

March 21, 2023

The Honorable Janet L. Yellen  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

The Honorable Jerome Powell  
Chair  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, D.C. 20551

The Honorable Martin J. Gruenberg  
Director and Acting Chair  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, D.C. 20429

The Honorable Michael J. Hsu  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7th St. SW  
Washington, D.C. 20219

Dear Secretary Yellen, Chair Powell, Director Gruenberg, and  
Acting Comptroller Hsu,

We write today to discuss how attempts to harness the federal financial regulatory apparatus in service of left-wing political goals are related to the recent high-profile failure of Silicon Valley Bank (SVB). SVB appears to have been focused more on environmental issues than safe and sound operations, which is perfectly consistent with your regulatory approach.

SVB's failure has been titled the "Death of a Climate Bank."<sup>1</sup> In many ways, SVB modeled the activity that the Biden Administration seeks from the banking system as a whole. It was the preferred bank of "climate tech," and its collapse "leaves a hole in the ecosystem for financing cleantech startups."<sup>2</sup> This is because it "worked with more than 1,550 technology firms that are creating solar, hydrogen and battery storage projects."<sup>3</sup> It had committed to \$5 billion in financing of speculative sustainability investments.<sup>4</sup> SVB claimed that it was involved in over 60% of community solar financings.<sup>5</sup> It was, in other words, the kind of bank that perfectly encapsulated your regulatory posture of viewing climate change as the leading risk to the finance industry, and as a ripe business opportunity to boot.

Aligning with your preferred regulatory posture increased SVB's exposure to the actual risks that contributed to SVB's failure. Before more damage is done, we urge you to turn away from the politicized path and refocus the regulatory agencies on true risk management. To put it bluntly, the administration's zealotry in fighting climate change by unwisely—and illegally—attempting to convert federal financial regulators into environmental activists is inextricably intertwined with these bank failures and the fallout from them. Your warping of the financial regulatory system undermines both the safe and sound operation of financial institutions and the public's faith in the fairness and efficacy of the regulatory regime. We urge you to change course and refocus your efforts on managing actual financial risk.

## Background

As detailed in a September 29, 2022 letter to Acting Comptroller of the Currency Michael J. Hsu from numerous state attorneys general ("Hsu Letter"),<sup>6</sup> the administration has set about systematically incorporating its view of "climate risk" into all areas of federal financial regulation. For the reasons explained in that letter, those actions are at best extremely misguided given that they cause financial regulators to focus on risks that do not present the potential for "a shock so big, so pervasive, and so fueled by short-term debt that it sparks a widespread run, a wave

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<sup>1</sup> Robinson Meyer, "Death of a Climate Bank," Heatmap (Mar. 10, 2023), <https://heatmap.news/technology/svb-climate-tech-bank>.

<sup>2</sup> Oliva Rudgard et al., "What Silicon Valley Bank's Collapse Means for Climate Tech," Bloomberg (Mar. 13, 2023), <https://www.bloomberg.com/news/articles/2023-03-13/what-silicon-valley-bank-s-collapse-means-for-climate-tech>.

<sup>3</sup> David Gelles, "Silicon Valley Bank Collapse Threatens Climate Start-Ups" N.Y. TIMES (Mar. 12, 2023), <https://www.nytimes.com/2023/03/12/climate/silicon-valley-bank-climate.html>.

<sup>4</sup> SVB, "SVB's Sustainable Finance Commitment," <https://www.svb.com/globalassets/library/uploadedfiles/svbs-sustainable-finance-commitment-final-jan-7-2022.pdf>.

<sup>5</sup> SVB, "Corporate Banking: Project Finance," <https://www.svb.com/corporate-banking/project-finance>.

<sup>6</sup> Letter from Utah Att'y Gen. Sean Reyes et al. to Michael J. Hsu, Acting Comptroller of the Currency ("Hsu Letter") (Sept. 29, 2022), <https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/2022-09-29%20Utah%20Letter%20to%20Hsu%20re%20Climate%20Risk%20Officer.pdf>.

of defaults, and threatens the ability of the whole system to function.”<sup>7</sup> Similar concerns were expressed in a comment letter submitted to the FDIC in response to its proposed principles in managing climate-related risk.<sup>8</sup> Specifically, the comment letter’s authors worried that, among other things, singling out climate-related risks for special treatment would pervert the practice of risk-management for the regulated and regulator entities alike, as both would focus too much on risks that “do not pose greater risk than, for example, technological disruption, economic downturns, domestic political changes, foreign conflicts, civic unrest, changing consumer tastes, non-climatic natural disasters, and public health crises.”<sup>9</sup> Both letters reminded you that your authority is limited solely to ensuring the safety and soundness of financial institutions and that privileging “climate risk” above other, more concrete risks strays far from that statutory grant.

