

The Banking Crisis of 2023: Outlook for the U.S. Banking Sector, Possible Regulatory and Legislative Responses, Lessons for Bank Customers and Management

2023 年银行业危机：美国银行业前景、可能的监管和立法应对措施、对于银行客户和管理层的经验教训

TAKEAWAYS

要点

- Legislative responses to recent banking industry failures could include reinstating various rules that formerly applied to banks with more than \$100 billion in assets.
对最近美国银行业倒闭案例的立法应对措施可能包括恢复以前适用于资产超过 1,000 亿美元的银行的各种规则。
- There are a variety of measures which bank depositors may pursue to remediate the risk of exposure in a bank failure.
银行储户可以采取各种措施来补救银行倒闭带来的风险。
- Bank management would be advised to consider measures to address the uncertainties arising from the current economic climate.
建议银行管理层考虑采取措施应对当前经济环境带来的不确定性。

The first quarter of 2023 was the most tumultuous for the banking industry since the outbreak of the pandemic in early 2020.

在 2023 年第一季度，世界银行业经历了自 2020 年疫情爆发以来最为动荡的时期。

On Friday, March 10, 2023, the Federal Deposit Insurance Corporation (FDIC) was appointed receiver of Silicon Valley Bank (SVB) in California. SVB was the 15th largest bank in the United States with approximately \$210 billion in assets. It claimed to have banking relationships with nearly half of the venture-backed technology and life sciences companies in the United States.
2023 年 3 月 10 日，美国联邦存款保险公司（FDIC）被任命为美国硅谷银行的破产管理人。美国硅谷银行是美国第 15 大银行，资产约 2,100 亿美元。它声称与美国近一半的风险投资支持的科技和生命科学公司有银行业务关系。

On March 12, 2023, regulators closed Signature Bank (SB), appointing the FDIC as receiver. SB, based in New York, focused on middle market companies, but was especially known for catering to law firms, real estate market participants and cryptocurrency companies. SB, at year-end 2022, had total assets of approximately \$110 billion. It has been reported that approximately 30% of SB's deposits were attributable to its cryptocurrency business.

2023 年 3 月 12 日，美国监管机构关闭了美国签名银行，并指定美国联邦存款保险公司为破产管理人。总部位于纽约的签名银行专注于中等市场公司业务，但尤其以顺应律师事务所、房地产市场参与者和加密货币公司的需求而闻名。截至 2022 年底，签名银行总资产约 1,100 亿美元。据报道，签名银行约有 30% 的存款来自其加密货币业务。

The SVB and SB failures were the second and third largest bank failures in U.S. history (after the failure of Washington Mutual in 2008).

美国硅谷银行和签名银行的倒闭分别是美国历史上仅次于 2008 年华盛顿互惠银行倒闭案的第二大和第三大银行倒闭案。

Both the SVB and SB failures resulted from a classic “run on the bank” scenario with large amounts of uninsured deposits being withdrawn in an extremely short period of time, coupled with substantial losses in the banks’ investment securities portfolio arising from the sustained period of inflation and the Federal Reserve’s program of increased interest rates as it has sought to quell inflation. By one estimate, as a result of the Federal Reserve’s aggressive stance on interest rate increases, the banking industry had some \$620 billion in unrealized losses in the securities portfolio at the end of 2022.

美国硅谷银行和签名银行的倒闭都是经典的“银行挤兑”的结果：大量没有购买保险的存款在极短的时间内被提现，再加上持续的通货膨胀和美联储为抑制通货膨胀而提高利率，使银行的证券投资组合产生了巨大损失。根据一项评估，由于美联储在提高利率方面的激进立场，银行业在 2022 年底的证券组合中有约 6,200 亿美元的未兑现损失。

Also on March 12, 2023, the U.S. Department of the Treasury, the Board of Governors of the Federal Reserve System and the FDIC jointly approved actions enabling the FDIC to complete its resolutions of the two failed banks on a basis that they would “make whole” all depositors of the failed banks (both insured and uninsured). The Federal Reserve also announced on the same day the creation of a Bank Term Funding Program (BTFP) to provide liquidity to eligible financial institutions in the U.S. (essentially those banks in satisfactory condition who are eligible to make short-term borrowings from the Reserve Banks; see 12 CFR Section 201.4(a)). The Federal Reserve, under the BTFP, is giving a 100% advance rate on eligible collateral. In other words, the collateral will be valued at par and not marked to market. As of April 2023, it is estimated that borrowings by banks under the BTFP have exceeded \$64 billion. In addition, banks had borrowed some \$88 billion from the Federal Reserve discount window.

