102 Duffy Avenue
Hicksville, New York 11801
www.flagstar.com

R. PATRICK QUINN, ESQ.
Senior Executive Vice President, General Counsel & Corporate Secretary
Phone: (516) 683-4570 ● E-mail: Patrick.Quinn@myNYCB.com

July 21, 2023

VIA EMAIL TRANSMISSION
comments@fdic.gov

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: **Public Comment of NYCB Concerning RIN 3064-AF93**

Dear Mr. Sheesley:

Thank you for the opportunity to comment on proposed regulations authorizing the Federal Deposit Insurance Corporation to collect special assessments to replenish the Deposit Insurance Fund (the "*DIF*") following a governmental determination of systemic risk to the U.S. financial sector. New York Community Bancorp Inc. ("*NYCB*")[1] appreciates and supports the FDIC's objective to address the decline in the reserve ratio of the DIF in the wake of the recent failures of Silicon Valley Bank and Signature Bank and the impact those circumstances had on numerous FDIC-insured institutions ("*IDIs*"). While we write in overall support of the invocation of a systemic risk exception and the measures proposed to make special assessments to replenish the DIF using IDI uninsured deposit volumes as a measure, for the reasons explained below, NYCB believes it is entitled to receive proportional credit for its role in acquiring the failed Signature Bank and assuming its uninsured deposits.

Statutory Authority for Systemic Risk Exception and Special Assessment

Losses to the DIF may be repaid by a special assessment on banks as allowed by law. The FDIC has authority, in implementing a special assessment, to consider "the types of entities that benefit from any action taken or assistance provided." 12 U.S.C. 1823(c)(4)(G)(ii)(III). On March 12, 2023, after the closures of Signature Bank by the New York Department of Financial Services and Silicon Valley Bank by the California Department of Financial Services and Innovation, the Treasury Department, Federal Reserve, and FDIC issued a Joint Statement

[1] New York Community Bancorp, Inc., organized under Delaware law in 1993, is the holding company for Flagstar Bank N.A. (hereinafter referred to as "*Flagstar*). NYCB is headquartered in Hicksville, New York with regional headquarters in Troy, Michigan.

invoking a systemic risk exception to avoid serious adverse effects on economic conditions and financial stability. Later, on May 11, 2023, the FDIC used its rulemaking authority to promulgate a Notice of Proposed Rulemaking entitled "Special Assessments Pursuant to Systemic Risk Determination" (RIN 3064-AF93) ("*Proposed Special Assessment Rule*").

Flagstar Acquisition of Signature Bank

On March 20, 2023, after the FDIC established Signature Bridge Bank, N.A., as successor to Signature Bank, New York, NY ("Signature"), it announced that NYCB's wholly-owned bank subsidiary, Flagstar, entered into a Purchase and Assumption Agreement with the FDIC, as receiver of Signature, to acquire certain assets and assume certain liabilities of Signature.[2] In connection with the Signature transaction, Flagstar assumed all of Signature's branches and acquired parts of Signature viewed as financially and strategically complementary to enhance future growth. Among other things, Flagstar:

- Purchased assets of approximately $38 billion, [redacted]
- Assumed liabilities approximating [redacted]

Flagstar's assumption of Signature's deposits, including uninsured balances, in March 2023, helped to resolve a banking crisis and lower cost to the FDIC. We support the FDIC's actions. We also propose an approach that would exclude Signature Bank's year-end uninsured deposits from the special assessment calculation as applied to NYCB and Flagstar.

Proposed Special Assessment Rule

A financially sound DIF is essential to support the country's financial system. FDIC is required to recover through special assessments any losses to DIF incurred as a result of actions of FDIC pursuant to a determination of systemic risk. Here, the total amount collected for the proposed special assessments would be approximately equal to the losses attributable to the protection of uninsured depositors at Signature and Silicon Valley Bank, currently estimated at $15.8 billion. To recover those losses to the DIF, the FDIC proposes an annual special assessment rate of approximately 12.5 basis points for each IDI affected by the Proposed Special Assessment Rule.[3] The proposed rule would impose a special assessment on IDIs that are part of

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[2] Signature Bank was a full-service commercial bank that operated 29 branches in New York, seven branches in California, two branches in North Carolina, one branch in Connecticut, and one branch in Nevada.

[3] The assessment base for the special assessments would be equal to an IDI's estimated uninsured deposits, reported as of December 31, 2022, adjusted to exclude the first $5 billion in estimated uninsured deposits from the IDI, or for IDIs that are part of a holding company with one or more subsidiary IDIs, at the banking organization level. *See*

banking organizations which reported $5 billion or more in uninsured deposits, as of December 31, 2022. While NYCB agrees with and supports the imposition of a special assessment, and understands the rationale behind imposing assessments based on uninsured deposit volumes, the application of the Proposed Special Assessment Rule to measure NYCB's assessment obligation should not apply to the uninsured deposits Flagstar assumed from Signature. Moreover, we respectfully submit that the FDIC should consider raising the amount of uninsured deposits subtracted from the measure of the Special Assessment from $5 billion to $10 billion to align with regulatory expectations for larger institutions. Regulators and market participants often view institutions of $10 billion in total assets or more as indications of complexity or having expanded business activities. Increasing the Special Assessment measurement to $10 billion may better align with existing regulatory and industry performance metrics and measurements.

