SYSTEMIC RISK EXCEPTION

Pursuant to amendments to the 1991 Federal Deposit Insurance Act, a statutory exception was authorized to the statutory requirement that the FDIC resolve a failed bank at the lowest cost to the Deposit Insurance Fund (DIL). If supermajorities of the Boards of The Fed and FDIC recommend, and the US Treasury, in consultation with the President, agrees with that determination (Systemic Risk Determination) to resolve a failed bank at the lowest cost to the DIL would have serious adverse effects on economic conditions or financial stability, the FDIC is authorized to take actions inconsistent with its statutory lowest cost mandate to resolve the failed bank (Systemic Risk Exception).

On the basis of that determination on Sunday evening March 12, 2023, the FDIC invoked the Systemic Risk Exception and on that basis:

- it decided that all depositors whether insured or not will be made whole, while shareholders and certain creditors of the banks will not be and will incur losses; and

- The Fed announced that it was establishing a new Bank Term Funding Program (BTFP), which will offer loans of up to one year in length to eligible depository institutions and U.S. branches or agencies of foreign banks that pledge qualifying assets as collateral. This lending program is meant to provide short- to medium-term liquidity to institutions that hold assets with long maturities, so as to mitigate the need to sell such assets at a loss in times of stress.

The Systemic Risk Exception has been invoked and implemented to resolve three of the four bank failures in late 2008 and early 2009. Silicon Valley and Signature Banks will be the fourth and fifth time it has been invoked.

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