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January 16, 2024

By Electronic Submission

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Washington, DC 20551

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Re: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity (FRB Docket No. R-1813, RIN 7100-AG64; FDIC Docket No. RIN 3064-AF29; OCC Docket ID OCC-2023-0008)

Ally Financial Inc. ("Ally," "we," "our," or "us") appreciates the opportunity to comment on the Notice of Proposed Rulemaking on the Regulatory Capital Rule ("Proposal") issued by the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("OCC," and together with the FRB and the FDIC, the "Agencies").[1] We recognize that the Agencies seek to improve the risk capture and consistency of capital requirements across large banking organizations[2] ("LBOs"). We support the Agencies' goal of reducing complexity and operational costs through changes across multiple areas of the Agencies' risk-based capital framework.[3] While regulatory capital requirements can advance these goals to some degree, the Proposal's rigid and untailored capital framework is not a proportionate solution to the systemic risks identified by the Agencies.

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1 Regulatory Capital Rule: Large Banking Organization and Banking Organizations with Significant Trading Activity, 88 Fed. Reg. 64,028 (proposed Sep. 18, 2023).

2 For purposes of this letter, references to large banking organizations are consistent with the Proposal, which applies to U.S. banking organizations with total assets of $100 billion or more and their subsidiary depository institutions. *See id.* at 64,030.

3 *See supra* note 1 at 64,030.

Given how readily the risk profiles of LBOs between $100 billion and $250 billion in total consolidated assets ("Category IV LBOs")[4] like Ally can be distinguished from the risk profiles of larger, more complex firms, we respectfully request the Agencies tailor the Proposal's requirements as follows:

1. Eliminate the dual-stack regulatory capital calculation structure ("Dual Stack Approach") for Category IV LBOs and either require them to calculate risk-weighted assets ("RWAs") under the standardized approach *or* the expanded risk-based approach ("ERBA") but not both;

2. Reinstate the current approach of applying the market risk capital rule only if a firm's trading assets and liabilities equal or exceed the relevant thresholds (*i.e.*, the lower of $5B or 10% of total assets); and

3. Extend the phase-in period for the recognition of the accumulated other comprehensive income ("AOCI") in regulatory capital from 3 years to 5 years, especially for Category IV LBOs.

This letter provides background on Ally as a Category IV LBO; our overarching concerns with the Proposal—including the Proposal's failure to tailor the proposed regulatory capital requirements as enhanced prudential standards; and support for the above three recommendations.

I. Background on Ally and Our Overarching Concerns with the Proposal

Ally is the nation's largest all-digital bank and an industry-leading automotive-financing and insurance business. We serve customers through a full range of online banking services—including deposits, mortgage lending, point-of-sale personal lending, and credit-card products—as well as securities-brokerage and investment-advisory services. We also have a corporate-finance business that offers capital for equity sponsors and middle-market companies.

As a Category IV LBO, we support the comment letters of the group of Category IV LBOs to which we are a signatory, the American Bankers Association, and the Bank Policy Institute.

[4] Category IV LBOs in this letter refer to those U.S. large banking organizations with total consolidated assets of $100 billion or more and do not meet the thresholds for weighted short-term wholesale funding, non-bank assets, or off-balance sheet exposure pursuant to the FRB's tailored framework for regulatory capital and liquidity requirements. *See* Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 Fed. Reg. 59,230, 59,235 (final, November 1, 2019).

Our comments in this letter supplement theirs. In particular, we echo their following overarching themes:

- If adopted, the Proposal would have meaningful unintended negative consequences to consumers and small businesses through reduced availability of credit and higher cost of capital;
- The Proposal's risk weights for retail exposures and residential real estate mortgage exposures under the ERBA should be lowered to align with the international Basel framework;
- The Proposal's RWAs for operational risk are significantly over-calibrated, unsupported, and overlap with operational risk losses capitalized through stress testing and the stress capital buffer;
- Final regulatory capital regulations should be delayed until a comprehensive quantitative impact study, including the cumulative impact of other recent proposals of the Agencies, can be completed and results are provided to the public for comment; and
- Tailoring of the regulatory capital rules by size, complexity, and other statutory risk factors has been effectively repealed through the Proposal.[5]

The Economic Growth, Regulatory Relief, and Consumer Protection Act ("S. 2155")—requires the FRB to tailor any enhanced prudential standards, including regulatory capital requirements, based on enumerated risk factors.[6] But the Proposal effectively eliminates any statutorily required differentiation across firms with $100 billion or more in assets. The Proposal holds Category IV LBOs like Ally to the same requirements as the largest and most complex banking organizations, including global systemically important banking organizations ("GSIBs"). In doing so, the Agencies must have concluded that the capital structures, riskiness, complexity, financial activities, size, and other risk-related factors of Category IV LBOs are equivalent to those

