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Bank Failures and Business: How to Safeguard Your Company's Finances

As a vital partner in the financial health of businesses, banks serve as a means of safekeeping deposited funds. However, as recent events have shown, the unfortunate collapse of smaller regional banks poses a considerable risk to the businesses that have deposited their money with them. This article will explore how a bank collapse of a smaller regional bank can affect a business, the federal safeguards in place to protect depositors, and what businesses can do to protect themselves.

Banks sometimes engage in several types of somewhat risky behavior, some of which have been highlighted in recent years due to their role in the financial crisis of 2008, and brought back into the spotlight due to the collapses of Silicon Valley Bank (SVB) and Credit Suisse. In short, SVB apparently took an aggressive approach to growing its deposits, which were uninsured and not diversified. Additionally, when interest rates were low, SVB invested heavily in US government bonds, but failed to hedge against rising interest rates. Credit Suisse's executives took different but equally substantial risks. By investing in companies like the now-defunct Greensill and Archegos, the bank's capital suffered losses. The bank also incurred fines as a result of several scandals, which have further depleted its capital.

When banks speculate in ways that can potentially lead to financial instability and even bank failures, it can have a significant impact on the businesses that have deposited their money with them. Access to funds can be lost, leading to a disruption of cash flow and the inability to operate effectively. The loss of deposits can also affect a business's creditworthiness, making it harder to secure loans or lines of credit in the future. This puts a significant financial strain on businesses, potentially causing them to fail.

To protect depositors, the Federal Deposit Insurance Corporation (FDIC) provides insurance on deposits at banks and savings associations. The FDIC insurance covers deposits up to $250,000 per depositor, per insured bank, for each account ownership category. This means that if a bank were to collapse, depositors (not shareholders) would be reimbursed up to $250,000 for their deposits. The FDIC also monitors the financial stability of banks and works to prevent bank failures. If a bank is in danger of failing, the FDIC may step in and take actions to protect depositors and minimize the impact of the bank's failure on the broader financial system.

In the event of a bank collapse, the FDIC will take over the bank's operations and act as a receiver or appoint a receiver. The FDIC did exactly that on March 26, 2023, by entering into a purchase and assumption agreement for all deposits and loans of SVB, by First–Citizens Bank & Trust Company, Raleigh, NC, which placed SVB into receivership. The FDIC will then liquidate the bank's assets to pay off depositors and creditors. If there are not enough assets to cover all the debts, the FDIC insurance will cover the remaining funds. The FDIC will also work to transfer deposits to another bank to ensure that depositors can access their funds as quickly as possible.

Despite the FDIC's protection, it is critical for businesses to take the following steps to protect themselves:

First and foremost, businesses should also always bank with an FDIC insured institution.

Another means of protection and probably the most commonly known is by diversifying deposits across multiple banks to reduce the risk of losing access to all of their funds if one bank were to fail, aka "not putting your eggs in one basket." That could mean maintaining an emergency fund of at least one month's worth of operating expenses in a business savings account at a bank separate from your business checking account. If feasible, businesses can go the extra mile by keeping their payroll account, personal account, and their primary business bank account at completely different banks.

Additionally, businesses should carefully review the financial health and stability of any bank they plan to work with, such as keeping up with any financial news relating to the bank as well as looking up its Texas Ratio. Investopedia defines the Texas Ratio as "a system to identify credit problems at banks that's calculated by dividing a bank's non-performing assets by the sum of its tangible common equity and loan loss reserves." The Texas Ratio is not to be used, however absent the consideration of other analyses (as a high ratio isn't always indicative of a bank going bankrupt and will not provide the full scope of the bank's well-being). Businesses can also consider working with larger, well-established banks that have a strong history of stability and reliability.

Finally, businesses should stay informed about the financial health of their banks and monitor any changes that may signal a potential risk of failure, especially during times of drastic changes in the market.

In terms of legal implications, a bank that collapses may face litigation from depositors and creditors seeking to recover funds. The FDIC will work to ensure that all claims are satisfied to the extent possible from the bank's assets. However, if there are not enough assets to cover all claims, depositors and creditors may file lawsuits to recover any remaining funds.

In conclusion, the collapse of a smaller regional bank can have significant consequences for businesses that have deposited their money with them. However, while the FDIC provides a safety net for depositors, businesses should take steps to protect themselves by diversifying their deposits across multiple banks and carefully reviewing the financial health of any bank they plan to work with. By taking these precautions, businesses can safeguard their financial stability and mitigate the risks associated with bank collapses

For more information or questions regarding this topic, please contact Monica Shamass at (312) 648-2300 or via e-mail at monica.shamass@sfbbg.com.

“Securing” Your Retirement Plan Distributions

The 2023 Consolidated Appropriations Act, signed into law on December 29, 2022, contains a Section referred to as Secure Act 2.0 of 2022, which expands the retirement plan changes initially implemented under the original Secure Act which became effective in 2021. While most of the retirement plan changes under Secure Act 2.0 are not effective until 2024 or later years, there are some provisions effective in 2023, one of which is to change the required minimum distribution age. This article will discuss some of the issues to be considered with respect to retirement plan distributions as provided in the Secure Act and modified in Secure Act 2.0 (collectively the “Secure Acts”). The requirements under the Secure Act were also modified by IRS Notice 2022-53, which provides relief for persons receiving an inherited IRA who would have had distribution obligations in 2021 or 2022 and did not take a distribution in those years, as many in the retirement plan community thought that the distributions from an inherited IRA could be taken at any time before the end of the 10-year distribution period,

