Western Alliance Bank®

Member FDIC

July 21, 2023

Attn: James P. Sheesley
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Via Electronic Filing

RE: Special Assessments Pursuant to Systemic Risk Determination; RIN 3064-AF93

Dear Mr. Sheesley:

Western Alliance Bank ("WAB") appreciates the opportunity to provide comments to the Federal Deposit Insurance Corporation ("FDIC") in response to its proposed rule to impose special assessments to recover the loss to the Deposit Insurance Fund ("DIF") arising from the protection of uninsured depositors in connection with the systemic risk determination announced on March 12, 2023 ("Proposal").[1] We strongly urge the FDIC to adjust its Proposal so that the assessment base measures insured depository institutions' ("IDI") estimated uninsured deposits reported *after* the invocation of the systemic risk exception ("SRE"). As explained below, a post-SRE date—ideally June 30, 2023—would better ensure that the banks that benefited more from the SRE pay more of the special assessment and promote safety and soundness, the maintenance of liquidity and the availability of credit in the banking system. We also agree with and commend the FDIC's attention to the comments on the Proposal by the American Bankers Association and the Mid-Size Bank Coalition of America.

Western Alliance Bancorporation is one of the top banking companies in the United States with more than $70 billion in assets, 57 banking offices across the country and over 3,300 employees. As the primary subsidiary of Western Alliance Bancorporation, WAB is deeply committed to its clients and to offering a full spectrum of tailored solutions and outstanding service to its customers. WAB has five regional banking divisions in Arizona, California and Nevada and also serves clients nationwide, wherever business occurs, through specialized groups built to respond to the needs of specific industries.

WAB is especially proud of its continued dedication to assisting in the development of affordable housing and small businesses. In 2022, WAB extended [redacted] volunteered 3,662 community service hours assisting first-time homeowners through the FHLB Affordable Housing Program, [redacted] These are just several examples of our continued commitment to enhancing and serving our local communities.

[1] Special Assessments Pursuant to Systemic Risk Determination, 88 Fed. Reg. 32694 (May 22, 2023), *available at* https://www.fdic.gov/news/board-matters/2023/2023-05-11-notice-dis-a-fr.pdf.

Our letter is organized in the following manner. Section I provides an Executive Summary of our key points, concerns and recommendations. Section II provides an overview of the Proposal. Section III explains why it is critical that the FDIC adjust the assessment base's as-of date to June 30, 2023 (or otherwise no earlier than March 31, 2023) in order to capture IDIs' estimated uninsured deposits reported *after* the invocation of the SRE. Section IV discusses why there should be an add-back to regulatory capital for the liability accrued following finalization of the Proposal that is phased out as each of the eight quarterly assessments is paid.

I. Executive Summary

First and foremost, we request that the FDIC use a date after the SRE to measure uninsured deposits for purposes of the special assessment, such as June 30, 2023. As explained below, the use of a December 31, 2022 measurement date would unduly burden WAB and similarly situated regional banks. The largest U.S. banks—those that are viewed as "too big to fail"—benefited most from the SRE and the related events in March, and using such a post-SRE date would better ensure that the banks that benefited more from the SRE pay more of the special assessment. Moreover, such a date would better promote safety and soundness, liquidity and the availability of credit in the banking system by ensuring that the banks that are best situated to pay for the losses to the DIF—those viewed as too-big-to-fail—pay a relatively larger proportion.

Other revisions to the Proposal would also help mitigate the undue burden on regional and other mid-size banks. Specifically, the FDIC should exclude from the amount of uninsured deposits certain deposits that do not pose a risk to the DIF: collateralized "preferred" deposits of government entities, trust-related collateralized deposits and intercompany deposits from bank subsidiaries. The "deductible" for the special assessment base also should be increased to above $5 billion as currently proposed to provide additional relief to mid-size banks while fairly allocating more of the special assessment burden to the largest banks, as noted above.

Finally, given the significance of the special assessment's impact to banks' regulatory capital, particularly to that of regional banks, the FDIC should work with the other federal banking agencies to allow the special assessment's impact to regulatory capital to be phased in. Similar to the agencies' approach to the implementation of Current Expected Credit Losses ("CECL"), we request that the federal banking agencies provide for an add-back to regulatory capital for the liability accrued following finalization of the Proposal to avoid banks accruing the full impact of the special assessment immediately upon enactment of the final rule. The add-back could be phased out as each of the eight quarterly assessments is paid.

II. Overview of Proposal

Section 13(c)(4)(G) of the Federal Deposit Insurance Act ("FDI Act") requires the loss to the DIF arising from the use of an SRE to be recovered from one or more special assessments on IDIs, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the FDIC determines to be appropriate. The Proposal's special assessment is intended to recover the losses incurred by the DIF as a result of the actions taken by the FDIC to protect the uninsured depositors of Silicon Valley Bank ("SVB") and Signature Bank ("Signature") following their closure and in connection with the systemic risk determination—invocation of the SRE—announced on March 12, 2023.

