STATEMENT OF

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BEFORE

THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND MONETARY POLICY

OF THE HOUSE COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

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RULES WITHOUT ANALYSIS: FEDERAL BANKING PROPOSALS UNDER THE BIDEN ADMINISTRATION

RANDALL D. GUYNN BIOGRAPHY

My name is Randall D. Guynn and I am Chairman of the Financial Institutions Group at Davis Polk & Wardwell LLP, where I have worked since 1986. I am the author, co-author or editor of numerous books and other publications on U.S. bank regulation, including *Lessons Learned from SVB's Sudden Failure and Related Contagion*, Yale Law School (Dec. 1, 2023); *Resolution of US Banks and Other Financial Institutions*, in Debt Restructuring (3d ed. Oxford University Press 2022); *Bank Resolution and Crisis Management* (Oxford University Press 2016); *Regulation of Foreign Banks & Affiliates in the United States* (9th ed. Thomson Reuters 2016); *Framing the Too Big to Fail Problem: the Path to a Solution*, in Across the Great Divide: New Perspectives on the Financial Crisis (Hoover Institution and Brookings Institution, 2014); *The Too Big to Fail Problem: The Path to a Solution* (Bipartisan Policy Center 2013); *Are Bailouts Inevitable?*, Yale Journal on Regulation (2012). I have co-taught a seminar on the history and regulation of money, banking and crypto assets for seven straight years at BerkeleyLaw. I represent a large number of banks and other financial institutions, but I am here today in my individual capacity and not on behalf of any client. The views I express are my own, and not necessarily those of Davis Polk, any client or any other organization with which I have been affiliated.

Introduction

Since last July, the U.S. federal banking agencies[1] (**agencies**) have issued a series of proposed regulations that would significantly increase the going-concern and gone-concern capital, or **GLAC**,[2] requirements and the resolution planning requirements applicable to U.S. banking organizations with $100 billion or more in total consolidated assets (**large banking organizations** or **LBOs**).

This package of proposed regulations includes proposed amendments to the U.S. risk-based capital requirements (**B3E proposal**)[3] to implement the Basel III endgame international framework (**B3E International Framework**);[4] proposed amendments to the capital surcharge applicable only to U.S. global systemically important banking organizations (**GSIBs**) known as the GSIB surcharge;[5] a proposed extension and expansion of a portion of the GLAC requirements currently applicable only to the U.S. GSIBs under the Federal Reserve's rule on total loss-absorbing capacity (**TLAC**)[6] to all LBOs – namely, the long-term debt (**LTD**) requirement at both the holding company (**HC**) and insured depository institution (**IDI**) levels and the clean holding company requirements at the HC level (**GLAC proposal**);[7] and proposed amendments to the resolution planning requirements for bank holding companies (**BHCs**) and IDIs designed in part to extend some of the requirements currently applicable only to the U.S. GSIBs to all LBOs.[8] The Federal Reserve's Vice Chair for Supervision has also said the Federal Reserve plans to amend the stress scenario framework underlying the calculation of the stress capital buffers (**SCBs**) for each LBO annually in the supervisory stress-testing process,[9] presumably to increase the going-concern capital requirements of all LBOs still further, in addition to the significant increase in capital requirements contemplated by the B3E proposal.

Various principals at the agencies have indicated that they also plan to revise the existing liquidity requirements to reflect lessons learned from the failures of Silicon Valley Bank (**SVB**), Signature Bank and First Republic Bank last spring.[10]

The proposed amendments would implement these significant increases in capital and other enhanced prudential standards in a way that would largely eliminate the existing tailoring of these standards among various categories of LBOs. The existing tailoring was mandated by Section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (**EGRRCPA**),[11] which was enacted by Congress with substantial bipartisan consensus.[12] The proposed amendments would do so by extending virtually all of the capital requirements

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[1] Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

[2] GLAC stands for gone-concern loss-absorbing capacity, but it means the same thing as gone-concern capital.

[3] 88 Fed. Reg. 64028 (Sept. 18, 2023) (first published by the agencies on July 27, 2023).

[4] Basel Committee on Banking Supervision, *Basel III: Finalising post-crisis reforms* (Dec. 7, 2017).

[5] 88 Fed. Reg. 60385 (Sept. 1, 2023).

[6] 82 Fed. Reg. 8266 (Jan. 24, 2017). TLAC is the sum of going-concern capital and GLAC requirements.

[7] 88 Fed. Reg. 83364 (Sept. 19, 2023).

[8] 88 Fed. Reg. 64626 (Sept. 19, 2023) (BHCs); 88 Fed. Reg. 64579 (Sept. 19, 2023) (IDIs).

[9] See note 49 below.

[10] See, e.g., Michael J. Hsu, Acting Comptroller of the Currency, *Building Better Brakes for a Faster Financial World* (Jan. 18, 2024).

[11] Pub. L. No. 115-174, 132 Stat. 1296, § 401 (2018).

[12] The EGRRCPA passed the House with the support of 225 Republicans and 33 Democrats. In the Senate, 50 Republicans and 16 Democrats voted in favor of the legislation.

currently applicable only to the U.S. GSIBs to all LBOs, except the GSIB surcharge and the enhanced supplementary leverage ratio (**eSLR**).

A disproportionate amount of the costs of this flattening of the existing tailoring regime will fall on the regional bank LBOs. For example, the combined impact of the B3E proposal and the GLAC proposal would be to double the combined going-concern capital and gone-concern capital requirements that currently apply to the regional bank LBOs, as shown on Exhibit A. The agencies have calibrated the proposed LTD requirement using the capital refill method, which is the same method used to calibrate the LTD requirement applicable to the U.S. GSIBs. That method makes sense for the U.S. GSIBS, which have all adopted a single-point-of-entry (**SPOE**) recapitalization within resolution strategy in their resolution plans under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (**Dodd-Frank Act**). That strategy needs sufficient loss-absorbing capacity to fully recapitalize a firm's material IDI and non-IDI subsidiaries assuming the capital of those subsidiaries has been fully depleted. But the regional bank LBOs have not adopted SPOE resolution strategies so a capital refill method of calibrating any LTD requirement probably imposes unjustified costs on them. In addition, the proposed GLAC requirement would require regional bank LBOs, but not the U.S. GSIBs, to satisfy the proposed minimum LTD requirement at both the HC and IDI levels. Finally, because the proposed LTD requirement would require the LTD to be subordinated to all runnable liabilities, it is equivalent to a requirement to double the going-concern capital of the regional bank LBOs in the form of more Tier 2 subordinated debt capital.

This disproportionate impact on the regional bank LBOs would give them a powerful economic incentive to consolidate to achieve a scale closer to that of the U.S. GSIBs to avoid becoming uncompetitive with the U.S. GSIBs and with the largely unregulated nonbank financial sector,[13] which already provides nearly 60% of the credit to the U.S. economy.[14] Despite the apparent policy of the Biden Administration to discourage further consolidation among the non-GSIB LBOs,[15] this powerful economic incentive will likely result in a banking system with a distribution curve shaped like a barbell. The U.S. GSIBs and a few regional bank LBOs will be at one end of the distribution curve and the community banks and mid-sized banks will be at the other end of the curve, with few if any regional bank LBOs in the middle.

Despite the magnitude of the proposed going-concern and gone-concern capital increases, the agencies have provided virtually no data, and certainly no rigorous cost-benefit analysis, to justify these significant increases.

The banking agencies implicitly acknowledged that they had not provided sufficient data by asking the LBOs for data on which to analyze the economic impact of the proposal in October,

[13] See, e.g., Debopriyo Bhattacharyya et al., *The Global Banking Annual Review 2023: The Great Banking Transition*, McKinsey & Company, 26-38 (October 2023).

[14] See, e.g., Michael S. Barr, Federal Reserve Vice Chair for Supervision, *Why Bank Capital Matters* (Dec. 1, 2022) ("In fact, nonbank financial intermediaries, broadly defined, fund nearly 60 percent of the credit to the U.S. economy today.").

[15] Executive Office of the President, Exec. Order No. 14036 Sec. 5(e), 86 Fed. Reg. 36987, 36992 (July 9, 2021); Assistant Attorney General Jonathan Kanter, *Promoting Competition in Banking* (June 20, 2023) ("The time is indeed ripe for us to re-examine how we assess bank mergers under the statutory framework that Congress has enacted."); CFPB Director Rohit Chopra, Statement at December Open Meeting of the FDIC (Dec. 14, 2021).

more than two months after the B3E proposal was first published.[16] But they compounded the problem of lack of data-based justification by closing the comment period on the B3E proposal on the same day that the data submissions were due, rather than giving the public an opportunity to comment on their new economic impact and cost-benefit analysis at the same time as the B3E proposal itself.

