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BY ELECTRONIC MAIL

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

James P. Sheesly
Assistant Executive Secretary
Attn: Comments RIN 3064-AF86
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Comments on Advance Notice of Proposed Rulemaking regarding Resolution-Related Resource Requirements for Large Banking Organizations of the Federal Reserve System and the Federal Deposit Insurance Corporation; Federal Reserve RIN 7100-AG44, Docket No. R–1786; FDIC RIN 3064-AF86

Dear Ms. Misback, Mr. Sheesly:

This letter is being submitted by First Republic Bank (the "Bank") in response to the Advance Notice of Proposed Rulemaking (the "ANPR") published by the Federal Reserve Board (the "Federal Reserve") and the Federal Deposit Insurance Corporation (the "FDIC" and together with the Federal Reserve, the "Agencies") in the *Federal Register* on October 24, 2022. The Agencies are considering whether certain resolution plan requirements applicable to globally systemic important banks ("G-SIBs"), including Total Loss Absorbing Capital ("TLAC") and Long-Term Debt ("LTD") requirements, should be applied to all Category II and Category III-size banking organizations, and how insured depository institutions ("IDIs") without a holding company should be considered.[1] As more fully discussed below, the Agencies should not apply G-SIB resolution requirements, including TLAC and LTD requirements, to banking organizations without applying a tailored approach as mandated by the Dodd-Frank Act.[2] Consistent with the intent of Congress, such requirements should only be applied to large, interconnected financial institutions whose failure could pose systemic risk to the financial

[1] Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64170 (October 24, 2022), Question 2.
[2] 12 U.S.C. 5365.

stability of the U.S. based on the banking organization's capital structure, riskiness, complexity, financial activities, and size.

Furthermore, IDIs without a holding company and a simple structure that engage in traditional banking activities, like the Bank, should not be subject to TLAC or LTD requirements, or any other additional resolution requirements proposed in the ANPR, because their operations do not pose the same, if any, financial stability risk or present complex resolvability issues for which those requirements were designed. TLAC and LTD requirements as applied to G-SIBs are intended to provide additional loss absorbing capacity and resources to facilitate the resolution of G-SIBs through the Single Point of Entry ("SPOE") approach, and such requirements are being proposed for large banking organizations ("LBOs") (*i.e.*, bank holding companies and savings and loan holding companies with $100 billion or more in assets) that are normally resolved under the Multiple Point of Entry ("MPOE") approach. However, the FDIC has several options for resolving an IDI without a holding company, and TLAC and LTD instruments are not necessary in facilitating such options, especially in the case of a domestic IDI that maintains a simple structure and resolution plan.

Also, imposing TLAC and LTD requirements on IDIs without a holding company would result in additional costs and regulatory burdens without the corresponding protections intended for those IDIs or the stability of the financial system at large. This is because the cost of issuing LTD could be higher for standalone IDIs compared to LBOs that have the flexibility to issue holding company debt, as opposed to IDI debt, at potentially lower costs. As a result, this would limit such IDIs' ability to compete with other much larger banking organizations at precisely the moment when fostering more, rather than less, competition among banking organizations would be appropriate and in the public interest.

We note that the ANPR is seeking comments on the resolution planning requirements under Section 165(d) of the Dodd-Frank Act and the joint implementing regulations of the Agencies promulgated thereunder, as well as the resolution planning requirements of IDIs under the FDIC's separate Covered Insured Depository Institution Rule ("CIDI Rule").[3] The Bank is currently only required to provide a resolution plan to the FDIC under the CIDI Rule, therefore, this comment letter is being submitted related to any potential resolution requirements being considered under the CIDI Rule.

I. Introduction: First Republic Bank is a Domestic IDI without a holding company with less complex operations than G-SIBs and LBOs

First Republic Bank is an FDIC-insured California state-chartered nonmember bank, and its prudential banking regulators are the FDIC and the California Department of Financial Protection and Innovation. The Bank is "well capitalized" and has $212.6 billion in total consolidated assets and $176.4 billion in total deposits as of December 31, 2022. The Bank has no branches, offices, or subsidiaries located outside of the United States, and unlike the Category II and Category III banking organizations portrayed by the ANPR, all of which are bank holding

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[3] 12 CFR 360.10.

companies or savings and loan holding companies, First Republic Bank is a domestic IDI without a holding company. As a domestic IDI without a holding company, the Bank is not able to conduct certain activities that are permissible for bank holding companies and savings and loan holding companies, including activities that are considered financial in nature, such as underwriting, dealing, or making a market in securities and engaging in merchant or investment banking activities.[4] The activities of the Bank and its subsidiaries are traditional banking services: retail and commercial deposits and loan products, trust services, insurance services, and wealth management services. The Bank has a small number of operating subsidiaries whose activities are limited to those permissible under the Federal Deposit Insurance Act ("FDI Act") for the Bank itself (*e.g*., an SEC-registered investment adviser, a brokerage firm that acts as an agent for its customers and trust companies, but no "financial subsidiaries"). The Bank is neither a "narrow bank" with a single business line nor a "universal bank" attempting to engage in a broad array of complicated nonbank financial activities, and the Bank maintains a long list of activities that it does not undertake – please see Appendix A.