Failed Bank Uninsured Deposit Assumptions

As noted in the Proposed Special Assessment Rule, the FDIC considers the types of entities that benefit from action taken or assistance provided under the determination of systemic risk, as well as economic conditions, the effects on the industry, and such other factors as the FDIC deemed appropriate and relevant to the action taken or assistance provided. See 12 U.S.C. 1823(c)(4)(G)(ii)(III). We agree with this principle as applied to NYCB's circumstances here, and believe it warrants an interpretation of the proposed special assessment that excludes the uninsured deposits of Signature assumed by NYCB. For example, Signature's uninsured deposits at December 31, 2022 were higher than those held at the time of the failure on March 10, 2023, the creation of Signature Bridge Bank, and the purchase and assumption by NYCB on March 19, 2023.

NYCB was well positioned and sound prior to the recent market turmoil, with strong capital, a stable retail deposit franchise, and ample liquidity. As a result of this strong position, NYCB was able to intervene and assume all Signature's remaining uninsured deposits through Flagstar. By assuming Signature's large uninsured deposit volumes, NYCB served the public interest in reducing the coverage needed from the DIF. As a matter of public policy, the special assessment should not discourage the assumption of deposits of failed banks from the FDIC.

We support the Proposed Special Assessment Rule and an approach that excludes the assumption of deposits from the failures of Silicon Valley Bank and Signature. For example, the proper measure for NYCB's special assessment obligation should be NYCB's aggregate level of uninsured deposits across its bank subsidiaries as of December 31, 2022, excluding Signature's uninsured deposits. We ask the FDIC to clarify that the estimates in the proposed rule exclude the uninsured deposits that NYCB assumed from Signature in March 2023.

Proposed Special Assessment Rule at 1. *See also* 12 C.F.R. 327.13(f)(3)(ii) Special Assessment Pursuant to March 12, 2023, Systemic Risk Determination ("(ii) The special assessment base for an insured depository institution during the initial special assessment period that has one or more affiliated insured depository institutions shall equal: (A) The institution's uninsured deposits, as described in paragraph (h); minus (B) The institution's portion of the $5 billion deduction, determined according to paragraph (i) of this section; provided, however, that an institution's special assessment base cannot be negative.").

Specific Requests for Comment

Finally, as the FDIC requests comment on all aspects of the notice of proposed rulemaking, in addition to our commentary above, we provide the following brief answers to the specific requests presented below.

Question 1: ***Should the special assessments be calculated as proposed?*** Yes. NYCB favors action invoking systemic risk exception in the present circumstances and generally supports a proposed special assessment based on uninsured deposit volumes of IDIs as of December 31, 2022. In providing this response, NYCB has taken into consideration the alternatives described in the Proposed Special Assessment Rule.

Question 2: ***Are there alternative methodologies for calculating the special assessments the FDIC should consider that would result in financial reporting in accordance with U.S. GAAP and could result in different timing for the impact to earnings and capital? Please describe.*** NYCB agrees that the special assessment must adhere with GAAP and appropriate regulatory and other disclosures.

Question 3: ***Should the assessment base for the special assessments be equal to estimated uninsured deposits reported as of December 31, 2022, or reported as of some other date, and why?*** We agree with the year-end 2022 uninsured deposits as the assessment base.

Question 4: ***Should the assessment base for the special assessments be equal to estimated uninsured deposits or some other measure?*** We support the proposal and its suggested assessment base. While the FDIC could consider a risk-based measure to allocate the assessment base, it would not likely materially change bank obligations.

Question 5: ***Is the deduction of $5 billion of aggregate estimated uninsured deposits from the assessment base for the special assessments for each IDI or banking organization appropriate? Why?*** Yes, in part. A $5 billion buffer helps prevent "cliff effect" and is appropriate because large portions of the domestic deposit funding of regional or large banks rely on uninsured deposit bases. However, we respectfully suggest the FDIC consider raising the amount of uninsured deposits subtracted from the measure of the Special Assessment from $5 billion to $10 billion to align with the enhanced risk management and performance requirements expected of larger institutions.

Question 6: ***Should the FDIC collect special assessments over an eight-quarter collection period, as proposed? Should the collection period be longer to spread out the effects of the payment of special assessments, or shorter?*** We support the proposed timeline for collections of the assessment. We understand that the assessments could have liquidity implications for certain banks. Nonetheless, we believe that banks should have the option to fully fund obligations prior to the end of the proposed time period.

Question 7: ***Should the FDIC consider an exemption for specific types of deposits from the base for special assessments? On what basis?*** Yes. The FDIC should consider whether uninsured public deposits should be excluded from the assessment base.

Question 8: ***Should any shortfall special assessments be calculated as proposed?*** Yes. The mechanism for addressing any shortfall appears appropriate as proposed.

Very Truly Yours,

R. Patrick Quinn
Senior Executive Vice President
General Counsel & Corporate Secretary