

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—N.D. Cal.: Court denies motions to dismiss consolidated class action brought by SVB Financial shareholders, (Jun. 16, 2025)

Securities Regulation Daily Wrap Up

By Kristin J. Angelino, J.D.

The court held that plaintiffs pleaded viable Exchange Act and Securities Act claims against Silicon Valley Bank, its executives, underwriters and auditors.

A federal district court has denied the motion to dismiss filed by defendants Silicon Valley Bank and its former officers, directors, underwriters and KPMG, an auditor of Silicon Valley Bank Financial Group (SVBFG), the parent company of SVB, after finding that the plaintiffs sufficiently pleaded elements of claims under Section 10(b) of the Exchange Act and Sections 11 and 12 of the Securities Act. ([*In re SVB Financial Group Securities Litigation*](#), No. 5:24-cv-02684 (N.D. Cal. Jun. 13, 2025)).

Silicon Valley Bank (SVB or the bank) was a large bank holding company with approximately \$212 billion in total assets when it failed in March 2023. Its failure followed the announcement of a major restructuring in its balance sheet necessitated by rising interest rates in 2022, which caused deposit outflows and a rapid increase in unrealized losses on its securities investments. Following the restructuring announcement, even more investors attempted to withdraw money from their accounts. After NASDAQ suspended trading in its stock and the California Department of Financial Protection closed the bank down and appointed a receiver, SVB filed for Chapter 11 bankruptcy protection on March 17, 2023.

Shortly after SVB's collapse, five groups of shareholder plaintiffs sued SVB's stakeholders. The cases were consolidated into one case with lead plaintiffs Norges Bank and Sjunde AP-Fonden.

The putative class action was brought against former officers, directors, and underwriters of SVB, and an auditor of Silicon Valley Bank Financial Group (SVBFG), the parent company of SVB, alleging violations of Sections 11, 12 and 15 of the Securities Act and Sections 10(b), 20(a) and 20A of the Exchange Act.

The Plaintiffs' complaint is divided into two parts. In the first part, Plaintiffs asserted Exchange Act claims against SVB's CEO and CFO (the Exchange Act Defendants) on behalf of persons who purchased SVBFG common stock between January 21, 2021 and March 10, 2023 (the Class Period). In the second part, Plaintiffs asserted Securities Act claims against former SVB executives, directors, underwriters (the Securities Act Defendants), and the auditor KPMG, on behalf of persons and entities who purchased SVB securities in any of SVB's eleven securities offerings during the Class Period.

Plaintiffs alleged that the Exchange Act Defendants made 25 misstatements in violation of Section 10(b). Defendants argued that Plaintiffs failed to alleged falsity, scienter and loss causation.

Falsity. Defendants challenged the falsity of each of the 25 statements on at least one ground; namely, that the statements: (1) are forward looking; (2) are non-actionable opinions, (3) are mere puffery, and (4) do not materially misrepresent SVB's conditions. The court disagreed with Defendants and explained how each of the grounds do not apply. Regarding the first ground, Defendants argued that certain statements are protected by PSLRA's safe harbor for forward-looking statements. The court disagreed, holding that within those statements, Defendants stated that various risks were mere speculation when, as alleged, Defendants knew that those risks had already been realized

from their own analyses and communications with the Fed and, therefore, PSLRA's safe harbor protection was not activated. Regarding the second ground, the court agreed with Plaintiffs that certain of the alleged misstatements were not opinions since they stated "with certitude fundamental aspects of SVB's risk controls." The court also agreed with Plaintiffs that certain of the other alleged misstatements are opinion statements that turn on an issue of material fact and, therefore, are non-actionable. Regarding the third ground, the court also disagreed with Defendants that certain statements constituted puffery, stating that the court is skeptical that Defendants' statements regarding the efficacy of its monitoring programs were unimportant to a reasonable investor.