As a domestic IDI without a holding company, the Bank maintains a resolution plan, which is submitted to the FDIC for review under the CIDI Rule every three years, and the Bank has participated in the resolution planning process for the last seven years. The Bank has had steady organic growth over the years, rather than growth through mergers or significant acquisitions. This organic growth has allowed the Bank to carefully refine its resolution plan over time, including by making updates to adhere to FDIC supervisory guidance and feedback. All of the Bank's key businesses, with the exception of the private wealth management business, are within the Bank, and the Bank is the only "material entity," as the term is defined in the CIDI Rule.[5] In the event of failure, it is expected that the Bank could be resolved in an orderly fashion in accordance with its resolution plan without the need for TLAC, LTD, or other resolvability measures.

II. TLAC and LTD requirements for IDIs without a holding company, limited or no international or "financial in nature" activities, and no "Critical Operations" would not be supported by supervisory or policy considerations

We understand that the ANPR is designed to address "financial stability" risk of systemic LBOs, especially those with (a) "Critical Operations" (as defined in the Agencies joint resolution plan rules),[6] (b) foreign operations and activities that limit financial and franchise value in the event of a resolution, and/or (c) requirements to file Section 165(d) resolution plans. In recognition of the differences between LBOs and IDIs without a holding company, the Agencies are seeking input as to "[h]ow should IDIs that are not part of a group under a [bank holding

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[4] The use of a bank holding company also allows for the separation of data processing and other key support functions, as well as aspects of client relationships (such as wealth management) into affiliates separate from the IDI that are not subject to the resolution powers of the FDIC and not available to be packaged and sold by the receiver to buyers interested in acquiring the entire client relationship.

[5] 12 CFR 360.10(b)(8).

[6] "Critical Operations" is defined under the Agencies' joint resolution plan regulations as "those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States." 12 CFR 381.2.

company] be considered?" The Bank is uniquely positioned to provide input on this question. Key to the response is the Congressional intent of the enhanced prudential standards under Section 165 of the Dodd-Frank Act, and specifically those related to enhancing the resolvability of large and systemically important financial institutions.

Congress enacted the enhanced prudential standards and supervision framework under Section 165 of the Dodd-Frank Act to automatically apply to bank holding companies above the specified asset threshold because the introduction of a parent holding company gives rise to the organizational and operational complexities of LBOs that present the risks outlined by the Agencies in the ANPR,[7] including but not limited to, heightened cross-jurisdictional activity, significant or complex nonbank operations, material operations, assets, liabilities and services outside the bank chain, large balance sheets and increased volume of uninsured deposits, and other characteristics that could present challenges to the orderly resolution of the banking organization.[8] Consistent with the Dodd-Frank Act, under the Agencies' Tailoring Rules, the most stringent enhanced requirements, like TLAC and LTD requirements, apply to the largest and most systemic U.S. banking organizations (U.S. G-SIBs), and the U.S. operations of the largest and most systemic foreign banking organizations, because the failure or material financial distress of these companies has the greatest potential to disrupt the financial stability of the United States.

Because it has no holding company, the Bank is not an LBO as defined in the ANPR,[9] but it will become a Category III banking organization under the FDIC's regulations once it reports a four-quarter trailing average of $250 billion or more in total consolidated assets.[10] Unlike many of the Category III banking organizations that are LBOs, the Bank's corporate structure and activities do not pose the same risks to the stability of United States or raise the resolvability concerns identified in the ANPR. As noted above, the Bank has no foreign offices, few subsidiaries, and only traditional banking product and service offerings, which allow for a less complex structure and more manageable (and resolvable) structure than an IDI with a holding company. In the unlikely event of insolvency of the Bank, the resolution process should be straightforward—the FDIC would take and control the entire organization as receiver, without involvement of a bankruptcy court or foreign courts and receivers.[11]

There is no clear policy reason or empirical evidence for departing from the existing statutory and regulatory framework by adopting enhanced prudential standards, like TLAC and LTD requirements, for IDIs without a holding company that do not present the risks and complexities with respect to financial stability or resolvability as identified in Section 165 of the

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[7] 12 U.S.C. 5365(a)(1).
[8] ANPR at pages 64172-64173.
[9] In the ANPR, 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 G-SIB. ANPR at fn. 4.
[10] 12 CFR 324.2.
[11] Specifically, given the structure of the Bank, the limited number of subsidiaries of the Bank and the centralized nature of critical services and operations at the bank entity, the Bank does not anticipate separate insolvency proceedings for its subsidiaries in a resolution scenario and does not expect multiple competing insolvencies to present a significant obstacle to the Bank's orderly resolution.

