

Big Law Works ‘Around the Clock’ as Clients Navigate SVB Collapse

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(Credit: Quality Stock Arts/Adobe Stock)

What You Need to Know

- Silicon Valley Bank’s 48-hour collapse sent several Big Law firms into action late last week.
- Morgan Lewis, Wilmer, Wilson Sonsini and Ballard Spahr are among the laws firms that launched task forces and webinars over the weekend.
- Despite some reassurance from the FDIC on Sunday, there are lingering issues that are expected to continue to prevent firms’ clients from conducting business in the normal course.

The collapse of Silicon Valley Bank in just 48 hours sent Big Law firms into rapid-response

mode, with several firms organizing task forces and impromptu virtual meetings to assist clients.

After significant outreach from companies with accounts at the once-premier financial institution for startups and their investors late last week, several of the Am Law 100 convened teams of finance, venture capital, banking regulation, investment management, restructuring and emerging company lawyers to address the ongoing inundation of inquiries.

For many firms, the quick action comes after years of organizing lawyers into industry-facing groups rather than by practice area. For some, it

also highlighted the power of having an interdisciplinary approach to client service.

“We had an amalgamation of expertise from traditional banking lawyers to emerging company and venture capital lawyers, and those communities of expertise typically do not mingle,” said Greg Seltzer, leader of the emerging companies and venture capital group at Ballard Spahr. “On Saturday, we brought in a labor and employment lawyer because we had specific questions on payroll, like what happens if you can’t make payroll if your account was frozen?”

Wilmer Cutler Pickering Hale and Dorr drew on expertise across its financial institutions, regulatory, tax, labor and corporate practices. Given its base of former government lawyers and regulatory experts, the firm had an “instinct” as to how the crisis might unfold, according to Franca Harris Gutierrez, chair of financial institutions and co-chair of securities and financial regulation at Wilmer.

By Saturday evening, Wilmer sent out an invitation for a webinar. In the first 30 minutes, over 100 people RSVPed to the event. It closed with over 1,300 attendees. The presentation, held Sunday afternoon, was attended by 957 people that included a mix of financial services, life sciences, retail and tech companies, as well as venture capitalists, accounting firms and other Am Law 100 firms.

“That goes to the value of the team,” Gutierrez said of the quickly orchestrated response. “Right up to and after the webinar, I was on calls with clients helping them navigate the situation. It was an interdisciplinary effort by the firm to pull together expertise and respond to clients’ needs in a holistic manner.”

A similar effort transpired at many tech-focused law firms including Wilson Sonsini Goodrich & Rosati, which applied a cross-disciplinary approach, according to corporate partner Allison Spinner.

“We immediately mobilized,” Spinner said. “That included corporate securities lawyers advising private and public companies, our corporate finance debt team, our corporate governance team including our colleagues in Delaware, our employment team and a variety of regulatory experts.”

“As you’d expect, our lawyers were working around the clock, engaging in one-on-one calls and emails with countless clients each day over the last several days,” she added, noting the firm took steps to broadly communicate updates and address areas of concern.

In a matter of hours overnight on Saturday, the firm organized a virtual forum with TechGC, an invitation-only community platform for general counsels. The hour-long event, held midday Sunday, addressed dozens of questions from participants on employment payroll issues and funding options.

In the wake of the bank’s closure, some clients inquired about transferring funds to their executives’ personal accounts, which Ballard’s Seltzer said is “not a strategy that any competent lawyer would endorse” because of the risk to a founder of liability for corporate assets. Those who did transfer funds to personal accounts did so as a “last resort,” Seltzer said.

“That could be looked on poorly by shareholders, investors and their board,” Seltzer said. “Every shareholder investor I dealt with over the weekend didn’t fault entrepreneurs for transferring to personal accounts. The last thing I want is a founder to be liable for assets of the corporation. When corporate assets are transferred into a personal account, it blurs that line a little bit.”

Seltzer said lawyers at the firm have advised clients who made the transfer to a personal account, and “almost all of them have transferred funds to a non-SVB account. Hopefully it’s no harm no foul, but it’s not a practice I would endorse.”

Some clients even requested to transfer funds to Ballard's own bank account, which, per firm policy, was turned down, Seltzer said. "That being said, we try to be the best partners for our clients. If we are the last resort, we are going to help clients in whatever situation they are in."

"We were asked to do this for three clients," Seltzer said. "We said we would do that as a last resort. They ended up going with those other less problematic options, one of which was the custodian account of an investor."

Morgan, Lewis & Bockius also did not accept funds from clients, said Laurie Cerveny, the global firm's managing partner of industries and strategic initiatives who organized the firm's SVB task force. Rather, lawyers at the firm arranged for clients to transfer funds into other banks "with whom we have a strong relationship."

Concerns about accessing deposits were largely assuaged when the FDIC was appointed as receiver and created a Deposit Insurance National Bank of Santa Clara, where the government body transferred all insured deposits of Silicon Valley Bank, lawyers interviewed for this story said. By Monday morning, clients had access to deposits.

"We've connected with two dozen clients who are saying they have access to funds and can access money wired out," Seltzer said Monday.

Now that the bank is in receivership, questions remain from clients with credit lines at SVB concerning whether they will be able to draw on them and from SBV shareholders and third-party creditors as to how they will be able to access their assets, lawyers said.

"If they want to make claims they will have to work with advisors to make claims on the bank and the FDIC will have a process to lay that out," Cerveny said. "The FDIC and administration's message is saying the taxpayers are not going to

pay the backstop. How that plays out, I don't think we know that."

Cerveny added that bankruptcy lawyers at Morgan Lewis are on the task force's "front lines." "If you're an unsecured creditor with a lot of business with SVB, that would be problematic for those businesses," she said.

Gutierrez, of Wilmer, said the firm's tech-heavy corporate practice received many questions from clients, and "trailing" transactional and operational issues remain. For many companies, business as usual has yet to resume, she said.

Wilson Sonsini's Spinner agreed that issues are lingering. The firm is advising clients on outstanding loans from SVB, issues involving other financial institutions, disclosure-related obligations for public companies and wire transfer security-related issues.

"A number of issues continue to arise and I'd expect to be advising clients on those in the days to come," Spinner said.

Lawyers advising clients said the events over the last four days could bring about a closer look at risk management by EC/VC clients and how exposed they are by holding a certain amount of company deposits in a single bank.

"It would not surprise me if people are taking a closer look at their risk management policy to see where they have their cash," Cerveny said. "Certainly banks are doing this, and I would expect depositors to do the same, and public companies are taking a hard look at those very questions. I know we've gotten those questions from our clients."

The events of the last four days have made for a glum mood in the EC/VC community, Seltzer said.

"There is a sentiment among the VC community that is saddened because SVB was huge in the venture capital market," he said. "They were there for startups when not a lot of commercial banks were. They designed financing products like venture debt products."