This is curious since the Vice Chair for Supervision stated in his first speech and several times thereafter that he had started a holistic review of capital standards months before the B3E proposal was published. Yet none of the data presumably generated from that review has ever been released, despite several requests from several members of Congress.[17]

As a result of the initial insufficiency and timing of any subsequent data analysis, the agencies' package of proposals may not satisfy the requirements of the Administrative Procedure Act (**APA**), which requires agencies to provide a reasonable basis for their proposed regulations, arguably including supporting data at or before the time they are proposed so that the public has a meaningful opportunity to comment on the data.

This lack of data is particularly concerning in the case of the B3E proposal since it was issued for public comment despite an unprecedented level of dissent among the principals at the agencies and from the public. For example, Federal Reserve Governors Christopher Waller and Michelle Bowman, and FDIC Vice Chair Travis Hill and FDIC Director Jonathan McKernan, all dissented.[18] While Federal Reserve Chair Jerome Powell and Federal Reserve Governor Philip Jefferson did not dissent from putting the B3E proposal out for comment, they expressed serious reservations about the B3E proposal.[19]

The public similarly filed an unprecedented number of substantive comments, with an overwhelming majority of those substantive comments being opposed to the B3E proposal or some portion of it. The comments came from a broad cross-section of the population, including a large number of banks and nonbank customers, counterparties and end users, as well as numerous members of Congress on both sides of the aisle. With such unprecedented opposition from so many principals at the agencies and such a large variety of banks, customers, counterparties and end-users, as well as members of Congress on both sides of the aisle, the agencies will have to be very careful in proceeding to the next step on the B3E proposal to comply with the requirements of the APA as articulated by the courts. Finally, because the stress capital buffer is the ultimate determinant of an LBO's capital requirements, it is impossible for the agencies or the public to properly assess the economic or cost-benefit impact of the B3E or GLAC proposals, without knowing what amendments the Federal Reserve will propose to the

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[16] Press Release, Board of Governors of the Federal Reserve System, Federal Reserve Board launches data collection to gather more information from the banks affected by the large bank capital proposal it announced earlier this year (Oct. 20, 2023).

[17] See, e.g., Letter from Andy Barr, Chairman of the Financial Institutions and Monetary Policy Subcommittee of the House Financial Services Committee to Michael S. Barr, Vice Chair for Supervision (Oct 19, 2023); Letter from Bill Foster, Ranking Member of the Financial Institutions and Monetary Policy Subcommittee of the House Financial Services Committee, and other members of Congress to the agencies (Jan. 16, 2024).

[18] Statement by Governor Christopher J. Waller (July 27, 2023); Statement by Governor Michelle W. Bowman (July 27, 2023); Statement by FDIC Vice Chair Travis Hill (July 27, 2023); Statement by FDIC Director Jonathan McKernan (July 27, 2023).

[19] Statement by Chair Jerome H. Powell (July 27, 2023); comments by Governor Philip Jefferson (July 27, 2023). Kyle Campbell, *Fed's Jefferson voices concerns over Basel III capital proposal*, American Banker (July 27, 2023).

stress-testing scenario framework that underlies the SCB. Those amendments need to be disclosed and considered by the public before the B3E or GLAC proposals are finalized.

Strong Capital Requirements

Virtually everyone agrees that U.S. banking organizations should be subject to strong capital requirements and that they were undercapitalized on the eve of the global financial crisis of 2008. There is also a consensus that the capital and other prudential standards should be tailored so that the largest, most systemically important, U.S. banking organizations are subject to the highest going concern capital requirements and enhanced prudential standards.

This includes subjecting all of the largest, most systemically important, U.S. banking organizations to capital and liquidity stress testing, recovery and resolution planning and, in the case of the U.S. GSIBs, an extra layer of going concern capital known as the GSIB surcharge[20] and an extra layer of gone-concern capital known as gone-concern loss-absorbing capacity or GLAC that can be used to restore the going concern capital of their material bank and nonbank subsidiaries in the highly unlikely event that those subsidiaries suffer enough losses to cause their going concern capital to be fully depleted. Together, going-concern capital and gone-concern loss-absorbing capacity is referred to as total loss-absorbing capacity (**TLAC**). Under the Federal Reserve's current TLAC rule,[21] most of a GSIB's GLAC is required to be maintained in the form of long-term debt that is subordinated to the GSIB's ***runnable liabilities***, including uninsured demand deposits.[22]

Tailoring Among Different Categories of LBOs

Consistent with this tailoring of capital and other prudential standards so that the largest, most systemically important, U.S. banking organizations are subject to the highest standards, and community banks and mid-sized banks are exempt from most of those standards, Congress enacted Section 401 of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 (**EGRRCPA**).[23] That Act of Congress, which continues to be ***binding law*** on the U.S. banking agencies, ***requires*** them to further tailor capital and other enhanced prudential standards among the LBOs based on their total assets and other characteristics, reserving the highest standards for U.S. LBOs with total assets of $250 billion or more.[24]

In implementing this congressional mandate, the Federal Reserve issued a regulation that divided the largest U.S. banking organizations into four categories. Category I consists of the U.S. GSIBs. Category II consists of non-GSIB LBOs with $700 billion or more in total consolidated assets or ***both*** $100 billion or more in total consolidated assets ***and*** $75 billion or more in cross-jurisdictional exposure. Category III are LBOs that are not Category I or II LBOs but have $250 billion or more in total consolidated assets or ***both*** $100 billion or more in total consolidated assets **and** $75 billion or more in any of the following risk-based indicators: (1) weighted short-term wholesale funding, (2) nonbank assets or (3) off-balance sheet exposure.

[20] 12 C.F.R. Parts 208 and 217.
[21] 82 Fed. Reg. 8266 (Jan. 24, 2017).
[22] Id., at 8267.
[23] Pub. L. No. 115-174, 132 Stat. 1296 (2018).
[24] *Id.*, § 401.

Category IV LBOs are those with $100 billion or more in total consolidated assets but less than $250 billion of total consolidated assets that do not meet any of the specific risk-based indicators for Category III organizations.[25]

As a result of these laws and regulations, the U.S. LBOs would have nearly twice the common equity tier 1 (**CET1**) going concern capital ***after*** a stress event more severe than the 2008 global financial crisis, as shown on Exhibit B. They also have approximately three times more liquid assets relative to their total deposits and total liabilities than they had in 2008, as shown on Exhibit C. They are also subject to enhanced liquidity requirements, capital and liquidity stress testing, and recovery and resolution planning at either the parent level or the insured depository institution (**IDI**) level, or both, as shown in Exhibit D. The U.S. GSIBs have also been required to increase their "usable" TLAC, which is the sum of their going concern capital and GLAC, to approximately six times the level they had in 2008, as shown in Exhibit E.

Purpose of B3E International Framework

Almost everyone agrees that going concern capital requirements should be more risk-sensitive and comparable. As a result, the U.S. banking agencies agreed to the B3E International Framework.[26] That framework was designed to make the standardized methods for calculating risk weights more risk-sensitive and the risk-weights for various types of risks less variable and more comparable. The leaders of the Basel Committee on Banking Supervision (**BCBS**) and the leading U.S. participants in that process stressed that the purpose of B3E was ***not*** to increase capital requirements in the aggregate, even though the changes may result in increases in capital for some types of risks with offsetting decreases in capital for other types of risks.[27]

Capital Neutrality

Consistent with these goals of the B3E International Framework, various principals and officers at the Federal Reserve gave public assurances that the international framework would be implemented in the United States so that it was capital neutral. The intention was to modify U.S. capital requirements so that the standardized tests would be more risk-sensitive and risk weights less variable and more comparable, but without increasing capital requirements in the aggregate.[28] During his Senate nomination hearing, Mr. Barr responded to various questions

[25] 84 Fed. Reg. 59032, 59035 (Nov. 1, 2019).

[26] Basel Committee on Banking Supervision, *Basel III: Finalising post-crisis reforms* (Dec. 7, 2017).

[27] See, e.g., Mario Draghi, Chairman of the Group of Governors and Heads of Supervision, the oversight body of the BCBS, GHOS Media, beginning at 32:05 (Dec. 7, 2017); Andreas Dombret, Member of Executive Board at Deutsche Bundesbank (Dec. 2017); Mark Carney, Bank of England and former Chair of the Financial Stability Board, Financial Stability Report Q&A (Nov. 30, 2016); William Coen, Secretary General of the Basel Committee on Banking Supervision and former officer at the Federal Reserve and the OCC, GHOS Media, beginning at 33:19.

