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: ANPR Resolution-Related Resource Requirements for Large Banking Organizations - (Docket No. R–1786 and RIN 7100–AG44 [Board]; RIN 3064–AF86 [FDIC])

Dear Ms. Misback and Mr. Sheesley:

The California Bankers Association (CBA) appreciates the opportunity to submit comments on 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) concerning resolution-related resource requirements for large banking organizations (LBOs). Specifically, the agencies have requested input on how insured depository institutions (IDIs) that are not part of a group under a bank holding company should be considered.

CBA is one of the largest banking trade associations in the United States advocating on legislative, regulatory, and legal matters on behalf of banks doing business in California. CBA frequently provides comments to regulatory proposals by the federal banking agencies.

We agree with the written comments submitted in a letter dated January 4 by Hu Benton, senior vice president and policy counsel for the American Bankers Association. We offer the following additional thoughts for consideration.

Global Systemically Important Bank Requirements Are Unnecessary for IDIs Without a Holding Company

The global systemically important bank (GSIB) requirements discussed in the ANPR include the Dodd-Frank Act's total loss-absorbing capacity (TLAC) and long-term debt (LTD)

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requirements, which are intended to facilitate the resolvability and resiliency of systemically important bank holding companies. TLAC and LTD instruments are expensive and significantly raise the cost of capital. The instruments have the downside to investors of equity-like risk in an insolvency with no equity upside when the bank is successful, and a tax-inefficient debt payment structure in which payments are subject to ordinary income taxation without a dividends received deduction. The issuers must either pay higher yields on these instruments or sell them to retail investors but shifting large bank stability risks to pension plans and retail investors may not be in the public interest.

Applying TLAC and LTD requirements to an IDI without a holding company would be costly without providing offsetting benefits since the simple structure and operations of IDIs without a holding company do not pose the risks that those enhanced supervisory requirements were designed for. Therefore, issuance of instruments such as TLAC and LTD bonds as a policy matter should not be required for IDIs without a parent holding company.

<u>Costs of Additional Requirements Outweigh Benefits for IDIs Without a Holding Company Under a Cost-Benefit Analysis</u>

The ANPR requests comment on how to scale GSIB supervisory and resolution plan requirements to Category II and Category III banking organizations to be effective without being unduly costly or burdensome. We believe that a cost-benefit analysis is required as part of any rulemaking process, regardless of whether the underlying statutes specifically require a cost-benefit analysis. Should the agencies move forward with a formal rulemaking to apply GSIB-like requirements to IDIs without a bank holding company, a cost-benefit analysis should be required as part of that rulemaking.

Imposing TLAC, LTD or other GSIB-enhanced supervisory requirements on simple IDIs with no holding company and limited or no international offices or financial in nature activities would greatly and disproportionately increase costs to those IDIs without corresponding benefits to those IDIs, their customers, or the overall financial system. While the agencies may find benefits that outweigh potential costs of applying TLAC, LTD, and other GSIB type enhanced prudential standards to Category II and Category III bank holding companies or savings and loan holding companies, we doubt applying GSIB requirements to IDIs without a holding company would pass a formal cost-benefit analysis.

<u>Dodd-Frank Act Enhanced Prudential Standards Are Intended for Large Bank Holding Companies and Other Systemically Important Financial Institutions</u>

The authority to impose additional supervisory requirements on GSIBs and LBOs is based on the Dodd-Frank Act as amended by the Economic Growth, Regulatory Relief and Consumer Protection Act. The Dodd-Frank Act applies enhanced requirements to systemically important bank holding companies and nonbank systemically important financial institutions.

Applying Dodd-Frank Act enhanced prudential standards to financial institutions that have not been deemed to be systemically important after an administrative proceeding and formal

determination is contrary to Congressional intent. We believe that Congressional action would be required to change this framework.

Conversely, IDIs without a holding company have a simple corporate structure and traditional banking operations that do not present the risks associated with more structurally and operationally complex banking organizations that are described in the ANPR. IDIs without a holding company have one federal bank supervisor and no resolution authorities to interfere with the FDIC as receiver or conservator. Accordingly, the whole banking organization is subject to the FDIC's power as conservator or receiver.

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For these reasons, we believe that there is neither a policy nor a statutory basis to apply TLAC, LTD or other GSIB-like enhanced prudential standards to IDIs that do not have a holding company. Thank you for the opportunity to share our thoughts.

Sincerely,

Kevin Gould
EVP/Director of Government Relations

KG:dp