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Silicon Valley Bank: a Tragedy in Three or Four Chapters

Marshall S. Huebner

November 9, 2023

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Silicon Valley Bank: Background

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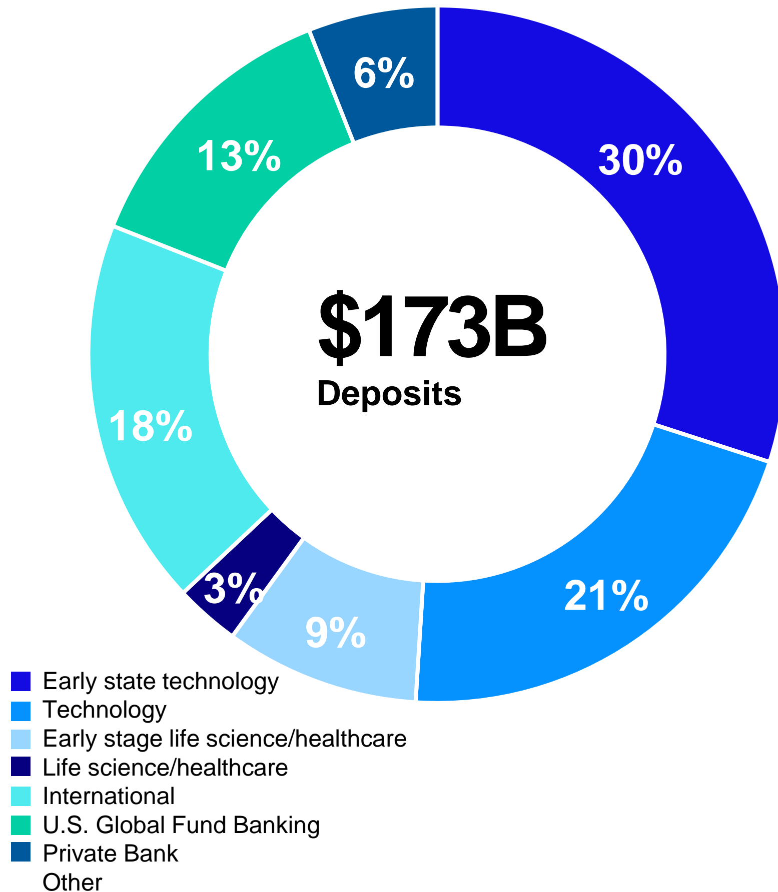
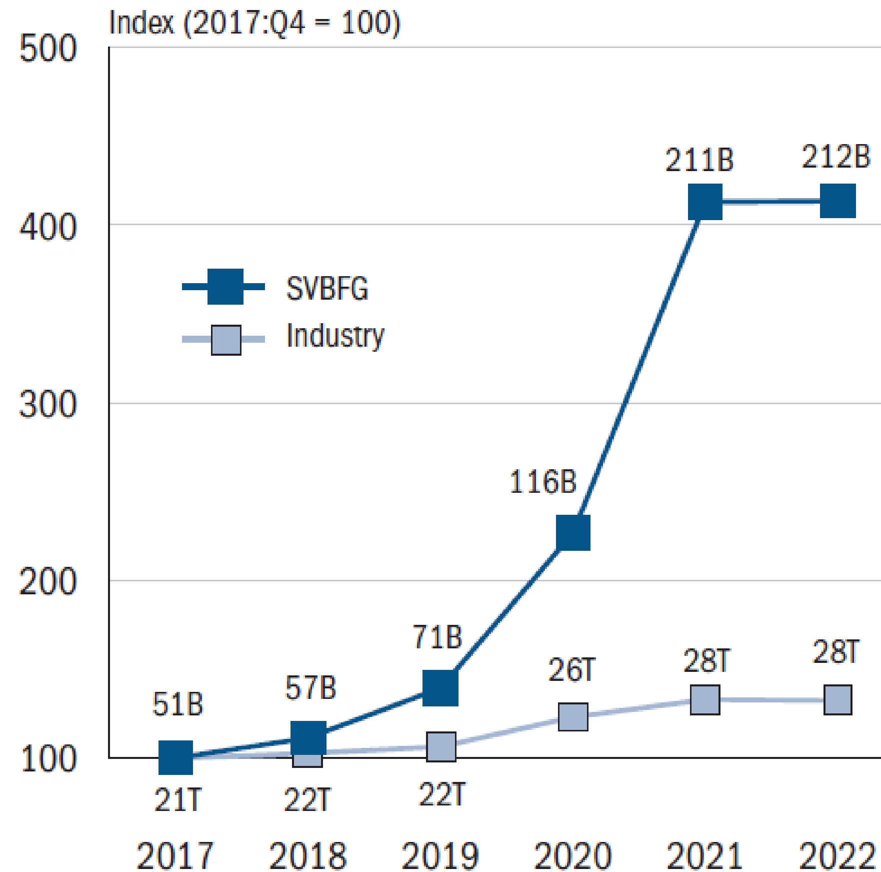
Total client funds by client type

SVBFG client funds by type



Source: SVBFG 2022:Q4 financial highlights, January 9, 2023.

SVBFG and banking industry total assets



Source: Federal Reserve, Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank (the "Barr Report"), April 28, 2023; FR Y-9C and Call Report.
https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf

