July 21, 2023

VIA ELECTRONIC SUBMISSION

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Special Assessments Pursuant to Systemic Risk Determination (RIN 3064–AF93)

Ladies and Gentlemen:

The Financial Services Forum (the "Forum")[1] appreciates the opportunity to submit this letter to the Federal Deposit Insurance Corporation (the "FDIC") on its proposed rule (the "Proposal") to impose a special assessment on certain insured depository institutions to recover losses to the Deposit Insurance Fund (the "DIF") arising from the protection of uninsured depositors through use of the systemic risk exception ("SRE") determination related to the closures of Silicon Valley Bank ("SVB") and Signature Bank ("Signature").[2] The Proposal is relevant to each of our member institutions, the eight U.S. global systemically important bank holding companies ("U.S. GSIBs"), the insured depository institution subsidiaries of which would be subject to the special assessment. In particular, we estimate that our member institutions together would pay approximately 60% of the proposed special assessment, despite not benefiting from the SRE as discussed further below.

We appreciate that the Proposal seeks to recover losses to the DIF in a manner that is consistent with the Federal Deposit Insurance Act ("FDI Act"). The Forum supports the FDIC using balances as of 12/31/2022 for purposes of determining the assessment base

[1] The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace and a sound financial system.

[2] Special Assessments Pursuant to Systemic Risk Determination, 88 Fed. Reg. 32694 (May 22, 2023).

and estimating the special assessment rate for the reasons stated in the Proposal. Changing to a later date would distort the assessment base by capturing the deposit volatility and flight to safety attributable to the failed institutions instead of the prevailing conditions leading up to the SRE determination.[3]

Nevertheless, by differentiating neither among different types of uninsured deposits nor among "large banks," the Proposal and its accompanying preamble discussion obscure the material differences in various types of uninsured deposits and the stabilizing role played by the U.S. GSIBs during the recent turmoil. Rather than being adversely affected by the failures of SVB and Signature (and therefore beneficiaries of actions taken under the SRE), the U.S. GSIBs generally experienced deposit inflows and acted as sources of strength and support to the broader banking sector to avoid further market turmoil and cost to the economy, as they did during the COVID-19 pandemic.[4]

Accordingly, in this letter, we wish to highlight the following key observations:

- The U.S. GSIBs were not beneficiaries of the FDIC's SRE determination. Rather, the U.S. GSIBs, which are already subject to the highest level of prudential requirements—such as the inclusion of losses on available-for-sale securities in the calculation of their capital ratios, and robust loss-absorbing debt and resolvability requirements—generally experienced deposit inflows and served as sources of strength and safety to the banking sector following the failures of SVB and Signature.

- By basing the special assessment entirely on gross volumes of uninsured deposits, the Proposal fails to consider important distinctions among different types of uninsured deposits. Specifically, the Proposal fails to recognize the stability of the U.S. GSIBs' funding sources as well as the U.S. GSIBs' asset quality and prudent asset-liability management practices, which a more risk-based assessment methodology would better capture.

Importantly, because the proposed assessment methodology does not accurately capture the risk an insured depository institution could pose to the DIF, the FDIC should not incorporate any similar approach into its regular assessment methodology and should ensure that the final rule does not set a precedent for future FDIC policymaking.

[3] This is responsive to Question 3 in the Proposal.

[4] Federal Reserve Board, Supervision and Regulation Report at 1 (Nov. 2020) ("banking organizations have been a source of strength . . . to the economy, entering the COVID event with substantial capital and liquidity and improved risk management and operational resiliency"), available *here*; Sean Campbell, The Three-Legged Stool: How Large Banks Have Supported the Economy During the Pandemic, Financial Services Forum (May 24, 2021) ("As large banks have extended credit, underwritten securities, and enhanced market liquidity, the rest of the economy has been better able to meet the challenges presented by the pandemic."), available *here*.