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5 *See* Economic Growth, Regulatory Relief, and Consumer Protection Act § 401, Pub. L. No. 115–174 (2018). *See also* Statement by Governor Michelle W. Bowman on the Proposed Long-term Debt Requirements and Proposed Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers (August 29, 2023), *found at* https://www federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm ("I am concerned that collapsing Categories II, III, and IV into a single prudential category may call into question whether the Federal Reserve is complying with the statutory requirements to tailor prudential requirements for large firms."); Statement by Vice Chairman Travis Hill on the Proposed Long-term Debt Requirements for Large Banks (August 29, 2023), *found at* https://www.fdic.gov/news/speeches/2023/spaug2923l.html ("As we consider how to balance costs and benefits in calibrating the requirement, we should also be mindful that . . . we are required by law to tailor enhanced prudential standards for large firms.")

6 *Id*.

of GSIBs. Such a position not only ignores the Agencies' own precedent,[7] but is unsupported by any quantitative analysis.

Ally—which has a risk profile that is representative of most Category IV LBOs—does not present financial-stability or safety-and-soundness risks that are remotely comparable to those of the GSIBs or the LBOs in Categories II and III. As of September 30, 2023, we had approximately $196 billion in total consolidated assets, a common equity tier 1 ("CET1") capital ratio of 9.3%, and approximately $64 billion of available liquidity (including $26 billion of pledged discount-window capacity). Almost all of our business is conducted through our single insured depository institution ("IDI") subsidiary, Ally Bank. As of September 30, 2023, Ally Bank's total consolidated assets of $186 billion constituted approximately 95% of Ally's total consolidated assets, and approximately 92% of the deposits at Ally Bank were FDIC-insured. See Appendix for more details on Ally's risk profile.

Similar to Ally, other Category IV LBOs are predominantly engaged in domestic lending activities, have relatively simple operating models, and do not engage in significant trading activities. While the failures of Silicon Valley Bank ("SVB"), First Republic Bank, and Signature Bank (collectively, "Failed Banks") in the spring of 2023 highlighted that firms with less than $250 billion in assets can pose certain systemic risks, those banking organizations had very unique operating models that were particularly vulnerable in the current macroeconomic environment. Accordingly, the Agencies' policy response to the failures of the Failed Banks through the Proposal is overly punitive. The Proposal would create undue and, at times, excessive operational burden for Category IV LBOs that ultimately do not address the type of systemic risks posed by the Failed Banks and would have meaningful adverse consequences to the Main Street economy. Our recommendations described below help tailor the proposed regulatory capital framework and mitigate these unintended consequences.

II. Eliminate the Dual-Stack Approach

We recommend eliminating the Dual-Stack Approach. The Dual Stack Approach requires Category IV LBOs—for the first time—to calculate RWAs under two different approaches (the standardized approach and the ERBA) similar to how Category I and II LBOs are currently required to calculate RWAs under two different approaches (the standardized approach and the advanced approaches). Instead, the final rule should either require Category IV LBOs to calculate

[7] *See* Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 Fed. Reg. at 59,234 (final, November 1, 2019) ("Banking organizations in Category IV generally have greater scale and operational and managerial complexity relative to smaller banking organizations, but less than banking organizations subject to Category I, II, or III standards.").

RWAs under the standardized approach only *or* require such firms to calculate RWAs under the ERBA only.

In addition to representing a clear departure from a tailored framework, application of the Dual Stack Approach to Category IV LBOs in particular would impose undue operational and compliance burden without any meaningful supervisory benefit. The only rationale provided by the Agencies is to "ensure that large banking organizations would not have lower capital requirements than smaller, less complex banking organizations."[8] While we can understand the spirit of this goal, this approach is an overly punitive means to an end. Not only does this approach call into question the "improved risk sensitivity" embedded in the ERBA, but "…this dual-requirement foregoes an opportunity to simplify an already complicated capital framework"[9] by "[s]ubjecting category…4 firms to two risk-based capital requirements [that] does not seem commensurate with their risk, size, business models, and complexity, and could result in costs that outweigh the benefits."[10] Requiring Category IV LBOs to implement a Dual Stack Approach would add significant complexity to capital allocation decisioning, forecasting, and monitoring contrary to the Agencies' stated goal to reduce complexity[11] and without comparable financial resilience benefits. For these reasons, we recommend the Agencies eliminate the one-size-fits-all Dual Stack Approach across all LBOs and take a more holistic, analysis-driven, risk-sensitive approach which results in a single RWAs calculation for Category IV LBOs.