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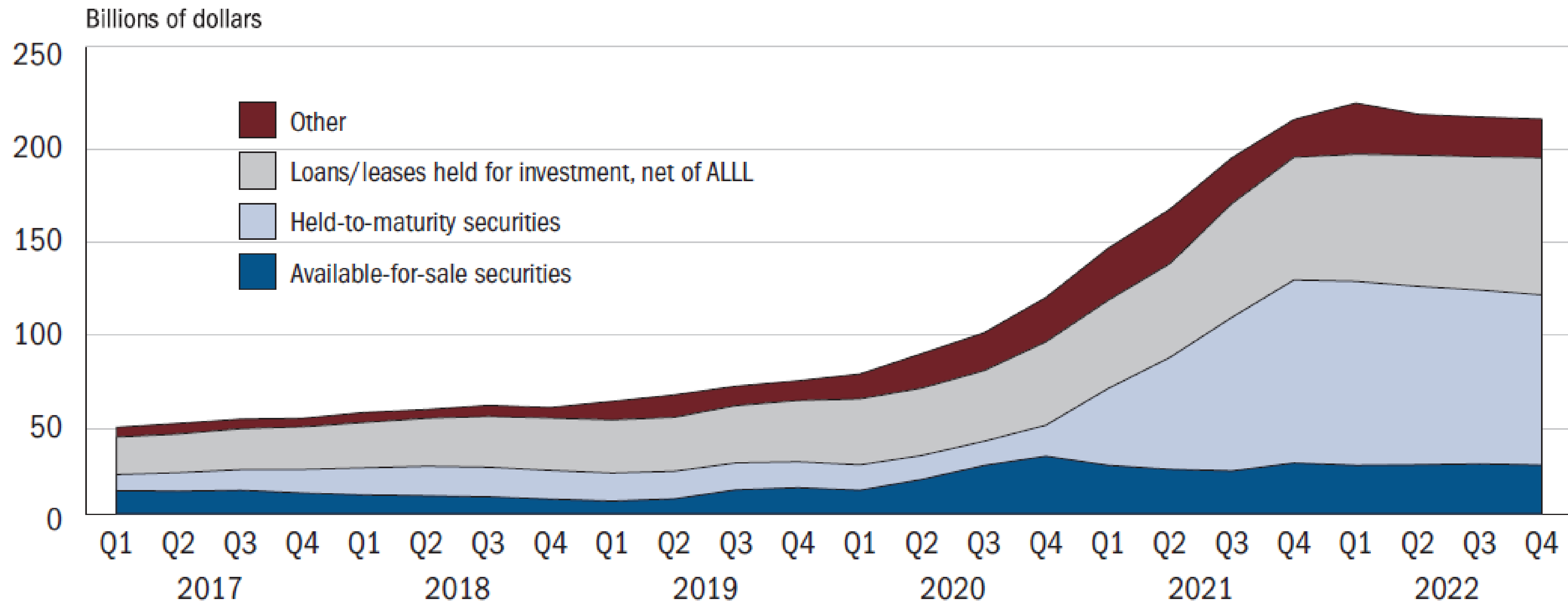
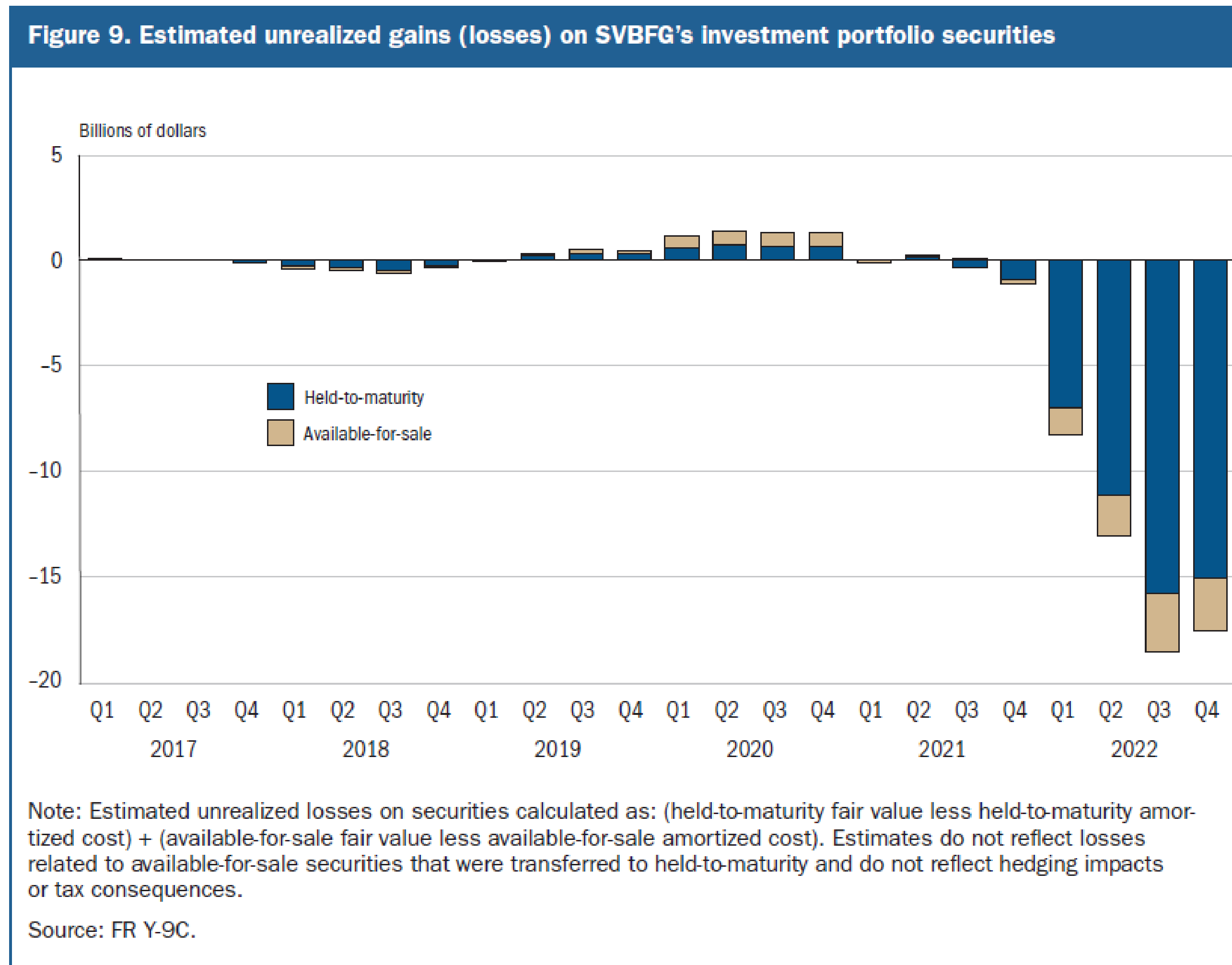
Composition of SVBFG assets



Source: The Barr Report; FR Y-9C.

Estimated unrealized gains (losses) on SVBFG's investment portfolio securities



Source: The Barr Report; FR Y-9C.

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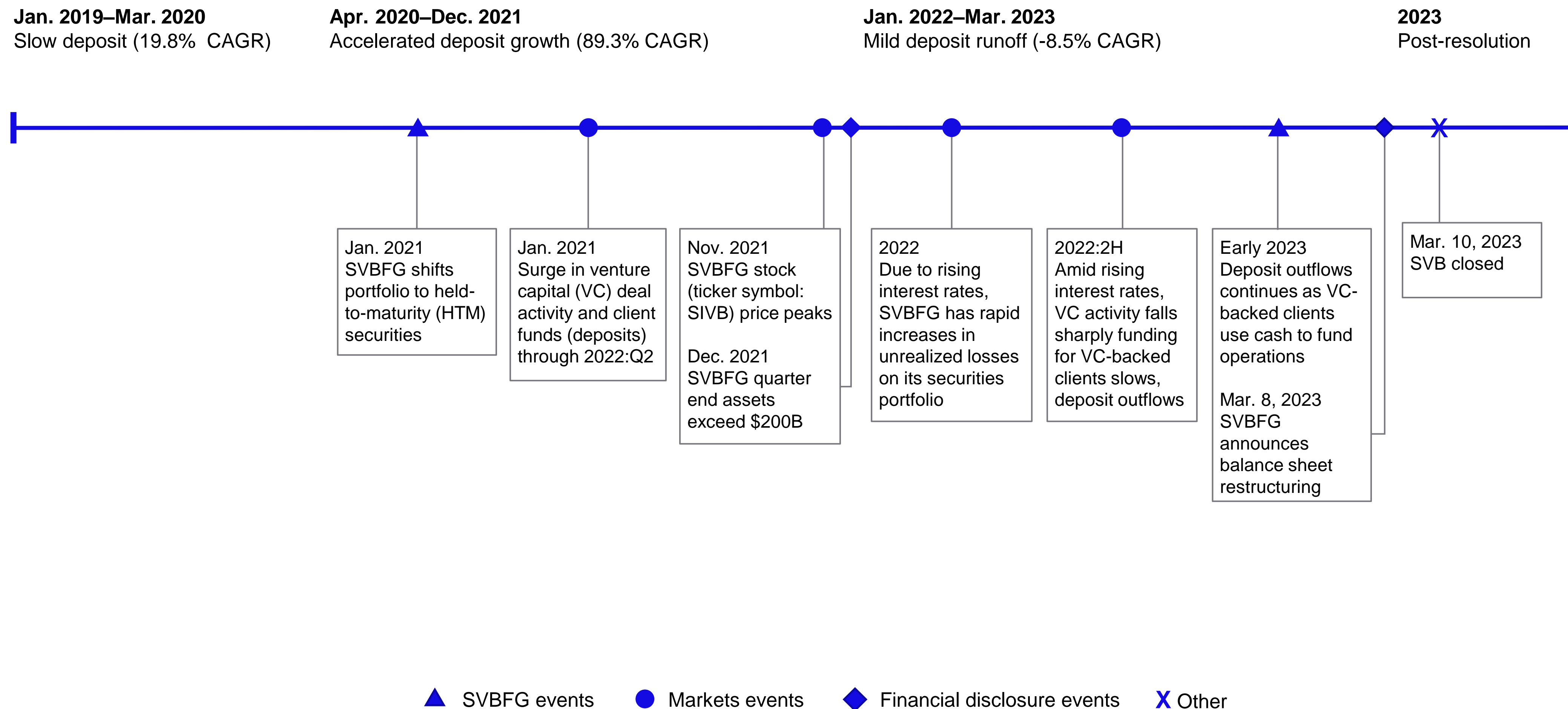
Timeline of key developments

Financial and market developments



Source: The Barr Report.

