STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0115

Joint Oversight Hearing
Assembly Committee on Banking and Finance
Senate Committee on Banking and Financial Institutions

The Failure of Silicon Valley Bank: Where Regulation and Supervision Fell Short

Wednesday, May 10, 2023
2:00 PM, 1021 O Street, Room 1100

Purpose of the hearing

The Assembly Committee on Banking and Finance and the Senate Committee on Banking and Financial Institutions ("the Committees") will convene an oversight hearing on May 10, 2023, to evaluate the state's supervision of Silicon Valley Bank (SVB), which failed in March 2023 as a result of a bank run spurred by concerns about the bank's financial health. The failure of SVB raises important questions about the adequacy of banking regulations and the effectiveness of banking supervision.

On May 8, 2023, the Department of Financial Protection and Innovation (DFPI) released a comprehensive review of its supervision of SVB. DFPI leadership will provide committee members an overview of this report, including the department's recommendations to improve state supervision of California-chartered financial institutions.

Importantly, SVB is not the only California bank that has struggled in the current economic environment. This year has also seen the winding down of Silvergate Bank and the failure of First Republic. While these events will not be the primary focus of this hearing, these cases highlight the need to review federal and state banking oversight.

Today, committee members will hear from:

- Clothilde "Cloey" V. Hewlett, Commissioner, DFPI,
- Avy Mallik, General Counsel, DFPI, and
- Jeanette Quick, Deputy Commissioner of Investor Protection, DFPI.

Summary of SVB's collapse

The business of banking is inherently risky, due in no small part to banks providing the beneficial economic function of maturity transformation – that is, banks gather short-term deposits and

make long-term loans. This activity introduces the risk that depositors may request their funds back in a timeframe that does not align with the cash flows generated by the loans. If many depositors request their funds back in a relatively short time period, a bank may be forced to seek out costlier funding sources or to sell assets, such as loans or other investments. In some cases, a bank may experience such significant demand from depositors to withdraw their funds that the bank is unable to meet all requests, resulting in the bank being shut down by state or federal regulators. This is the outcome that befell SVB in March 2023.

For California, SVB was not just any bank. SVB was widely perceived as a vital component of California's tech economy, offering tailored products and services to venture capitalists (VCs), technology firms, entrepreneurs and start-ups. SVB marketed itself as "the financial partner of the innovation economy," and one venture capitalist described it as "the most important capital provider to tech startups and the biggest supporter of the community."[1]

SVB's reliance on start-ups and VC customers meant that the bank's fortunes tracked closely with those of the tech industry. Until a few months ago, this close relationship worked well: between 2019 and 2022, amid a booming tech economy, SVB's assets tripled, growing from around $60 billion to $209 billion, becoming the 16th largest bank in the nation. This growth in assets was driven primarily by large increases in deposits, as SVB's customers raised large amounts of capital through IPOs and new funding rounds. Notably, many of these deposit accounts exceeded the $250,000 FDIC insurance limit, meaning the depositors were exposed to losses in the event that SVB failed. SVB used that surge in deposits to invest in medium-and long-term securities like government bonds, which are typically considered safe.

However, SVB's weaknesses began to emerge after the Federal Reserve raised interest rates to combat persistent inflation. Specifically, the Federal Reserve warned SVB leadership about the bank's "interest rate risk," which is a type of risk stemming from a changing interest rate environment.[2] In SVB's case, the market value of its long-term securities investments was declining, which means the bank would sell these investments at a loss if they were compelled to sell before their maturity date. This interest rate risk, in combination with SVB's substantial amount of uninsured deposits (representing 88% of the bank's deposits at the end of 2022) and a struggling tech sector, appear to have helped create the conditions for SVB's quick collapse in March 2023.