III. Reinstate the Current Approach to Applying Market Risk Rule

We recommend reinstating the current approach of applying the market risk capital rule only if a firm's aggregate trading assets and liabilities equal or exceed the relevant thresholds, which, as proposed, would be the lower of $5 billion or 10% of total assets.[12]

Applying the market risk rule to firms that take minimal market risk—such as Ally—would result in overly punitive compliance and operational burdens for Category IV LBOs that are not commensurate with their limited market risk exposures. We see very little supervisory benefit or resiliency gained by requiring Ally—with an aggregate carrying value of less than $5 billion of

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8 *See supra* note 1 at 64,031.

9 *See* Statement by Jonathan McKernan on the Proposed Amendments to the Capital Framework (July 27, 2023), *found at* https://www fdic.gov/news/speeches/2023/spjul2723c html.

10 *See* Statement by Governor Michelle W. Bowman on the Proposed Rules to Strengthen Regulatory Capital Rules for Large Banks (July 27, 2023), *found at* https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230727 htm.

11 *See supra* note 1 at 64,030 ("The proposal would….reduce complexity and operational costs through changes across multiple areas of the agencies' risk-based capital framework.").

12 *See supra* note 1 at 64,030.

market risk covered positions—to apply an entire market risk framework.[13] Applying the market risk capital rule to Ally would have minimal impact to our regulatory capital requirements but would impose the same compliance and operational burdens as LBOs that take significantly more market risk. Consistent with the longstanding application of the market risk capital rule, there should be thresholds for application.

IV. Extend Phase-In Period for Recognition of AOCI

We recommend extending the phase-in period for recognition of AOCI from 3 years to at least 5 years, especially for Category IV LBOs.

A three-year phase-in period for non-GSIB LBOs would depart from the Agencies' precedent of providing a longer phase-in period of 5 years for GSIBs when those firms were required to phase in AOCI.[14] While an even longer phase-in period would be appropriate given the difference in risk profiles between Category IV LBOs and GSIBs, Category IV LBOs should receive *at least* as much time as the GSIBs were given to phase in AOCI. A transition period of at least 5 years would also help avoid abrupt and discontinuous changes in capital requirements that do not reflect data, analysis, or a bank's actual economic exposures. We also note that a vast majority of Ally's debt investment securities is classified as available-for-sale (AFS) whereas the vast majority of SVB's debt investment securities was classified as HTM. Extending the phase-in period for absorbing into regulatory capital accumulated other comprehensive losses on AFS securities would reduce volatility in regulatory capital calculations attributable to these legacy positions as they ultimately mature over time and would allow LBOs to build capital more gradually and organically through the retention of earnings.

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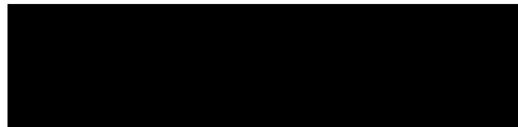
[13] Notably, when evaluating an appropriate threshold for limited trading assets and liabilities for purposes of calibrating the Volcker Rule's compliance obligations, the Agencies provided the rationale that the "…banking entities with limited trading assets and liabilities are most appropriately reserved for banking entities below the $1 billion threshold set forth in the proposal. Such banking entities tend to have simpler business models and do not have large trading operations that would warrant the expanded compliance obligations application to banking entities with moderate and significant trading assets and liabilities….[T]hese banking entities also hold a relatively small amount of the trading assets and liabilities in the U.S. banking system." 84 Fed. Reg. 61,974, 61,981. With respect to a $5 billion threshold, the Agencies noted that "33 broker-dealer affiliates of firms that have between $1 and $5 billion in consolidated trading assets and liabilities and are subject to section 13 of the BHC Act account for only approximately 2% of bank-affiliated broker-dealer assets and between approximately 1% and 2% of holdings." *Id.* at 62,060.

[14] *See* Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule and Market Risk Capital Rule, 78 Fed. Reg. 62, 018, 62,266 (final, Oct. 11, 2013) (Table 3 to §__.300 providing a 5-year transition period for the phase-in of AOCI for advanced approaches banking organizations).

Once again, we appreciate the opportunity to comment on the Proposal. If you have any questions, please contact me at russ.hutchinson@ally.com or our Corporate Treasurer, Bradley Brown, at bradley.brown@ally.com.

