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THE 2023 BANKING CRISIS: A PRIMER ON BANK RECEIVERSHIPS

This article explores some of the key legal and regulatory consequences of the regional bank failures that took place in the spring of 2023. During this time, three prominent banks suddenly collapsed, causing turmoil in the banking industry and anxiety among federal policymakers. In response, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the U.S. Department of Treasury took action, in some cases including the implementation of unprecedented solutions.

By Carl Fornaris *

When an insured bank fails, the chartering authority of the failed bank appoints the Federal Deposit Insurance Corporation (the “FDIC”) as the receiver of the failed bank. A bank receivership is meant to assist depositors in recovering their deposits and creditors in recovering their assets from the estate of the failed bank. Once all the bank’s assets are sold and all claims against the bank are resolved, the receivership terminates.¹ This article briefly discusses FDIC receiverships in general and, specifically, the impact of the spring 2023 bank failures that resulted in the creation of the Bank Term Funding Program, the use of the long-standing Exchange Stabilization Fund, and the creation of two bridge banks. In addition, this article (1) addresses the status of pre-existing loan obligations when a bank fails, (2) includes

information regarding the bid process used by the FDIC when it seeks to sell the assets of a failed bank, and (3) discusses the contract repudiation rights of the FDIC.

THE SPRING 2023 BANK FAILURES

When the respective state chartering authorities of Silicon Valley Bank (“SVB”) and Signature Bank (“SB”) closed SVB and SB in mid-March 2023, the FDIC formed bridge banks to operate each failed bank until a buyer of the whole bank or specific bank assets and deposit liabilities could be found.² After invoking the Federal Deposit Insurance Act’s systemic risk

¹ *When a Bank Fails – Facts for Depositors, Creditors, and Borrowers*, FED. DEPOSIT INS. CORP. (July 28, 2014)
<https://www.fdic.gov/consumers/banking/facts/>.

² *Remarks by Chairman Martin J. Gruenberg on Recent Bank Failures and the Federal Regulatory Response before the Committee on Financial Services, United States House of Representatives*, FED. DEPOSIT INS. CORP. (Mar. 29, 2023)
<https://www.fdic.gov/news/speeches/2023/spmar2923.html>.

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