1. The U.S. GSIBs were not beneficiaries of the SRE determination, and the Proposal does not appreciate the resilience of U.S. GSIBs

In imposing a special assessment, pursuant to the FDI Act, the FDIC is required to consider "the types of entities that benefit from any action taken or assistance provided" pursuant to the SRE determination.[5] The Proposal asserts that "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," as "a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds," and that "larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination."[6] In other words, "there could be negative knock-on consequences for similarly situated institutions."[7]

In making these statements, however, the Proposal does not define "large banks" and fails to distinguish among differently situated large banks—those that did and did not benefit from the SRE determination. The Forum's member institutions did not show signs of being adversely impacted by the SVB and Signature failures, through depositor withdrawals or otherwise, and were not "similarly situated" to SVB and Signature. As FDIC Vice Chairman Travis Hill noted, "the banks who experienced the largest outflows of deposits following the failure of [SVB] are generally the banks who benefitted most from the systemic risk exception, and the banks who experienced inflows of deposits are generally the banks who benefited least."[8] As research from Federal Reserve Board economists shows, the largest banks, including our member institutions, did not face deposit runs and, instead, generally experienced deposit inflows as customers fled to safety following the SVB and Signature failures.[9] Accordingly, our member institutions were among those banks that benefited the least from the SRE determination.

In addition to serving as sources of safety for customers, the U.S. GSIBs served as sources of strength to the banking sector as a whole, including by contributing the majority of a $30 billion deposit infusion to First Republic Bank immediately after the

[5] 12 U.S.C. § 1823(c)(4)(g)(ii)(III).

[6] 88 Fed. Reg. at 32701.

[7] *Id.*

[8] FDIC, Statement of Vice Chairman Travis Hill on the Special Assessment Notice of Proposed Rulemaking (May 11, 2023) ("Hill Statement"), available *here*.

[9] Cecilia Caglio, et al, Flight to Safety in the Regional Bank Crisis of 2023 at 11 (May 23, 2023), available *here*.

failures of SVB and Signature. As the FDIC recognized, this "most welcome" action by our member institutions "demonstrate[d] the resilience of the banking system."[10]

The U.S. GSIBs played this stabilizing role during the most recent crisis because of their strength and resiliency. As noted above, U.S. GSIBs have stable funding sources and high-quality assets and engage in prudent and effective asset-liability management practices. In addition, they are subject to the highest level of prudential requirements, including, for example, factoring losses on available-for-sale securities into the calculation of their capital ratios. Further, their compliance with the total loss-absorbing capacity ("TLAC") rule already requires them to incur the cost of holding a minimum amount of long-term debt ("LTD") above and beyond minimum regulatory capital requirements (which include a GSIB surcharge). As FDIC Chairman Martin Gruenberg recently noted, including unrealized losses in capital ratios "might have averted the loss of market confidence and the liquidity run" at SVB,[11] and a long-term debt buffer at SVB and Signature may have allowed the FDIC to resolve SVB and Signature in a manner that "protected all uninsured depositors without use of a systemic risk exception."[12] Chairman Gruenberg has previously observed that unlike regional banks, U.S. GSIBs are already subject to such LTD requirements.[13] By issuing sufficient amounts of eligible LTD and making other changes to support their resolvability,[14] U.S. GSIBs have reduced the likelihood of deposit runs at their subsidiary banks[15] and have substantially increased their resilience.[16]

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10 FDIC, Joint Statement by the Department of the Treasury, Federal Reserve, FDIC, and OCC (Mar. 16, 2023), available *here*.

11 FDIC, Remarks by Chairman Martin J. Gruenberg on the Basel III Endgame at the Peterson Institute for International Economics (June 22, 2023), available *here*.

12 FDIC, Remarks by Chairman Martin J. Gruenberg on "Oversight of Prudential Regulators" before the Committee on Financial Services, United States House of Representatives (May 16, 2023), available *here*.

13 FDIC, Remarks by Martin J. Gruenberg, Member, Board of Directors of the Federal Deposit Insurance Corporation on An Underappreciated Risk: The Resolution of Large Regional Banks in the United States (Oct. 16, 2019) ("Gruenberg 2019 Remarks"), available *here*.

14 Letter from Kevin Fromer, President and CEO, FSF, to Financial Stability Board ("FSB") (June 28, 2019), available *here*; Letter from Kevin Fromer, President and CEO, FSF, and Rob Nichols, President and CEO, American Bankers Association, to FSB (noting "the significant progress made in achieving reform goals, specifically the substantial increases of [TLAC], the implementation of robust crisis management plans through recovery and resolution planning, and the development of legal, financial and operational strategies to support orderly resolution if required.") (Sept. 30, 2020), available *here*.