Researchers, experts, and federal policymakers have developed detailed accounting of the many factors that worked together to create the conditions for SVB's failure. For additional

---

[1] Aimee Picchi, "Silicon Valley Bank shut down by regulators. Here's what to know." CBS News (March 10, 2023), available at: https://www.cbsnews.com/news/silicon-valley-bank-sivb-stock-fdic-cbs-explains/

[2] "Interest rate risk," also called "duration risk," is the risk that a change in interest rates will negatively affect the value of an asset. For example, if someone buys a bond when interest rates are low, then the market value of that bond will decline if rates for newly issued bonds go up, because the newly issued bonds generate higher cash flows due to their higher interest rates. If the low interest rate bond is held until maturity, then the bond holder will see the full return. However, if the bond holder must sell a low interest rate bond on the secondary market before the bond's maturity date, then the bond holder will take a loss because the low interest rate bond is valued lower than more lucrative newly issued bonds with higher interest rates.

information about what caused the SVB collapse, committee members may wish to refer to the Assembly Banking and Finance Committee's April 10th informational hearing, titled "The Collapse of Silicon Valley Bank: What Happened and What it Means for Banking Regulation." Materials can be found on the committee website: https://abnk.assembly.ca.gov/content/collapse-silicon-valley-bank-what-happened-and-what-it-means-banking-regulation.

Timeline of major events in the SVB collapse

1. On Wednesday March 8, SVB announced a sale of $21 billion in securities at a loss of $1.8 billion to raise liquidity, a result of SVB's interest rate risk. The company also announced it was conducting a capital raise. These announcements raised concerns among investors and customers that the bank could be in financial trouble. In a letter to investors, the SVB president wrote that "While VC (venture capital) deployment has tracked our expectations, client cash burn has remained elevated and increased further in February, resulting in lower deposits than forecasted."[3]

2. On Thursday, March 9, SVB experienced a bank run as a growing number of the bank's customers, including start-ups and VCs, began to pull their money out of the bank. SVB customers used social media and their personal networks to spread the word about pulling funds out of the bank. In total, approximately $42 billion was withdrawn from the bank in a single day, leaving SVB with a negative cash balance of around $958 million.[4] As DFPI described in its order taking possession of the bank, "the precipitous deposit withdrawal has caused [SVB] to be incapable of paying its obligations as they come due."

3. On Friday, March 10, DFPI took control of SVB due to its inadequate liquidity and appointed the Federal Deposit Insurance Corporation (FDIC) as a receiver of SVB. The FDIC announced that the insured portion of deposits (amounts less than $250,000) would be available to customers by Monday, March 13, and that the uninsured portion of deposits would be paid as an advanced dividend at some later date. The FDIC also began looking for a buyer of SVB or its parts, which would then determine any additional funds that could be allocated back to uninsured depositors.

4. On Sunday, March 12, purchaser bids for SVB were due to the FDIC. According to testimony from the FDIC's Martin Gruenberg, the FDIC received only one valid offer on the insured deposits and some of SVB's assets. Gruenberg states that the costs associated with this offer

[3] Krystal Hu et al, "Silicon Valley Bank Scrambles to Reassure Clients After 60% Stock Wipe-Out." Reuters, March 10, 2023, available at: https://www.reuters.com/business/finance/silicon-valley-bank-sell-stock-cope-with-cash-burn-2023-03-09/

[4] DFPI's order is available at: https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/DFPI-Orders-Silicon-Valley-Bank-03102023.pdf?emrc=bedc09

would have "resulted in recoveries significantly below the estimated recoveries in liquidation."[5]

As concerns arose that risk of collapse could spread to other banks and reports that customers had begun to withdraw funds from other banks with large amounts of uninsured deposits, the FDIC board recommended that the Secretary of the Treasury make a "systemic risk determination" with regard to SVB. This determination allowed the FDIC to extend insurance to all of SVB's deposits, even those with deposits greater than the $250,000 insured threshold. Gruenberg notes this guarantee helped small and mid-size businesses as well as customers with very large account balances. The ten largest deposit accounts held $13.3 billion in total.

5. On Sunday, March 26, the FDIC announced that it had sold most of SVB's assets to First Citizens Bank. According to the FDIC, the net costs of the SVB failure to the Deposit Insurance Fund to insure all deposits would be roughly $20 billion.

Federal and state roles in the regulation and supervision of banks

Banks facilitate a large majority of all payments in the economy, and a disorderly bank failure can cause far-reaching effects on society, such as causing employers to miss payrolls or consumers being unable to access their funds. In order to reduce the risk of bank failures, banking is among the most regulated industries in the world. Banks are subject to statutory laws enacted by legislators and rules promulgated by bank regulators that are intended to ensure the safety and soundness of individual banks and the banking system as a whole. But the diversity and complexity of risk in banking requires a more responsive and continuous oversight relationship between government and banks than is possible with statutory and regulatory law alone. This oversight relationship is referred to as "supervision" and consists of government bodies that constantly monitor, inspect, and examine banks for compliance with laws.