Against this backdrop, the country saw the largest bank failure since the 2008 financial crisis. SVB grew rapidly over the past few years—going from \$60 billion in total deposits in 2020 to nearly \$200 billion in 2022—and was the sixteenth-largest bank in the country at the time it failed.<sup>10</sup> As time goes on we will undoubtedly learn more about errors and mismanagement that contributed to SVB’s failure, but initial reporting has focused on two main culprits: industry concentration risk and interest rate risk. SVB’s customer base was disproportionately made up of “venture capital-backed technology and life-sciences companies” and “more than 2,500 venture capital firms.”<sup>11</sup> These customers had a disproportionately large number of accounts that had balances above that which the FDIC insures.<sup>12</sup> The bank’s over-exposure to the tech sector left it more vulnerable than most banks to a downturn in that particular sector, which is exactly what happened: SVB “started to see trouble when start-up funding began to dwindle, leading its clients — a mixture of technology start-ups and their executives — to tap their accounts more.”<sup>13</sup> This increase in customer withdrawals exacerbated a liquidity crunch that was caused by a mismatch between SVB’s assets—which were primarily invested in long-term, low-yield U.S. treasuries and

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<sup>7</sup> *Id.* at 4 (quoting John H. Cochrane, “A Convenient Myth: Climate Risk and the Financial System,” NAT’L, REV. (Nov. 17, 2021), <https://www.nationalreview.com/2021/11/a-convenient-myth-climate-risk-and-the-financial-system>).

<sup>8</sup> Letter from Utah Treasurer Marlo M. Oaks et al. to FDIC (June 3, 2022), <https://treasurer.utah.gov/wp-content/uploads/06-03-2022-Comment-to-FDIC-Principles-for-Climate-Related-Financial-Risk-Management-for-Larger-Financial-Institutions.pdf>.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> Conor Murray, “What to Know About Silicon Valley Bank’s Collapse—The Biggest Bank Failure Since 2008,” FORBES (Mar. 13, 2023), <https://www.forbes.com/sites/conormurray/2023/03/13/what-to-know-about-silicon-valley-banks-collapse-the-biggest-bank-failure-since-2008>.

<sup>11</sup> Vivian Giang, “Banking Turmoil: What We Know,” N.Y. TIMES (Mar. 15, 2023), <https://www.nytimes.com/article/svb-silicon-valley-bank-explainer.html>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

mortgage-backed securities—and the interest it needed to pay on customer deposits, which was driven steadily higher by the Federal Reserve’s inflation-fighting efforts.<sup>14</sup>

### **Your Focus on Climate Risk Contributed to These Failures**

We are concerned that SVB’s failure is directly related to the administration’s “whole of government” approach to fighting climate change. As noted above, SVB failed in part because of a rapid increase in interest rates over the past year that was necessary to fight record-high inflation. But, as noted in the Hsu Letter, an inordinate focus on climate risk, and the related underinvestment in traditional energy infrastructure, substantially contributed to the inflation those interest rate increases were designed to combat.<sup>15</sup> Put another way, rather than decreasing risk to the financial system, the administration’s continued focus on combatting climate change actually increased that risk.

Leaving aside those macroeconomic issues, your singling out of climate-related risk as the government’s chief regulatory concern may have contributed to the failure in other ways. The issues that led to SVB’s failure are the exact kinds of risk that financial regulators—but not environmental ones—should be alert to and guard against. They are the exact types of risk discussed in the comment letter on the FDIC proposed principles. But the relevant regulators did not see them in this case. Relevant regulators allowed the bank to become dangerously overexposed to both a specific segment of the economy and to the risk of interest rates rapidly increasing.

Was there unaddressed concentration risk because that concentration was in a politically favored industry? As noted above, media reports have suggested that SVB was particularly important to the clean energy industry.<sup>16</sup> Were regulators

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<sup>14</sup> See, e.g., Robert Cyran, “SVB Found Old Concentration Risk,” Reuters (Mar. 10, 2023), <https://www.reuters.com/breakingviews/svb-found-old-concentration-risk-2023-03-10> (“When tech took a disproportionate hit from the recent inflationary downturn, clients burned through savings, pulling out their deposits. That left the bank short of cash and forced to sell its tarnished investments at cut-rate prices.”). These same media reports suggest that the bank failed to engage in basic risk management practices, such as hedging against rising interest rates.

