July 20, 2023

Via email: comments@fdic.gov

James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN 3064–AF93
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

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

Ladies and Gentlemen:

Bank OZK appreciates the opportunity to comment on the notice of proposed rulemaking issued on May 22, 2023 by the Federal Deposit Insurance Corporation (the "FDIC") regarding the Special Assessment Pursuant to Systemic Risk Determination (the "Proposed Rule"). We are a regional bank with $30.8 billion in assets headquartered in Little Rock, Arkansas, with approximately 2,700 employees and more than 240 offices in eight states.

We understand and appreciate the steps taken by the FDIC to protect depositors during the recent bank failures and its need for a special assessment to recover the associated loss to the Deposit Insurance Fund (the "DIF"). Indeed, the FDIC's systemic risk determination and orderly resolution of the failed institutions played a key role in maintaining stability and public confidence in the banking industry. We also support the general framework of the Proposed Rule. However, because we agree with the FDIC's conclusion that "[g]enerally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination," we believe that the Proposed Rule's special assessment base should be altered to (i) accurately reflect the risk posed to the DIF and (ii) cause the institutions which benefited from the systemic risk determination to bear a share of the assessment commensurate with such benefit.

Excluding Certain Categories of Deposits from the Assessment Base. The Proposed Rule establishes the assessment base as the estimated uninsured deposits of each insured depository institution as of December 31, 2022, subject to certain adjustments. The following two categories of deposits pose minimal to no risk to the DIF and should be excluded from the assessment base to avoid inadvertently penalizing banks for such deposits and ensure that the assessment is tailored to the amount of risk posed by an institution's uninsured deposits as a whole.

Intercompany Accounts. Intercompany account deposits from wholly-owned bank subsidiaries should not be included in the assessment base. Such deposits are ultimately owned by the bank itself and, in the event of a bank failure, would not need to be covered by the DIF. Indeed, the FDIC has acknowledged that upon such a failure, it would address intercompany accounts through separate specific instructions.[1]

[1] 12 C.F.R. § 370.4

Moreover, the Proposed Rule's rationale for calculating the assessment based on uninsured deposits is because uninsured deposits would have been withdrawn if not for the systemic risk determination. This logic does not apply to intercompany account deposits, which are effectively the banking institution's own operating cash, since the institution would not cause its subsidiary or affiliate to withdraw funds from the institution itself.

Because intercompany account deposits were never at risk of being withdrawn, did not benefit from the systemic risk determination, and do not pose any risk to the DIF, they should not be included in the assessment base. To do so would artificially inflate the assessment base.

Collateralized Governmental Deposits. Similarly, collateralized government deposits (primarily of state, county and municipal entities) are significantly more protected than other types of uninsured deposits. State and local governments typically mandate that such deposits be backed by high-quality collateral with a market value equal to or exceeding the amount of deposited funds, along with additional pledging, monitoring, recordkeeping and reporting requirements. These fully secured deposits are not at risk in the event of a bank failure and are thus extremely stable and less subject to flight in the event of a bank run or systemic risk determination.

In our experience, regional banks with strong local ties often receive proportionally more of these types of deposits than the country's largest banks, and excluding them from the assessment base would be appropriate in light of their reduced risk profile.

Increasing the Assessment Base Threshold Amount. In order to allocate the assessment fairly and proportionally among banks based on their respective benefit from the stability provided by the systemic risk determination, we believe the Proposed Rule's exclusion of the first $5 billion of uninsured deposits from the assessment base should be increased to $10 billion or above. While the systemic risk determination helped stabilize the industry and may have prevented broader deposit flight, the majority of deposit outflows driven by the recent bank failures took place after the determination, with the immediate and well-documented movement of uninsured deposits from regional and local banks to systemically important institutions where depositors believed their funds, by virtue of the massive size of such institutions, were in effect fully insured. The timing and scope of this deposit flow suggests that the largest banks experienced considerably more benefit from the systemic risk determination than their smaller counterparts, and increasing the threshold exclusion to $10 billion or above would properly recognize and account for this disparity.

Once again, we appreciate the opportunity to comment on the Proposed Rule and respectfully ask the FDIC to consider these adjustments. Please feel free to contact me should you have any questions about the information contained in this letter.

Sincerely,

[redacted]

Tim Hicks
Chief Financial Officer