

SVB Financial Group Files for Chapter 11 Bankruptcy

By Jeffrey Cohen, Andrew Behlmann, Philip J. Gross, Lowell A. Citron, Rossie E. Turman III, Ed Zimmerman, and Anthony O. Pergola

What You Need To Know:

- SVB Financial Group (SVB Financial), the former holding company of Silicon Valley Bank (SVB), filed for Chapter 11 bankruptcy protection in the Southern District of New York on March 17, 2023. The bankruptcy case is *In re SVB Financial Group*, No. 23-10367 (Bankr. S.D.N.Y.).
- The Bankruptcy Court has scheduled a “first-day” hearing for Tuesday, March 21, 2023 at 3 p.m. ET. Registration information is available [here](#).
- Two key operating units of SVB Financial—SVB Securities, a regulated broker-dealer, and SVB Capital, a venture capital and private credit fund platform—did not file Chapter 11 petitions and, according to the company, are continuing to operate in the ordinary course of business.
- SVB Financial states that it holds \$2.04 billion in cash in accounts at Silicon Valley Bridge Bank (SVBB), the bank established by the Federal Deposit Insurance Corp. (FDIC) in the receivership of SVB, but that SVBB has declined requests to transfer funds out of those accounts and cut off access to SVB Financial’s books and records.
- Prior to the bankruptcy filing, SVB Financial did not employ any employees directly. Rather, employees of SVB (now SVBB) and other non-debtor subsidiaries performed key roles for SVB Capital and other corporate and administrative functions on behalf of SVB Financial.
- SVB Financial states that it has approximately \$141 million of unfunded equity commitments to venture capital funds on the SVB Capital platform and \$170 million of total commitments under a capital call line of credit facility, with \$62 million drawn as of the bankruptcy filing. SVB Financial seeks Bankruptcy Court authority to make approximately \$50 million in aggregate funding of equity investments within the next three weeks and fund undrawn commitments under the capital call line of credit facility.

The SVB Financial Chapter 11 Filing

Early Friday morning, March 17, 2023, SVB Financial, the former holding company of SVB, filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York, citing the need to preserve value after the California Department of Financial Protection and Innovation placed SVB into receivership and appointed the FDIC as receiver.

The Chapter 11 process for SVB Financial is entirely separate from the receivership of the now-shuttered SVB. SVB Financial states that it is seeking to use the Chapter 11 process to assess strategic alternatives for its valuable business units other than Silicon Valley Bank. Those business units, which are not debtors in bankruptcy, include SVB Securities as well as SVB Capital and its funds and general partner entities.

According to SVB Financial:

- SVB Securities is a registered broker-dealer with its own management, employees, and capital;
- SVB Capital is a venture capital and private credit fund platform;
- SVB Securities and SVB Capital are separate legal entities, distinct from SVB Financial Group; and
- SVB Securities and SVB Capital will continue to operate in the ordinary course of business.

As a Chapter 11 debtor in possession, SVB Financial may continue to operate its business in the ordinary course, subject to Bankruptcy Court oversight.

SVB Financial reports funded debt consisting of approximately \$3.3 billion in unsecured notes, with recourse only to SVB Financial (not SVB Securities or SVB Capital), and it has approximately \$3.7 billion of preferred equity outstanding.

In a March 17, 2023 press release, SVB Financial estimated that it has approximately \$2.2 billion of liquidity. However, according to initial filings in its bankruptcy case, approximately \$2.04 billion of cash is currently held in accounts at SVBB, the bridge bank created by the FDIC in the SVB receivership. According to SVB Financial, SVBB has not honored requests by SVB Financial to transfer cash out of its accounts.

SVB Financial Operations, Employees, and Capital Commitments

SVB Financial (the Debtor) indicates in its first-day bankruptcy filings (filed on Sunday, March 19, 2023) that in the immediate days after the FDIC was appointed receiver over SVB, the Debtor continued to receive limited information on its business operations from personnel at SVBB.

