

Recent Bank Failures & Distress: Lessons Learned and Chapter 11 Implications

UT LAW CLE



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Agenda

- I. Introductions
- II. Banking/Cash Management Implications of Filing for Chapter 11
- III. Checks & Balances in Chapter 11
- IV. Recent Bank Failures and Distress in 2023
- V. Implications Going Forward

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I. Introductions



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II. Banking/Cash Management Implications in Chapter 11

- Chapter 11 Debtors seek “first day” relief under the Cash Management Motion
 - “First Day Motions” are typically filed at the commencement of the case (i.e., with the Chapter 11 petition) to ensure a smooth transition into bankruptcy and to permit the debtor to maintain stable operations
 - Allow the debtor to, among other things, continue certain operations and business practices, pay or honor certain prepetition obligations, and obtain related procedural relief
 - Cash Management Motion is a customary First Day Motion
 - Typically seeks authority to maintain the debtor’s existing **cash management system**, including the use of bank accounts, intercompany financing arrangements, and existing business forms

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II. Banking/Cash Management Implications in Chapter 11

- More specifically, Cash Management Motion relief typically includes:
 - Continued use of existing bank accounts (including paying related fees)
 - Continued use of existing “business forms”
 - “Debtor-in-Possession” designation on checks
 - Addressing requirements of **Bankruptcy Code Section 345(b)**
 - Section 345(b) requires a debtor to obtain a bond for any deposit or investment account not insured or guaranteed by the US government
 - Typically involves negotiation with the United States Trustee if the debtor’s bank account(s) do not currently comply and relief is needed

III. Checks & Balances in Chapter 11: UST Oversight and Adherence to UST Guidelines

- The United States Trustee Program (the “**UST**”) is a component of the Department of Justice responsible for overseeing the administration of bankruptcy cases with the aim of promoting the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders
 - Not be to be confused with the chapter 11 trustee appointed in a bankruptcy case (i.e., the UST does not have direct control of the company and its property)
- Once in bankruptcy, the debtor owes fiduciary obligations to the estate. The UST has issued guidelines that cover banking and other responsibilities for debtors-in-possession

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