The specific ways in which a bank is regulated and supervised depends partially on its charter, which acts as a type of license authorizing the bank to operate. The United States has a dual-banking system (also called a dual-charter system) by which both federal and state regulators share the supervision of banks and credit unions. Under the dual-banking system, a bank can choose to receive a federal charter through the Office of the Comptroller of the Currency (OCC) or a state charter through the state chartering authority.

DFPI is California's state chartering authority and supervises nearly 100 state-chartered banks.[6] A state-chartered bank is also regulated by either the Federal Reserve or the FDIC, depending on whether the bank joins the Federal Reserve System. Importantly, banks, whether they are state-

---

[5] Remarks by Chairman Martin J. Gruenberg on Recent Bank Failures and the Federal Regulatory Response before the Committee on Banking, Housing, and Urban Affairs, United States Senate, March 27, 2023, available at: https://www.fdic.gov/news/speeches/2023/spmar2723.html

[6] For a full list of state-chartered banks in California, see: https://dfpi.ca.gov/commercial-banks/directory-of-state-charted-com-banks/

or federally-chartered, may also be subject to a range of rules and policies aimed at ensuring the stability of the whole financial system.

In practice, a large majority of bank regulation and supervision is dictated at the federal level. Adding the involvement of state regulators may seem like a complicated structure that adds yet another cook to a kitchen already filled with assorted federal agencies. However, the availability of a state charter is believed to produce real and tangible benefits for both the industry and consumers by making the federal and state governments "compete" for banks. According to the Conference on State Banking Supervisors (CSBS), state regulators offer unique value to banking supervision because "the state regulatory system provides banks and nonbanks the opportunity to serve the specific needs of local communities under the supervision and guidance of a supervisor directly connected to those communities."[7] CSBS notes that many products that are now commonplace, such as home equity loans and the checking account, originated in state-chartered banks and later became more widely available in the broader dual-banking system.

DFPI also cites a number of advantages to banks that obtain a California charter. Among the benefits are lower fees and assessments, minimal intrusion of examiners into institutions that are well-managed and well-capitalized, and more direct and timelier contact with the regulator.[8] DFPI states that "the combination of access, low fees, favorable state laws, and expertise and experience of the Department's staff, make the state charter the charter of choice for California financial institutions."

What is involved in bank supervision?

As a state-chartered bank that was a member of the Federal Reserve System, SVB was jointly supervised by DFPI and the Federal Reserve. For these types of banks, DFPI and the Federal Reserve coordinate their examinations of the bank and may alternate examinations of small community banks. The two supervising teams may focus on different aspects of the bank's operations.

According to the Federal Reserve, the primary objectives of an examination are to provide an objective evaluation of a bank's soundness, determine the risk involved in the bank's activities, evaluate the bank's compliance with laws and regulations, and identify areas where "corrective action" is required to strengthen the bank and improve the quality of its performance.[9]

Banking supervisors have a number of options to correct a bank's behavior or practices. For example, if the Federal Reserve determines that a bank is unsafe or it is not following the law, it

---

[7] See CSBS primer on financial services regulation for further discussion of state charters: https://www.csbs.org/state-financial-regulation-101

[8] "Advantages of a State Charter," DFPI (Updated September 2019), available at: https://dfpi.ca.gov/advantages-of-state-charter/

[9] See Chapter 5 of the Federal Reserve's "About the Fed" manual for an in-depth discussion of the Federal Reserve's many supervisory duties for both national and state member and nonmember banks: https://www.federalreserve.gov/aboutthefed/files/pf_5.pdf

can take a range of informal or formal actions to ensure that the bank changes course. Informal supervisory actions typically are used to address less serious issues, while formal supervisory actions are actions to correct behavior, and can be enforced in court. Those formal actions can include orders directing the bank to cease and desist from engaging in certain conduct or directing the bank to take actions to return to safer business practices.

A key area of exploration for committee members is how supervision is shared between DFPI and the federal regulator for state-chartered banks. During Assembly Banking Committee's April 10th informational hearing, expert witnesses described a situation where typically the federal regulator – either the Federal Reserve or the FDIC – serves as the lead and the state regulator serves as "second chair." A main reason for this is practical: federal regulators are typically better staffed and have significant more resources than state regulators, therefore taking the lead role in supervision, especially for large and complex financial institutions.