[28] *See e.g.,* Mark Van Der Weide, Federal Reserve General Counsel, Remarks on an ABA panel (Jan. 6, 2022) ("We're also committed to putting these [Basel III endgame] reforms in place in a way that's roughly capital neutral for the U.S. banking system."); Neil Roland, U*S Fed aims to adopt last Basel III part by January 2023 with 'capital neutral' calibrations across the system*, Lexis-Nexis (June 3, 2021) ("'If we can't find the right dials to turn inside the Basel III end-game risk-based reforms we'll look at other parts of the capital framework' to ensure that it's 'no more stringent than the capital framework we had before,' Fed General Counsel Mark Van Der Weide said at a webinar yesterday."); Testimony of Randal K. Quarles, Federal Reserve Vice Chairman for Supervision, Hearing Before the House Committee on Financial Services, 116th Cong. at 17 (Dec. 4, 2019) (responding to a question about the federal banking agencies' plans for the implementation of Basel III endgame, Mr. Quarles stated, "they are essentially capital neutral. I think that we will be able to do that by looking at everything as a whole rather than implementing them piecemeal.").

about capital and tailoring to the effect that the U.S. banking system was strongly capitalized and tailoring makes sense.[29]

Breakdown in Consensus for Capital Neutrality and Tailoring

The consensus for capital neutrality and tailoring started to break down almost immediately after Michael Barr was confirmed as Vice Chair for Supervision at the Federal Reserve.

Holistic Review of Capital Standards

In his first speech after being confirmed as Vice Chair for Supervision, Mr. Barr stated that he would conduct a "holistic review" of capital standards.[30] Later that year, Vice Chair Barr stated that in reviewing these capital standards he and the Federal Reserve staff would be humble and skeptical about the optimal level of capital. This was the first sign that the consensus about capital neutrality and tailoring might be breaking down.[31] He repeated his plan to conduct a holistic review of capital requirements several times,[32] but did not say what he considered to be a sufficient level of capital. It became clear over time, however, that by being humble about the optimal level of capital, Vice Chair Barr meant that when in doubt about the optimal level of capital requirements, regulators should err on the side of overcapitalizing the U.S. banking system rather than on the side of undercapitalizing it.

Sudden Failure of Silicon Valley Bank and Related Contagion

The next sign that the consensus about capital neutrality and tailoring was breaking down was Vice Chair Barr's responses to the failure of SVB. In a report that was either his report or a report of the full Board of Governors,[33] SVB's failure was attributed to three principal factors: (1) a failure of bank risk management 101 by senior management at SVB by mismanaging SVB's extraordinarily high interest rate risk and liquidity risk,[34] (2) the tailoring of capital and other

[29] Hearing Before the Senate Banking Committee on Nominations of Michael S. Barr, Jamie E. Lizarraga, and Mark Toshiro Uyeda, 117. Cong. 123, 24 (May 19, 2022) (testimony of Michael S. Barr) (responding to questions from members of the committee, Mr. Barr stated, "Capital in the banking system today is quite strong" and "I think that tailoring or a graduated approach, a tiered approach makes sense for the financial system.").

[30] Michael S. Barr, Vice Chair for Supervision, *Making the Financial System Safer and Fairer*, (Sep. 7, 2022).

[31] Michael S. Barr, Vice Chair for Supervision, *Why Bank Capital Matters* (Dec. 1, 2022).

[32] See, e.g., Hearing Before the Senate Banking Committee on Oversight of Financial Regulators: A Strong Banking and Credit Union System for Main Street, 117 Cong. at 11 (Nov. 14, 2022); Hearing Before the House Financial Services Committee on The Federal Regulators' Response to Recent Bank Failures, 118 Cong. at 201 (March 29, 2023); Hearing Before the House Financial Services Committee on Oversight of Prudential Regulators, 118 Cong. at 150 (May 16, 2023); Hearing Before the House Financial Services Committee at 129 (March 29, 2023).

[33] Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank (April 2023). The report was labeled as a report of the full Board, but it was issued under a cover letter from the Vice Chair for Supervision. But in response to a question about whether the Board voted on or reviewed the report, Mr. Barr responded, "No, it is a report of the vice chair for supervision under my statutory authorities. It was not a report of the board." Hearing Before the House Financial Services Committee at 21 (May 16, 2023). See also Federal Reserve Governor Michelle Bowman, *Responsive and Responsible Bank Regulation and Supervision* (June 25, 2023) ("Although the report was published as a report of the Board of Governors, it was the product of one Board Member, and was not reviewed by the other members of the Board prior to its publication.").

[34] *Id*. at 12. The fundamental nature of this failure is reflected in the Security and Exchange Commission's (**SEC's**) Guide 3, which was first issued in 1976 and requires all publicly traded banking organizations to disclose statistical information about their interest rate and other material risks that have been the core risks of banking since the dawn of fractional reserve banking in Italy in the 14th century and Great Britain in the 17th century. *See* Raymond De Roover, *The Rise and Decline of the Medici Bank, 1397-1494*, at 2 (Harvard University Press, 1963); Usher, Abbott Payson, *The Early History of Deposit Banking in Mediterranean Europe Volume I,* at 181 (Harvard University Press, 1943); R.D. Richards, *The Early History of the Bank of England*, at 233 (1958) (1929).

enhanced prudential standards among LBOs as mandated by EGRRCPA,[35] and (3) a "shift in culture" under the "direction of the Vice Chair for Supervision," including "pressure to reduce burden on firms, meet a higher burden of proof for a supervisory conclusion, and demonstrate due process when considering supervisory actions.[36] Because the Vice Chair for Supervision has repeatedly referred to this report as his report,[37] I will refer to it as the Barr Report in the rest of my written statement and in my oral testimony.

A subsequent report by the Federal Reserve's Office of Inspector General (**OIG Report**) agreed with the Barr Report that the principal causes of SVB's failure was the mismanagement of interest rate risk and liquidity risk by senior SVB management and serious deficiencies in supervision.[38] But it disagreed with the second and third factors in the Barr Report. Instead of attributing SVB's failure to the tailoring mandate in EGRRCPA, the OIG report stated that the impact of the tailoring mandate was limited to the relatively short period of time when SVB had less than $100 billion in assets.[39] Similarly, instead of attributing SVB's failure to a shift in supervisory culture directed from the top, the OIG report attributed it to the supervisory staff's failure on the ground to focus on SVB's most salient risks,[40] such as its extraordinary interest rate and liquidity risks.[41] The OIG Report also noted that the Federal Reserve's supervisory staff had allowed SVB to function without a Chief Risk Officer for most of 2022,[42] despite its extraordinarily high interest rate risk and liquidity risk.

What is most surprising about the supervisory blind spot about interest rate risk is that it occurred during a period when Federal Reserve Chairman Jerome Powell made one public statement after another that the Federal Reserve Open Market Committee (**FOMC**) intended to progressively increase interest rates as high as necessary to bring inflation down from 9.1% to its long-term target of 2%.[43] It also continued after Mr. Barr was confirmed as Vice Chair for Supervision on July 13, 2022 and long after his predecessor's term as Vice Chair for Supervision had expired on October 13, 2021.

B3E Proposal

The final sign that the consensus on capital neutrality and tailoring had completely broken down was the issuance of the notice of proposed rulemaking on July 27, 2023, to amend U.S. capital standards to implement the B3E International Framework.

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[35] Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank, at 10-11 and 86.

[36] *Id*. at 11. The former Vice Chair for Supervision issued a statement and made a press statement, stating he never told the staff to go easy on the banks. Randal Quarles, *Statement Regarding the Federal Reserve Report on the Failure of Silicon Valley Bank* (April 28, 2023); Victoria Guida, *Quarles hits back at Barr's SVB report*, PoliticoPro (April 28, 2023). Instead, he stated that he directed the staff to focus on what's really important – like interest rate and liquidity risk – and to stop paying excessive attention to routine administrative matters. He said he would often use the phrase, "And if they won't do what's really important, smite them hip and thigh." Kyle Campbell, *For Fed supervision, cultural shortcomings are nothing new*, American Banker (May 8, 2023).

[37] See note 33.

[38] Office of Inspector General for the Board of Governors of the Federal Reserve System, *Material Loss Review of Silicon Valley Bank* (Sept. 25, 2023).