同样，在 2023 年 3 月 12 日，美国财政部、联邦储备系统理事会和美国联邦存款保险公司联合批准授权美国联邦存款保险公司能够在“全额补偿”两家倒闭银行的所有储户（无论有无保险）的基础上完成其银行处置。同日，美联储还宣布建立一项银行定期融资计划（BTFP），为适格的美国金融机构（主要是那些状况良好、有资格从储备银行获得短期借款的银行，见《美国联邦法规》第 12 卷第 201.4 (a) 节）提供流动性支持。根据银行定期融资计划，美联储对于合格抵押品的预付款率为 100%。换言之，抵押品将按面值估值，而非按市场价值计价。据估计，截至 2023 年 4 月，银行已根据银行定期融资计划获得超过 640 亿美元的借款。此外，银行还从美联储贴现窗口获得了约 880 亿美元的借款。

Losses to the FDIC Deposit Insurance Fund (the DIF) from the two bank failures have been estimated at over \$22 billion.

据估计，联邦存款保险公司存款保险基金（DIF）因两家银行倒闭而遭受的损失超过 220 亿美元。

In the weeks following their failure, portions of the business and operations of the two failed banks were absorbed by other banks in transactions assisted by the government.

在倒闭后的几周内，这两家倒闭银行的部分业务和运营通过政府协助的交易而并入其他银行。

This paper comments on: the outlook for the U.S. banking sector in the aftermath of these bank failures; possible regulatory and legislative responses to the current situation; and lessons learned for customers and management of U.S. banks, including possible approaches to dealing with the liability and asset mismatch challenges facing the U.S. banking sector.

本文将对以下内容进行评论：在这些银行倒闭之后美国银行业的前景；对当前情况的可能采取的监管和立法对策；对于美国银行客户和管理层的经验教训，包括应对美国银行业面临的负债和资产错配挑战的可能应对方法。

Outlook For the U.S. Banking Sector

美国银行业展望

As of this writing, the U.S. government's response to the SVB and SB failures appears to have calmed financial markets. Nevertheless, in March 2023, following the SVB and SB failures and related events, Moody's Investors Service downgraded its view of the entire U.S. banking system to negative from stable. Moody's cited a "rapidly deteriorating operating environment" despite regulators' efforts to support the industry. Moody's also warned that it either was downgrading or placing on review for downgrade seven individual institutions. Moody's stated: "Banks with substantial unrealized securities losses and with nonretail and uninsured U.S. depositors may still be more sensitive to depositor competition or ultimate flight, with adverse effects on funding, liquidity, earnings and capital."

截至撰文之日，美国政府对美国硅谷银行和签名银行倒闭案的反应似乎已经平息了金融市场。然而，2023年3月，在美国硅谷银行和签名银行倒闭及相关事件发生后，穆迪投资者服务公司将其对整个美国银行体系的评级从“稳定”下调为“负面”。穆迪称，尽管监管机构努力支持银行业，但“经营环境正迅速恶化”。穆迪还警告说，它正在降低7家机构的评级或将其列入降级审查。穆迪表示：“拥有大量未实现证券损失及非零售和未经保险的美国储户的银行可能仍然对储户竞争或挤兑更加敏感，从而对融资、流动性、收益和资本产生不利影响。”

In the immediate aftermath of the SVB and SB failures, according to data published by the Federal Reserve, smaller U.S. banks lost nearly \$200 billion in deposits in the week ending March 15, 2023. More recent data from the Federal Reserve showed that customer deposits at smaller banks appear to have stabilized, totaling \$5.39 trillion in the week ending March 22, almost matching the \$5.38 trillion in the prior week. Deposit outflows from the banking system as a whole, however, have continued. *The Wall Street Journal* reported that, as of April 5, 2023, some \$2.2 trillion was lodged in the Federal Reserve's reverse repurchase, or repo, facility. It also reported that bank deposits had dropped \$363 billion, to \$17.3 trillion, since the beginning of March 2023, with assets in money market funds increasing \$304 billion to a record \$5.2 trillion. Some 40% of money market fund assets are invested in the Federal Reserve's reverse repo facility.

根据美联储发布的数据，在美国硅谷银行和签名银行倒闭后不久，美国小型银行在截至2023年3月15日的一周内损失了近2,000亿美元存款。来自美联储的最新数据显示，小

型银行的客户存款似乎已经稳定下来，在截至 3 月 22 日的一周，存款总额为 5.39 万亿美元，与前一周的 5.38 万亿美元几乎持平。然而，整个银行系统的存款外流仍在继续。据《华尔街日报》报道，截至 2023 年 4 月 5 日，大约 2.2 万亿美元存入了美联储的逆回购机制。《华尔街日报》还称，自 2023 年 3 月初以来，银行存款下降了 3,630 亿美元至 17.3 万亿美元，而货币市场基金资产增加了 3,040 亿美元，达到创纪录的 5.2 万亿美元。大约 40% 的货币市场基金资产投资于美联储的逆回购机制。

Nonetheless, the seeds of continuing challenges to the banking sector may well have been sown by recent events. In the past, challenges to the banking sector only became crises over a period of years. For example, from 1980 to 1994, approximately 3,000 financial institutions in the United States were closed or taken over (mostly smaller banks and many savings and loan institutions). 尽管如此，从最近的事件中，美国银行业将持续面临挑战的情况已经初见端倪。从过去的经验来看，银行部门面临的挑战会在一段时间内演变为危机。比如，从 1980 年到 1994 年，美国大约有 3,000 家金融机构倒闭或被接管（大部分是小型银行和众多储蓄和贷款机构）。

As compared with prior crises where the quality of bank loan assets was the main problem, the current environment focuses on the mismatch between the duration of the investment securities portfolio and the liability side of the balance sheet.

