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How Public Companies Are Responding To SVB's Collapse

By **Tom Zanki**

Law360 (March 13, 2023, 10:15 PM EDT) -- Silicon Valley Bank's collapse is prompting scores of public companies to review their ties to the fallen lender and disclose potential risks, a development that attorneys said will require further vigilance going forward even after a federal rescue plan.

As word spread about the demise of SVB, formerly the country's 16th-largest bank by assets, several prominent technology and life sciences companies in California and beyond quickly disclosed how much cash and investments they had deposited at the Santa Clara-based bank. Many sought to reassure investors that their financial condition remained sound despite SVB's woes.

Online retailer Stitch Fix Inc. said Monday that it expected that its $40 million credit line at SVB would not be available, while adding that it expected to have enough cash and cash equivalents to meet the company's needs for the next 12 months and more, according to a Form 8-K disclosure filed with the U.S. Securities and Exchange Commission.

Digital streamer Roku Inc. said Friday it had about $487 million, or 26% of its cash and cash equivalents, held at SVB. At the time, Roku told regulators that the company did not know to what extent it could recover that cash, given deposit insurance limits. Still, Roku said it had enough cash to fund expenses for at least the next 12 months.

Attorneys who advise public companies say they have been in regular contact with clients regarding their disclosure obligations since federal regulators took possession of SVB on Friday. Subsequent announcements late Sunday by the Federal Reserve, Federal Deposit Insurance Corp. and the U.S. Treasury Department indicating that SVB depositors, plus those of another failed entity, Signature Bank, would be made whole regardless of insurance limits appear to have eased fears that a cash crunch could destabilize markets.

But attorneys said companies should still monitor the fallout from SVB's failure, given the uncertainty of events going forward. SVB's unraveling comes as many companies are preparing their annual reports, known as 10-Ks, which require a reassessment of risks.

"Every public company in the U.S. should consider revisiting their disclosures, specifically risk factor disclosures [in upcoming periodic reports or offerings], and augment them as necessary to reflect the recent turmoil," said Morgan Lewis & Bockius LLP partner Erin Martin, who counsels public companies. "Even if this just relates to macro-focused risk factors and you otherwise have very limited exposure to this."

Companies that are planning to sell new shares, such as through an initial public offering or a follow-on transaction, have a more urgent need to check their exposure to SVB and make sure their registration statements line up accordingly, attorneys said.

"If you were doing a '33 Act offering today, there's a good chance you would add a risk factor," said Seward & Kissel LLP partner Edward Horton, referring to the Securities Act of 1933, which governs sales of newly issued stocks or bonds.

Circumstances vary according to the company. Existing public companies with a longer time frame until their next periodic report could take a wait-and-see approach to assess the fallout from SVB's collapse in order not to risk rushing a disclosure and making a material misstatement, Horton said.

"This is something that people are watching very, very closely to see how it unfolds," Horton said.

Companies that fail to disclose material information — or make material misstatements about their financial condition — could be vulnerable to investor lawsuits, which is why companies regularly revise their risk disclosures to account for worst-case scenarios.

Given its former status as a go-to lender for technology startups in Silicon Valley's venture capital community, SVB's closure on Friday prompted speculation whether the bank's failure was an isolated event or could trigger wider financial contagion. Sunday's intervention by federal officials seemed to calm markets, at least for now.

Privately held companies also cheered the rescue plan. Cryptocurrency firm Circle Internet Financial LLC, which says $3.3 billion of its USD Coin reserves are at SVB, about 8% of its total reserves, said it was "heartened to see the U.S. government and financial regulators take crucial steps to mitigate risks extending from the banking system."

Yet despite the federal intervention on SVB, market uncertainty is still widespread.

SVB's collapse was driven partly by the recent spike in interest rates, which devalued bonds the company bought in recent years when rates were at historic lows, prompting the company to record steep losses as it sold those bonds to cover withdrawals.

Morgan Lewis' Martin said in a webinar Monday that she expects the SEC and investors to increase their scrutiny about companies' cash management practices in the coming months, given the current environment.

Daniel Bagliebter, a partner at Mintz Levin Cohn Ferris Glovsky and Popeo PC, advises biotechnology companies, an industry where early-stage startups are hungry for funds to develop new therapies and are scrutinized about how much cash they have on hand.

For at least the next few days, Bagliebter is not expecting a rash of additional 8-K disclosures from companies regarding their exposure to SVB. But how far ripple effects from the Silicon Valley lender's failure spreads across the market could be worth watching in the weeks ahead.

"We're in 10-K season for most public companies," Bagliebter said. "We're keeping an eye on whether there are developments, particularly around risk factors. We'll probably recommend some updates to clients, depending on where their cash is, how exposed they are and whatnot."

--Editing by Jill Coffey.