Federal review of SVB supervision and related policy matters

The SVB failure and the federal government's emergency response has led to significant postmortem evaluations of what went wrong and whether regulators could have prevented the bank's failure. Below is a brief summary of each report, followed by a list of policy issues the Committees may wish to consider further as part of its evaluation of DFPI's role in overseeing state-chartered banks.

<u>Federal Reserve Board</u>

On April 28, 2023, the Federal Reserve Board (FRB) released a comprehensive review of the Federal Reserve's supervision of SVB. The FRB report does not discuss in depth DFPI's role in supervising SVB along with FRB, nor does the report signal any concerns about the dual-banking system. Instead, this report treats the Federal Reserve as the primary supervisor of SVB, a recurring theme in many of the SVB-related postmortems. The 118-page report includes four high-level takeaways:

1. SVB's board of directors and management failed to manage their risks.

2. Supervisors did not fully appreciate the extent of SVB's vulnerabilities.

3. When supervisors identified vulnerabilities, they did not take sufficient steps to ensure that SVB fixed those problems quickly.

4. The FRB's tailoring approach in response to federal law and a shift in the stance of supervisory policy impeded effective supervision by reducing standards, increasing complexity, and promoting a less assertive supervisory approach.

The FRB report provides a detailed accounting of SVB's many vulnerabilities, most of which were identified, but underestimated, by federal supervisors. Prior to its failure, SVB had 31 open supervisory findings, roughly three times the number at similar banks. These findings were

related to risk management, liquidity, interest rate risk management, and technology. The FRB report makes it clear that SVB's leadership failed in its duties to manage the bank's growth responsibly, but that also the Federal Reserve's oversight "proved inadequate for the well-documented and significant vulnerabilities and managerial weaknesses at SVBFG."

FRB's review also raise a number of important policy issues relevant to DFPI's supervision of state-chartered banks, including the efficacy of supervisory tools, the role of executive compensation, and the culture within regulatory agencies. Those issues, and related questions the Committees may wish to ask, are provided later in this background report.

FDIC

The federal government's response to the SVB failure have led to additional discussion about the role of deposit insurance in preventing bank runs and creating financial stability. As noted above, an unusually high percentage of SVB's deposits were uninsured, meaning they were above the $250,000 insured level. This concentration of uninsured deposits helped spark customer panic, and federal regulators ended up making all depositors whole as part of its emergency response because of the impact on small businesses and the fear of wider contagion in the banking system.

On May 1, 2023, the FDIC released a report examining the role deposit insurance plays in preventing bank runs and instilling confidence in the banking system.[10] This report examined three possible policy options:

1. "Limited coverage" that provides insurance of all depositors up to a certain amount, either $250,000 or a higher amount.

2. "Unlimited coverage" that extends unlimited insurance coverage to all depositors.

3. "Targeted coverage" that offers different insurance limits across account types, where business accounts receive much higher coverage than other accounts.

Though deposit insurance is outside the scope of California policymaking, any changes to deposit insurance would have a significant impact on any state-chartered bank. The FDIC cautions against "unlimited coverage" because it could promote bank risk-taking and impose significant costs on banks, which pay assessments to support the insurance fund. In its conclusion, the FDIC suggests a "targeted coverage" would best meet the objective of cost-effectively providing for financial stability and customer protection.

DFPI review of SVB supervision and related policy matters

On May 8, 2023, DFPI released a comprehensive review of SVB's failure and DFPI's supervision. The stated purpose of the report is to "provide information for policymakers and stakeholders

[10] https://www.fdic.gov/analysis/options-deposit-insurance-reforms/

that may help to prevent future bank failures." DFPI's report notes that while the Federal Reserve took a lead role in supervising SVB, the department can do more to prevent a similar situation from occurring again.

DFPI's report does not contain any suggested statutory changes or recommendations to significantly modify its supervisory authority. Like the federal reports described above, DFPI's review points to shortcomings in the speed, focus, and priorities of supervisors, and the report recommends actions the department can take to better calibrate its existing supervisory authority to address the current risks in the banking system.