与之前的危机相比，以往的主要问题在于银行贷款资产的质量，而当前银行面临的问题在于投资证券组合的期限与资产负债表的负债端之间的不匹配。

Another source of potential volatility for banks is the growing prevalence of smartphone banking applications and social media. While online banking has been available for quite a few years, the share of bank customers who use internet or mobile banking has increased from 52% in 2017 to about 66% in 2021, according to the FDIC. In the case of SVB, it has been widely reported that the deposit flight was spurred by commentary on social media and online communications within the tight-knit Silicon Valley technology and venture capital community. It should also be noted that later in 2023 the Federal Reserve is expected to roll out its new FedNow Service which is described as a new around the clock service through which businesses and individuals can send and receive instant payments in real time. This service might increase the risks for banks experiencing liquidity pressures.

银行潜在波动的另一原因是智能手机银行应用程序和社交媒体的日益普及。美国联邦存款保险公司的数据显示，尽管网上银行已经存在多年，但使用互联网或手机银行的银行客户比例从 2017 年的 52% 增加到了 2021 年的约 66%。在美国硅谷银行的例子中，许多报道称，存款挤兑是受到了社交媒体上的评论和关系紧密的硅谷技术和风险投资社区内部在线交流的刺激。此外，值得注意的是，美联储预计将在 2023 年早些时候新推出“联邦即时服务”。这是一种新型全天候服务，企业和个人可以通过该服务实时付款和收款。该服务可能会增加面临流动性压力的银行的风险。

What are the implications of these developments for the banking industry as a whole? The following are possibilities:

这些近期发展将为整个银行业带来什么影响？以下是一些可能的情况：

- FDIC insurance premiums are likely to increase for the banking industry as a whole, to replenish the DIF after the losses resulting from SVB and SB. The Secretary of the Treasury has avowed that U.S. taxpayers will not bear these costs. (However, as discussed below, the White House position is that community banks should not bear the costs of the recent failures.)

整个银行业的联邦存款保险公司保险费可能会增加，以补充存款保险基金因美国硅谷银行和签名银行造成的损失。财政部长已经公开表示，美国纳税人不会承担这些成本。（但是，正如下文所讨论的，白宫的立场是社区银行不应承担近期失败的成本。）
- Will securities portfolio accounting and regulatory treatment be changed? In the worst case, bank securities portfolio accounting will be changed to 100% “available for sale” (AFS) accounting which would force banks to shorten their securities book and likely reduce their yields on investment securities. As an alternative, it is possible that all deposits beyond the level of FDIC insurance would be required to match the securities portfolio accounted for on an AFS basis. This would also reduce yields on investments but not as much as the worst-case scenario where AFS accounting applies to the entire securities portfolio. Presumably, insured deposits still could be matched by securities accounted for on the held-to-maturity basis. Any change in the accounting rules would likely need to be phased in over a considerable period of time.

证券组合的会计核算和监管处理是否会发生变化？在最坏情况下，银行证券组合核算将改为按照 100% “可供出售”（AFS）核算，这将迫使银行缩短其证券账簿，并可能降低其投资证券的收益率。另一种可能的方案是，所有可能超出联邦存款保险公司保险水平的存款皆需与按 AFS 核算的证券组合相匹配。这也将降低投资收益率，但不会像将 AFS 核算应用于整个证券组合的最坏情况一样严重。据推测，受保险存款仍然可以与基于持有至到期基础的证券相匹配。会计规则的任何变化都可能需要在相当长的一段时间内逐步实施。
- Bank regulators likely will require enhanced stress testing for a much wider range of banks, not only the global systemically important banks. Enhanced and expanded stress tests will likely focus on deposit analysis and may include deposit customer behavior analysis, predicting the deposit flow against interest rate movements based on depositor history. Bank regulators will likely examine banks’ securities portfolios to ascertain whether they match the deposit characteristics.

银行监管机构可能在更大范围内对银行进行强化压力测试，而不仅限于全球系统重要性银行（G-SIBs）。强化压力测试可能会侧重于存款分析，并可能包括存款客户行为分析，根据储户历史来预测存款流与利率变动的关系。银行监管机构可能会检查银行的证券组合，以确定它们是否匹配存款的特征。
- Will regulators also be more focused on placing restrictions on lending to avoid another serious mistake? If so, this also will be a challenge to bank profitability.