Dodd-Frank Act or the ANPR. IDIs, like the Bank, (i) without a holding company and an otherwise simple corporate structure, (ii) with a limited number of subsidiaries, (iii) no foreign offices or branches, (iv) that do not maintain Critical Operations that pose a threat to U.S. financial stability,[12] and (v) that conduct internal critical services and operations wholly within the bank entity and its subsidiaries rather than at a holding company affiliate, can be resolved in an orderly fashion by the FDIC through one or more of its franchise marketing options without concern of multiple competing insolvency forums and proceedings and consistent with the IDI's resolution plan under the CIDI Rule.[13] TLAC and LTD requirements for such IDIs would not be supported by supervisory or policy considerations, and as further discussed below, any benefits of those requirements would not outweigh the costs and additional regulatory burden for IDIs placing them at a competitive disadvantage to G-SIBs and LBOs.

III. Imposing TLAC and LTD requirements on IDIs without a holding company would disproportionately impact such IDIs compared to G-SIBs and LBOs

TLAC and LTD are expensive and raise the cost of capital for banking organizations, in part because, from the investors' perspective, they combine equity-like risk with a tax-inefficient debt payment structure.[14] Investors then expect issuers to pay higher rates than on non-TLAC instruments. The net effect of issuing these debt instruments is an increase in the leverage of the entity.[15] Subjecting IDIs to TLAC and LTD requirements would result in unnecessarily leveraging those IDIs, and additional compliance burdens and costs associated with the foregoing, without the intended corresponding benefits (*i.e.*, providing FDIC with more flexibility in resolving institutions subject to resolution under the SPOE or MPOE approaches). Rather, these additional costs and regulatory obligations would divert resources that could be better used by such IDIs to improve its business products and services and better compete with large banking organizations, thereby increasing competition among banking organizations and providing consumers with better and alternative banking options.

Further, TLAC and LTD requirements would disproportionally impact stand-alone IDIs relative to G-SIBs and LBOs that can issue senior unsecured debt from their holding companies

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[12] First Republic Bank does not maintain any "Critical Operations".

[13] While the Bank has subsidiaries that could be subject to different insolvency regimes (e.g., broker-dealer subsidiary), they have small balance sheets and very limited external creditors, engage primarily in agency activities, and do not have custody of client assets. In the event of failure of the Bank, the Bank does not anticipate separate insolvency proceedings for its subsidiaries in a resolution scenario and does not expect multiple competing insolvencies to present a significant obstacle to the Bank's orderly resolution.

[14] See, BIS, Assessing the Economic Costs and Benefits of TLAC Implementation (Nov. 2015); S. Lubben, The Impossibility of TLAC 23 NYU J. Legislation & Pub. Policy 45 (2020) ("The only way to maintain even the illusion of the traditional debt-equity distinction will be to sell TLAC debt to unknowing retail buyers. And that appears to be what is happening."); C. Attina & P. Bologna, Banca d'Italia, Occasional Paper No. 604: TLAC-eligible debt: who holds it? A view from the Euro Area (Feb 2021) (finding the holders of TLAC are primarily pension plans and insurance companies and the less financially sophisticated portion of the retail investor market who may not be aware of the risks of TLAC).

[15] See, Comment Letter of S.M. Miller and T.M. Hoenig, George Mason Mercatus Center, ANPR Resolution-Related Resource Requirements for Large Banking Organizations (Dec. 2022).

at lower rates than subordinated debt issued by an IDI. Notably, all unsecured debt issued by an IDI is subordinated to depositors by the FDI Act[16]. In addition, IDIs without holding companies are typically primarily funded by deposits, and the activities permissible for an IDI are limited accordingly to protect the federal deposit insurance fund. As such, IDIs without a holding company, that are mostly deposit funded, could incur significantly higher interest expense relative to G-SIBs and LBOs that (i) are able to issue senior unsecured debt at the holding company and/or (ii) already have material amounts of LTD eligible holding company senior debt already issued and outstanding. Additionally, the excess liquidity from raising LTD would likely be deployed inefficiently (likely held in cash and securities) by an IDI without a holding company.

