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January 23, 2023

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Ann E. Misback, Secretary

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: James P. Sheesley,
Assistant Executive Secretary

RE: Advanced Notice of Proposed Rulemaking - Resolution-Related Resource Requirements for Large Banking Organizations (Federal Reserve Docket No. R–1786 and RIN 7100–AG44; FDIC RIN 3064–AF86)

Dear Ms. Misback and Mr. Sheesley:

The Independent Community Bankers of America (ICBA)[1] appreciates this opportunity to respond to the Advance Notice of Proposed Rulemaking (ANPR) issued by the Board of Governors of the Federal Reserve System ("Board") and the Federal Deposit Insurance Corporation ("FDIC", and together with the Board, the "Agencies") concerning resolution resource requirements for certain large banking organizations.[2] The ANPR focuses on potential new requirements, particularly the issuance of a certain amount of debt, that would be imposed on "large banking organizations" that are not "global systemically important banking organizations".[3] Specifically, the questions raised in the ANPR concern banking organizations in

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.
With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5.8 trillion in assets, over $4.8 trillion in deposits, and more than $3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org
[2] See 87 Fed. Reg. 641790 (October 24, 2022), available at https://www.fdic.gov/news/board-matters/2022/2022-10-18-notice-dis-b-fr.pdf.
[3] The term "large banking organization" refers to a domestic bank holding company, or domestic savings and loan holding company, that has $100 billion or more in total consolidated assets but is not a GSIB under the Board's capital rule. In the ANPR, the Agencies are focused on domestic large banking organizations in Categories II and III, which generally exceed a threshold of $250 billion in total consolidated assets.
Category II banking organizations have $700 billion or more in average total consolidated assets or $75 billion or more in cross-jurisdictional activity. Category III banking organizations have between $250 billion and $700 billion

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Categories II and III under the Board's tiering framework for enhanced prudential standards, and which generally exceed a threshold of $250 billion in total consolidated assets.

Background

Since the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act in 2010 (the "Dodd Frank Act"), the Board and the FDIC have promulgated rules and guidance to support the orderly resolution of global systemically important bank holding companies ("GSIBs") and large banking organizations. These rules and related guidance are tiered based on the complexity and risks of different banking organizations. For instance, the most stringent rules apply only to GSIBs and include (1) requirements to submit a resolution plan every two years, (2) follow a ''clean holding company'' requirement that prohibits top-tier holding companies from entering certain financial arrangements that might impede orderly resolution, and (3) maintain minimum outstanding amounts of total loss-absorbing capacity ("TLAC") and long-term debt.

The Board has issued supervisory guidance on recovery planning that applies to GSIBs, and the FDIC has issued a rule to require certain covered insured depository institutions ("CIDIs"), including insured depository institution subsidiaries of GSIBs, to periodically submit resolution plans to ensure that the FDIC can effectively carry out its responsibilities for the resolution of a CIDI in the event that it is appointed receiver under the Federal Deposit Insurance Act. For large banking organizations that are not U.S. GSIBs, resolution planning requirements under Title I of the Dodd Frank Act apply at a reduced frequency. Category II and Category III large banking organizations, for instance, file resolution plans on a triennial cycle, alternating between submission of full and targeted resolution plans. Further, large banking organizations that are not GSIBs generally are not subject to TLAC or long-term debt requirements, clean holding company requirements, rules related to qualified financial contract stay provisions in resolution, or Board guidance on recovery planning.

With regard to the ANPR, the Agencies are asking for public input on whether the requirements on GSIBs and in particular the requirement to issue TLAC should apply to large banking organizations that are in Category II and III, i.e., generally those with total consolidated assets that exceed $250 billion.

ICBA's Position

ICBA agrees with the Agencies that imposing GSIB requirements on large banking organizations that are in Categories II and III would enhance financial stability by providing for a wider range of resolution options for these institutions. ICBA never wants to see a repeat of the 2008 global crisis when the too-big-to-fail institutions were bailed out by the government and community banks were allowed to fail at the expense of the FDIC's Deposit Insurance Fund (DIF) and at a loss to many local communities**. Not only would requiring Category II and III institutions to issue long term debt reduce the chances that these**

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in average total consolidated assets or $75 billion or more in off-balance sheet exposures, nonbank assets, or short-term wholesale funding and Category IV banking organizations have between $100 billion and $250 billion in average total consolidated assets.

institutions would incur any DIF losses but also would minimize the chances that the failure of any one or more of these institutions would overwhelm the DIF and require another bailout by the government.

Furthermore, ICBA is concerned with the concentration of the banking industry at the top (particularly due to merger activity during the past decade) and the potential risks to our financial system from such concentration. ICBA believes that the continued growth and dominance of too-big-to-fail banks has led to an overly concentrated financial system, created unacceptable moral hazard and systemic risk, thwarted the operation of the free market, and harmed consumers and business borrowers. As noted by the ANPR, merger activity has increased the size of large banking organizations that are not GSIBs, particularly those in Category III. As of December 2019, the domestic Category III firms had an average of approximately $413 billion in total consolidated assets, while as of December 2021, the same group of large banking organizations had grown to an average size of approximately $554 billion in total consolidated assets.