监管机构是否也会更加关注对贷款的限制，以避免再次出现严重错误？倘若如此，这也将对银行盈利能力构成挑战。
- Will the adoption of current expected credit loss (CECL) accounting for the loan loss reserve be revisited? Of course, a major shift in accounting for loan losses occurred in the last few years with the adoption of CECL accounting (requiring an analysis of expected “lifetime losses” in the loan portfolio as opposed to currently incurred losses).

是否会重新考虑采用当前预期信贷损失（CECL）核算贷款损失准备金？当然，随着当前预期信贷损失核算规则的采用，贷款损失的核算在过去几年发生了重大转变（需要分析贷款组合中的预期“生命周期损失”，而不是当前发生的损失）。

As a “bottom line” conclusion, these challenges to the industry may well result in much less tolerance for risk on the asset side of the balance sheet, as well as greatly increased scrutiny on the liability side; the implication is clearly for pressure on overall profitability of the U.S. banking system.

至少，美国银行业面临的这些挑战可能会导致资产负债表中资产端的风险承受能力大幅降低，而对负债端的审查将大幅加强；显然，这意味着美国银行系统的整体盈利能力面临压力。

Possible Legislative or Regulatory Responses 可能的立法或监管措施

It is too early to be certain about the range of responses by the U.S. Congress or the bank regulators to the current challenges faced by the banking industry. But a number of possible responses are already emerging.

现在确定美国国会和银行监管机构将对银行业目前面临的挑战做出何种反应还为时过早。但一些可能的应对措施已经涌现。

On March 30, 2023, the White House issued a “Fact Sheet” on the crisis suggesting a number of actions, including: reinstating various rules that formerly applied to banks with more than \$100 billion in assets, namely enhanced liquidity requirements and stress testing, annual supervisory capital stress tests, “living wills” for the resolution of the bank in a failure, increased capital levels and expanding long-term debt requirements for a broader range of banks. The White House paper did state that community banks should not have to pay increased FDIC insurance premiums. Another subject mentioned was the completion of the executive compensation rule for bank executives authorized under Section 956 of the Dodd-Frank Act (to prohibit incentive compensation arrangements that encourage inappropriate risk-taking at covered financial institutions). The White House Fact Sheet in a number of places lays blame for the failures on the previous administration, although the 2018 legislation referred to was passed by Congress on a bi-partisan basis. Senator Tim Scott, the leading Republican on the Senate Banking Committee, stated: “Here are the real facts. The bank executives at these banks failed to manage their risk, the regulators failed to supervise these banks, and the Biden administration failed to stop its reckless spending and curb inflation. The regulators had the tools to supervise these banks, but they were asleep at the wheel.”

2023年3月30日，白宫发布了一份关于此次危机的“事实清单”，提出了一系列措施，包括：恢复此前适用于资产规模超过1,000亿美元的银行的各项规定，即加强流动性要求和压力测试、年度监管资本压力测试、破产银行处置的“生前遗嘱”、提高资本水平以及将长期债务要求扩张适用于更多银行。白宫文件还规定，社区银行不应被要求支付美国联邦存款保险公司增加的保险费。白宫文件提到的另一个议题是，完成《多德-弗兰克法案》（Dodd-Frank Act）第956条授权制定的银行高管薪酬规则（禁止鼓励相关金融机构不当冒险的激励性薪酬安排）。尽管白宫文件提到的2018年立法是国会在两党支持的基

础上通过的，但白宫“事实清单”仍在多处将失败归咎于上届政府。参议院银行委员会首席共和党议员蒂姆·斯科特（Tim Scott）表示：“事实情况是这样：这些银行的高管未能管理好自身风险，监管机构未能监督这些银行，拜登政府未能停止不计后果的支出并遏制通货膨胀。监管机构拥有监督这些银行的工具，但他们无所作为。”

On March 18, 2023, an organization called the Mid-Size Bank Coalition of America sent a letter to the federal bank regulators arguing that a temporary suspension of the FDIC deposit insurance limit is necessary to “halt the exodus of deposits from smaller banks.” Whether the political will to do so can be mustered is unclear (legislation would be required).