<sup>15</sup> Hsu Letter, *supra* note 6, at 2 (“America and the world are currently suffering through sky-high inflation, driven by gas and electricity prices that have increased substantially over the past twelve months. In August, the Consumer Price Index was 8.3% higher than twelve months prior, driven in large part by a 23.8% increase in energy prices (including a 68.8% increase in fuel oil, 15.8% increase in electricity, and 33% increase in piped gas service).”). The interest rate increases were also driven by excessive government spending, much of which was focused on combatting climate change but will have negligible if any impact on the weather. Jon Sanders, “Biden’s Impoverishing Americans To Cut Emissions Won’t Even Touch Climate Change,” Am. Inst. For Econ. Research (Sept. 25, 2022), <https://www.aier.org/article/biden-impoverishing-americans-to-cut-emissions-wont-even-touch-climate-change>.

<sup>16</sup> See, e.g., Mark Le Dain, “Silicon Valley Bank Collapse Is a Blow to Clean Energy Tech, Regardless of What Happens in the Next 24 Hours,” FORBES (Mar. 12, 2023), <https://www.forbes.com/sites/markledain/2023/03/12/silicon-valley-bank-collapse-is-a-blow-to-clean-energy-tech-regardless-of-what-happens-in-the-next-24-hours> (noting that “SVB boasts over 1,550

and/or SVB concerned about pointing out that its customer base would be particularly impacted by rising interest rates because it would suggest that the cleantech economy on which the administration pins its environmental plans cannot survive on its own absent access to capital that is nearly free? Did regulators or risk management employees look past some issues with SVB's balance sheet because they believed it was doing important work?

Relatedly, how much of SVB's cash management plan was predicated on an assumption that changes to U.S. law and policy would make its cleantech clients more profitable, and therefore ease any strain on the bank's cash position? Your emphasis on climate risk is based almost exclusively on concern for "transition risk" and "stranded assets." Are bank regulators really in a position to question assumptions SVB may have made about future regulatory change when they are actively encouraging regulated entities to assume that such legal and regulatory changes will take place?<sup>17</sup>

SVB's failure, and your lack of focus on true systemic and prudential risk issues, creates concern about the health of the financial system in general, as investors have fled bank stocks in recent days.<sup>18</sup> If this continues, the financial position of banks will further erode, which weakens the financial system. Banks may be forced to raise additional capital, which may further the perception that the financial system is weak and could ultimately result in a feedback loop of increasing concern that causes real harm to all Americans. This would be the poisoned fruit of your politicization of the financial regulatory function.

More broadly, your focus on "climate risk" incentivizes risk managers and bank examiners to focus on items other than those that truly present existential risk to institutions and systemic risk to the financial system. At some point, caring about climate change and caring about safety and soundness will come into conflict, and your statements and actions to date suggest that safety and soundness will be the one to give way. How is a bank examiner to act if he determines that safe and sound practices require a bank to take an action such as lending to energy intensive industries? Will that examiner feel empowered to pursue the most safe and sound

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prominent clients in the climate technology and sustainability sector" and that the bank "had even committed \$5 billion in loans and investments specifically towards sustainability efforts").

<sup>17</sup> See, e.g., Off. of Comptroller of the Currency, Principles for Climate-Related Financial Risk Management for Large Banks 1 (Dec. 16, 2021), <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-138a.pdf> (describing climate-related "transition risk" as including "stresses to certain banks or sectors arising from the shifts in policy . . . or technologies associated with the changes necessary to limit climate change"); Fin. Stability Oversight Council, Report on Climate-Related Financial Risk 28 (Oct. 2021), <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf> (noting that regulators "are developing or planning to develop methodologies and tools to support risk assessments that estimate exposures and vulnerabilities of institutions to climate-related financial risks").

<sup>18</sup> "Bank Stocks Dive as Wall Street Trembles Amid SVB Failure," CBS News (Mar. 13, 2023), <https://www.cbsnews.com/news/bank-stocks-down-us-bank-failure-svb-signature-2023-03-13>.

course of action? Or will she be concerned that her superiors will discipline her for encouraging a bank to take a course of action that further contributes to climate change?

### **Your Devotion to Combatting Climate Change Calls into Question the Motivations of Your Recent Actions**

As discussed in the Hsu Letter, your forays into environmental regulation undermine faith in financial regulation as a general matter, as they create the perception that the regulatory apparatus is more concerned with political issues than ensuring the integrity of the financial system.<sup>19</sup> And this doubt also affects the perception of actions you have taken in response to SVB's failure.