Larger size banks in Category III increases the risk of a costly resolution of these organizations. For the vast majority of bank resolutions, the FDIC pursues a strategy of selling the failed insured depository institution ("IDI") to another depository institution, as this has been the course of action which was least costly to the DIF and minimizes disruption to local communities and to the financial system. However, during the global financial crisis, there were limited and very undesirable options available to the FDIC for resolving large banks including disruptive and costly liquidations and/or the sale to even larger financial institutions. As the concentration of the industry increases and the universe of potential acquirers becomes smaller, the options become narrower for the Agencies during a resolution and the challenges associated with the acquisition of a large, failed IDI significantly increases. The availability of sufficient loss-absorbing resources at the depository institution or at the holding company would preserve franchise value and support the stabilization of the firm to allow for a range of options for the restructuring and the disposition of the organization in whole or in parts.

Another troubling trend with large banking organizations has been their increased reliance on large uninsured deposits to fund their operations. Although uninsured deposits can serve as a stable funding source for many banks, they now comprise a significant portion of Category II and III banking organizations' funding base, standing at roughly 40% of total deposits as of the first quarter of 2022 as a group. The more uninsured deposits that large banking organizations hold, the less likely that these organizations can be resolved by the FDIC without substantial costs to the DIF. This poses a risk to the rest of the financial system. While GSIBs also have high levels of uninsured deposits, the regulatory resolution framework that has been built up around them—including TLAC and long-term debt requirements—mitigate those risks.

As noted by the ANPR, some large banking organizations have also significant international activity or nonbank operations that could present challenges to orderly resolution. Cross jurisdictional activities, for instance, can raise challenges to the feasibility of creating a viable bridge depository institution for a failing insured depository institution resulting in a disorderly and costly resolution. Similarly, nonbank activities raise the problem of multiple regulators intervening in a bank resolution with different priorities and pursuant to sometimes conflicting legal authorities.

In short, as the profile of large banking organizations continues to evolve, with larger balance sheets and increased volume of uninsured deposits, and potentially more complex organizations, the Agencies should consider additional measures to address financial stability impacts that might result from the failure of such firms. **ICBA recommends requiring that Category II and III institutions have an extra layer of loss-absorbing capacity to increase the FDIC's optionality in resolving a large bank.** Additional loss absorbing resources would limit contagion risk by reducing the likelihood of uninsured depositors suffering loss and would be useful in keeping various resolution options open for the FDIC to resolve a subsidiary depository institution in a way that minimizes the long-term risk to financial stability.

Long Term Debt Requirement for Large Banking Organizations

The ANPR also invites comment on the type and structure of long-term debt that should be required for Category II and III institutions. In contrast to the GSIBs that use a single-point-of-entry ("SPOE") resolution strategy, many Category II and III institutions have indicated in their resolution plans that they would use a multiple-point-of-entry ("MPOE") resolution strategy in which the parent holding company would enter bankruptcy and the insured depository institution subsidiary would undergo FDIC-led resolution under the Federal Deposit Insurance Act. Since both approaches have merit, each large banking institution should be given the option of issuing long term debt at the holding company level or at the bank level recognizing that long term debt issued by either entity would act as an extra layer of capital and would be very helpful to a resolution.

The more options that are available to the FDIC as it undertakes resolution of a Category II or III bank, the greater chance it will be that the resolution is conducted in an orderly manner without the need of a bailout. Therefore, Category II and III banking organizations should be required to maintain long-term debt at either the holding company level or at the bank level calibrated so that all subsidiaries can continue operating following a resolution. Currently, the current long-term debt calibration for U.S. GSIBs requires that firms maintain long-term debt at least equal to the greater of (i) 6% of risk-weighted assets, plus a firm-specific surcharge applicable to each GSIB or (ii) 4.5% of total leverage exposure.

Depending on the size and complexity of the institution, a similar separate calibration should be made by the Agencies for each Category II or III institution to ensure each institution maintains enough loss-absorbing debt to fully recapitalize its subsidiaries following a resolution. Furthermore, such debt should include appropriate provisions that would subordinate the debt to the liabilities of either the bank or the holding company. If the debt is to be issued by the holding company, the banking institution should be subject to clean holding company requirements similar to those imposed on GSIBs.

Conclusion

Category II and III banking organizations have grown large and complex enough that they should be required to maintain at either the holding company level or at the bank level, long term debt with characteristics and calibrations similar to those required for GSIBs. Not only would

requiring Category II and III institutions to issue long term debt reduce the chances that these institutions would incur any DIF losses but also would minimize the chances that the failure of any one or more of these institutions would overwhelm the DIF, destabilize our financial system, and require extraordinary intervention by the government. ICBA supports any legislative and regulatory measure that curbs or ends advantages currently enjoyed by larger banking organizations to help mitigate the risk they pose to the financial system and the economy.

ICBA appreciates the opportunity to comment on the Board's ANPR entitled "Resolution-Related Resource Requirements for Large Banking Organizations." If you have any questions or would like additional information, please do not hesitate to contact me at Chris.Cole@icba.org.

Sincerely,

Christopher Cole
Executive Vice President and Senior Regulatory Counsel