2023年3月18日，一个名为美国中型银行联盟的组织致函联邦银行监管机构，认为有必要暂停美国联邦存款保险公司的存款保险限额，以“阻止存款从小型银行外流”。此种政治意愿能否得到呼应尚不明确（尚需立法）。

Another alternative to the deposit insurance limit would be to institute, by legislation, an increase in the coverage level to, say, \$1,000,000 for some period. This would appear to quell concerns about the deposits of most small- and medium-sized businesses. Former FDIC chairman William Isaac observed that, rather than affording coverage to all the uninsured deposits at SVB and SB, the FDIC could have returned to its 1982 approach (called the modified deposit payoff) under which the FDIC would pay uninsured depositors the full insured amount of \$250,000 and would issue receivership certificates for 80% of the uninsured funds, which was the approximate amount historically recovered from failed bank receiverships. The certificates could be tendered to the Federal Reserve Banks for cash. If the FDIC ultimately recovered more than 80%, it would remit the extra funds to the large depositors. The government’s announcement of the closure of SVB did mention the issue of receivership certificates to uninsured depositors, but the amount was unspecified and the issue became moot when full coverage was afforded.

存款保险限额的另一替代方案是，通过立法在一段时间内提高保险承保水平，如提高至1,000,000美元。这似乎能够消除人们对大部分中小企业存款的担忧。美国联邦存款保险公司前主席威廉·艾萨（William Isaac）观察到，相较于为美国硅谷银行和签名银行的所有未保险存款提供保险，美国联邦存款保险公司本可以回归其1982年的做法（被称为修正的存款偿付），即，美国联邦存款保险公司向未保险储户支付250,000美元的全额保险金额，并为80%的未保险资金颁发接管证书——这与历史上从破产银行接管中获得的大致金额一致。这些证书可以提交给美国联邦储备银行换取现金。如果美国联邦存款保险公司最终获得超过80%的赔偿，它将把额外的资金汇给大型储户。政府关于美国硅谷银行关闭的公告确实提到了向未保险储户颁发接管证书的问题，但没有具体说明金额，而当提供全额保险后，此问题便失去了意义。

Others have suggested that enhanced “claw back” rules on bank executive compensation should be adopted with respect to banks that fail—e.g., clawing back bonuses, etc., if the bank fails within two years.

此外，还有人建议针对倒闭银行采取强化的银行高管薪酬“收回”规则——比如，如果银行在两年内倒闭，就应该收回奖金等。

Lessons Learned—Bank Customers **经验教训——银行客户**

The SVB and SB failures exposed many customers of both banks to potentially severe losses on the uninsured portion of their deposits. As discussed above, the federal government, determining that a systemic risk was presented by the two bank failures, determined to make whole not only the insured deposits, but the uninsured deposits as well. However, the uncertainty generated by the two bank failures has brought into sharp focus the need for bank customers with substantial deposits to manage the risk of bank failure. There are a variety of measures which bank depositors may pursue to remediate the risk of exposure in a bank failure (the Secretary of the Treasury having made clear that not all bank failures will result in full protection for the uninsured depositors). These measures include the following:

美国硅谷银行和签名银行的倒闭让这两家银行的许多客户的未保险存款面临潜在的严重损失。如上所述，联邦政府认定这两家银行倒闭带来了系统性风险，决定不仅全额支付已保险存款及未保险存款。然而，这两家银行倒闭所产生的不确定性使拥有大量存款的银行客户更加关注应对银行倒闭风险的需求。银行储户可以采取多种措施来应对银行倒闭带来的风险敞口（美国财政部部长明确表示，并非所有的银行倒闭案的结局都是给未保险储户提供充分保护）。这些措施包括：

- **Diversification of Bank Accounts at Multiple Institutions.** Of course, for some depositors, e.g., individuals and small- to medium-sized businesses, it may be feasible to diversify the customer's banking relationships so that all deposits are within the \$250,000 insurance coverage at each bank. There are practical difficulties with that strategy, of course, since the management of multiple accounts and the fees associated with them can be burdensome. For major corporate customers, of course, this strategy is likely impracticable.

在多个机构分散开立银行账户。对于个人和中小型企业在内的某些储户，在多个银行分散存款，从而使其在每家银行的存款总额都在 250,000 美元的保险范围内是可行的。当然，这一策略在实践中也存在困难，因为多个账户的管理以及相关费用可能负担较重。当然，对于大型企业客户来说，这一策略可能并不可行。

- **CDARS.** Some years ago, Promontory Financial Group developed the Certificate of Deposit Account Registry System (CDARS), which essentially breaks up a customer's uninsured deposits into smaller increments and places those deposits with a number of banks, with the result being that all funds are covered by FDIC insurance. The service is now provided by a company known as the IntraFi Network LLC of Arlington, Virginia, which claims membership of over 1/3 of the banks and thrifts in the U.S. This service is in widespread use in the U.S. banking industry.

