

FINRA Provides Guidance for Broker-Dealers in Wake of Recent Bank Failures

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The recent failures of Silicon Valley Bank (SVB) and Signature Bank have shaken middle-market banking and capital markets in the United States and abroad. Many were questioning whether their deposits at SVB and Signature Bank would adversely impact the net capital requirements pursuant to the Securities Exchange Act of 1934 (SEA) Rule 15c3-1 (Net Capital) and Customer Protection rules requirements pursuant to SEA Rule 15c3-3 (Customer Protection).

Q&A

For example, are deposits in excess of FDIC insured limits non-allowable for net capital purposes? Do customer and/or PAB reserve accounts need to be moved if these banks are no longer considered to be adequate custodians pursuant to the Customer Protection rule?

FINRA answered these questions swiftly. On March 14, 2023, through [Regulatory Notice 23-04](#), FINRA issued guidance for member firms that may be affected by these bank failures as follows:

- All bank deposits at SVB and Signature may continue to be treated as allowable assets for net capital purposes.
- Balances in Customer and PAB Reserve Bank Accounts at SVB and Signature may continue to be treated as qualified reserve bank account deposits for purposes of SEA Rule 15c3-3(e).
- Any withdrawals of funds from accounts held at SVB and Signature must comply with the requirements of all applicable rules, e.g., SEA Rule 15c3-1(e) and SEA Rule 15c3-3(e)(1).

Annual Report Filing Dates

A highly regulated industry, broker-dealers are currently in the process of filing, or will file, their audited annual report by March 31, 2023. Broker-dealers registered with the Securities and Exchange Commission (SEC) are generally required to file their audited annual report and either a compliance or exemption report within 60 days of the broker-dealer's fiscal year end.

During 2021, the SEC provided relief when it issued an order that permitted specified FINRA members an additional 30 calendar days for filing their annual reports as required pursuant to SEA Rule 17a-5(d), subject to certain conditions. This relief meant that the majority of non-clearing broker-dealers were likely granted such relief.

Discussions with Auditors

Broker-dealers affected by the recent bank failures, or those with deposits at banks that have been recently "flagged" with concerning issues, should, among other things, discuss the financial reporting implications with their auditors as they seek to meet their regulatory reporting deadline. The current issues in the banking world will, at a minimum, give rise to expanded footnote disclosures in annual reports. In addition, CPA firms are carefully monitoring the situation which may also trigger additional scrutiny over items such as going concern and concentration risks.

Broker-dealers should also take this opportunity to assess the adequacy of their treasury management function and consider seeking the help of a specialist to assist in this process and make the necessary enhancements to that function, as needed.

Contact Us

If you would like to discuss how our specialist can assist you with regulatory compliance or with an audit, contact your client service team at PKF O'Connor Davies or:

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