Chapter 1: A Historic Failure of Oversight and Regulation

01

Regulation of SVB and SVBFG

- Dual-banking system of both federally and state chartered, supervised and regulated banks.
  - SVB was chartered by the California Department of Financial Protection and Innovation, and was therefore supervised and regulated by the CDFPI.
  - SVB was also a state member bank of the Federal Reserve System, and was therefore also regulated and supervised by the Federal Reserve System (SF Fed).
- SVBFG was a bank holding company, and itself directly regulated by the SF Fed.
- Within the Fed regulatory sphere, banking organizations are generally supervised based on their size (which generally coincides with complexity).
  - When SVBFG reached $100bn in assets on a rolling 4-quarter basis in June 2021, it became a "**large banking organization**" subject to heightened supervision.

Banking regulators are Prudential Regulators

— Unlike market regulators, which are conduct or disclosure-based regulators, banking regulators, like the Fed, are concerned with safety and soundness of both an individual institution and the financial sector as a whole.

- Broadly, the Fed is concerned with an individual banking organization's
  - **C**apital: the bank's ability to absorb losses.
  - **A**sset quality: the riskiness of a bank's loans (generally) becoming impaired.
  - **M**anagement capability: how well governed is the institution?
  - **E**arnings: is the bank earning an appropriate return to continue to be viable?
  - **L**iquidity: How capable is the bank of meeting present or future cash flow needs?
  - **S**ensitivity to market risk: How much is the banking organization impacted by changes in interest rates, a particular sector, commodity prices, etc.?
- These factors are assessed individually, assigned a numerical score between 1 (highest) and 5 (lowest) and aggregated into a composite **CAMELS** rating.

Failures of supervision

- Even before interest rates rose and despite frequent examinations, supervisors did not fully appreciate the extent of SVB's vulnerabilities as it grew in size and complexity.
  - The SF Fed examined SVB 26 times (and SVBFG an additional 17 times) between Feb 2018 and March 2023.
  - The Federal Reserve's Office of Inspector General September 2023 report (the "OIG report") found that examiners "did not balance the lack of appropriate ***liquidity risk management*** with the bank's financial results" and that "examiners missed an opportunity [as early as March 2019] to downgrade the liquidity component" of SVB's CAMELS rating.
  - Supervisors also failed to raise issues of ***concentrated customer base*** which could exacerbate run risk, especially given that 94% of SVB's deposit base was uninsured.
- When interest rates rose, examiners did not scrutinize the risks it posed to SVB's investment securities portfolio.

Failures of supervision (cont.)

While the Federal Reserve Board's surveillance team grappled with interest rate risk, the examiners actually responsible for SVB failed to do so despite the sharp rise in interest rates being front page news in many of the business publications:

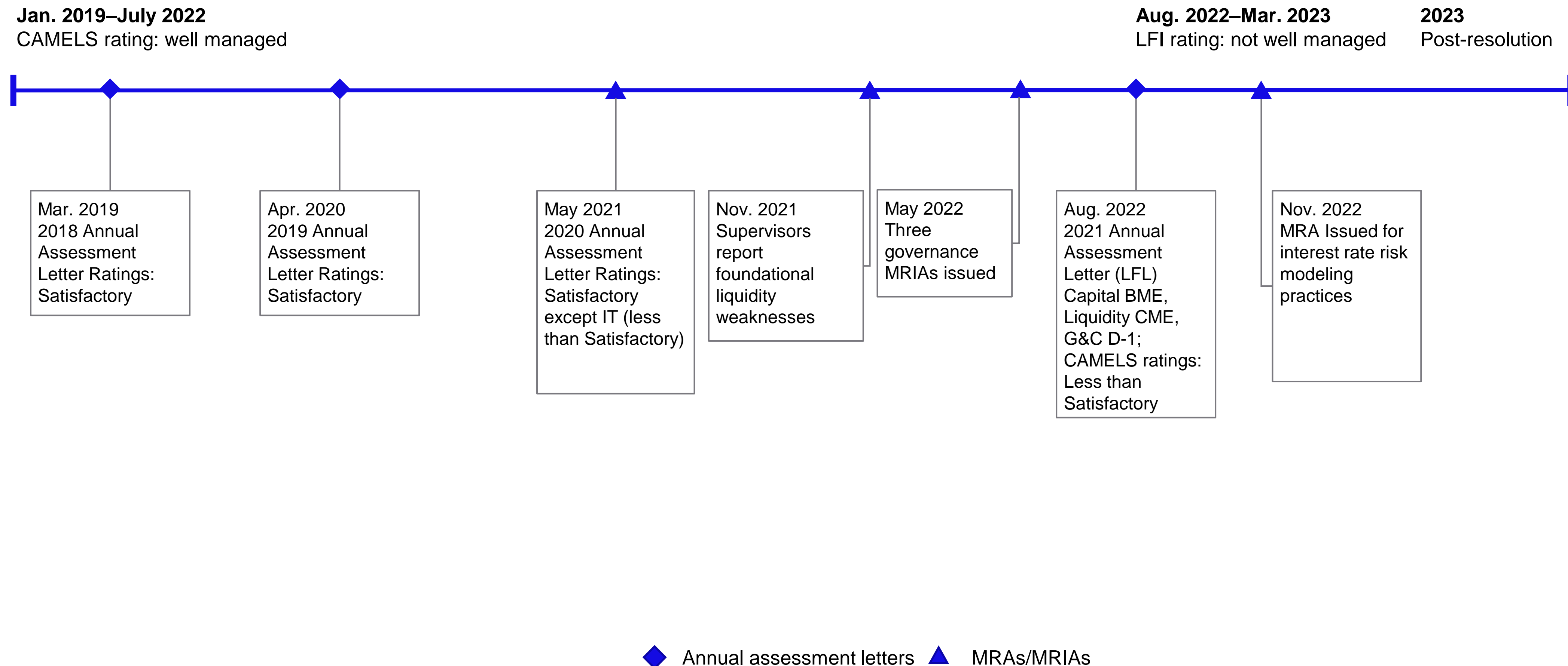
- "In June 2022, the Board's surveillance team issued a special topic report discussing the high level of unrealized losses on the investment securities at many banks as a result of interest rate increases. The surveillance team identified SVBFG as one of the institutions with the highest levels of unrealized losses and with a large portion of investments in its HTM portfolio. . . . As of June 2022, the Board's surveillance team also placed SVBFG on the Systemwide holding company watch list with a high adverse change probability warning."
- "In August 2022, FRB San Francisco examiners issued LFI ratings for SVBFG and, jointly with the CDFPI, issued CAMELS ratings for SVB. . . . Despite the surveillance team's reports, examiners commented in the supervisory letter that SVB's balance sheet structure mitigated some of the risks associated with the recent rapid growth by having 64 percent of the bank's total assets in cash and fixed income securities, of which 93 percent were invested in U.S. Treasuries and government agency-issued securities and did not consider the changing market environment and its potential effect on the bank's financial condition."

Source: OIG Report.

Failures of supervision (cont.)

- When supervisors did identify vulnerabilities, they did not act with the needed seriousness or speed.
  - Missed opportunities to downgrade CAMELS rating.
  - Did not enter into an MOU to address SVB's many shortcomings, even though one was slowly being drafted for more than a year.
  - Did not require SVBFG to act as a source of strength and push capital down to SVB.
  - Allowed SVB to unwind interest rate hedges in 2022.
  - Allowed SVB to operate without a chief risk officer from April 2022 through its failure 11 months later.
  - Did not issue any Matters Requiring Attention ("MRAs") on interest rate risk until November 2022, instead focusing their efforts on many process and checklist MRAs.
  - Did not account for instant and broadly transmissible electronic communication that can, at breathtaking speed, spread fear through social and professional networks and cause a run.
- These substantive failures in oversight were seemingly caused, in part, by a botched handover of responsibility from "RBO" to "LFBO" supervisors upon SVB's crossing the $100 billion size threshold.
- This series of failures is illustrated in the series of graphics on the following three slides.