However, according to SVB Financial, that cooperation stopped in the days immediately prior to the bankruptcy filing, and SVBB has since cut off access to books and records. SVBB and the FDIC have each engaged bankruptcy counsel, with whom SVB Financial reportedly has been working to obtain access. However, as of the bankruptcy filing date, SVB Financial states that it has been unable to access a substantial portion of its books, records, files, electronic systems, and key employees.

Approximately 110 employees of SVBB are key members of the SVB Capital business. SVB Financial seeks authority from the Bankruptcy Court to pay or reimburse SVBB and other non-debtor affiliates for services performed on behalf of SVB Financial.

Additionally, through a motion to continue to use its existing cash management system, SVB Financial states that in the ordinary course of its business, it engages in routine transactions with certain of its affiliates and third-party businesses. Among other things, SVB Financial reports that it (a) routinely provides equity commitments and cash investments through the SVB Capital business platform, which comprises 30 fund families of over

100 legal entities, with approximately \$141 million of aggregate unfunded equity commitments, and (b) makes advances to certain funds on the SVB Capital platform under a \$170 million capital call line of credit facility, with \$62 million presently outstanding.

SVB Financial estimates that it will need to make approximately \$50 million in aggregate funding of equity investments on a net investment basis within the next three weeks, and has requested interim Bankruptcy Court authority to do so. In addition, SVB Financial has requested permission from the Bankruptcy Court to fund undrawn commitments under the capital call facility, up to the total \$170 million commitment amount. Both requests are scheduled to be heard at the first day hearing on Tuesday, March 21, 2023.

Holding Company Capital Commitments to a Bank Subsidiary Under Section 365(o) of the Bankruptcy Code

On March 19, 2023, the FDIC, as receiver for SVB, filed a Notice of Appearance in the SVB Financial bankruptcy case. It is unclear whether the FDIC, in furtherance of its efforts to maximize recovery by the former bank's depositors, may assert that SVB Financial made a commitment to maintain the capital of SVB.

In a bank holding company bankruptcy, section 365(o) of the Bankruptcy Code potentially grants the FDIC an advantage over other creditors under certain circumstances. Section 365(o) deems a Chapter 11 debtor bank holding company to have assumed any commitment to a federal regulator (such as the FDIC) to maintain the capital of an insured depository institution. Deemed assumption would require the bank holding company to immediately cure any deficit related to such commitment.

If the Bankruptcy Court finds that SVB Financial made a commitment to the FDIC to maintain the capital of Silicon Valley Bank, section 365(o) could obligate SVB Financial to immediately honor such obligations. Failure to meet that commitment would likely result in conversion of the holding company's Chapter 11 case to a liquidation under Chapter 7, with the FDIC's claims in respect of any such capital maintenance requirements having statutory priority ahead of general unsecured claims, pursuant to section 507(a) (9) of the Bankruptcy Code.

The Bankruptcy Court has scheduled a first-day hearing in the SVB Financial Chapter 11 case for Tuesday, March 21, 2023 at 3 p.m. ET. Participants appearing virtually must register in advance and must log in to the hearing via Zoom for Government at 2 p.m. ET. Detailed instructions for attending the first-day hearing are available [here](#).

This Client Alert will be updated as additional information becomes available.

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

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

JEFFREY COHEN

Partner
Chair, Bankruptcy & Restructuring Department
T: 212.419.5868
jcohen@lowenstein.com

ANDREW BEHLMANN

Partner
T: 973.597.2332
abehlmann@lowenstein.com

PHILIP J. GROSS

Counsel
T: 973.597.6246
pgross@lowenstein.com

LOWELL A. CITRON

Partner
Chair, Debt Finance
T: 646.414.6819
lcitron@lowenstein.com

ROSSIE E. TURMAN III

Partner
Chair, International Finance
Co-chair, Africa Practice
T: 646.414.6808
rturman@lowenstein.com

ED ZIMMERMAN

Partner
Chair, The Tech Group
T: 212.204.8696
ezimmerman@lowenstein.com

ANTHONY O. PERGOLA

Partner
Vice Chair, The Tech Group
T: 212.204.8689
apergola@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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