

Bank Failures: Lessons from the trenches, observations, and strategic outlook



California Bankers Association
2023 Bank Counsel Seminar
September 13, 2023

Speakers



Michael Delune

**Managing Director, General Counsel
Manufacturers Bank**

Michael Delune currently serves as General Counsel of Manufacturers Bank, an SMBC Group company. As primary legal advisor to the bank and a member of its executive leadership team, Michael drives the bank's legal strategy and advises the bank's management and its board of directors on a variety of legal risks in addition to acting as the bank's corporate secretary, overseeing regulatory interactions, and previously serving as the bank's Chief Risk Officer. With more than 20 years of experience in the financial services industry, Michael frequently leverages his comprehensive expertise in corporate transactions, governance, risk management, and regulatory compliance to enhance business success.



Craig Miller

**Partner
Manatt, Phelps & Phillips, LLP**

Craig Miller is a partner in Manatt's San Francisco office and is the leader of Manatt Financial Services. Craig focuses his practice on representing public and private corporations in a wide range of corporate matters. Over the past 25 years, Craig has led countless transactions, including mergers, acquisitions, and public and private equity and debt securities offerings. He also regularly represents venture capital management companies and their portfolio companies in venture fund structuring, portfolio investments, capital raises and strategic transactions.

I. SVB Failure

- Key Events
- Elements and Reactions

II. DFPI Oversight and Regulation

- Experience from DFPI
 - Governance
 - Liquidity Risk
 - Interest Rate Risk
- Key Takeaways from the DFPI and the FRB

III. What should Boards be asking and what should internal counsel ensure Boards are asking management?

- Risk Environment
- Risk Assessment
- Risk Monitoring

IV. What are the Corporate Governance Lessons from SVB

- Duties of Directors and Officers
- Board composition
- Risk Management
- Challenge Management
- Hold Management Accountable
- Understand Concentration Risk
- Recognize Impact of Technology
- Develop and Review Financial Oversight and Contingency Plans
- Review risk factors and other disclosures
- Review D&O Protections

- V. What to Expect in the Future?

- Heightened level of regulatory scrutiny in exams
- Renewed focus on liquidity risk and concentration
- Unforgiving assessments of management and boards
- Pressure from shareholders
- Legislation and Regulation
 - Federal and State response
 - RECOUP Act

VI. Deeper Dive – Impact on Supervisory Expectations

Expect some immediate changes by regulators (no rulemaking required)

- FRB/DFPI review of their supervision of SVB.
 - Attention to weaknesses that resulted in bank failures.
- More forceful regulatory enforcement
- Risk management expectations for smaller institutions: revisiting the \$10B mark?
- Board of Directors supervision over financial risks.
- Horizontal reviews.
- Compliance with deposit insurance recordkeeping rules.
- Discretionary application of EPS to individual institutions.
- Regulatory approvals (M&A, etc.) – additional scrutiny and/or conditions.
- Fintech partnerships.

VII. Deeper Dive – Rulemaking Activity (potential/actual)

Potential or actual rulemaking in the following areas

- “Un-tailoring” of enhanced prudential standards.
- AOCI filter.
- Basel III endgame.
- Additional capital or liquidity requirements for firms with certain deficiencies.
- Resolution planning requirements.
- Deposit insurance.
- Interagency Policy Statement on Funding and LRM.
- Revised incentive compensation standards.

VII. Deeper Dive - Rulemaking Activity (potential/actual)..cont

Potential rulemaking in the following areas

- Source of strength regulations.
- New liquidity facilities.
- Bank merger reform.

VIII. Living through the crisis - views from inside the (non-failing) bank

- War room
- Board of Directors involvement
- Customer management
- Deposit flow monitoring
- Managing major deposit relationships
 - Sale of network deposit products
- Media inquiries
- Review untapped liquidity sources

VIII. Living through the crisis - views from inside the (non-failing) bank

- Exposure / concentration review
 - Specific to impacted industry
 - Specific to failed bank(s)
 - Correspondent banking relationships
 - Investments
 - Participations/syndications/ISDAs/LCs
 - Vendor relationships with failed bank
- Preparing for regulatory inquiries
- Opportunities
 - Customers
 - Talent

IX. Takeaways - Management best practices

Preparing for the next cycle

- Rethinking risk management
- Capital planning
- Social media monitoring
- Managing correspondent bank exposure