SF Fed repeatedly failed to downgrade SVB's CAMELS ratings



Source: The Barr Report.

SF Fed Repeatedly Failed to Downgrade SVB's CAMELS Ratings (cont.)

Table 6. CAMELS ratings for SVB: scored from 1 (highest) to 5 (lowest)

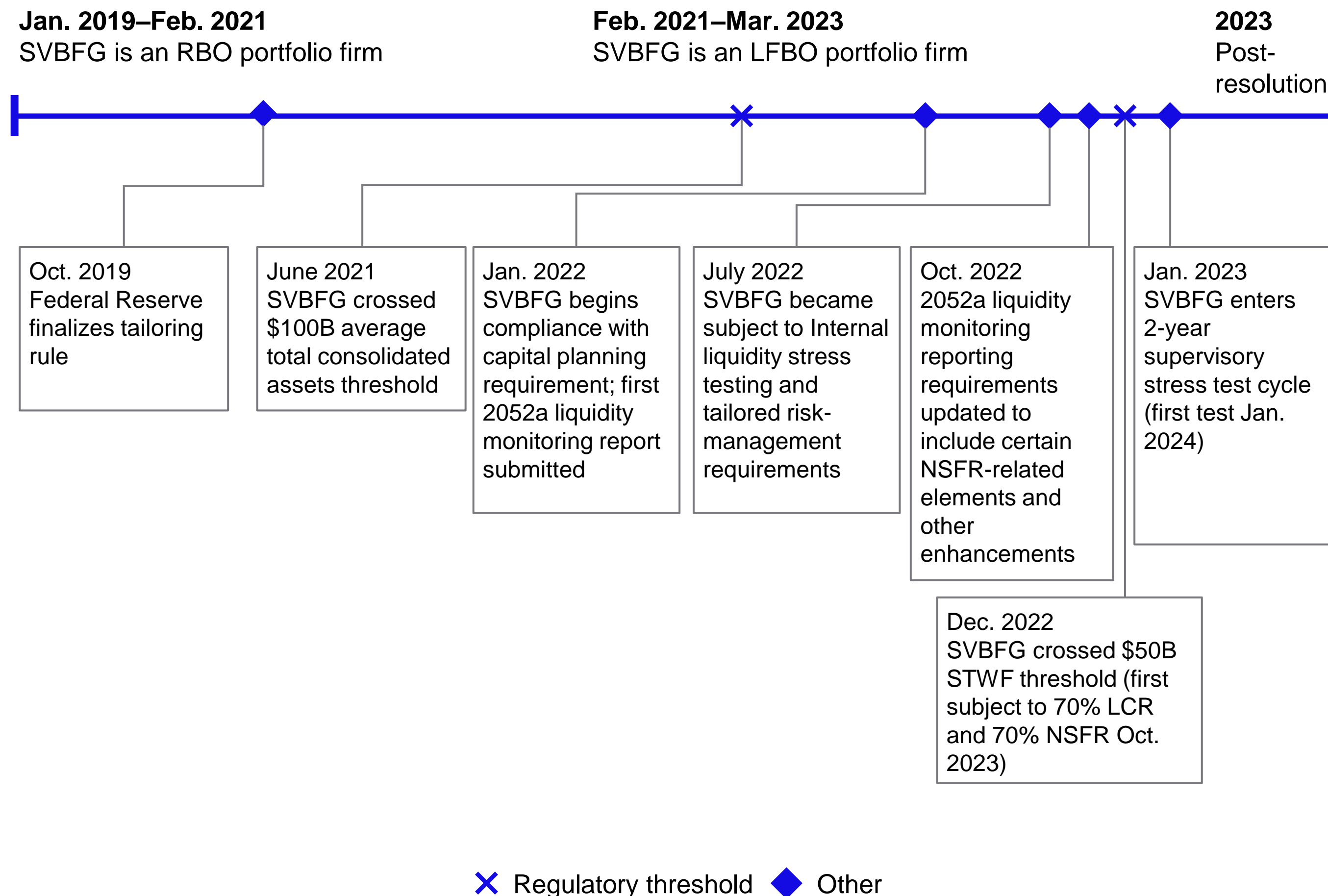
Report disposition date	Capital rating	Asset quality rating	Management rating	Earnings rating	Liquidity rating	Sensitivity to market risk rating	Composite rating
3/7/17	2	2	2	2	1	2	2
2/14/18	2	2	2	2	1	2	2
3/6/19	2	2	2	2	1	2	2
4/13/20	2	2	2	2	1	2	2
5/3/21	2	2	2	2	1	2	2
8/17/22	2	2	**3**	2	**2**	2	**3**

Note: Shading Indicates a change In ratings.

Source: The Barr Report; Internal Federal Reserve supervisory databases.

SVB was subject to a botched supervisory handoff

Regulatory developments



Source: The Barr Report.

Barr Report: "The transition of SVB from the Regional Banking Organization portfolio to the LFBO portfolio lacked a defined plan and process. As a result, supervisory plans and staffing of the new team came after the transition, rather than in the period leading up to it. Staff describe a sharp shift and 'cliff effect' as SVBFG rapidly went from RBO supervision to LFBO supervision…"

SVB and the source of strength requirement

- In 2010, Congress enacted Section 616(d) of Dodd Frank, codified at 12 U.S. Code § 1831o–1, which provides as follows:
  - "The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution."
- The statute also provides that "[n]ot later than 1 year after the transfer date, as defined in section 5411 of this title, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section."
  - Thirteen years later, no such rules have been issued.

SVB and the source of strength doctrine (cont.)

- Moreover, at no point did the Federal Reserve or any other regulator impose any obligation on the SVB parent to provide capital to the bank. In particular, SVB Financial Group was not party to any:
  - Capital and Liquidity Maintenance Agreement (CALMA).
  - Memorandum of Understanding or Consent Decree requiring maintenance of bank capital.
  - Capital Commitments to its bank subsidiary entered into under a single point of entry (SPOE) living will.

Chapter 2: With Failure Imminent, Regulators Fumbled

02

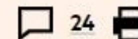
SVB's failure: proximate cause

Silicon Valley Bank profit squeeze in tech downturn attracts short sellers

California institution that serves start-up scene under scrutiny over investments that have left it with unrealised $15bn loss

Greg Becker, chief executive of Silicon Valley Bank: 'There will be more headlines about failure rates and [tech industry] lay-offs. Whether this volatile period is 12 months or 18 months, our goal is to be able to make sure we're resilient to support clients through this' © FT montage/Bloomberg