Required Minimum Distributions. One of the changes under Secure Act 2.0 is to change the required minimum distribution age to age 73 effective in 2023, an increase from age 72 under the Secure Act. If a person reaches the required minimum distribution age, the initial required distribution has to be taken by April 1st of the following year, but the person would then have to take another distribution in that same year, so two distributions are taken in that year. Therefore, it is generally better to take the initial distribution in the year a person reaches the required distribution age – previously 70 ½, then increased to age 72 in the years 2021 and 2022 by the Secure Act, and now increased to age 73 by Secure Act 2.0 for the year 2023, with a further increase to age 75 scheduled under Secure Act 2.0 in the year 2032. The IRS publishes joint-life tables that usually apply to the calculation of the required distribution. A further deferral of the initial distribution under Secure Act 2.0 for persons reaching age 73 in 2023 has resulted from the recently issued IRS Notice, 2023-23, which provides that persons who reach age 72 in 2023 will not have to take the initial required minimum distribution until April 1, 2025, instead of April 1, 2024.

Exception for Active Participants in a Qualified Plan. While the age for required minimum distributions (“RMDs”) was increased from age 70 ½ to age 72 under the Secure Act, this applies to individual retirement accounts, but not to participants in a qualified retirement plan, often a 401(k)-profit sharing plan, if the participant is still employed. Under Internal Revenue Code Section 401(a)(9)(c), the initial required beginning date is the April 1st following the year an employee retires and has reached RMD age, but this delayed distribution does not apply to an employee who is a 5% or greater owner of the company maintaining the retirement plan. There is no age limit for persons actively employed.

Inherited IRAs and Safe Harbor for the Years 2021 and 2022. The Secure Act changed the distribution period in the year 2021 for persons who receive an inherited IRA who are not a surviving spouse or a child of the account owner under the age of 21, with distributions required to be taken over a 10-year period. It was widely thought in the retirement plan community that the distributions could be taken at any time before the end of the 10-year period. However, the IRS issued proposed regulations on February 24, 2022 (87 FR 10504) that required distributions to be taken over the entire 10-year period, effective in the year 2021.

Due to the confusion in the retirement plan community, the IRS published Notice 2022-53 which provided relief for distributions that would have been required in the years 2021 and 2022 under the 10-year inherited IRA rule created under the Secure Act. As a result, no distributions from an inherited IRA are required for the years 2021 and 2022. It should be noted that the required distribution from an inherited IRA commences in the year following the year of death of the account holder. However, there is a required distribution for the account holder in the year of death if the account holder reached the required distribution age before his or her year of death – something that is sometimes overlooked.

Change in Penalties for Late Distributions. Secure Act 2.0 also changes the excise tax penalty for late distributions. The 50% excise tax on a late distribution has been reduced to 25%, with a further reduction of the penalty to 10% if the required minimum distribution is taken and the excise tax paid within two years. While this change reduces the late distribution excise tax penalty, it may mean that requests to the IRS to waive the penalty might no longer be applicable.

Distribution requirements for retirement plans are subject to many variations based on the relationship of the designated beneficiary to the account holder, the age of the account holder, and the age of the designated beneficiary at the time of the death of the account holder. Special rules apply to a surviving spouse, who has the option to rollover a distribution into an IRA of the surviving spouse and to use the joint-life tables to take a distribution over a longer period of time. The surviving spouse’s distributions can be deferral until the time the surviving spouse reaches the required distribution age, without application of the 10-year rule created for other beneficiaries under the Secure Act (with other exceptions to the 10-year rule for a young or disabled beneficiary). Beneficiary designations and planning distributions from a retirement account have always required special attention and the Secure Acts provide new planning opportunities and challenges that require the advice of a knowledgeable advisor.

For more information, please contact Ron Silbert at ron.silbert@sfbbg.com or by calling 312-648-2300.

Case Success Story

Jason Newton obtained a significant property tax win in March that will result in substantial tax savings for the client. After an appeal to and decision from the Cook County Board of Review, Jason reduced the annual taxes of a single property by $1,000,000. The decision was the result of months of negotiations and should remain in place for three years. This is the second year in a row that Jason has negotiated and successfully appealed this property’s taxes. Savings for the client over a four-year period will amount to approximately $4,000,000.

Speaking Engagements

Dan Beederman presented at the American Association of Independent Lighting Agents’ (AAiLA) Second Annual Membership Event on March 6 and 7 in New York, NY. The topic of his presentation was “Achieving and Maintaining Success as a Sales Representative.”

CLE Presentation

Matt Tyrrell presented a CLE course for the National Business Institute on February 22. The program, titled “The Nuts and Bolts of Hiring and Terminating Employees: Best Practices for Conducting Investigations, Firing Employees on Leave and More,” covered topics such as practical guidance for hiring new employees.

Published Articles

On February 16, the Electronics Representatives Association (ERA) published its quarterly publication, “The Representor.” Articles written by attorneys Bruce Bell (“Premium Financing — An Inexpensive Means to Purchasing Life Insurance”) and Adam Glazer (“Using a Contract Breach to Defend Against a Sales Rep’s Claim for Breach of Contract”) were included in the issue and can be found on our website (https://www.sfbbg.com/sales-rep-articles).

Real Estate Tax News

The Cook County Assessor recently published the 2023 assessments of properties in Riverside and Calumet Townships. These two publications kick off the 2023 reassessment session of properties located in the south and west suburbs of Cook County. The Assessor has not yet released a schedule of other 2023 publications, but there will likely be several months before most other townships in Cook are issued 2023 valuations.

2023 also marks a general reassessment year for all properties outside of Cook County. Unlike Cook, which operates on a three-year reassessment cycle, all other counties in Illinois reassess on a four-year cycle. Initial 2023 valuations in DuPage, Lake, and Kane Counties are expected to be published starting this summer.