AON

Managing Emerging Risks in the Banking Sector

The collapse of Silicon Valley Bank (SVB) and other regional banks in March underscores the emerging risks in the banking system for fintech companies and financial institutions of all sizes. From liability exposures to regulatory challenges across financial lines of insurance, all stakeholders can be affected.

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> There's no way to talk about claim trends and what's been going on in this marketplace without talking about Silicon Valley Bank," said **Tony Jones, a partner at Troutman Pepper**, during an August 24 webinar on the subject.

Jones noted a bankruptcy court judge allowed SVB executives to tap their $210 million tower of directors' and officers' (D&O) liability insurance for all the claims against the bank, but not without objection for unsecured debt holders.

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> We're starting to see more of these types of situations where claimants are coming in and objecting to the insurance proceeds, which are supposed to be providing a defense by their terms, actually paying for that defense. They make the argument that the proceeds should be there to compensate the victims," he said.

Stress-Test and Communicate Coverages

Since the fallout of SVB, stress-testing insurance policies has become critical for banks and fintech companies. Collaborating with knowledgeable brokers and counsel who can navigate this intricate realm is crucial, and addressing potential issues upfront can minimize future disputes.

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> When there's a big D&O claim, and the board is surprised, that doesn't go well for anybody," said **Uri Dallal, managing director and U.S. regional leader at Aon.** "So, ensuring they will understand the risks to those programs and will be thoughtful about them is incredibly important."

A strong communications program, especially with key executives and board members, helps stakeholders grasp the nuances of risks and coverage, avoiding surprises during claims. Dallal recommends involving third-party experts such as legal counsel and brokers for effective board education.

The education program should be as comprehensive as possible and evolve with current events. Dallal said that a strong program will consider the complexities of overlapping insurance policies, such as for cyber events and professional service failures, and emerging issues such as potential litigation around intellectual property claims regarding customer interactions.

Aon offers its proprietary CyberCrime Plus policy that blends cyber, crime and errors and omissions coverage. Designed specifically for the banking industry, the policy enables clients to manage their top operational risks in a single insurance purchase. "Increasingly, the insurance market has had a desire to get away from a siloed approach because of the consideration of how those risks have overlapped," Dallal said.

Monitor Partnerships in the Face of More Regulatory Scrutiny

The MOVEit data breach in 2023 shows how the growing convergence between banks and fintech companies has created emerging risks associated with this partnership.

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> Many financial institutions were indirectly impacted by MOVEit because of their third-party relationships with financial services providers that were directly impacted," said **Kristin Adams, executive vice president at Aon**. "The lesson here that folks are learning very quickly is to look at your incident response plan and make certain that it contemplates third-party breaches."

Adams recommended that key executives conduct tabletop exercises to prepare for such events. Third-party relationships are challenging, particularly regarding cyber liability and cyber security. She emphasized the need for due diligence, robust contracts and ongoing monitoring of these partnerships.

The use of third parties does not diminish or remove a bank's responsibility to perform all activities safely and soundly, in compliance with applicable laws and regulations, including those related to consumer protection and security of customer information, noted **James Stevens, a partner at Troutman Pepper** and co-leader of the firm's financial services team.

Stevens recommended that banks should consider these risks throughout the life cycle of the relationships, including when planning, conducting due diligence, contract negotiations, ongoing monitoring and termination.

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> The regulators have made it very clear: Banks that are partnering with third parties in these ways need to have really robust indemnification provisions, and they need to make sure they have robust reps and going-forward covenants around insurance coverage," **Stevens** said.

Stevens and Adams underscored the significance of robust monitoring programs in safeguarding organizations and ensuring regulatory compliance.

Navigate the Evolving Insurance Market

Effective communication, thorough education of executives and board members, and adapting to emerging complexities in the insurance market will help banks and fintech companies meet business challenges.

Vigilance and strategic planning are key to mitigating evolving risks and ensuring compliance in the dynamic fintech-banking landscape.

About Aon

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