[39] *Id*. at 30. See also Davis Polk, *Silicon Valley Bank failure – A different view of the Federal Reserve OIG report* (Oct 18. 2023); Randall Guynn, Margaret Tahyar & Kirill Lebedev, *A Tale of 2 SVB Reports: Where the Fed's Barr and OIG Differ*, Law 360 (Nov. 13, 2023).

[40] OIG Report, at 41.

[41] *Id*. at 25.

[42] *Id*. at 14.

[43] See, e.g., Transcript of Press Conference after the Federal Open Market Committee Meeting, (March 16, 2022); Transcript of Press Conference after the Federal Open Market Committee Meeting (July 27, 2022).

Instead of proposing amendments limited to making the U.S. standards more risk-sensitive and resulting in risk weights that were more comparable among U.S. and non-U.S. banking organizations, the B3E proposal would substantially increase U.S. going concern capital requirements in the aggregate with the largest increases in the required capital for market risk and operational risk. According to the agencies' own estimates, which some have argued are too low,[44] the B3E proposal would increase risk weights by 20% and common equity tier 1 (**CET1**) capital by 16% in the aggregate and by 19% for Category I and II banks,[45] with both risk weights and CET1 capital being increased for market risk by a whopping 77%.[46] It would also introduce a new standardized approach for operational risk that would significantly increase capital requirements for operational risk based on business volume without any reduction for track records of low operational losses.[47]

Opposition to B3E Proposal

There is sharp disagreement over whether the largest banks should be subject to these higher proposed capital requirements. Critics have observed that virtually all of the banking agency principals have repeatedly assured the public that the largest banks are well-capitalized and resilient.[48] Nevertheless, the Federal Reserve, the FDIC and the Acting Comptroller all approved the B3E proposal over an unprecedented number of dissents and expressions of concern.

Virtually No Supporting Data or Cost-Benefit Analysis

The preamble to the B3E proposal stated that "[t]he agencies assessed the likely effect of the proposal on economic activity and resilience, and expect that the benefits of strengthening capital requirements for large banking organizations outweigh the costs." But the agencies have provided virtually no data to support that conclusion. Moreover, because the B3E proposal overlaps with the stress capital buffer requirement, it is not possible to assess the full impact of the B3E proposal without knowing the changes that the Federal Reserve plans to make to the SCB requirement, which the Federal Reserve Vice Chair for Supervision has said it will make.[49]

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[44] According to the Bank Policy Institute (**BPI**), the B3E proposal is more likely to result in a capital increase of over 20%, with the GSIBs needing to increase capital by 25%. BPI estimated that capital charges for banks with high levels of fee income could see their capital requirements surge by more than 50% because of the new operational risk charges. *See* Bank Policy Institute and American Bankers Association, Comment Letter on Proposed Rule to Revise the Capital Requirements Applicable to Large Banking Organizations and Banking Organizations with Significant Trading Activity, 11 (Jan. 16, 2024). The Financial Services Forum estimates that capital requirements for the U.S. GSIBs could increase by more than 30 percent. Financial Services Forum, American Bankers Association, Bank Policy Institute and Securities Industry and Financial Markets Association Comment Letter on Proposed Rule to Revise the Capital Requirements Applicable to Large Banking Organizations and Banking Organizations with Significant Trading Activity (Dec. 22, 2023).

[45] 88 Fed. Reg. at 64169.

[46] Id., at 64168.

[47] 88 Fed. Reg. at 64030

[48] Hearing Before the House Financial Services Committee on Monetary policy, 117th Cong. 24 (June 23, 2022) (testimony of Jerome H. Powell) ("[T]he banking system in particular is very strong, well-capitalized."); Federal Reserve Vice Chair for Supervision, Hearing Before the House Financial Services Committee on Oversight of Prudential Regulators, 118 Cong. 1 (May 16, 2023) (testimony of Michael S. Barr) ("Overall, banks have strong capital and liquidity."); Martin J. Gruenberg, FDIC Chair, Remarks on the FDIC's Third Quarter 2023 Quarterly Banking Profile (Nov. 29, 2023) ("The banking industry . . . remained well capitalized."); Hearing Before the Senate Banking Committee on Oversight of Financial Regulators: Protecting Main Street Not Wall Street, 118 Cong. 17 (Nov. 14, 2023) (testimony of Michael J. Hsu) ("OCC supervised banks in the aggregate have strong levels of regulatory capital.").

[49] *See* Hearing Before the Senate Banking Committee on Recent Bank Failures and the Federal Regulatory Response, 118 Cong. 9-10, (March 28, 2023) (testimony of Michael S. Barr) ("We will need to enhance our stress testing with multiple scenarios so that it captures a wider range of risk and uncovers channels for contagion, like those we saw in the recent series of events."); Michael S. Barr, *Holistic Capital Review*, (July 10, 2023) ("The stress test should evolve to better capture the range of salient risks that banks face.")

The Federal Reserve Vice Chair for Supervision also suggested that the B3E proposal was justified by a holistic review of capital requirements, but the agencies did not provide a copy of that review, including any supporting data, for public comment.

Optimal Capital Studies

The preamble cites a handful of third-party studies suggesting that U.S. capital levels are currently below the optimal level.[50] But it does not explain how the banking agencies determined that those particular studies were reliable, why they justified the B3E proposal or why they are more accurate than competing studies that suggest the U.S. capital levels are about right.

Sudden Failure of Silicon Valley Bank – Part II

The agencies indicated in the preamble to the GLAC proposal that an extra layer of gone-concern loss-absorbing capital in the form of subordinated LTD needs to be imposed on the regional bank LBOs regardless of the statutory tailoring requirements to prevent a recurrence of the banking turmoil in March 2023.[51] The Vice Chair for Supervision has similarly stated that the tailoring regime needs to be revisited in light of that turmoil.[52]

The Real Lesson from SVB's Failure

But the sudden failures of Silicon Valley Bank, Signature Bank and First Republic Bank did not occur because of insufficient capital, excessive tailoring or a less intense supervisory culture. They occurred because of a stunning failure by senior SVB management to properly manage its extraordinary interest rate risk and liquidity risk. They also occurred because of an equally stunning failure by the supervisory staffs of the California Department of Financial Protection and Innovation (**DFPI**), the Federal Reserve Bank of San Francisco and the Board of Governors to detect or take prompt and decisive action against SVB in light of its extraordinary exposure to interest rate risk and liquidity risk. This double blind spot is baffling since interest rate risk and liquidity risk, along with credit risk, have been the core risks of banking since the dawn of fractional reserve banking in Italy in the 14th century and Great Britain in the 17th century.[53] These are not new or insignificant risks in the post-modern era.

Moreover, as shown on the figure attached as Exhibit F, SVB was clearly insolvent on a fair value basis by the end of the third quarter and fourth quarters 2022. This should have been obvious to both SVB's senior management and the supervisory staffs of the California DFPI, the Federal Reserve Bank of San Francisco and the Board of Governors. The unrealized losses on both its available-for-sale (**AFS**) and held-to-maturity (**HTM**) bond portfolios were publicly

[50] *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg. 64028, 64169 note 469 (Sept. 18, 2023).

[51] 88 Fed. Reg. 64524, 64527 (Sept. 19, 2023).

[52] *See* Hearing Before the House Financial Services Committee on The Federal Regulators' Response to Recent Bank Failures, 118 Cong. 100 (testimony of Michael S. Barr) ("You know, the Federal Reserve System of Supervision and Regulation is based on a tailored approach where firms between $50 and $100 billion are really part of the regional banking organization group. Firms $100 billion and above are in the large and foreign banking organization group. And even within that, there are distinctions between firms at $100 to $250 and $250 and above. And I think part of the problem is that that framework, which really focuses on asset size, is not sensitive to the kinds of problems we saw here with respect to rapid growth and a concentrated business model. That's one of the reasons why, you know, earlier this year I announced that we were going to have a novel supervision group that really focuses on these kinds of issues.")

[53] See note 34.

disclosed in SVB's call reports and its parent's SEC filings. The information was not hidden from view simply because the unrealized losses in its AFS portfolio were not reflected in its reported capital as a result of the opt-out for accumulated other comprehensive income (**AOCI**). In other words, extending the AOCI requirement to the AFS portfolio of the regional bank LBOs will not give the market – or the supervisors – any new information about insolvency on a fair value basis that was not already available to them.