For example, there is concern about possible political motivation in guaranteeing all deposits at the failed bank, even those that were not insured.<sup>20</sup> As discussed above, a substantial number of SVB's depositors were venture capital-backed tech companies and their executives, including a substantial number of cleantech companies. This industry provides substantial rhetorical and financial support to the very same political actors who support the financial regulatory system becoming even more focused on combatting climate change. Given the administration's regulatory preference for supporting climate change initiatives, it is not unreasonable to question whether the government's unprecedented step was not an effort to stave off general economic collapse, but instead an attempt to provide financial support to an important constituency that did not exercise proper vendor oversight.<sup>21</sup> And it suggests that your actions were motivated by a desire to save the cleantech industry on which the administration is relying to deliver the country its promised climate agenda. But even if that is not the case, your focus on climate change has created that perception, which weakens the financial system generally and undermines faith that financial regulators are solely focused on the economic health of our banking system as opposed to furthering favored political agendas.

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As the above clearly shows, your focus on climate risk as a special category to be monitored and managed above all else has led to substantial issues in the financial

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<sup>19</sup> Hsu Letter, *supra* note 6, at 7 (“Faith in America’s financial system stems in large part from the public’s belief that the financial regulatory system is not used for political purposes, but instead solely to ensure the integrity of the system. Numerous experts have explained how the recent focus by central banks and financial regulators on climate change is at best misguided and at worst affirmatively harmful to the very financial systems they are trying to protect.” (citations omitted)).

<sup>20</sup> Kimberly A. Strassel, “Did ESG Help Sink SVB?,” WALL ST. J. (Mar. 16, 2023), [https://www.wsj.com/articles/did-esg-help-sink-svb-progressive-climate-bank-bailout-federal-reserve-treasury-biden-insurance-9db64b0b?mod=hp\\_opin\\_pos\\_2#cxrecs\\_s](https://www.wsj.com/articles/did-esg-help-sink-svb-progressive-climate-bank-bailout-federal-reserve-treasury-biden-insurance-9db64b0b?mod=hp_opin_pos_2#cxrecs_s).

<sup>21</sup> *See id.* (noting that “the Biden administration immediately swooped in with an SVB bailout, promising to make all those clean-tech companies whole,” while “most every other company in the country faces a bevy of hostile Biden regulators and lawsuits”).

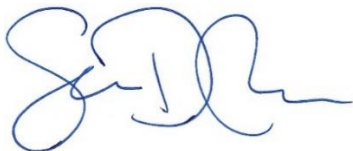
system and weakened regulators' ability to effectively monitor and supervise institutions for actual financial risk. Many—if not all—of these issues can be addressed by simply refocusing on safety and soundness, rather than using the financial system to pursue political goals.

It is time to turn away from this mistaken path and refocus federal efforts on actual financial risks that have the ability to do real harm to the national economy. Attempting to use the financial system to pursue environmental goals does nothing but increase risk. For example, banks that refused to do business with coal companies, but rushed to partner with green technology companies, made the wrong bet over the past two years, as coal company cash flow has skyrocketed while rising interest rates have exposed the weakness in many green energy business models. Serving a diversified customer base means having customers who generate cash flow that can help a financial institution offset the struggles of other customers.

You should publicly direct banks to pursue profitability, liquidity, and prudent risk management and note that declining to serve customers for failing to comply with unrealistic climate initiatives like achieving net zero by 2050<sup>22</sup> is a threat to the financial system. You should make clear that no agency, nor any agency personnel, has authority to pressure any bank to increase its exposure to net-zero compliant customers or to decline to do business with companies for not being net-zero compliant. You should also direct banks to stop setting emissions reductions targets that are inherently arbitrary and undermine public confidence in the financial system.

Providing clear direction to financial institutions will help ensure that risks to the financial system are properly managed and restore confidence in the regulatory apparatus that has been lost. We are committed to assist in any way we can.

Sincerely,



Sean D. Reyes  
Utah Attorney General



Steve Marshall  
Alabama Attorney General



Tim Griffin  
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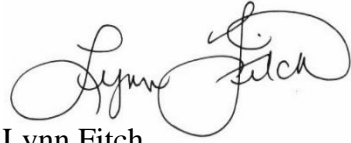
<sup>22</sup> Steve Milloy, "A Quiet Refutation of 'Net Zero' Carbon Emissions," WALL ST. J. (Dec. 28, 2022), <https://www.wsj.com/articles/a-quiet-refutation-of-net-zero-climate-change-emissions-energy-global-warming-sec-goals-clean-power-11672262963>.



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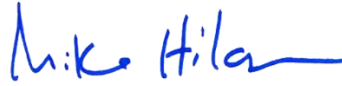
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