Under the Proposal, the total amount to be collected for the special assessments is approximately $15.8 billion, estimated to be equal to the losses attributable to the protection of SVB's and Signature's depositors, and the proposed annual special assessment rate is approximately 12.5 basis points. The assessment base for the special assessments is proposed to be equal to an IDI's estimated uninsured deposits as reported in the Consolidated Reports of Condition and Income or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks as of December 31, 2022, and is proposed to be collected over an eight-quarter collection period beginning with the first quarterly assessment period of 2024 (*i.e.*, January 1, 2024 through March 31, 2024), at a quarterly special assessment rate of 3.13 basis points. The Proposal would adjust the assessment base for the special assessments to exclude the first $5 billion from the estimated uninsured deposits reported as of December 31, 2022, applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs. If an IDI is part of a holding company with one or more subsidiary IDIs, the $5 billion deduction is proposed to be apportioned according to its estimated uninsured deposits as a percentage of total estimated uninsured deposits held by all IDI affiliates in the banking organization.

The Proposal states that estimated uninsured deposits as of December 31, 2022, "are the most recently available data" capturing the amount of uninsured deposits in each institution "near or at the time" the systemic risk determination was made and the uninsured depositors of SVB and Signature were protected.[2] The Proposal further states that using estimated uninsured deposits as of December 31, 2022 in calculating the special assessments (the "Deposit Calculation Date") would lead to "institutions that had the largest amounts of uninsured deposits at the time of the determination of systemic risk paying a larger share of the special assessments."[3] The Proposal asserts that, "[i]n general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs.... Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination."[4]

The FDIC expects banks with $50 billion or more in consolidated assets would shoulder almost all (95.2%) of the special assessment.[5] The FDIC estimates the special assessment would result in an average one-quarter reduction in income of 17.5% for such banking organizations.[6] The FDIC also expects the assessment to decrease the dollar amount of Tier 1 capital by an average of 61 basis points for banking organizations subject to the assessment.[7]

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[2] *Id.* at 32697.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 32699.

[6] *Id.* at 32703.

[7] *Id.* at 32702.

III. Uninsured Deposits Should Be Measured as of a Quarter *After* the SRE.

Chairman Gruenberg summarized the policy goals of the special assessment by explaining that the Proposal "applies the special assessment to the types of banking organizations that benefitted most from the protection of uninsured depositors, while ensuring equitable, transparent, and consistent treatment based on amounts of uninsured deposits. The [P]roposal also promotes maintenance of liquidity, which will allow institutions to continue to meet the credit needs of the U.S. economy."[8] The Proposal invites comment on whether the Deposit Calculation Date should be December 31, 2022 or another date.[9] As discussed below, a Deposit Calculation Date after the SRE (such as June 30, 2023) would better achieve the Proposal's policy goals.

a. A post-SRE Deposit Calculation Date would better ensure that the banks that benefited more from the SRE pay more of the special assessment.

By using the December 31, 2022 Deposit Calculation Date as opposed to June 30, 2023 or another post-SRE Deposit Calculation Date, WAB and similarly situated regional banks would bear a relatively larger proportion of the assessment than would the largest banks in the United States. However, the largest banks more clearly benefited from the SRE and banking stress in March 2023 than WAB and similarly situated banks. The largest banks experienced deposit inflows in March and after the SRE whereas regional banks like WAB experienced meaningful deposit outflows after the SRE.[10] For example, $120 billion flowed into the 25 largest banks during the March banking crisis, while $185 billion flowed out of smaller banks.[11] The U.S. banks viewed as "too big to fail" ("TBTF") appeared to benefit from that perception during the March banking events; depositors reportedly withdrew their funds from other banks during that period and placed them with TBTF banks.[12]

[8] Statement by Chairman Martin J. Gruenberg on the Notice of Proposed Rulemaking on Special Assessment Pursuant to Systemic Risk Determination (May 11, 2023), *available at* https://www.fdic.gov/news/speeches/2023/spmay1123a.html.

[9] 88 Fed. Reg. at 32706.

[10] For example, the largest U.S. bank by asset size experienced a 1.3% increase in its deposits from December 31, 2022 to March 31, 2023. Other banks much larger than WAB experienced increases of deposits during this time or relatively minor decreases. In contrast, WAB and at least one similarly situated regional bank experienced deposit outflows during the same time period significantly greater than the largest banks (measured as a percentage of the bank's total deposits).

Although some of the largest banks experienced decreases in deposits between December 31, 2022 and March 31, 2023, the percentage decreases of the banks' deposits were minimal compared to the percentage decreases of certain regional banks. Thus, the largest banks generally experienced a relative increase in deposit share between December 31, 2022 and March 31, 2023 as compared to those regional banks. Comparisons based on data from December 31, 2022 and March 31, 2023 Call Report data.