SVB had invested a massive influx of uninsured deposits received during the Covid-19 pandemic in a portfolio of long-dated, fixed-rate U.S. Treasury and mortgage-backed securities, betting that inflation would be transitory and that the Federal Reserve would not need to increase interest rates to battle inflation. Instead, inflation persisted and the Federal Reserve increased interest rates to reduce it, resulting in large unrealized losses in SVB's bond portfolio. In addition, 95% of SVB's deposits were uninsured and largely concentrated in venture capital funds and their portfolio companies, exposing SVB to a high risk that they would run at the first sign of trouble. The question is not why its concentrated uninsured depositor base ran with such intensity in March 2023, but why they didn't run earlier.

No reasonable amount of capital could have saved SVB in light of its basic risk management deficiencies and the related failures of the supervisory staff to detect and take prompt and decisive actions in light of the bank's extraordinary interest rate and liquidity risks. One of the real lessons of SVB's sudden failure and related contagion is that no amount of capital is a complete substitute for good risk management and supervisory oversight.

Unfounded Fear

Compounding these problems, many if not all of SVB's depositors could not readily determine over SVB weekend which of their deposits were claims against SVB and which had been safely swept off its balance sheet into third-party money market funds. This observation is supported by more than a hundred calls that my colleagues and I fielded from panicked SVB depositors over SVB weekend. I believe this uncertainty intensified the panic among those depositors because they feared they might have, say $150 million of exposure to Silicon Valley Bank, when in fact they only had $10 million of exposure, with $140 million safely swept into third-party money market funds.

This good faith but probably unfounded fear also fueled contagion. Most of SVB's uninsured depositors may have had enough cash to meet payroll in the days and weeks following SVB's failure without the FDIC's extraordinary guarantee of all uninsured deposits, if they had known with certainty that the majority of their potential exposure to SVB had been safely swept off SVB's balance sheet. This belief is supported by the large number of deposit sweep agreements we collected and my colleagues reviewed feverishly over SVB weekend. By Sunday late afternoon, just before the FDIC announced that it would guarantee all uninsured deposits at SVB and Signature Bank, my colleague who reviewed the documentation said she was highly confident that the vast majority of SVB deposits in its sweep programs she reviewed had in fact been safely swept off SVB's balance sheet into third-party money market funds that would not be lost by SVB's failure.

Guarantee of Uninsured Deposits – A Costly Miscalculation Based on Imperfect Information?

SVB's depositors might not have lobbied the FDIC, Treasury, Federal Reserve or White House as intensively to invoke the systemic risk exemption to the least-cost test[54] so the FDIC could protect all uninsured depositors against losses, if they had had better information during SVB weekend. More importantly, the FDIC, Treasury, Federal Reserve and White House might not have invoked the systemic risk exemption – at great cost to the Deposit Insurance Fund and ultimately to the surviving U.S. banks in the form of extraordinary deposit insurance assessments to cover that cost – to protect uninsured depositors if they knew that most of SVB's uninsured depositors probably could have met their payroll obligations in the days and weeks following SVB's failure with deposits that had been safely swept into third-party money market funds.

This is a major information problem which, if true, is easily fixable through better disclosure and better supervision, as long as the agencies recognize that it may have been one of the fundamental problems that contributed to the magnitude and speed of the run on SVB.

Adverse Impact of B3E Proposal on Businesses and Households

I will not attempt to describe the full array of costs and risks that would be imposed by the B3E proposal, the GLAC proposal or the resolution planning proposals on the LBOs and the wider U.S. economy. Those costs and risks are described better and more completely in the unprecedented number of comment letters that have been filed in response to the B3E proposal, the GLAC proposal and the resolution planning proposals. Instead, I will describe some of the key risks and costs that would be imposed on businesses and households if the B3E proposal were finalized as proposed.

Mortgage Lending. The B3E proposal would impose higher capital requirements on mortgage lending, making it more expensive for large U.S. banks to make residential mortgage loans. These higher capital requirements would function like an excise tax, reducing the supply or increasing the cost of mortgage loans made by large U.S. banks, or both, depending on the elasticity of demand.

- The B3E proposal would do so by:
    - Establishing risk weights for residential mortgage loans that are 20 percentage points higher than the Basel Framework, with the highest capital charges for mortgage loans with smaller down payments, which are frequently issued to first-time homebuyers or LMI borrowers;
        - This deviation from the Basel international standard would adversely affect the availability or cost of residential real estate loans from large U.S. banks without any commensurate benefits to U.S. financial stability.

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[54] See 12 U.S.C. §§ 1823(c)(4) (least-cost test); 1823(c)(6) (systemic risk exception to least-cost test).

- The disproportionately greater adverse impact on first-time home buyers and LMI borrowers conflicts with the goals of various government programs designed to provide first-time home buyers and LMI borrowers with access to home ownership.
    - The reason given for this deviation was to avoid disadvantaging smaller banking organizations that would otherwise be generally subject to higher risk weights for the same residential mortgage exposure under the standardized approach.
    - The standardized approach continues to serve as a floor to the ERB approach, so it is difficult to see what incremental advantage the agencies are concerned about.
- Imposing restrictions on the amount of mortgage servicing assets (**MSAs**) that Category III and IV banks may include in CET1 capital;
- Imposing punitive capital requirements for first- and second-lien mortgages to the same borrower;
- Introducing a new standardized capital requirement for operational risk, which would require large banks to hold additional capital based on the amount of fees they earn from servicing mortgages; and
- Introducing a new standardized approach for calculating RWAs for securitization exposures, which are expected to materially increase the capital required for mortgage loan securitization vehicles.

SMEs. The B3E proposal would also impose higher capital requirements on extensions of credit to, or investments in, small and medium-sized enterprises (**SMEs**) relative to similar exposures to larger businesses, even when the credit risk of the SME is equivalent to that of a large business.

- These higher capital requirements would also operate like an excise tax on credit or equity exposures to SMEs, resulting in a reduction in the supply or increase in the cost of extensions of credit to or equity investments in SMEs by large U.S. banks, or both, depending on the elasticity of demand.
- The B3E proposal would do so by:
    - Applying a 65% risk weight to credit exposures to an investment grade issuer if the issuer or its parent is publicly listed, but it would apply a 100% risk weight if neither the borrower nor its parent is publicly listed.
        - Given that only a few SMEs are publicly listed companies, credit exposures to investment grade SMEs would almost never qualify for the 65% risk weight.
    - By eliminating the 100% risk weight for non-significant equity exposures, all equity exposures to non-public SMEs would be subject to a 400% risk weight, effectively quadrupling the risk weight applicable to equity exposures to nonpublic SMEs.

Consumer Finance. The B3E proposal would impose higher capital requirements on consumer financing activities, including credit card and home equity credit facilities, which allow consumers to meet emergency or unforeseen needs (e.g., unforeseen medical bills) and promote financial inclusion (e.g., unbanked or underbanked consumers often use credit cards as their first step toward building a credit history). These higher capital charges would similarly act like an excise tax on consumer financing, resulting in a reduction in the supply or increase in the cost of consumer financing provided by large U.S. banks, or both, depending on the elasticity of demand.

- The B3E proposal would do so by:
  - Imposing risk weights for regulatory retail exposures that are 10% higher than the Basel Framework;
  - Imposing a 10% credit conversion factor (**CCF**) on the unused portion of unconditionally cancellable credit facilities, meaning that large U.S. banks would be required to have capital against a 10% drawdown rate even for the portion of a credit card or home equity line of credit that has not, in fact been drawn down;
  - Including interest and fees earned from credit card and home equity lines in the interest, lease and dividend component and services component, respectively, of a large U.S. bank's business indicator, producing disproportionately higher operational risk RWAs from increased business volumes; and
  - Imposing higher capital charges on securitized credit card and home equity lines under SEC-SA.

Corporate and Municipal Finance in the Capital Markets. The B3E proposal would increase the capital requirements for market risk by an estimated 77% primarily to address periods of severe market stress without providing any data-driven justification for such a significant increase. Indeed, there is no evidence that large U.S. banks had insufficient capital for market risk during numerous recent periods of severe market stress or that the Federal Reserve's stress capital buffer requirement does not already ensure that they will have sufficient capital to suffer losses and continue providing market making services during prolonged periods of severe market stress, including market illiquidity when they cannot hedge or close out positions.