Finally, regarding the fourth ground, the court rejected Defendants' argument that certain statements--namely, statements concerning SVB's intention and ability to hold securities classified as Held-to-Maturity (HTM)--are not false or misleading, holding that the court cannot consider arguments going to the truth of Plaintiffs' allegations at the motion to dismiss stage. The court also disagreed with Defendants' argument that the statements are opinions subject to the *Omnicare* standard, since not one of Defendants' statements included qualifying language that indicates the HTM classification was something other than a fact. The court also rejected Defendants' argument that, because the Fed contemporaneously classified SVB's SOX program as "effectively managed," its SOX certifications did not misrepresent SVB's overall health and wellbeing. The court reasoned that pointing to a single, specific finding from the Fed does not make Plaintiffs' task of providing sufficient allegations impossible when its complaint contains "dozens of contrary allegations."

Scienter. The court found that Plaintiffs sufficiently alleged scienter when they alleged that Defendants had contemporaneous knowledge of information that contradicted the representations Defendants made to their investors. For example, the court noted that Plaintiffs alleged that Defendants received regulator feedback during the Class Period that directly conflicted with representations to investors and that Defendants had discussions with former employees and consultants that guaranteed that Defendants were aware of the falsehoods within their representations. The court also found that Plaintiffs' complaint sufficiently alleged scienter when looking at the "totality of circumstances."

Loss causation. The court stated that, while Plaintiffs are not required to prove loss causation at the motion to dismiss stage, they must (1) allege a significant drop in price, and (2) allege with particularity facts plausibly suggesting that the fraud caused the stock drop, as opposed to some other fact. The court held that, with SVB's billions of dollars in losses, Plaintiffs easily met this standard.

Section 20(a) and 20A claims. Since the court held that Plaintiffs adequately pleaded a primary violation of Section 10(b), it found that dismissal of the Section 20(a) and Section 20A claims is not appropriate here.

Securities Act claims. The Securities Act Defendants offered four reasons why Plaintiffs claims against them under Sections 11 and 12 of the Securities Act must fail: (1) the statements were not false at the time they were made, (2) the statements included sufficient warnings, (3) no reasonable investor would rely on statements concerning risk management, and (4) the HTM statements were accurate under appropriate accounting standards. The court disagreed, holding that some of the statements overlapped entirely with the arguments asserted under the Exchange Act and, therefore, Defendants' motion to dismiss them were denied on the same grounds. Regarding the HTM statements, the court held that Plaintiffs sufficiently alleged that Defendants represented that they had the ability to hold the specific securities to maturity when Defendants knew that they did not have sufficient liquidity to do so. Finally, the court held that Plaintiffs sufficiently alleged that Defendants failed to comply with Items 303 and 305 of Regulation S-K. The court noted that although Defendants could not disclose confidential communications with the Fed, they were required to disclose SVB's significant control weaknesses which (as alleged) independently existed and were merely corroborated by the Fed's findings.

Section 15 claim. Since the court held that plaintiffs adequately pleaded a primary violation of Section 11, it found

that dismissal of the Section 15 claim is not appropriate here.

KPMG. KPMG argued that its alleged misrepresentations in the offering documents are statements of opinion, not fact, and asked the court to consider them under the *Omnicare* standard. Specifically, KPMG argued that Plaintiffs' complaint failed under each of the three *Omnicare* theories. The court agreed as to the first two theories, but disagreed as to the third, holding that Plaintiffs sufficiently alleged omissions that call into question KPMG's basis for offering its opinion and, therefore, succeeded on this theory at the motion to dismiss stage. The court added that Plaintiffs did more than simply allege that an opinion was wrong, because they alleged that KPMG "was well aware of SVB's deficiencies, but gave them a clean audit anyway, and did so mere days before SVB collapsed losing billions of dollars in value."

The case is No. 5:24-cv-02684.

Judge: Wise, N.

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Companies: Asbestos Workers Philadelphia Welfare and Pension Fund; Heat & Frost Insulators Local 12 Funds; SVB Financial Group

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