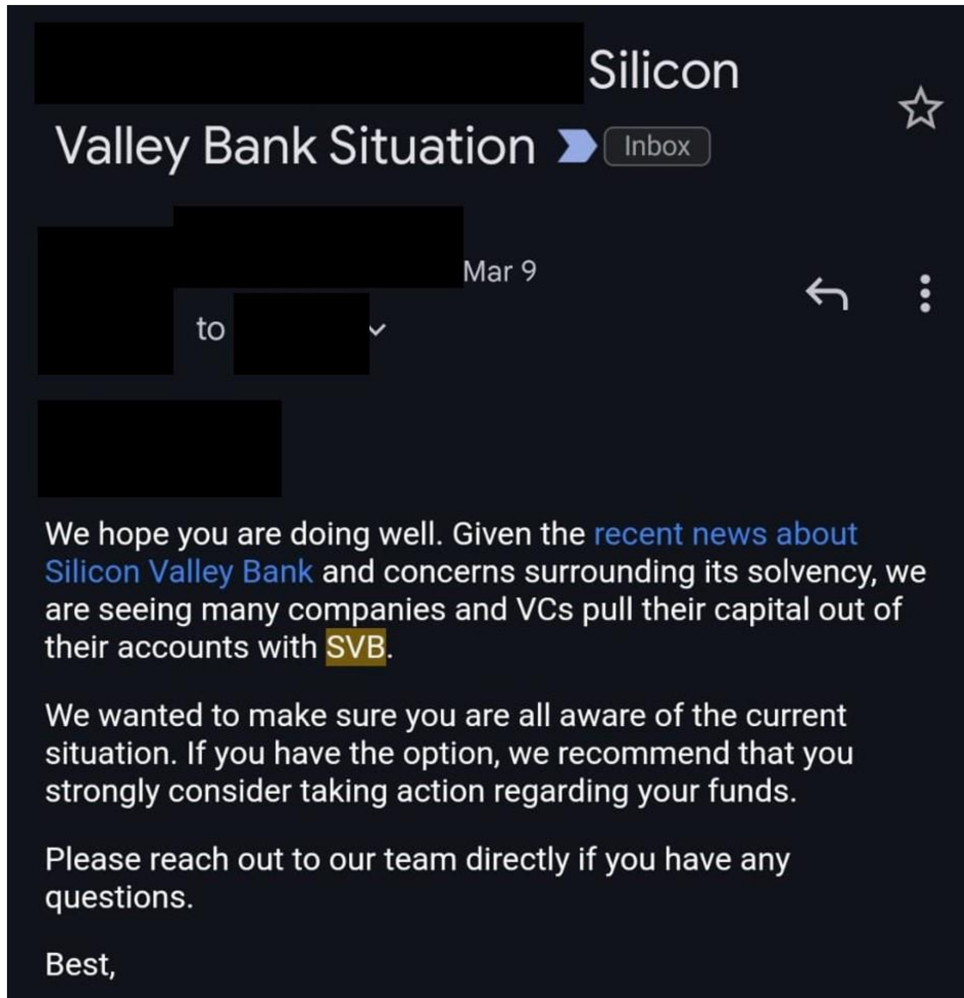
Tabby Kinder in San Francisco, **Dan McCrum** in London and **Antoine Gara** and **Joshua Franklin** in New York FEBRUARY 22 2023

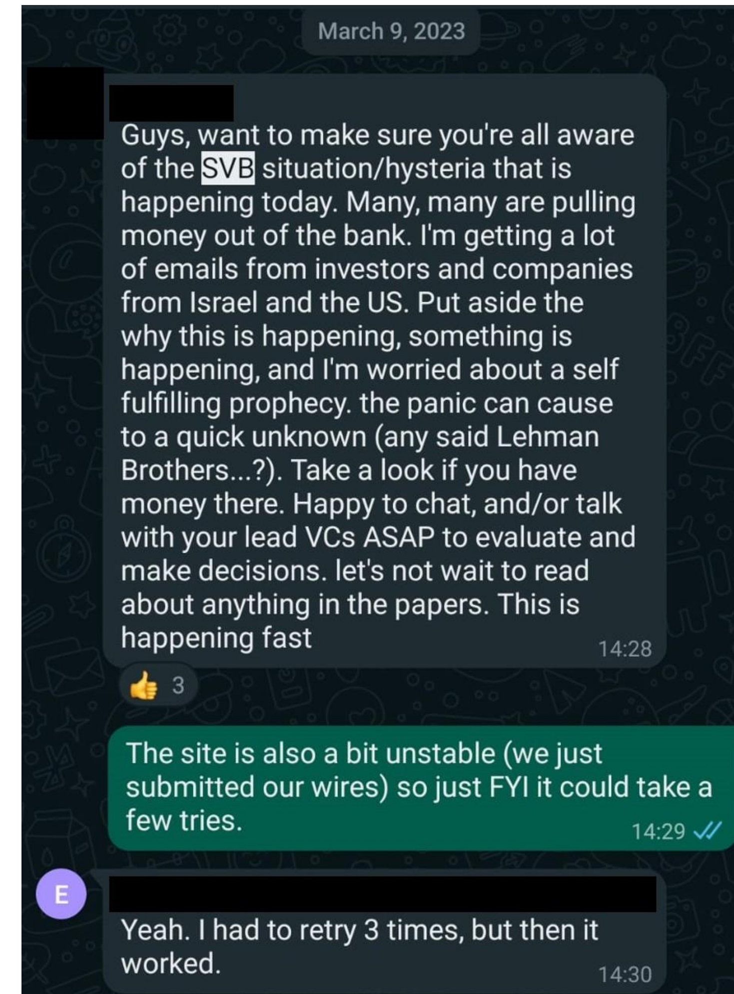


Source: Financial Times.

SVB's failure: proximate cause (cont.)

- Negative press reports in February 2023 cause deposit withdrawals to accelerate, with withdrawals encouraged by VC investors and others in messages such as these:





SVB's failure: proximate cause (cont.)

- SVB reacts by selling its portfolio of available for sale securities (AFS) at an after-tax loss of $1.8 billion and announcing a capital raise plan, which causes a crisis of confidence and the bank's rapid demise.
  - March 8: Sale of AFS securities and capital raise plan announced.
  - March 9: $40 billion deposit flight.
  - March 10: With $100 billion in further outflows anticipated, SVB is placed in receivership.

The moment of crisis: regulators' efforts underwhelm

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- On Thursday March 9, SVB tried to fend off a bank run and obtain liquidity by attempting to:
  - Obtain a $20 billion secured loan from SF Federal Home Loan Bank

    but SF FHLB said it came in too late to process that day (it was mid-day).
  - Move collateral to the Fed to borrow money through BNY Mellon (its custody bank)

    but SVBFG had limited collateral pledged to the Federal Reserve's discount window, had not conducted required test transactions, and was not able to move securities collateral quickly from its custody bank or the FHLB to the discount window.

Source: The Barr Report.

The FDIC's response: from DIN-B to Plan-B

Press Release

FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California

Friday, March 10, 2023

For Immediate Release

Last updated: March 12, 2023

WASHINGTON – Silicon Valley Bank, Santa Clara, California, was closed today by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. To protect insured depositors, the FDIC created the Deposit Insurance National Bank of Santa Clara (DINB). At the time of closing, the FDIC as receiver immediately transferred to the DINB all insured deposits of Silicon Valley Bank.

All insured depositors will have full access to their insured deposits no later than Monday morning, March 13, 2023. The FDIC will pay uninsured depositors an advance dividend within the next week. Uninsured depositors will receive a receivership certificate for the remaining amount of their uninsured funds. As the FDIC sells the assets of Silicon Valley Bank, future dividend payments may be made to uninsured depositors.

- Market turmoil and fear of contagion persisted on Friday, March 10, after the FDIC formed a DIN-B to honor SVB's insured deposits only (i.e., $250k per depositor).
- Depositors – who still had over $150 billion in deposits at SVB – were left uncertain about their ability to make payroll and other payments.
- Massive fear about a domino effect at regional banks; several other bank stocks were halted from trading, including First Republic, PacWest Bancorp, and Signature Bank.
- Other banks saw huge outflows of deposits into the GSIBs.

The FDIC’s response: from DIN-B to Plan-B (cont.)

March 12, 2023

Joint Statement by Treasury, Federal Reserve, and FDIC

Department of the Treasury

Board of Governors of the Federal Reserve System

Federal Deposit Insurance Corporation

For release at 6:15 p.m. EDT

Washington, DC -- The following statement was released by Secretary of the Treasury Janet L. Yellen, Federal Reserve Board Chair Jerome H. Powell, and FDIC Chairman Martin J. Gruenberg:

Today we are taking decisive actions to protect the U.S. economy by strengthening public confidence in our banking system. This step will ensure that the U.S. banking system continues to perform its vital roles of protecting deposits and providing access to credit to households and businesses in a manner that promotes strong and sustainable economic growth.