This significant increase in capital requirements for market risk would harm American businesses and municipalities by raising the cost of debt and equity raised in the U.S. capital markets, while reducing market liquidity, without any data-driven justification that large U.S. banks would otherwise be insufficiently resilient during periods of extreme market stress. This impact could have a very negative effect on American businesses, municipalities and retail investors since American businesses and municipalities depend on liquid capital markets to raise

more than half their debt and equity financing and U.S. retail investors depend on deep market liquidity to reduce the risks and costs of investing in American businesses.[55]

In particular, the proposed new capital requirements for market risk would harm U.S. businesses and municipalities in a variety of ways, including by:

- Implementing the haircuts for structured finance transactions (**SFTs**) haircuts so that collateralized transactions are treated as unsecured, adversely impacting markets for repurchase agreements and stock borrowing where pension funds lend their securities to manage retiree distributions;

- Implementing credit valuation adjustments (**CVA**) in a manner that would adversely impact manufacturers' ability to hedge legitimate commercial risk such as exchange rates or commodity prices and alternatively failing to exempt corporate end users or client-cleared trades from CVA; and

- Implementing the market risk proposals in a way that adversely impacts market liquidity since shocks are applied to trading assets under both the SCB and FRTB.

    - This would result in circumstances where required capital can exceed the actual size of the exposures.

    - It would also result in excess capital and reduced market liquidity by failing to adequately recognize portfolio diversification and long-standing risk management practices.

The agencies seem to understand there is no justification for such a significant increase in capital by admitting that "[t]he overall effect of higher capital requirements on market making activity and market liquidity remains a research question needing further study."[56]

The proposal also completely ignores the fact that the proposed increase in capital for severe market stress overlaps with the Global Market Shock component of the Federal Reserve's stress testing, which already increases the stress capital buffer to address the risks of severe market stress. Both the proposed increase in capital for market risk in the B3E proposal and the Federal Reserve's stress testing are designed to address the same problem – namely, to ensure that large U.S. banking organizations have sufficient capital to both absorb losses during periods of severe market shocks and have sufficient capital after suffering those losses to provide market making and other capital markets services to the market throughout the business cycle.

Tailoring. The B3E proposal would largely eliminate tailoring of capital requirements among the LBOs violation of the tailoring mandate contained in Section 401 of EGRRCPA or its animating spirit. This feature will harm U.S. businesses and households over time by creating a powerful economic incentive for Category III and IV banking organizations to consolidate into banking organizations with a scale closer to that of the U.S. GSIBs to be able to spread the increased capital costs imposed by the B3E proposal over a larger base so they can remain

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[55] See, e.g., Coalition for Derivatives End-Users, Comment Letter on Proposed Rule to Revise the Capital Requirements Applicable to Large Banking Organizations and Banking Organizations with Significant Trading Activity, 10-11 (Jan. 16, 2024).

[56] 88 Fed. Reg. at 64170-64171.

competitive with the Category I and II firms. This would reduce the option of businesses and households to obtain banking services from regional banks and turn the distribution of the U.S. banking system into a barbell of large and small banking organizations, with virtually no banking organizations in the middle.

Any government efforts to restrain such consolidation through policies against bank mergers will ultimately fail as a result of economic forces. The financial condition of regional banks that are prevented by government fiat from spreading the increased costs of the B3E proposal over a larger scale through merger and consolidation will almost certainly deteriorate over time, increasing the risk of depositor runs and ultimately failure that would result in costly emergency sales in an FDIC receivership.

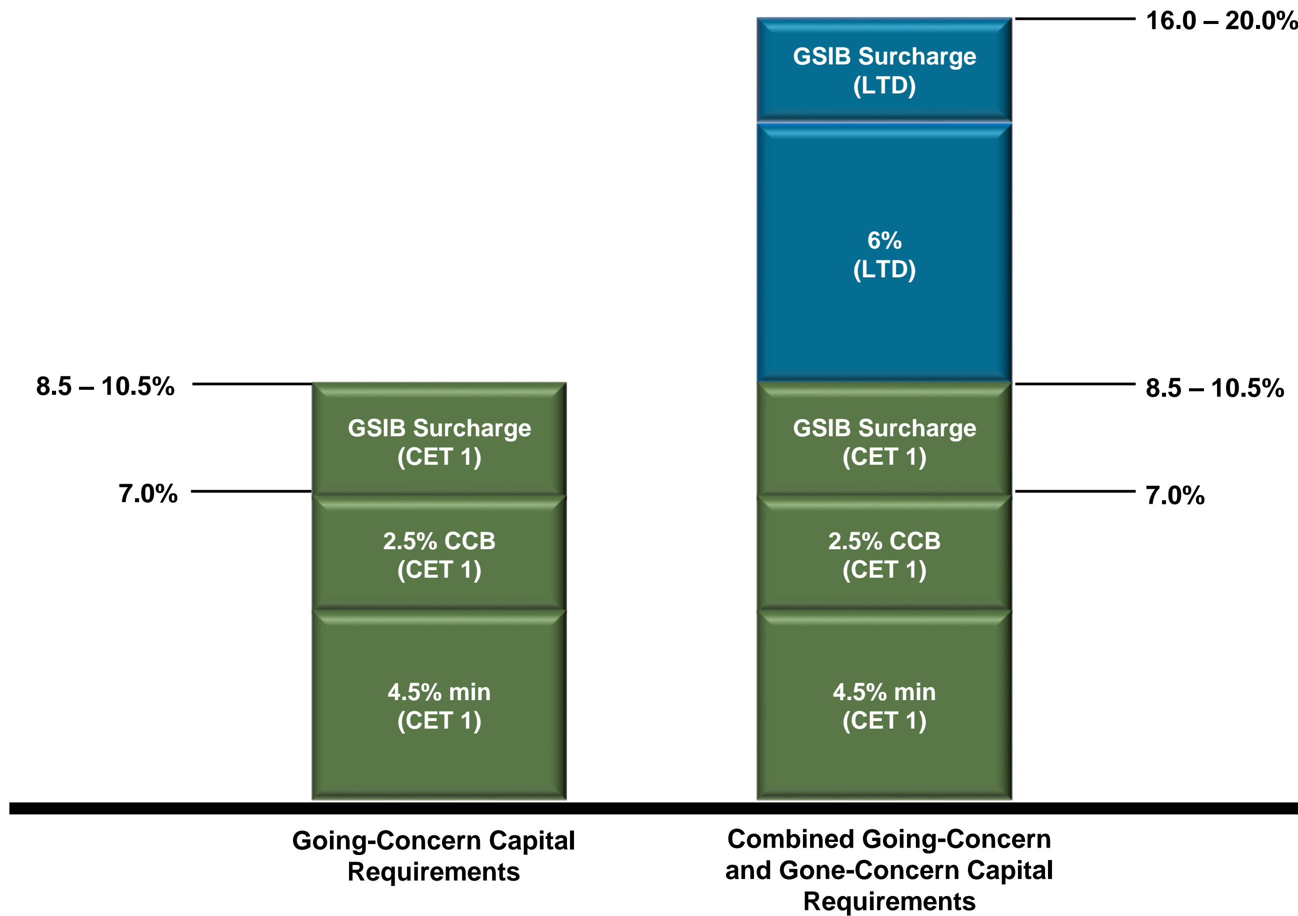
Conclusion

The U.S. capital framework includes a stress capital buffer that is the determining factor in the level of capital requirements applicable to the U.S. LBOs. Neither the Basel III framework generally nor the B3E International Framework assumes an SCB regime like that in the United States. Nor does any country other than the United States use their stress-testing regimes to impose capital buffers on their systemically important banks. This results in U.S. LBOs being subject to higher capital requirements than their non-U.S. counterparts. Thus, even if the agencies implemented the B3E International Framework in a capital neutral way and with full tailoring, the U.S. LBOs would all be subject to higher capital requirements than their non-U.S. counterparts. But by proposing to implement the B3E International Framework in a way that significantly increases the capital requirements on U.S. LBOs, without eliminating the overlap with the U.S. stress-testing regime, the agencies would impose even higher capital requirements on U.S. LBOs relative to their non-U.S. counterparts. I wonder whether that is really the right way to run a U.S. railroad.

Exhibit A

Disproportionate Impact on Regional Bank LBOs

Disproportionate Impact on Regional Bank LBOs



Source: Modeled on Davis Polk Visual Memorandum, Federal Reserve's Final Rule on Total Loss-Absorbing Capacity and Eligible Long-Term Debt, Slide 18 (Jan. 11, 2017).

Exhibit B

Capital Then and Now

Common Equity Tier 1 Ratios of U.S. GSIBs

U.S. GSIBs would have higher risk-based capital ratios today in a severely adverse stress environment than actual risk-based capital ratios in 2008.