The DFPI review includes four primary findings and suggested DFPI response:

1. **SVB was slow to remediate regulator-identified deficiencies, and regulators did not take adequate steps to ensure SVB resolved problems as fast as possible.** To help address this shortcoming, DFPI plans to coordinate with federal regulators to develop stronger and more effective systems to remediate deficiencies promptly.

2. **Digital banking technology and social media accelerated the volume and speed of the run on SVB and contributed to its ultimate collapse.** In response to this new dynamic, DFPI plans to require banks to consider how to quantify and best manage existing and emerging risks posed by technology-enabled activities such as social media and real-time deposit withdrawals.

3. **SVB's unusually rapid growth was not sufficiently accounted for in risk assessments**. DFPI **states that it** will review its internal staffing processes to ensure that additional staff members are assigned in a timely manner, commensurate with accelerated growth or increased risk profile for an institution, for banks with assets of more than $50 billion. DFPI also notes that it will continue to develop large bank supervisory plans with federal regulators, with an increased focus on timelines for corrective actions and the allocation of examiners.

4. **SVB's high level of uninsured deposits contributed to the run on SVB**. In response to the risks associated with uninsured deposits, DFPI states that it will focus efforts on banks' uninspired deposit levels and subject banks with over $50 billion in total assets to heightened examination requirements regarding uninsured deposits.

Like the Federal Reserve report, the DFPI report reviews the history of supervisory actions taken against SVB. These actions took the form of meetings and supervisory letters that included Matters Requiring Attention (MRA) and Matters Requiring Immediate Attention (MRIAs), warnings that require a written response from management. Five of these letters were independent issued by the Federal Reserve and related to matters exclusively covered by the Federal Reserve, such as liquidity positions and liquidity risk management, and 11 were jointly

issued with DFPI, and they covered matters related to risk management, liquidity risk management, and interest rate risk.

DFPI's report also provides a comprehensive look into how it coordinates with federal regulators in overseeing large and complex financial institutions. The collapse of both SVB and First Republic – two of California's largest state-chartered banks – raises important questions about whether state supervisors have the capacity to adequately assist in the supervision of these types of institutions. The department's review provides some insights into how this supervision played out in practice with SVB:

1. **The Federal Reserve took the lead examiner role when SVB joined the Large and Foreign Banking Organization (LFBO) portfolio.** When a bank grows above the $100 billion threshold, it joins the LFBO grouping of financial institutions and receives increased federal scrutiny and oversight from the Federal Reserve Board of Governors. DFPI also notes that due to its size and complexity, SVB was examined on a continuous basis and that the two regulators "divided their responsibilities in such a way that oversight activities were led primarily by FRBSF, with DFPI monitoring supervisory activities and collaborating with the FRBSF on discrete exams."

2. **DFPI did not participate in every exam.** In the 2022 exam cycle, DFPI collaborated with the Federal Reserve on six of the 10 targeted exams. For the four that DFPI did not participate in, the subjects and information typically fall outside of DFPI's jurisdiction because they involve comparing a bank with the practices of banks across the country.

3. **The bulk of dedicated examiners were from the Federal Reserve.** While DFPI ramped up supervisory hours for SVB in the 2022 supervisory cycle, the bulk of dedicated supervisory staff were Federal Reserve examiners. The Federal Reserve had a team dedicated to SVB consisting of 15 examiners, each with subject matter expertise examining large banks with more than $100 billion of assets, while the DFPI team relied on two examiners dedicated to SVB with support from other examiners who focused on particular risk areas as needed and rotated to other non-SVB assignments throughout the year. Federal Reserve staff spent approximately 25,000 hours on scheduled supervisory activities on SVB in 2022, compared to just over 3,000 hours spent by DFPI.

Questions from the Committees

The above reports highlight a host of policy issues relevant to the Committees' consideration of DFPI's supervision. Committees may wish to consider the following issues or ask the following questions:

The role of federal vs. state bank supervisors

1. Compared to the supervision policies of the Federal Reserve or the FDIC, does the DFPI request any unique information or ask any unique questions of banks pursuant to the department's supervisory activities?

2. Are there any federal laws that prevent California from applying stricter safety and soundness requirements on state banks than those required by existing federal law?

3. What are the policy benefits for Californians related to the chartering and supervision by DFPI of state banks with greater than $50 billion in assets, compared to those banks undertaking similar business activities under a national charter?