After receiving a recommendation from the boards of the FDIC and the Federal Reserve, and consulting with the President, Secretary Yellen approved actions enabling the FDIC to complete its resolution of Silicon Valley Bank, Santa Clara, California, in a manner that fully protects all depositors. Depositors will have access to all of their money starting Monday, March 13. No losses associated with the resolution of Silicon Valley Bank will be borne by the taxpayer.

- The FDIC sought to find a buyer for SVB that weekend, but the speed of outflows and rapid failure made it unrealistic for buyers to submit going concern bids on that timeline.
- Because contagion and panic continued, the federal government – at its very highest levels – determined on Sunday, March 12 that more drastic measures were needed to mitigate systemic harm, culminating in the invocation of the systemic risk exception and backing all SVB deposits.
- Invoking the SRE worked, and deposit flight to the GSIBs abated.

Chapter 3: Broken Promises

03

FDIC reversal contradicts prior public statements and defies market expectations

- When the FDIC invoked the SRE, everyone believed all deposits were fully guaranteed because the government repeatedly and in plain terms said that they were:
  - March 12 – Treasury, Fed, and FDIC joint statement: Secretary Yellen approved [SVB's resolution] in a "in a manner that fully protects all depositors." "Depositors will have access to all of their money starting Monday, March 13."
  - March 13 – FDIC press release: Headline: "FDIC Acts to Protect All Depositors." "All depositors [of SVB] will be made whole."
  - March 16 – Yellen statement to Senate Committee: "[W]e worked . . . to protect all depositors;" "On Monday morning, customers were able to access all of the money in their deposit accounts;" "Americans can feel confident that their deposits will be there when they need them."
  - March 28 – FDIC statement to Senate Committee: "[The SRE was invoked] to fully protect all depositors."
  - March 28 – Michael Barr before Senate Committee: "We are committed to ensuring that all deposits are safe."

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FDIC cuts off SVBFG access to its bank deposits

- For a brief period of time after SVB's failure, SVBFG was able to access its accounts (like all other former SVB depositors) at the Bridge Bank.
  - It successfully initiated eight wire transfers on 3/15 and 3/16 to prepare for its reorganization.
- However, on March 16, the Bridge Bank began to reject wire transfers that were previously and properly initiated.
  - The FDIC-R instructed the Bridge Bank to place a hold on SVBFG's accounts there and to restrict any withdrawals.
  - The FDIC-R even told Bridge Bank employees to contact the recipient banks for certain of the wires that had already cleared and incorrectly inform them that the wires had been initiated in error and should be canceled.
- In the wake of this treatment, the SVBFG parent commenced chapter 11 proceedings.

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FDIC initially says that the systemic risk exception applies to parent deposits

- The FDIC initially represented to the Bankruptcy Court that the parent deposit was covered by the systemic risk exception, and its payment was merely a matter of allowance and timing:
  - “To the extent that the FDIC agrees that any amount is due to the Debtor (and unavailable for setoff), such amount will be paid in full through the Deposit Insurance Fund.” Objection to Debtor’s First Day Motion, at ¶ 16 (March 20, 2023), Dkt. 33.
  - “To the extent the debtor's claim is allowed and is not subject to set off or has been reduced by amounts that may be entitled to be set off, that claim would be paid by the deposit insurance fund. And that deposit insurance fund is backed by the full faith and credit of the United States." FDIC-R1 Counsel statement during the First Day Hearing at 56:12-57:21.
  - “To the extent that allowed deposit claims against the SVB receivership estate (including any allowed claim asserted by SVBFG) are not fully satisfied from the SVB receivership assets, the FDIC will fully protect and satisfy any remaining amount under 12 U.S.C. § 1823(c)(4)(G).” Statement of the FDIC, as Receiver for SVB, Pursuant to the Court’s Direction at the April 26, 2023 Hearing at 6 (May 3, 2023), Dkt. 145.

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FDIC reverses course

- However, the FDIC subsequently reversed its position:
  - In the Bankruptcy Court proceeding, in response to a question about whether Secretary Yellen's comments about insuring all deposits covered SVBFG's deposits:
    - "I don't think they cover these funds or that they [necessarily have to] . . . The secretary's statements were made generally to the marketplace . . . a press release doesn't go through the same type of precision that, for example, filing something in the court would. And, in fact, the FDIC's website specifically says whatever press releases we make are not binding upon us. And they're not intended to be, your Honor, they're intended to calm fears . . ."
  - In the Bankruptcy Court proceeding,
    - "FDIC-R1 respectfully requests that the Court take judicial notice of the existence and contents of the General Disclaimer on the FDIC's website (the "Disclaimer"), which states, in part, as follows:
      - *"This website does not purport to authoritatively interpret current federal statutes, regulations, orders or other federal authority, nor does it bind the FDIC or any other federal agency or entity with regard to the matters presented."*"

Sources: Hearing Transcript, SVB Financial Group v. Federal Deposit Insurance Corporation, October 19, 2019; request of the Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank, for Judicial Notice, Pursuant to Federal Rule of Evidence 201, in Support of its Reply in Support of its Motion to Dismiss, Dkt. 72 (filed September 6, 2023).

Chapter 4: Yet to Be Written, but the Current Signs Are Not Encouraging

04

Introspection and Reviews

Two major reports about the fall of SVB and what caused it.

April 28, 2023: Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank (the Barr Report)

Board of Governors of the Federal Reserve System
Washington, D. C. 20551

Michael S. Barr
Vice Chair for Supervision

April 28, 2023

Re: Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank

Silicon Valley Bank (SVB) failed because of a textbook case of mismanagement by the bank. Its senior leadership failed to manage basic interest rate and liquidity risk. Its board of directors failed to oversee senior leadership and hold them accountable. And Federal Reserve supervisors failed to take forceful enough action, as detailed in the report.

September 25, 2023: Material Loss Review of Silicon Valley Bank (the OIG Report)

Evaluation Report
2023-SR-B-013
September 25, 2023

Board of Governors of the Federal Reserve System

Material Loss Review of Silicon Valley Bank

Introspection and Reviews

- Both the Barr Report and the OIG Report concluded that SVB's failure was primarily the result of:
  - Mistakes made by SVB's senior management and the failure to manage basic interest rate and liquidity risks; and
  - The lack of effective oversight by SVB's board of directors.

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Insights

Silicon Valley Bank failure – A different view of the Federal Reserve OIG report

October 18, 2023 | Client Update

The Federal Reserve OIG issued a report on SVB's failure. Media reports have described it as nearly identical to the Barr Report. The report is more critical of the supervisory staff. It does not blame regulatory tailoring for reduced supervisory intensity, except when SVB had assets between $50-$100 billion. Nor does it blame supervisory deficiencies on a less-assertive supervisory culture instituted by former Vice Chair for Supervision Quarles.

Introspection and Reviews

But the Barr Report and the OIG Report differ in their analysis of regulatory and supervisory shortcomings:

The Barr Report concluded:

- Supervisors did not fully appreciate the extent of SVB's vulnerabilities as it grew in size and complexity;
- Supervisors did not take sufficient steps to ensure that SVB fixed those problems quickly enough;
- Supervisory and regulatory failures were caused by the Fed's implementation of "tailoring" as required by statute and, more politically, by an alleged shift in supervisory practices under the direction of the previous Vice Chair for Supervision that resulted in a less-assertive supervisory culture and a shift in supervisory practices, including:
  - Pressure to reduce the burden on firms;
  - Requirements to meet a higher burden of proof for supervisory conclusions;
  - Need to demonstrate due process when considering supervisory actions.

The OIG Report:

- Said the impact of tailoring was limited;
- Did **not** attribute any supervisory deficiency to a less-assertive supervisory culture promoted by former Vice Chair for Supervision Randal Quarles; and
- Identified a number of supervisory deficiencies, including failures to:
  - Sufficiently scrutinize the risks from rising interest rates on SVB's HTM investment securities portfolio;
  - Take actions to mitigate the risks from rising interest rates because the large and foreign banking organization supervisory unit was excessively focused on risk management, not the risks themselves; and
  - Focus attention on the potential risk of unrealized losses on SVB's long-dated, fixed rate, investment securities as a result of higher interest rates.