[11] Exchange between Lev Menand and Representative Foster (based on the Federal Reserve's H.8 statistical release deposit outflow data), United States House Committee on Financial Services, Roundtable on Deposit Insurance Reform (Jun. 23, 2023), *available at* https://democrats-financialservices.house.gov/events/eventsingle.aspx?EventID=410581#Webcast.

[12] Stacy Cowley, Regional Banks and Regulators Try to Soothe Depositors' Fears, New York Times (March 21, 2023), *available at* https://www.nytimes.com/2023/03/21/business/regional-banks-depositors-fears.html; Emily Peck,

The significance of this disparity cannot be overstated, as deposit base is the fundamental and unique aspect of banks in the United States. For example, the fundamental measure of competition in the banking space has been measured in terms of deposits for decades.[13] A bank that experiences an increase in its deposit base is able to engage in additional lending and similar basic intermediation activities of banks, receive related additional net interest income and enjoy a larger customer base for the bank's other products and services.

Moreover, deposits are well known as "sticky,"[14] and the effects of the March crisis and the SRE are expected to last into the future. In other words, there was a meaningful and lasting change to the competitive landscape in banking in March that further advantaged TBTF banks and is not expected to be undone any time soon.

The proposed December 31, 2022 Deposit Calculation Date ignores this significant change to the banking landscape related to the SRE and events in March. The December 31, 2022 date does not reflect the continued deposit outflows WAB and other banks experienced after the SRE or the corresponding deposit inflows to other banks, including the TBTF banks. As a result, the Proposal would require WAB and similarly situated banks to pay for a benefit those banks did not receive (*i.e.*, the SRE's failure to stem deposit outflows from those banks). Moreover, the proposed Deposit Calculation Date would once again make the largest banks the largest beneficiaries of the failures of SVB and Signature Bank: once for deposit inflows stemming from those failures and again for the use of a Deposit Calculation Date that, compared to a post-SRE Calculation Date, requires relatively smaller banks to pay a relatively larger share of the special assessment.

In fact, all else equal, a pre-SRE Deposit Calculation Date is fundamentally inferior to a post-SRE Deposit Calculation Date because the former, by its nature, cannot reflect any impact of the SRE. In fact, the proposed Deposit Calculation Date clearly includes significant deposits held by SVB, Signature and First Republic Bank, and it likewise does not reflect the inflows of deposits directly from those failed banks to other banks. All benefits of the SRE must be assumed with such a date, and regional banks are left to pay a higher proportion (relative to a post-SRE Deposit Calculation Date) based on this flawed date.

A post-SRE Deposit Calculation Date may provide more direct evidence of any SRE benefits or other effects of March banking stress. Specifically, a more appropriate Deposit Calculation Date is June 30, 2023, after the deposits from these failed banks settled and some normalcy returned to the banking industry. This date would properly reflect the movement of uninsured deposits from SVB, Signature and First Republic Bank in the special assessment each bank pays.

How "too big to fail" banks became a symbol of safety, Axios (March 24, 2023), *available at* https://www.axios.com/2023/03/24/how-too-big-to-fail-banks-became-a-symbol-of-safety.

[13] *See, e.g.*, Department of Justice, Bank Merger Competitive Review – Introduction and Overview (1995), *available at* https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf.

[14] *See, e.g.*, CNBC, BofA's deposits are inherently sticky based on our customer base, says CEO Brian Moynihan (April 18, 2023) (noting the inherent stickiness of one of the largest bank's deposits and related benefits to net interest income), *available at* https://www.cnbc.com/video/2023/04/18/bofas-deposits-are-inherently-sticky-based-on-our-customer-base-says-ceo-brian-moynihan.html.

b. A post-SRE Deposit Calculation Date also would better promote safety and soundness, liquidity and the availability of credit in the banking system.

As described above, the Proposal acknowledges the significant financial impact the special assessment would have on banks subject to the assessment. The Proposal estimates that such banks will, on average, see a 61 basis point decrease to regulatory capital and, more significantly, would experience an average one-quarter reduction in income of 17.5%. Thus, the Proposal acknowledges that—despite the estimated eight quarter collection period—banks subject to the assessment will be required to reflect the entirety of the assessment in the first quarter of the assessment.

Any final rule should of course consider, and seek to minimize, the significant impact of the special assessment on banks and the financial system, especially during periods of potential volatility.[15] However, the Proposed Deposit Calculation Date, compared to a post-SRE Deposit Calculation Date, would likely cause greater proportionate declines in lending and liquidity for WAB and similarly situated regional banks than would a post-SRE Deposit Calculation Date for TBTF banks. Moving the Deposit Calculation Date to June 30, 2023 or another post-SRE period would better ensure that the banks that can shoulder the burden of the special assessment more easily do so and that the assessment does not needlessly penalize banks for taking actions in March to promote their safety and soundness.

