debtor will be paid in full through the FDIC Deposit Insurance Fund. Moreover, the FDIC contends that requiring SV Bridge Bank to transfer the Debtor's accounts from SV Bridge Bank to a new bank amounts to a preclusion of the FDIC receiver's powers and functions, including the receiver's right to administer its claims process as against SV Bridge Bank, and the right to withhold payment on the SVB Financial's deposit claim is appropriate under applicable law.

At the First Day Hearing, counsel to the Debtor addressed the lack of information-sharing among the FDIC receiver, SV Bridge Bank, and the Debtor. The parties indicated the establishment of a "working group" of representatives from each entity may help solve various operational issues as they arise – a concept that was strongly encouraged by Judge Glenn. Judge Glenn also noted that he is prepared to approve the Debtor's Cash Management Motion as it pertains to the Debtor's use of up to \$100 million, comprising \$20 million in equity contributions and \$80 million for loans and investments by SVB Capital. The Bankruptcy Court's approval is subject to the court's review of a supplemental declaration describing specific cash uses and transfers between SVB Financial Group and SVB Capital.

Although the hearing revealed some progress among the parties with respect to the lines of communication, it remains to be seen whether the Debtor will be able to reach a consensual resolution of the Bankruptcy Code section 345(b) issue. Further, counsel to the FDIC receiver would not confirm whether the FDIC intends to file any claims against the Debtor – any such claims potentially could significantly impact creditor recoveries. Given the interconnectedness between the Debtor and SVB Bridge Bank, it is likely that further issues will arise with respect to the various rights and obligations of these entities, with each subject to a separate statutory regime.

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