CDARS. 几年前，Promontory 金融集团开发了存款证账户注册系统（CDARS），该系统将客户的未保险存款分拆成若干小额存款，并将这些存款存放在数家银行，从而使客户的所有资金都被美国联邦存款保险公司的保险涵盖。该服务目前由弗吉尼亚州阿灵顿市的 IntraFi 网络有限公司提供，该公司声称其会员包括美国 1/3 以上的银行和储蓄机构。这项服务在美国银行业得到了广泛应用。

- **Sweep Accounts.** Sweep accounts are basically of two kinds: (a) "external" sweep accounts; and (b) "internal" sweep accounts. They are called sweep accounts because funds in the customer's ordinary bank account or accounts are, by agreement with the bank, "swept" (usually at daily close) from the bank account to either (a) investments in money market mutual funds (or similar investment vehicles) in the case of an "external"

sweep account; or (b) another type of account within the bank (e.g., a Eurodollar account at a foreign branch of the bank) in the case of an “internal” sweep account. Money market mutual funds, of course, are investment companies which invest principally in U.S. Treasury securities and other obligations of the federal government. The FDIC has generally taken the position that customer funds at a failed bank that were swept into a money market mutual fund before the bank failure remain the assets of the customer and are not part of the FDIC receivership estate. This is consistent with the fact that, when the sweep recurs, the deposit totals of the bank are reduced by the amount of the sweep. In other words, both the deposit liability and the associated cash are removed from the bank’s balance sheet and are now represented by the investment in securities, which are owned by the customer. As to “internal” sweep accounts, the regulations of the FDIC treat them as creating a general unsecured creditor’s claim, which is not a deposit in a receivership. (See 12 CFR Section 360.6(d)(3)(i).) This has two negative features: (a) the provisions of law giving bank depositors certain “preferences” in a bank failure do not apply if the obligation is not a deposit; and (b) general unsecured creditors in bank failures usually fare very poorly in terms of their recovery.

“扫账”。 “扫账”大致分为两种：（a）“外部”扫账；（b）“内部”扫账。它们之所以被称为“扫账”，是因为根据与银行的协议，（通常在每日收盘时）客户的一个或多个普通银行账户中的资金被从银行账户“横扫”到：（a）在“外部”扫账的情况下，对货币市场共同基金（或类似的投资工具）的投资；或（b）在“内部”扫账的情况下，银行内的另一种类型的账户（例如，银行外国分行的欧元账户）。当然，货币市场共同基金是主要投资于美国国债和其他联邦政府债券的投资公司。美国联邦存款保险公司通常采取的立场是，在银行破产前被扫入货币市场共同基金的客户资金仍属于客户的资产，而不被纳入美国联邦存款保险公司的破产管理财产。这与以下事实相吻合，即当扫账发生时，银行的存款总额会减去扫账的金额。换句话说，存款负债和相关现金都会从银行的资产负债表中扣除，体现为客户所有的证券投资。至于“内部”扫账，美国联邦存款保险公司的规定则将其视为创设了一项一般的无担保债权，而非在破产管理财产中的存款。（见《美国联邦法规》第12卷第360.6(d)(3)(i)节）这有两个负面特征：（a）如果该债务不是存款，则给予银行储户在银行破产时某些“优先权”的法律规定不适用；以及（b）银行破产时的一般无担保债权人通常很难从银行收回资金。

Under most external sweep arrangements, the bank acts as agent of the customer relative to the mutual fund and the customer cannot practically deal directly with the mutual fund. Recovery of funds from the money market mutual fund, of course, is subject to its continuing solvency and liquidity. To ascertain a customer’s rights in respect to sweep accounts, careful review of the underlying account documentation is critical.

在大多数外部扫账安排下，银行作为客户相对于共同基金的代理人，客户实际上无法直接与共同基金打交道。当然，从货币市场共同基金中收回资金取决于其持续的偿付能力和流动性。为了确定客户与扫账相关的权利，仔细审查基础账户文件至关重要。

- **Repos.** As described above, another investment vehicle which reduces the amount of ordinary bank deposits would be to enter into overnight repurchase agreements, or repos, with creditworthy counterparties.

回购。如上所述，另一个减少普通银行存款金额的投资工具是与信誉良好的交易对手签订隔夜回购协议。

- **Multiple Accounts for Affiliated Groups.** Under the FDIC’s regulations, multiple accounts by a given customer (or individual) are normally aggregated for purposes of determining the coverage of the FDIC insurance. However, the FDIC regulations do provide that bank accounts of separate legal entities within an affiliated group (e.g., corporations, partnerships, etc.) can qualify for separate FDIC insurance coverage if each entity in the group is formed and operated for a principal purpose other than obtaining additional FDIC insurance coverage. It would be advisable for customers relying on this approach to document within their own records the separate purpose of each entity and to exchange correspondence with the bank on that subject so that the separate purpose is reflected on the account records of the bank (which are determinative for FDIC insurance purposes). (See 12 CFR Section 330.11(a).)