15 LTD supports the U.S. GSIBs' single-point-of-entry resolution plans. Because only a top-tier holding company would enter resolution proceedings and losses would be imposed on the holding company's equity and LTD holders, short-term creditors of the holding company's subsidiaries (such as depositors of its subsidiary bank) would be less likely to run. *See* Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank

It is also important to refute the suggestion that deposit inflows experienced by the U.S. GSIBs are a result of "Too-Big-to-Fail" perceptions. Forum member institutions attracted deposits in the wake of the SVB and Signature failures because of their significant resilience, strong balance sheets, prudent risk management practices and liquidity strength. In particular, according to the Federal Reserve Board's most recent Financial Stability Report, Forum member institutions maintain a liquidity buffer that is more than five percentage points higher than the "large non-GSIB banks" identified in the report.[17] Deposit flows into Forum member institutions during the period of bank failures were solely a result of their observable strength.

Despite U.S. GSIBs not benefitting from the SRE determination and serving as sources of strength and resilience to the banking sector, our member institutions would pay approximately 60% of the total special assessment. At a minimum, we request that the final rule acknowledge the differentiated role played by our member institutions and not mischaracterize the role of our member firms.

2. The Proposal fails to consider distinctions among banks' risk profiles and different types of uninsured deposits

The Proposal bases the special assessment entirely on the total estimated amount of uninsured deposits held by banks, as reported on a bank's Call Report or FFIEC 002.[18] As Vice Chairman Hill notes, however, "[t]he biggest problem with using total uninsured deposits as a metric to gauge who was helped most by the systemic risk exception" is that banks that did and did not benefit from the SRE determination both have high amounts of uninsured deposits.[19] In addition, research by Federal Reserve Board economists shows that the amount of uninsured deposits "fail[s] to explain large banks [sic] deposit growth" following the SVB and Signature failures.[20]

By relying solely on the amount of uninsured deposits, the Proposal fails to consider important distinctions in banks' risk profiles. For example, banks with stable funding,

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Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations 82 Fed. Reg. 8266, 8298 (Jan. 24, 2017).

[16] *See* Sean Campbell, Capital and Beyond: Total Loss Absorbency and Financial Resiliency, Financial Services Forum (Feb. 13, 2019) (discussing cost of LTD), available *here*.

[17] Federal Reserve Board, Financial Stability Report at 51 (May 2023), available *here*.

[18] By relying on this gross estimate, which includes, for example, deposits of a bank's wholly owned subsidiaries, and which Chairman Gruenberg has noted "overstate[s] the volume of uninsured deposits to some degree," the FDIC may be introducing measurement error into the special assessment. *See* Gruenberg 2019 Remarks, *supra* note 13.

[19] Hill Statement, *supra* note 8.

[20] Caglio, et al, *supra* note 9, at 13.

high-quality assets and prudent asset-liability management practices are less susceptible to deposit outflows, including outflows of uninsured deposits.

The Proposal further fails to distinguish among different types of uninsured deposits. The FDIC and other agencies previously have recognized that not all types of uninsured deposits are equally likely to run in stress situations and have stated that operational deposits related to the clearing, custody and cash management services our member institutions provide "present less liquidity risk during a stress period" and "are more stable than non-operational funding."[21] As a result, it seems inappropriate to impose the special assessment equally on uninsured deposits with different liquidity characteristics and risk profiles.

We appreciate the FDIC's prompt action to stabilize the financial system in the wake of SVB's and Signature's rapid failure and acknowledge the statutory requirement to recover losses to the DIF related to the SRE determination. Nevertheless, we believe the Proposal, which uses estimated uninsured deposits as its assessment base, neither accurately reflects the entities that benefitted from the SRE determination nor differentiates between stable and unstable types of uninsured deposits. We urge the FDIC to ensure that it does not incorporate a similar approach in its regular assessment methodology and to consider in the future a more risk-based assessment methodology that recognizes that accounting for factors such as funding stability, asset quality and prudent asset-liability management practices would more accurately address the statutory factors the FDIC must consider in imposing a special assessment.

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[21] Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 Fed. Reg. 61439, 61498, 61502 (Oct. 10, 2014). Under the agencies' liquidity coverage ratio rules, operational deposits are assumed to flow out at far lower rates than other uninsured wholesale deposits. *Compare* 12 CFR § 329.32(h)(4) (outflow rate of 25% for uninsured operational deposits) *with* § 329.32(h)(1), (5) (outflow rates of 40 to 100% for uninsured, non-operational unsecured wholesale funding).

Thank you for considering these comments. Please feel free to contact the undersigned (KFromer@fsforum.com) with any questions.

Respectfully submitted,

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President and CEO
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