Introspection and Reviews

- Third party reports tend to agree predominantly with the more critical OIG report

Bank Policy Institute Statement on SVB Reports (April 28, 2023)

We commend both the Federal Reserve and the GAO for releasing reports on SVB's failure with speed and urgency, and believe it is particularly helpful that the Federal Reserve has made public the underlying supervisory materials related to SVB, given its status as a failed institution. These will assist future investigations greatly as they assess the causes and ramifications of SVB's failure, including numerous important topics beyond the scope of these initial reports.

Unfortunately, and in contrast to the accurate and objective review of the problems leading to the failure of SVB provided by the GAO's report, the Federal Reserve's report lays blame at changes to regulation and supervision made in recent years, when its own examination materials make plain the fundamental misjudgments made by its examination teams over that same period. For example, SVB consistently failed the internal liquidity stress tests it was required to perform, but Fed examiners did not require it to improve its liquidity situation, suggesting that the regulations were fit for purpose, but the examiner response was inadequate. Put simply, there is no provision of S. 2155 that requires examiners to misjudge interest rate risk; the examination materials make clear that nothing in S. 2155 prevented them from properly examining it.

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Introspection and Reviews (cont.)

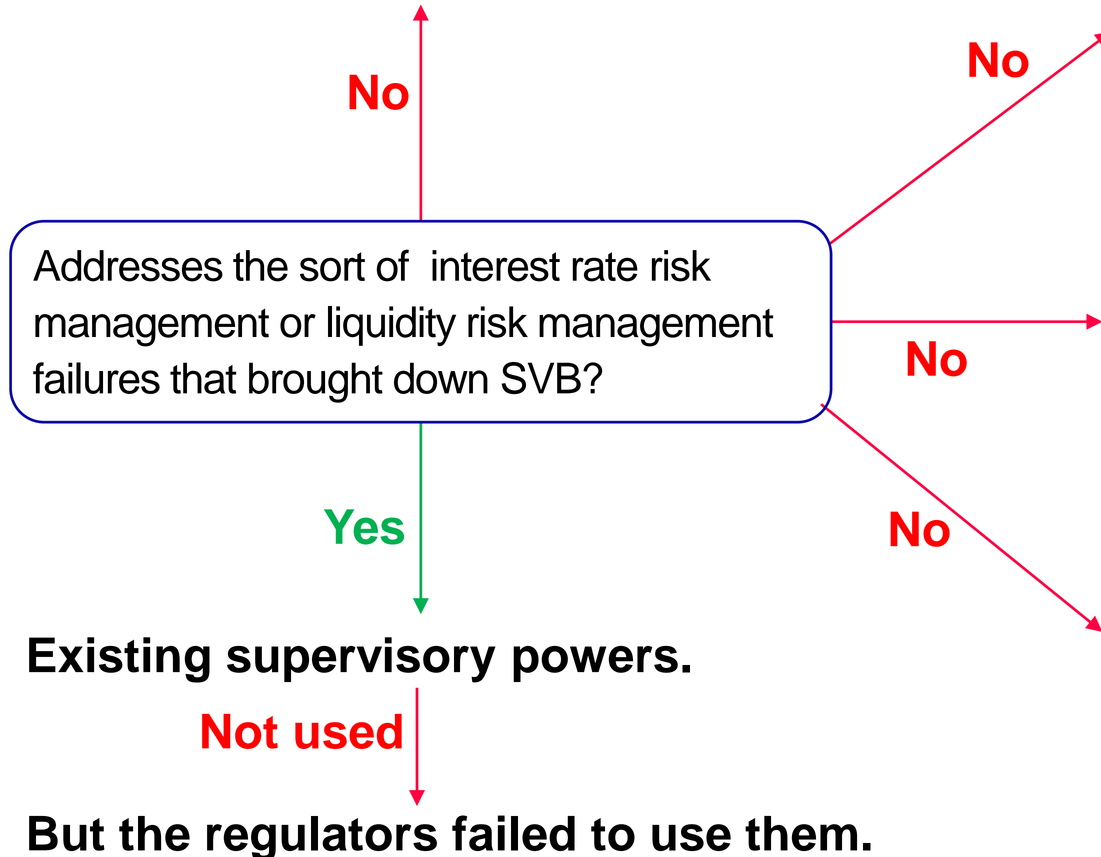
Center for Financial Stability Report on Supervision and Regulation after Silicon Valley Bank (October 16, 2023)

Clearly, the managements of these three recently failed institutions were not up to the challenge, and regrettably, the supervisory process did not require prompt remediation of their failures in basic risk management in time to avert the banks' collapse. Much of the ensuing debate has focused on whether the failures could have been prevented if more stringent, "enhanced" prudential standards (EPS) had applied to them, similar to those applied to the largest institutions. While people of good can and will differ on the extent to which supervisory approaches should be adjusted based on the size and complexity of an institution, enhanced standards should not have been needed for supervisors to catch and remediate the fundamental mismanagement of these banks which violated basic "Banking 101" principles of asset and liquidity management. This is particularly true given the classic red flags presented by all of them: rapid growth fueled by a highly unstable deposit base. **As discussed below, while targeted reforms may be worth considering, wholesale changes to the prudential framework applicable to regional banks do not appear to be warranted and would only distract policy makers from the more urgent need to determine why the rules and processes that we already in have place — which should have been sufficient— weren't.**

The Regulatory Response:

Comparison of the long-term debt proposal to the existing TLAC rule

The FDIC, Federal Reserve and OCC have proposed to extend the long-term debt and clean holding company portions of the Federal Reserve's existing TLAC Rule for U.S. GSIBs and U.S IHCs of foreign GSIBs to all large banking organizations with $100 billion or more in total assets, with virtually no tailoring and only a few other amendments to the existing TLAC Rule. Th



U.S. Basel III endgame proposed rule

The federal banking agencies' 1,087-page Basel III endgame proposal, released on July 27 after split votes at both the Federal Reserve and the FDIC, has roiled the banking sector. The proposal would significantly increase capital requirements for Category I – IV banking organizations over a three-year transition period.

Corporate process supercharged: The role of the board under the FDIC's proposed guidelines

The FDIC proposed enforceable guidelines on corporate governance and risk management that would apply to all state non-member banks with assets greater than $10 billion. The proposal would impose a number of very detailed and highly prescriptive governance requirements on banks and, in doing so, blurs the line between board and management responsibilities.

Living will changes on the horizon

The Federal Reserve and FDIC have released the Section 165(d) Rule Guidance Proposals and the FDIC has released an IDI Resolution Planning Rule Proposal, both of which would result in major changes for many regional banks and foreign banks and minor changes for GSIBs.

Attorney Biography

A

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Marshall Huebner co-heads Davis Polk's Restructuring Group. Most recently, in 2023 he was named "Dealmaker of the Year" by NYLJ and "Litigator of the Week" by *American Lawyer*. In 2022, he was named "Debtor Counsel of the Year" by *The Deal*, one of the top 30 restructuring professionals in the world by *Euromoney*, a "Bankruptcy MVP" by *Law360* and a 2022 "Outstanding Lawyer" by *Turnarounds and Workouts*. He is also one of the very few restructuring lawyers twice named "Dealmaker of the Year" by the *American Lawyer*. Marshall has played a key role in many of the largest and most complex restructurings of the last 30 years.

Clients tell *Chambers* that Marshall's "combination of towering intellect and passion for his client's cause is unparalleled" and that "he out-thinks and out-works everyone else in a bankruptcy." He has testified before Congress, lectures annually at preeminent law schools and conferences, and frequently publishes, including on governance, fiduciary duty and other matters relating to distress.

He is a member of the National Bankruptcy Conference and the American College of Bankruptcy. He also runs marathons for charity and has volunteered as an EMT for more than 35 years.