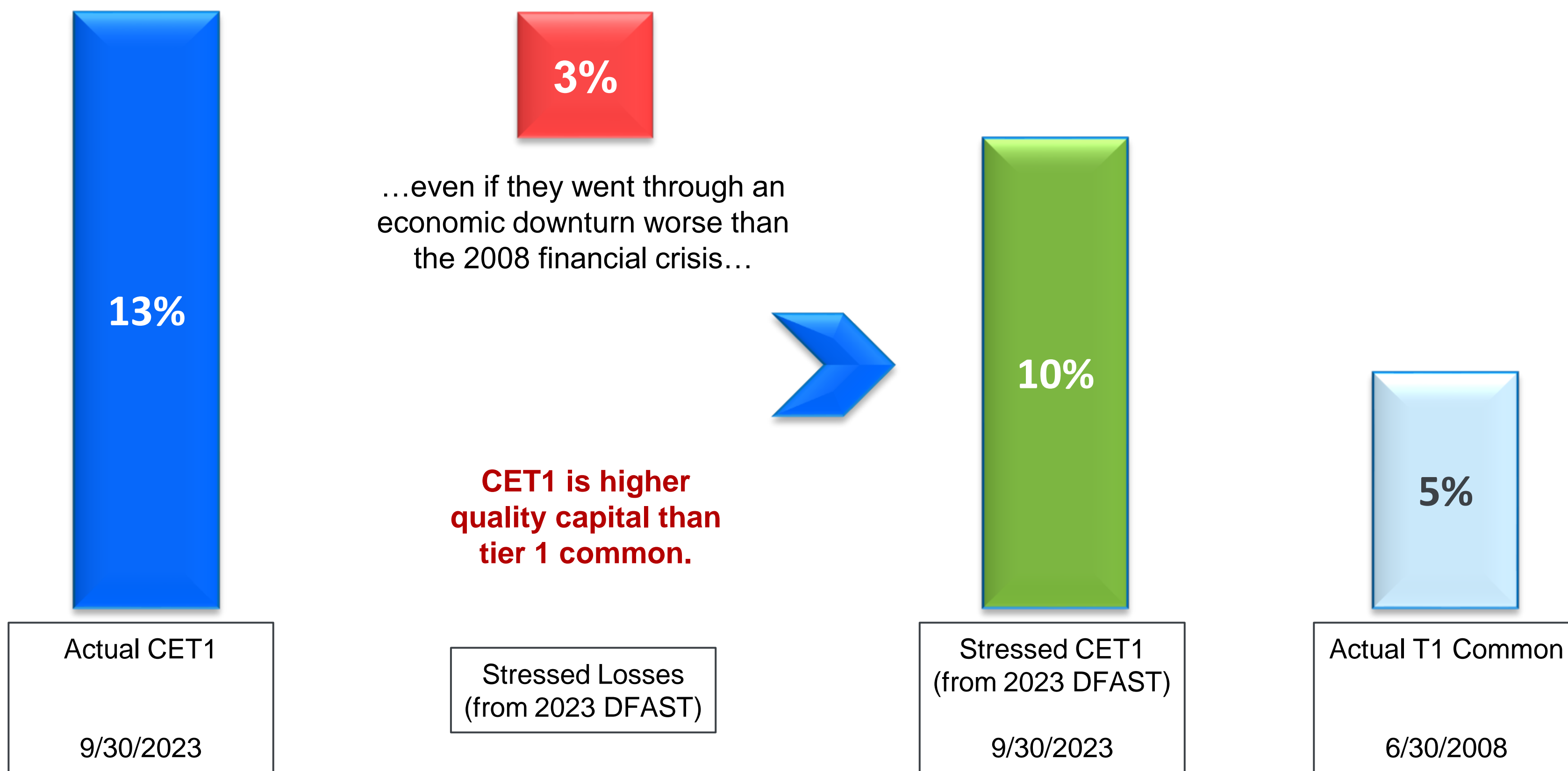


Exhibit C

Liquidity Then and Now

Liquidity Ratios of U.S. GSIBs

U.S. GSIBs have 3.5x and nearly 3x more liquid assets relative to their total liabilities and deposits, respectively, today than they did in 2008.