As noted above, regional banks were the hardest hit of the banks subject to the special assessment. Regional banks not only experienced sharper declines in deposits but also in market capitalization, as well as sharper increases in borrowing costs. Thus, regional banks currently are more constrained than the largest banks, both in terms of liquidity from deposits as well as liquidity and capital from other sources.

Moreover, WAB and other regional banks acted responsibly to right-size their balance sheets during, and in the wake of, the March banking stress and have incurred the inherent resulting losses associated with such sales in an increasing interest rate environment. Although these actions were appropriate and resulted in safer and sounder institutions, the actions also caused decreases to capital levels and the size of ours and others' balance sheets.

As a result, the lending activities of WAB and similarly situated regional banks already may be more constrained than those of the largest banks (even after adjusting for size). Imposition of a special assessment based on a December 31, 2022 Deposit Calculation Date rather than a post-SRE date would impose a relatively larger burden on regional banks like WAB and therefore exacerbate a likely reduction in overall lending. In our case, this could mean reductions in lending to small and middle-market businesses, including SBA loans, to residential mortgage lending and to affordable housing investments.

The TBTF and the other largest banks in the United States did not experience the effects of the March banking stress to the same extent and therefore are better situated to pay a larger proportion of the special assessment without the risk of negative effects to the safety and soundness or lending activities of the banks. Using a June 30, 2023 Deposit Calculation Date (or other post-SRE date) would shift more of the burden to the largest banks, thus bolstering the safety and soundness of the banking system and overall credit. It would also avoid requiring banks that took appropriate actions during 2023

[15] *See* 12 U.S.C. § 1823(c)(4)(G)(ii)(III).

to right-size their balance sheet to incur two financial penalties for such actions: one penalty associated with the actual sale of assets and another associated with ignoring such actions for purposes of the special assessment.

c. *There are several additional changes that would help to compensate for the disproportionate impact of the special assessment on regional banks.*

As described above, the special assessment, as proposed, favors large banking organizations at the expense of regional and other mid-size banks. However, as discussed in more detail in the Mid-Size Bank Coalition of America's comment letter on the Proposal, there are several additional changes to the Proposal that we strongly support and which would help the special assessment impact banks more equitably:

- "Preferred deposits" (*i.e.*, deposits of public funds subject to state law collateralization requirements) should be excluded from the special assessment base. Mid-size banks likely have proportionally more of these kinds of deposits, and preferred deposits pose little to no risk to the DIF.
- Trust-related collateralized deposits should be excluded from the special assessment base. Mid-size banks often take certain trust-related deposits, which are required to be collateralized under applicable federal or state law, and similar to preferred deposits, these deposits are significantly more protected because of the collateral requirement than other uninsured deposits that are not collateralized.
- Intercompany account deposits from bank subsidiaries should be excluded from the special assessment base. Such intercompany account deposits generally would not need to be protected under FDIC insurance in the event of a bank failure, so it is unlikely that the FDIC would need to cover such deposits in a bank resolution scenario even following a systemic risk determination.
- The "deductible" for the special assessment base should be increased to above $5 billion as currently proposed. Similar to using a post-SRE Deposit Calculation Date, increasing the deductible should provide additional relief to more banks while fairly allocating more of the special assessment burden to the large banks that benefited most from the stability provided by the systemic risk determination.

IV. <u>There Should Be an Add-Back to Regulatory Capital For the Liability Accrued Following Finalization of the Proposal.</u>

As recognized in the Proposal, depository institutions would be likely to incur a loss equal to the total amount of the special assessment in the quarter the rule is published in the Federal Register.[16] Given the significance of this impact, particularly to regional banks as discussed above, the FDIC should work with the Federal Reserve Board and Office of the Comptroller of the Currency to mitigate the special assessment's impact to regulatory capital. Specifically, to avoid banks accruing the full impact of the special assessment immediately upon enactment of the final rule, rather than gradually and in line with the FDIC's proposal to collect the special assessment over eight quarters, we strongly request that the FDIC and the other federal banking agencies provide for an add-back to regulatory capital for the liability accrued following finalization of the Proposal. The add-back would be phased out as each of the

[16] *See* 88 Fed. Reg. at 32702.

eight quarterly assessments is paid. The banking agencies have adopted such a solution in the past, for example in connection with its CECL methodology final rule in response to similar concerns.[17]

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We appreciate the opportunity to respond to your proposal and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact us by calling Josh Denney at (202) 657-0985.

Sincerely,

[redacted]

Dale Gibbons
Vice Chairman and Chief Financial Officer

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[17] Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances, 85 Fed. Reg. 61577 (Sept. 30, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-09-30/pdf/2020-19782.pdf.