为关联集团开立多个账户。根据美国联邦存款保险公司的规定，在确定美国联邦存款保险公司保险的覆盖范围时，特定客户（或个人）的多个账户通常是合并计算的。但是，联邦存款保险公司的规定的确规定，如果一个关联集团（例如公司、合伙企业等）中的每个实体的成立和运营的主要目的不是为了获得美国联邦存款保险公司的额外保险，则该关联集团中的独立法人实体（例如公司、合伙企业等）的银行账户有资格获得联邦存款保险公司的单独保险。建议依赖这种方法的客户自行记录每个实体的单独目的，并就此与银行沟通，以便将单独目的反映在银行的账户记录中（对美国联邦存款保险公司而言，该记录具有决定性作用）（见《美国联邦法规》第12卷第330.11(a)节）。

- **Borrowing.** The FDIC has recognized that, in a bank receivership, a depositor who is also a borrower from the bank may have rights of set-off between the loan and the deposit obligation. Careful observance of the loan terms is important in such a circumstance.

借款。美国联邦存款保险公司认可，在银行破产管理中，储户若同时也是银行贷款人，则可以在贷款和存款义务之间享有抵销权。在这种情况下，谨慎遵守贷款条款至关重要。

- **Too Big to Fail.** The federal government’s coverage of the uninsured depositors at SVB and SB, based on a perceived systemic risk, clearly indicates that, at some point, while a bank may not be too big to fail, it may well have its uninsured deposits covered by the FDIC. Understandably, the federal government’s representatives have been vague about how large a bank needs to be for it to pose a systemic risk. How much of a concern this will ultimately prove to be across the banking industry remains to be determined. As discussed above, there has been migration of deposits to the larger banks and out of the banking system.

大而不能倒。基于感知到的系统性风险，联邦政府兜底了美国硅谷银行和签名银行的未保险储户。这清楚地表明，在某个时点，尽管一家银行可能并非太大而不能倒闭，但它的未保险存款仍可能会被美国联邦存款保险公司兜底。不难理解，联邦政府代表一直在银行需要多大才能构成系统性风险的问题上含糊其辞。这最终会在

多大程度上引起整个银行业的关注，还有待确定。如上所述，存款已被转移到较大的银行和银行系统之外。

- **Cash Flow Contingency Plan.** Businesses would be advised to maintain a cash flow contingency plan in the event their financial institution fails. They may also be advised to inquire of their service providers, such as payroll processing companies, as to the soundness of their banking institutions.

现金流应急计划。建议企业建立金融机构倒闭时的现金流应急计划。同时，建议企业向其服务提供商（例如工资处理公司）询问其银行机构的可靠性。

- **Customer Notices.** Many businesses provide for their customers to pay for goods and services directly to an account at their bank (commonly referred to as a “lockbox”). If a business depositor’s bank were to fail, it would be advisable for the business to immediately give notice to the business’s own customers directing them to remit their payments to a different bank. While funds arriving after the bank’s closure should not be part of the receivership estate, there could be administrative and practical difficulties in segregating and accessing such funds.

客户通知。许多企业规定其客户可以直接向其银行账户支付商品和服务费用（通常称为“锁箱”）。如果企业储户的银行倒闭，建议企业立即通知自己的客户，指示他们将付款汇到另一家银行。虽然在银行倒闭后到账的资金不应被纳入破产管理财产，但剥离和使用这些资金可能会遇到行政程序和实际操作上的困难。

Lessons Learned—Banking Industry

经验教训——银行业

The Federal Reserve’s most recent interest rate increase of only 25 basis points suggests that the Federal Reserve believes that inflationary pressures are easing. Whether this comes to pass in the remainder of 2023 and beyond remains to be seen. Bank management and boards of directors would be advised to consider a variety of measures to address the uncertainties arising from the current economic climate. Measures which might be considered include the following:

美联储最近一次加息仅为 25 个基点，表明美联储认为通胀压力正在缓解。这是否会在 2023 年或更远的将来实现还有待观察。建议银行管理层和董事会采取各种措施，以应对当前经济环境所带来的不确定性。可以考虑的措施包括：

- **Medium-Term Bank Note Program.** Banks may wish to consider lengthening the duration of their liabilities by initiating a medium-term bank note program. Many billions of dollars of medium-term bank notes have been issued in recent decades. Typically, the maturities range from one to three years or longer in some cases. National banks have a particularly attractive regulatory path for the issuance of such notes. Under the regulations of the Comptroller of the Currency, investment-grade bank notes can be offered to accredited investors without prior regulatory review and approval, subject to certain conditions. (See 12 CFR Section 16.6.) State-chartered banks may also be able to issue such notes, subject to compliance with applicable state law. Of course, the current interest rate climate and general concerns about the health of the banking industry will increase pricing and may adversely affect availability of this funding vehicle for some banks.