Respectfully submitted,



Russell Hutchinson
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Ally Financial Inc.

Appendix

Ally—as a Category IV LBO—does not present financial-stability or safety-and-soundness risks that are comparable to those presented by GSIBs or the LBOs in Categories II and III. This Appendix summarizes Ally's risk profile as of September 30, 2023 pursuant to the statutory tailoring factors of S. 2155:

- **Capital Structure**: Ally was well capitalized with a CET1 capital ratio of 9.4% and a total capital ratio of 12.5%. Ally's CET1 capital ratio exceeded the minimum regulatory requirement of 7.0%, which consisted of the 4.5% statutory requirement plus Ally's 2.5% stress capital buffer, by approximately $3.7 billion.

- **Riskiness**: 87% of Ally's total funding was derived from deposits, most of which were granular and diversified retail accounts. Ally's weighted short-term wholesale funding[15] totaled about $4.7 billion,[16] or approximately 3% of total liabilities. Non-bank assets[17]—which primarily arose from insurance services provided to automotive customers—totaled about $9.5 billion,[18] or less than 5% of Ally's total assets. Ally's off-balance sheet exposure[19] totaled about $1.7 billion[20]—less than 1% of Ally's total assets. Such off-balance sheet exposures were concentrated primarily within our commercial automotive and corporate finance business, in which we made routine lending commitments to our customers. Additionally, Ally had *de minimis* trading securities and assets measured at fair value on a recurring basis using Level 3 inputs.

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[15] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59,032, 59,043 (final, November 2, 2019) ("Reliance on short-term, generally uninsured funding from more sophisticated counterparties can make a banking organization more vulnerable to large-scale funding runs, generating both safety and soundness and financial stability risks.").

[16] Ally's Systemic Risk Report—FR Y-15, Schedule G, line item 6 (September 30, 2023).

[17] *See supra* note 15 at 59,041 ("The amount of a banking organization's activities conducted through nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant activities in nonbank subsidiaries are more likely to have complex corporate structures and funding relationships. In addition, in certain cases nonbanking subsidiaries are more likely to have complex corporate structures and funding relationships.").

[18] Ally's Systemic Risk Report—FR Y-15, Schedule A, line item M6 (September 30, 2023).

[19] *See supra* note 15 at 59,043 ("Off-balance sheet exposure complements the size indicator under the tailoring framework by taking into account additional risks that are reflected in a bank organization's measure of on-balance sheet assets. This indicator provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services stemming from off-balance sheet activities.").

[20] Ally's Systemic Risk Report—FR Y-15, Schedule A, line item M5 (September 30, 2023).

- **Complexity**: Ally's business and operations were based almost entirely in the United States, with total cross-jurisdictional activity of about $1.2 billion[21] or approximately 0.6% of Ally's total assets. Ally's organizational structure was not complex given that substantially all our business activity occurred at our single IDI, Ally Bank, which constituted approximately 95% of Ally's total consolidated assets.

- **Financial Activities**: Ally's primary business activities included traditional retail deposit services, consumer and commercial automotive financing products, mortgage finance, and corporate finance. Ally was not engaged in any material respect in activities related to payments, custody services, debt and equity underwriting, or sales and trading. Ally's consumer and commercial automotive financing businesses accounted for approximately 73% of Ally's total finance receivables and loans.

- **Size**: With $196 billion in total consolidated assets, Ally sat well below the boundary between Categories III and IV. Unlike the rapid growth rates of SVB and Signature Bank from 2019 through 2021—198% and 134% respectively[22]—ours was 1%. That has not materially changed over the last seven quarters, when our growth rate was 7%.

- **Resolvability**: Ally had a simple organizational structure with a single IDI. Ally Bank's total consolidated assets of $186 billion constituted approximately 95% of Ally's, and its total deposits of $153 billion were approximately 84% of Ally's total liabilities. Approximately 92% of deposits at Ally Bank were FDIC-insured, compared to 12% for SVB and 33% for Signature at the time of their failures.[23]

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[21] Ally's Systemic Risk Report—FR Y-15, Schedule E, line item 5 (September 30, 2023).

[22] U.S. Gov't Accountability Office, GAO 23-106736, Preliminary Review of Agency Actions Related to March 2023 Bank Failures 11 (2023).

[23] Special Assessment Pursuant to Systemic Risk Determination (final, Nov. 29, 2023), 88 Fed. Reg. 83,329, 82,331.

The following charts compare metrics and indicators of Ally to the thresholds used by S. 2155 and its implementing regulations as of each period-end date for the seven quarters ended September 30, 2023.