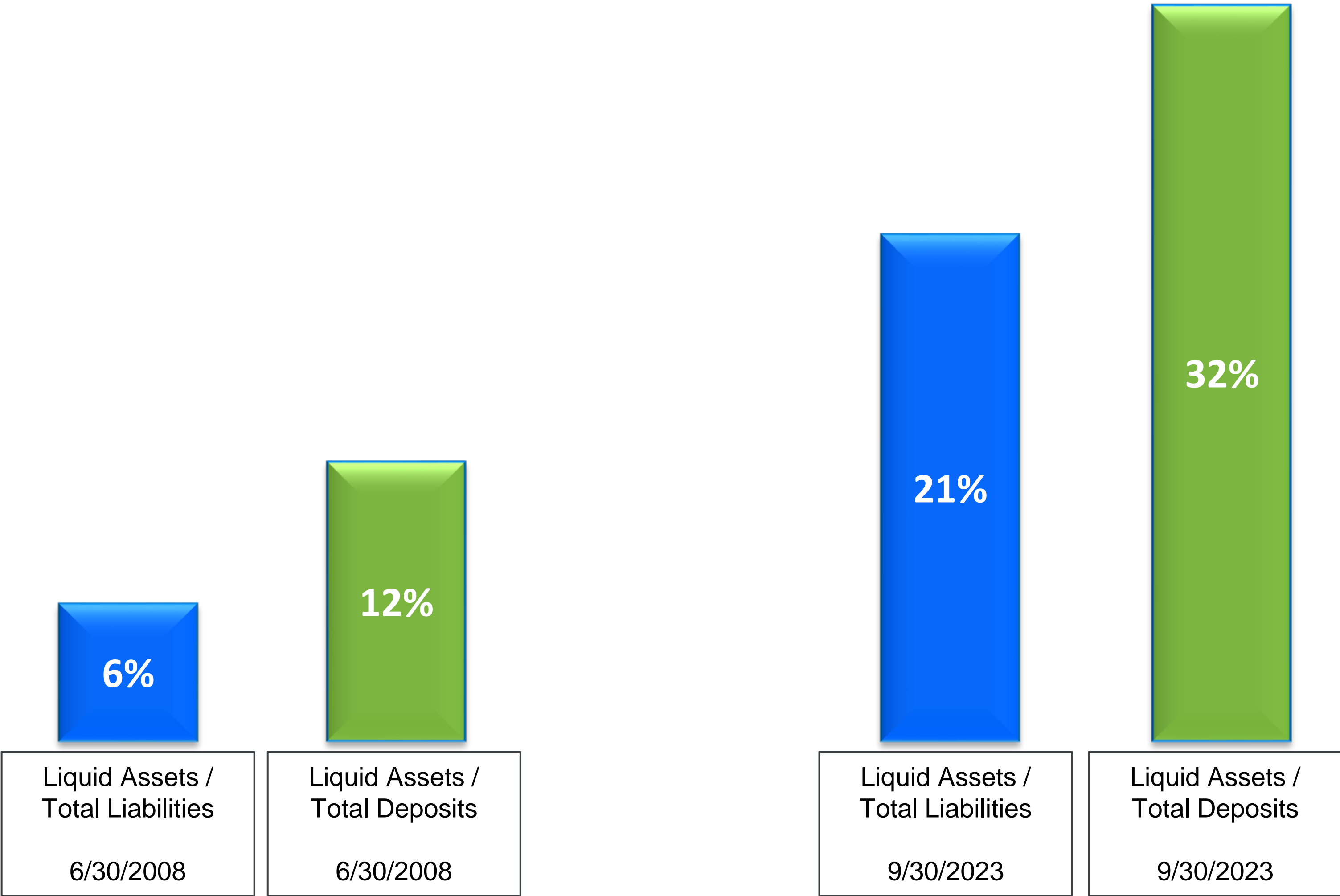


Exhibit D

Tailoring of Prudential Standards

Enhanced Regulatory Requirements Post Financial Crisis

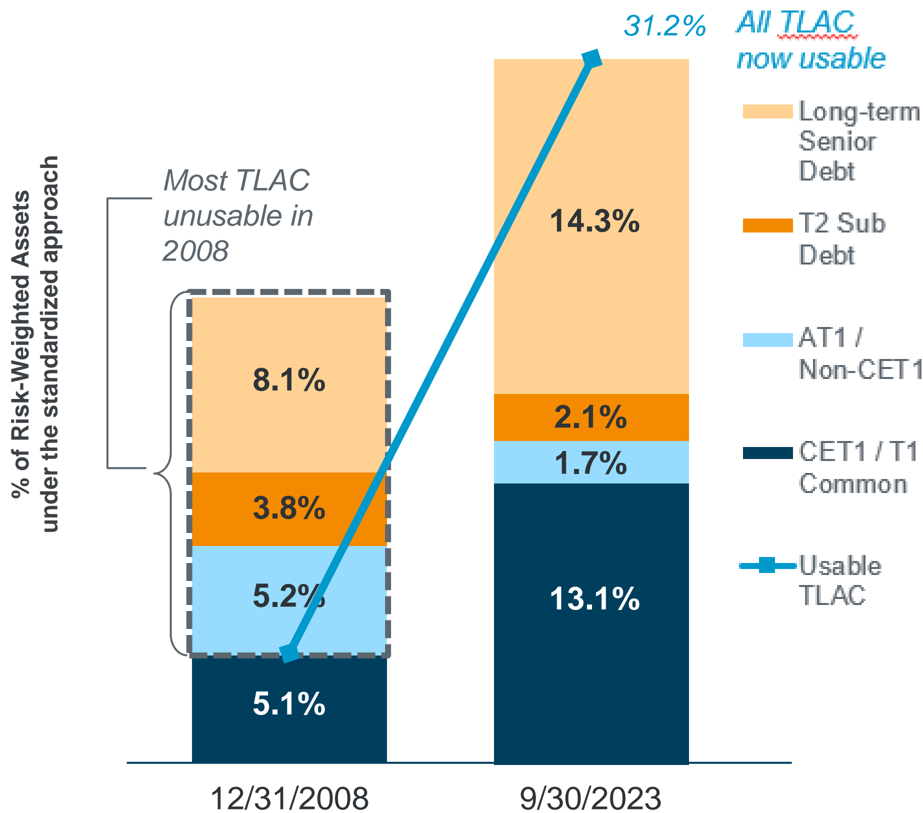
Regulation	Less than $10B assets	$10B to $50B	$50B to $100B	Category IV (1)	Category III (2)	Category II (3)	Category I U.S. G-SIBs
Recovery Plans							✓
TLAC Requirement							✓
G-SIB Surcharge							✓
Enhanced SLR (5% / 6%)							✓
AOCI Included in Basel 3 capital						✓	✓
Advanced Approach Risk Weighted Assets						✓	✓
Countercyclical Capital Buffer (If Deployed)					✓	✓	✓
Supplementary Leverage Ratio (3%)					✓	✓	✓
Single Counterparty Credit Limits					✓	✓	✓
Section 165(d) Resolution Plans					✓	✓	✓
Company-Run Stress Testing					Biennial	Annual	Annual
Supervisory Stress Testing				Biennial	Annual	Annual	Annual
Capital Planning (CCAR) / Stress Capital Buffer (SCB)				"Flexible" Annual	Annual	Annual	Annual
Liquidity Coverage Ratio				Reduced (70%) / None	Full / Reduced (85%)	Full	Full
Internal Liquidity Stress Testing				Quarterly	Monthly	Monthly	Monthly
Liquidity Risk Management				Tailored	✓	✓	✓
Risk Committee			✓	✓	✓	✓	✓
Durbin Amendment (Interchange Fee Restrictions)		✓	✓	✓	✓	✓	✓
Subject to Regulation by CFPB	Certain Products	✓	✓	✓	✓	✓	✓
Prompt Corrective Action Tools	✓	✓	✓	✓	✓	✓	✓
Volcker Rule	Eligible for Exemption	✓	✓	✓	✓	✓	✓

<u>Exhibit E</u>

Usable TLAC Then and Now

Usable TLAC

U.S. GSIBs have substantially increased and restructured their equity and long-term unsecured debt so that all of it can now be used to absorb losses without threatening financial stability.



- **TLAC** consists of **equity** plus **long-term unsecured debt** that can be converted to common equity in bankruptcy
- U.S. GSIBs now have >6 times more usable TLAC
- In 2008, long-term senior debt not usable without imposing losses pro rata on short-term senior debt (e.g., commercial paper)
- Subordinated debt and non-CET1 were considered unusable in 2008 because of market confusion about loss waterfall
- U.S. GSIBs have restructured themselves to make all external unsecured long-term debt at top-tier parent level structurally or contractually junior to all external short-term debt
- Enough long-term debt (senior + subordinate) to recapitalize U.S. GSIBs at full Basel III capital levels under conditions twice as severe as 2008

All capital ratios presented on an aggregate (weighted average) basis. Long-term senior debt in 2008 is estimated based on the long-term non-subordinated borrowings of parent holding companies of all U.S. G-SIBs

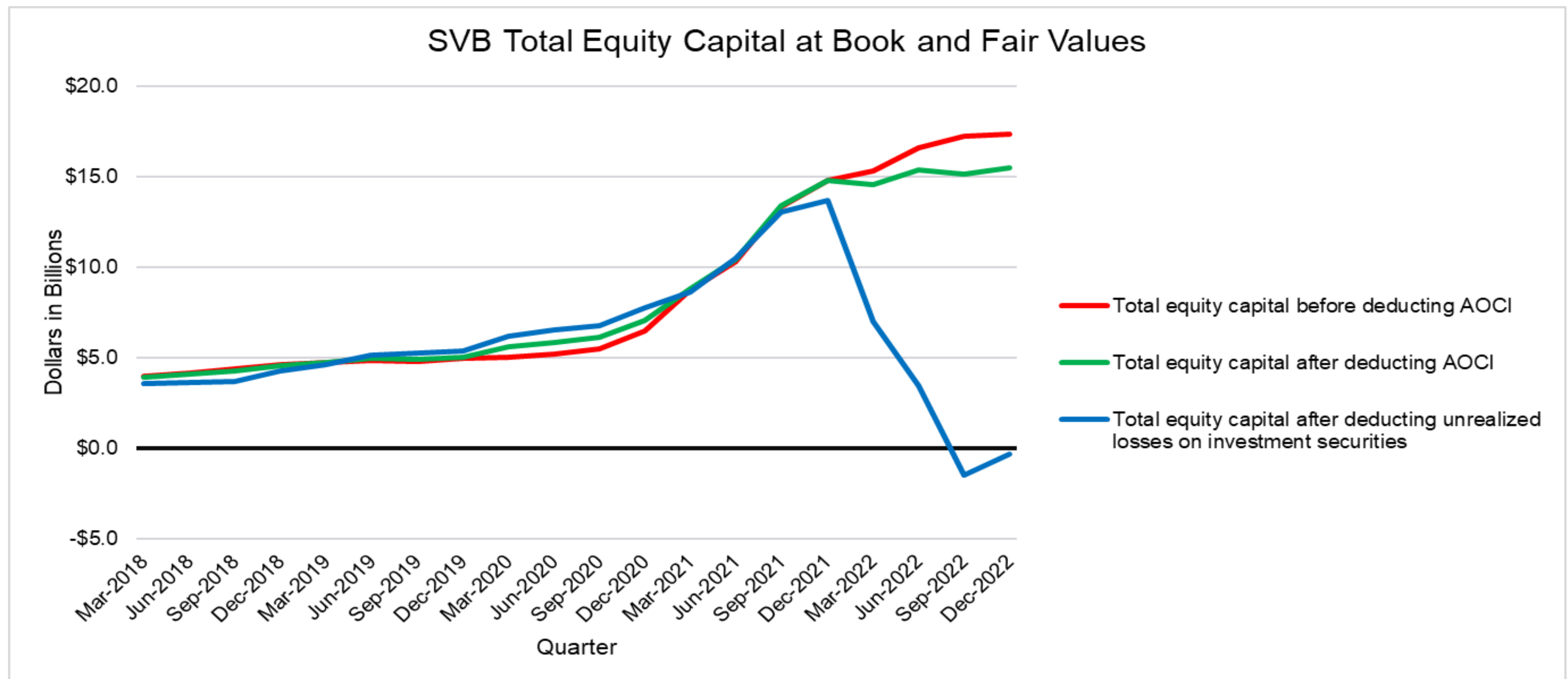
Exhibit F

SVB Insolvency on Fair Value Basis

SVB – What happened?

Insolvent on a fair value basis at 12/31/2022 and 3/9/2023 when the run began

As shown below, SVB was ***clearly*** insolvent on a fair value basis at 12/31/2022 solely because of the unrealized losses in its investment securities portfolio. In fact, it became insolvent during Q3 2022. Assuming its long-term, fixed rate loans reflected a similar rate of unrealized losses because of interest rate risk and its other loans reflected a significant rate of unrealized losses because of credit or other risks, SVB was ***deeply*** insolvent on a fair value basis at 12/31/2022.



Source: Davis Polk based on SVB's call reports at each date