中期银行票据计划。银行可能希望考虑通过启动中期银行票据计划来延长其负债期限。近几十年来，已有数十亿美元的中期银行票据发行。其期限通常为一至三年不等，甚至更长。国家银行的监管路径对此类票据发行具有十足吸引力。根据美国货币总稽核办公室的规定，投资级别的银行票据可以在符合某些条件的情况下，无需事先经过监管部门的审查和批准，就可以向合格的投资者发售（见《美国联邦法规》第12卷第16.6节）。在遵守适用州法律的前提下，州特许银行也可以发行此类票据。当然，目前的利率环境和对银行业健康状况的普遍担忧将提高定价，并可能对一些银行的这种融资工具的可行性产生不利影响。

- **Limit on Uninsured Deposits.** At SVB, it was reported that uninsured deposits constituted some 96% of the bank’s deposits. Bank management and boards of directors may wish to consider instituting prudential limits on uninsured deposits as a percentage of total deposits.

未保险存款限制。据报道，在美国硅谷银行，未保险存款占银行存款的96%左右。银行管理层和董事会可能希望考虑对未保险存款占总存款的百分比设定审慎限制。

- **Hedging.** Of course, for a price, interest rate hedges to protect the value of the investment portfolio can be acquired. Fixed to floating rate interest rate swaps will help protect the value of the investment securities portfolio in a rising rate environment (giving up current earnings to some degree as the price of the hedge). Caps, collars and other hedging products are widely available in the market.

对冲。当然，只要付出一定的代价，也可以通过利率对冲来保护投资组合的价值。固定利率转为浮动利率的利率互换操作将有助于在利率上升的环境中保护投资证券组合的价值（作为对冲的代价，在一定程度上放弃了当前的收益）。利率上限、利率两头封和其他套期保值产品在市场上随处可见。

- **SEC Filings.** For publicly held banks and bank holding companies, the quarterly report on Form 10-Q for the first quarter of 2023 will present a platform for clearly delineating management’s strategy for dealing with interest rate risk and liquidity issues. Investors and analysts will surely be giving careful attention to these risks in earnings conference calls and as they review the quarterly reports of the banking industry.

美国证券交易委员会备案。对于上市银行和银行控股公司来说，2023年第一季度10-Q季报将为明确界定管理层应对利率风险和流动性问题的战略提供一个契机。投资者和分析师肯定会在财报电话会议上和审查银行业季度报告时仔细关注这些风险。

- **Stress Tests.** While regulatory requirements for stress tests in the liquidity area may well be forthcoming, management and boards of directors of banks would be advised to consider instituting liquidity stress tests on a reasonably frequent basis irrespective of the regulatory requirements. Expert advice on the interest rate outlook for purposes of stress testing analysis should be considered. Interest rate and liquidity stress tests in the past generally have not dealt expressly with a “run on the bank” scenario. Consideration should be given to doing so in the current environment.

压力测试。尽管流动性领域的压力测试监管要求很可能即将出台，但不论监管要求如何，都建议银行管理层和董事会考虑以合理的频率进行流动性压力测试。以压力测试分析为目的而提供的关于利率前景的专家建议应被纳入考量。过去，利率和

流动性压力测试通常并未明确处理“银行挤兑”情景。而当前环境下，应将其纳入考量范围。

- **Deposit Predictive Models.** There are a variety of companies making available sophisticated predictive models regarding depositor behavior in various scenarios. Consideration should be given to instituting regular use of such models. One such model is made available by the Darling Consulting Group through their proprietary Deposits360° deposit analysis solution.

存款预测模型。许多公司提供不同情况下储户行为的复杂预测模型。应该考虑定期使用这些模型。达林咨询集团通过其专有的 Deposits360°存款分析解决方案提供的模型便是其一。

- **Other External Liquidity Sources.** Banks would be advised to be in close touch with their Federal Home Loan Bank and their Federal Reserve Bank to optimize their access to emergency liquidity if the need should arise. Press reports indicated that SVB was trying to increase its borrowing capacity from its Federal Home Loan Bank but was unable to do so before the regulators closed the bank. Of course, liquidity arrangements with other banks are possible. And if the bank is a subsidiary of a significant holding company with its own resources, a formal line of credit or other borrowing arrangement for the holding company to provide funding to the bank may be in order.

其他外部流动性来源。建议银行与其对应的联邦住房贷款银行和联邦储备银行保持密切联系，以便在必要时优化获得紧急流动性的渠道。媒体报道称，美国硅谷银行曾试图增加从其联邦住房贷款银行的借款能力，但在监管机构关闭该银行之前无法完成。当然，与其他银行的流动性安排也是可能的。如果银行是拥有自己资源的重要控股公司的子公司，可能拥有由控股公司向银行提供资金的正式信用额度或其他借款安排。

It can be expected that the banking sector will continue to see challenges and changes during the balance of 2023. Bank customers, management and boards will need to exercise continued vigilance as matters evolve.

可以预见，在 2023 年，银行业将继续面临挑战和变化。银行客户、管理层和董事会将需要视情况发展持续保持警惕。