4. The FRB report states that "the supervisory approach at SVBFG was too deliberative and focused on the continued accumulation of supporting evidence in a consensus-driven environment."

    a. When DFPI disagrees with the supervisory decisions, actions, or inactions of partnering federal examiners, does the department have the authority and ability to unilaterally make its own decisions or take actions intended to protect the safety and soundness of the institution?

    b. In the case of SVB, which entity had the strongest voice in establishing the consensus view – DFPI, the Federal Reserve Bank of San Francisco, or the Federal Reserve Board?

DFPI supervision activities

5. Does the asset size of a bank affect how the DFPI deploys supervisory resources?

    a. Are there any differences in the knowledge, skills, and abilities of examiners assigned to small community banks compared to examiners assigned to larger regional banks?

    b. Does the DFPI have processes in place to deal with "cliff effects" as a bank approaches any asset size threshold that would change the nature of supervisory activities?

6. Please describe the level of experience among DFPI examiners in dealing with the governance and risk management practices of sizeable and complex institutions like SVB.

7. Please describe the ability for DFPI to attract and retain qualified examiners. Does DFPI have difficulty hiring for these positions?

8. SVB's assets grew 271 percent from year-end 2018 to year-end 2021, with a large majority of that growth unrelated to merger and acquisition activity. The FRB report cites this high rate of growth as a contributing factor in SVB's failure.

   a. In the past 20 years, has the DFPI supervised any state bank that has grown at a similar rate over a similar period of time (excluding any examples where such asset growth was significantly due to M&A activity)?

   b. Does the DFPI monitor the growth rates of state banks and respond with enhanced supervisory activities for banks that significantly exceed industry-standard rates of growth? If so, what are those enhanced supervisory activities?

9. The FRB report finds that supervisors were dissuaded from taking certain supervisory actions, such as ratings downgrades, because of SVB's short-term financial performance.

   a. Does the DFPI have any policies or procedures in place to mitigate the risk of supervisors failing to take stronger supervisory actions simply due to the bank being profitable in the short-term?

   b. Would it be practically feasible for certain examiners, such as the examiners assigned to evaluate risk management and controls, to be shielded from knowing the financial performance of the bank, so that the examiner's views are not distorted by short-term financial performance when establishing a rating?

<u>Potential policy responses to SVB failure</u>

10. According to the FRB report, a SVB director told supervisors that "controls always lag growth." The report includes this quote in the context of discussing SVB's failure to build a governance and risk management framework that kept up with its rapid growth and business model risks.

    a. Based on the department's experience, do controls always (or often) lag growth?

    b. If yes, what policy responses – whether through enacting new statutes, promulgating regulations, or changing supervisory approaches – would mitigate the negative consequences of a bank growing too fast to adequately manage the evolving risks of the institution?

11. The FRB report cites the structure of executive compensation as a factor that contributed to the bank's failure, specifically that management compensation was based on short-term earnings without adjustments for risk.

    a. Does the department review the structure of executive compensation when examining state banks? If so, what are the supervisory guidelines related to executive compensation?

    b. If the Legislature desired to strengthen executive compensation requirements for state banks, does the department have any guiding principles in crafting a policy that would better align the interests of shareholders, directors, bank management, and the general public, compared to the compensation structures that were in place at SVB?

12. The FRB report finds that bank supervisors were often aware of deficiencies in SVB's controls, risk management, and liquidity position, yet those concerns did not translate to timely and forceful demands from supervisors for SVB management to remedy those deficiencies.

    a. Which, if any, existing laws or policies prevented DFPI examiners from requiring SVB management to remedy deficiencies identified in supervisory activities?

    b. If the Legislature desired DFPI examiners to take timelier and forceful action in requiring management to make material changes at a troubled bank, would the department need any additional authority or resources to carry out that charge?

13. The FRB report finds that SVB directors and management "failed to establish a risk-management and control infrastructure suitable for the size and complexity of SVBFG when it was a $50 billion firm, let alone when it grew to be a $200 billion firm."

    a. If such governance failures were known by supervisors, should SVB have been allowed to continue growing?

    b. Would the DFPI need additional authority or clarity in the law to institute a hard cap on a bank's balance sheet if the department found the bank lacked sufficient controls and risk management suitable for the existing size of the bank?