Work highlights

- Lead counsel to the Purdue Pharma fiduciary estate in connection with its chapter 11 restructuring, effectuating a comprehensive resolution of more than $40 trillion of asserted claims. The proposed settlement will convert Purdue into a public benefit company for the exclusive benefit of litigation claimants and the American public. Measured by number of claimants and aggregate asserted claims, Purdue is the largest chapter 11 case in U.S. history
- Lead counsel to the Federal Reserve Bank of New York and to the U.S. Department of the Treasury with respect to their $182 billion in multiple financings and 79.9% equity stake in the American International Group; AIG had over $1 trillion in assets, and the Federal Reserve and Treasury AIG financings remain the largest financings ever extended to a corporate borrower
- Lead U.S. counsel to the joint administrators and liquidators of Lehman Brothers International (Europe) and its U.K. Lehman affiliates, including in connection with the settlement of tens of billions of dollars of claims against Lehman's U.S. entities
- Lead counsel to the administrative agent under The Hertz Corporation's $10.9 billion asset-backed vehicle financing facility in connection with Hertz's chapter 11 restructuring
- Lead counsel to the majority bondholders of Silicon Valley Bank Financial Group
- Represented multiple creditors, counterparties and financial institutions in connection with the resolution of Silicon Valley Bank and Signature Bank
- Lead counsel to the lenders to Bed, Bath & Beyond
- Lead restructuring counsel to Delta Air Lines, assisting Delta in, among other things, a $2.45 billion debtor-in-possession loan for LATAM Airlines, and, in Delta's own chapter 11 proceedings, successfully defending against a $10 billion hostile takeover attempt and emerging from Chapter 11 with one of the largest equity capitalizations on record
- Counsel to the Ford Motor Company in connection with avoiding chapter 11 through a $10 billion balance sheet restructuring
- Lead counsel to Citibank in Lyondell, including advising on the then-largest DIP financing ($8.5 billion) in U.S. history and successfully resolving a $23 billion fraudulent transfer claim

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- Lead counsel to Arch Coal, James River Coal, Patriot Coal, Bonanza Creek Energy, Magnetation, Frontier Airlines, Pinnacle Airlines, Pernix Therapeutics and The Star Tribune Company in their chapter 11 proceedings
- Lead counsel to the prepetition and/or DIP agents in dozens of cases including Hertz, Toys “R” Us, Enron, Kodak, American Airlines, Nine West, Lyondell, Polaroid, Republic Airways, Federal Mogul and Loral Space and Communications
- Lead counsel to the board of directors of SunEdison, Inc., formerly the world's largest renewable energy company
- Lead counsel to Citibank as affinity counterparty to Sears Roebuck and Company
- Lead counsel to Citibank on its $1 billion pre-purchase of AAdvantage Miles from American Airlines and its worldwide affinity relationship in connection with American’s chapter 11 proceedings
- Lead counsel to Delta in each of the LATAM Airlines and Republic Airlines chapter 11 restructurings
- Lead counsel to the senior lenders in multiple energy restructurings including Basic Energy, Larchmont Resources and Southcross Energy

Mr. Huebner also routinely advises boards of directors and purchasers in non-public distressed matters, and provides risk management and bankruptcy advice on derivatives products and other complex transactions.

Recognition

Mr. Huebner has repeatedly been recognized as a leader in his field, including:

Industry recognition

- *New York Law Journal* – Dealmaker of the Year
- *American Lawyer* – Litigator of the Week
- *Chambers Global* – Bankruptcy/Restructuring | Band 1
- *Chambers USA* – Bankruptcy/Restructuring (Nationwide) | Band 1
- *Legal 500 U.S.* – Restructuring (including Bankruptcy) | Leading Lawyer
- *Law360* – Bankruptcy MVP
- *The Deal* – Debtor Counsel of the Year
- *The Deal* – Top Bankruptcy Lawyer
- *Who’s Who Legal* – Restructuring & Insolvency | Thought Leader
- *Super Lawyers* – Top 100 Lawyer | New York
- *Euromoney USA Best of the Best Expert Guide* – Top 30 Restructuring Practitioner globally
- *Global M&A Network* – Top 100 Restructuring & Turnaround Professional
- *Turnarounds and Workouts* – Outstanding Restructuring Lawyer
- *Lawdragon* – One of the 500 Leading Global Restructuring & Insolvency Lawyers
- *American Lawyer* – Dealmaker of the Year (twice)

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Recent Transactional awards

- TMA Turnaround and Transaction Awards – International Company Turnaround/Transaction Deal of the Year (LATAM Airlines) | 2023
- American Bankruptcy Institute – International Matter of the Year (LATAM Airlines) | 2022
- IFLR Americas Awards – Restructuring Deal of the Year (Hertz) | 2022
- Turnaround Atlas Awards – Chapter 11 Restructuring: Turnaround of the Year (l-m) (Hertz) | 2022
- Latin Lawyer Awards – Restructuring Deal of the Year (LATAM Airlines) | 2021
- Turnaround Atlas Awards – Chapter 11 Restructuring of the Year (SunEdison) | 2018

Under his leadership, Davis Polk's Restructuring Group has likewise received dozens of awards, including most recently:

- Chambers USA – Bankruptcy Law Firm of the Year | 2022
- Law360 – Bankruptcy Group of the Year | 2021
- The Deal – Restructuring Advisory Firm of the Year | 2020

Mr. Huebner was also featured in Thomson Reuter's 2014 New York Metro Super Lawyers magazine in an article entitled, "Hatzalah," detailing "[h]ow Marshall Huebner helped rescue the economy."

Of Note

Congressional Testimony

- Testified before the House Judiciary Subcommittee on Commercial and Administrative Law: Protecting Employees in Airline Bankruptcies; .

Recent Publications

- "Recent Developments at the Crossroads of Bankruptcy and Mass Torts," *Corporate Disputes Magazine*, 2023
- "One Person Can Knock Out Our Firm? Imputation and Retention Risks for Professionals Under Chapter 11," *Harvard Law School Bankruptcy Roundtable*, 2023
- "Risks for Transactions and Directors in Financially Distressed Businesses (United States), *Practical Law,"* 2023
- "Tell me your secrets: Chapter 11 discovery risks for investor valuation materials, *Corporate Disputes Magazine*," 2023
- "More Restructuring Is Coming for Credit Lenders and Investors, *Bloomberg Law*," 2022
- "Please Don't Forget the Victims: Mass Torts, Third Party Releases and the U.S. Bankruptcy Code," *Harvard Law School Bankruptcy Roundtable*, 2022
- "The Landscape Shifts: Duties of and Risks to Directors and Officers of Insolvent Enterprises," *Corporate Counsel*, December 7, 2022)
- "Special Issues in Mass Torts," *Legal Era Magazine*, December Edition 2020
- D&O Insurance & Insolvency: Navigating the Intersection, The Corporate Governance Advisor, May/June 2017, Vol. 25, No. 3
- Multiple articles for Harvard Law School Forum on Corporate Governance and Financial Regulation

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Select Speaking Engagements
- Keynote, SC Gould School of Law and Lewis & Clark Law School, West Coast Bankruptcy Roundtable
- Keynote, NYSBA Corporate Counsel Institute, 2021, 2023
- J.P. Morgan, Bank of America, Barclays, Deutche Bank High Yield Conferences
- Cross-border Tort Claim Driven Insolvencies, International Bar Association (IBA) Conference
- Yale, Harvard, University of Chicago, U.S.C., Columbia and NYU Law Schools, Harvard Business School

Current Memberships
- National Bankruptcy Conference
- American College of Bankruptcy
- American Bankruptcy Institute
- Board of Advisors, Yale Law School Center for the Study of Corporate Law

Professional History
- Partner, 2002-present
- Law Clerk, Hon. Pierre N. Leval, U.S. Court of Appeals, Second Circuit, 1993-1994

Education

J.D., Yale Law School
Ford Foundation Fellowship
Senior Editor, *Yale Law Journal*

A.B., Princeton University
Fulbright scholar
Rotary scholar

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