If the FDIC desires IDIs to issue more unsecured debt, it could incentivize more issuance by increasing its Unsecured Debt Adjustment in its FDIC assessment framework. This would increase the assessment savings for every dollar of unsecured debt raised by a bank, and thereby give an economic incentive for IDIs to issue more unsecured debt, without the FDIC having to impose burdensome and more costly TLAC and LTD requirements.

IV. TLAC and LTD requirements are not necessary for IDIs without a holding company that can be resolved in an orderly manner by the FDIC under the FDI Act

The underlying premise for the ANPR's proposed requirements stems from the Agencies' observation that certain LBOs have grown in size over the past decade, both organically and in many cases, through merger activity. With the growth, the Agencies observe that certain LBOs now have complex and intricate corporate structures, foreign operations, diverse resolution authorities that may compete with each other (*i.e.*, U.S. bankruptcy courts for bank holding companies and their nonbank subsidiaries competing with foreign governments for overseas offices and operations), multiple points of entry for resolutions and funding (for bank holding companies and their subsidiaries) and may pose some risk to the financial system that may not have been anticipated when the resolution rules were first promulgated. As noted in the ANPR, the FDIC generally uses the SPOE approach to resolve G-SIB failures, the MPOE approach to resolve LBOs, and the FDIC has several options for resolving an IDI, including selling assets and transferring deposits to healthy acquirers or a bridge bank, or executing an insured deposit payout.

TLAC and LTD requirements as applied to G-SIBs are intended to enhance the resolvability and resiliency of bank holding companies that would undergo the SPOE approach to resolution, in which operating subsidiaries are recapitalized by transferring losses to the bank holding company and keeping such operating subsidiaries out of the insolvency proceedings. Additionally, G-SIBs have assets and operations in foreign jurisdictions that may be subject to ringfencing and/or other value destroying and limiting actions by those foreign jurisdictions, and TLAC and LTD requirements, as well as the SPOE approach, mitigate such risks. IDIs without international offices or operations do not pose the same cross-jurisdictional, financial,

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[16] 12 U.S.C. 1815(e)(2)(C)(ii).

operational, and legal concerns as G-SIBs or LBOs with international operations, making TLAC and LTD requirements unnecessary.

Under the MPOE approach, legal entities within the LBO's corporate structure other than the top-tier holding company undergo a bankruptcy proceeding or FDIC-led resolution. The ANPR posits that while an MPOE resolution strategy may be appropriate for an LBO, without sufficient loss absorbing resources at the subsidiary IDI, the FDIC's options for resolving the IDI under the FDI Act may be limited. Additionally, the FDIC's options are further constrained in instances when a banking organization has significant international operations subject to multiple competing insolvencies. The ANPR proposes that Category II and Category III banking organizations be required to maintain minimum outstanding amounts of TLAC and LTD for the purpose of recapitalization in the event of failure. While TLAC and LTD requirements may provide the FDIC with flexibility in resolving systemic LBOs, TLAC and LTD requirements are not necessary at an IDI without a holding company with no foreign offices or international operations. Resolution plans prepared in accordance with the CIDI Rule for such IDIs without a holding company, such as the Bank's resolution plan, provide the FDIC with flexibility and optionality to achieve its objectives for an orderly resolution.

V. Conclusion

We thank the Agencies for their consideration of our comments and suggestions set forth in this letter. We would be pleased to provide additional information as requested.

Sincerely,

[redacted]

Michael J. Roffler
Chief Executive Officer, President and
Board Member

Appendix A

Business Activities Not Undertaken

- No proprietary trading
- No market making in equities
- No trading assets or liabilities
- No cross-currency swaps
- No clearing services
- No banking or custody services to digital asset exchanges or service providers and no direct Bank investments in digital assets
- No underwriting transactions in debt and equity markets
- Not a commercial paper issuer, backstop provider or guarantor
- No underwriting of IPOs
- No exotic derivatives
- No junk bond investments (1)
- No foreign sovereign debt investments
- No wholesale lending or borrowing of securities to or from financial institutions
- No depository institution, foreign bank or credit union debt positions
- No loans to foreign governments
- No credit card issuance or auto loan originations
- No low-doc or no-doc subprime lending
- No negative amortization loans (minimal amount in runoff)
- No reverse mortgages
- No foreign offices
- No open market common stock buybacks
- No factoring
- No sale of loan servicing on originated loans (2)
- No commercial letters of credit (i.e., trade finance)
- No conduit securities lending transactions
- No domestic or foreign holding company and no holding company subsidiaries

(1) Does not include unrated securities.
(2) Except for Bank of America–retained loans.