#

# **Checklist for Borrowers in the Wake of SVB and Signature Bank Failures**

(March 29, 2023)

Below are several proactive considerations for borrowers following recent banking industry events and while the Fed, U.S. Treasury and the White House discuss possible remedial actions to prevent further stress to the global banking industry and continue to combat rising inflation.

1. **Understand the risk profile of the bank, including the relationship between uninsured deposits and unrealized losses**. If you are unsure where to look, Quarles can assist in obtaining the underlying information for you from the relevant government-filed reports.

1. **Existing loan covenants may prohibit transferring cash to other banks**. Although you may ultimately decide to transfer funds out of a bank that you consider unsafe, it is best to consult with counsel on this question. Other ways this prohibition can be addressed include:
* Set up automatic sweeps of available cash to pay down the loan and reduce your uninsured deposit exposure at the same time;
* Use available excess cash to invest in permitted instruments like securities, *e.g.,* notes and bonds; and
* Where the existing agreement does not permit transfers or investments, obtain written consent from the bank to transfer funds or use your cash to make investments.

1. **Prepare for banks to tighten credit**. When operating in a tighter credit environment, assess your ability to access new equity investments or other sources of funds, and to capital plan for your business with the idea that credit financing may not be as available as it has been, at least for a period of time. Where possible, you could decide to extend maturities on existing debt right now.

1. **Expect interest rates to remain at current levels or increase, at least for as long as the Fed is raising rates**. You should project how your business or household can perform with increased rates on your credit, and businesses. You could consider purchasing an interest rate hedge like a swap or collar that will mitigate the harshness of a rate rise on the debt you are paying. However, hedges may contain language tying the hedge to the existence of your underlying loan, which may affect your flexibility to refinance the underlying loan if/when rates fall.
2. **Expect banks to exhibit increased wariness in the current situation**. In the short term, increase your communication with your banker, especially with regard to any difficulties your business is experiencing, and deliver all required reporting to the bank under your loan agreement very timely.
3. **Get good data**, often available but not easy to obtain without expert help, and consult your attorneys on legal issues.

Quarles continues to monitor and share updates on the banking industry as events unfold. For additional insights or guidance relative to your specific business needs, please contact your Quarles attorney or:

* Jim Kaplan: 312-715-5028 / jim.kaplan@quarles.com
* Kim Wynn: 414-277-5377 / kim.wynn@quarles.com