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July 7, 2023

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

VIA ELECTRONIC SUBMISSION

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

The proposed change to FDIC premiums imposes a special assessment to recover anticipated losses to the Deposit Insurance Fund ('DIF') due to the systemic risk determination and subsequent responses to recent bank failures. While restoration of the DIF is crucial to support the banking industry and ensure depositor confidence the proposed rulemaking requires additional consideration before taking effect in Q1 of 2024.

The proposal indicates the bank failures will cost the DIF approximately $15.8 billion. The uncertainty about the amount of the total loss requires a provision for an extension of the assessment period or a one-time shortfall assessment to make up any difference between the amount collected over the proposed two-year period and the actual loss. The potential for an open-ended obligation or make-up charge adds a challenge to forecasting income and capital levels in an already murky economic environment. When projecting the impact of the special assessment on capital and earnings the proposal assumes banks will be at income levels approximating their average quarterly income for 2022. Increases in interest rates have reduced net interest margins so looking backwards to project earnings understates the special assessment's impact on capital and earnings. The proposal also set the bar for capital maintenance at 'adequately capitalized,' while determining an average reduction in capital of 61 basis points from the assessment. Layering an additional 61 basis point stress on capital will likely create greater scrutiny by examiners, shareholders, and markets, whose expectations typically exceed adequate capitalization. The rule should also consider that Bank Capital plans often call for charges against capital levels for the types of liquidity and funding measures on which banks have been more reliant in 2023. Therefore, the analysis in the proposal may not be properly aligned with both market conditions and prudent management practices.

The rapidly evolving landscape in 2023 forced smaller banks to prioritize liquidity during the concurrent hurdles of significant deposit runoff and continuous interest rates increases. These events further burdened institutions given the impact of the FDIC's 2 basis point increase to assessment rates currently in place. The 2 basis point increase was calculated under a larger system-wide deposit base. The trend since mid-2022 has been the opposite, with declining deposits being further compounded by the more recent contraction, banks are seeing an outsized negative impact from that action. While uninsured deposits will comprise the large majority of the losses incurred from the recent bank failures and therefore make a reasonable basis for a special assessment, the proposal should consider a more comprehensive risk-based approach and a lengthier collection period to allow banks to adjust to the existing increase in the regular assessment while still navigating a period of significant volatility.

The proposed 12.5 basis point annual increase attempts to direct the largest burden of the special assessment to large banks as the primary beneficiaries of the systemic risk determination. Excluding the first $5 billion of uninsured deposits as of December 31, 2022, does not consider the relative risk those deposits presented at each institution. In particular, and as noted in the proposal, banks under $50 billion in assets are less reliant than larger institutions on uninsured deposits. Such banks typically feature community-focused lines of business, rather than specialized and concentrated lines, while relying on core deposits from a diverse depositor base. The special assessment may be disproportionately high for this class of bank when considering its typically lower risk profile (zero failures of banks between $10 – 50 billion assets over the past 13 years). As noted in the proposal, calculating the special assessment base using uninsured deposits as a percentage of total deposits was considered as an alternate approach to the $5 billion exception of uninsured deposits. The reasons for rejecting this uninsured deposit ratio as the lone factor in determining the base were sound. However, if enacted in conjunction with the proposed $5 billion exception, the rule would both protect small banks and apply the assessment to organizations that bore greater risk.

While a special assessment is needed to ensure the long-term health of the DIF, the approach should place greater responsibility on banks that carried the vast majority of the industry risk from uninsured deposits leading up to the systemic risk declaration, which are the same banks that benefitted from the declaration, and be commensurate with an individual institution's risk profile.

We appreciate the opportunity to comment on the questions raised in the Proposed Rulemaking.

Question 1 of the Proposed Rulemaking asks;

> *Question 1: Should the special assessments be calculated as proposed?*

The calculation should be revised with adjustments to reflect the risks presented by banks prior to the systemic risk declaration and the impact to banks from the declaration. To assessment should seek not just to plug a hole in the DIF but to promote prudent practices going forward. This can be accomplished through risk-based adjustments to the assessment. Options could include existing data from the regular FDIC assessment such as the Core Deposits score. Alternatively or additionally, an adjustment for the uninsured deposits ratio would provide a meaningful gauge of contributory risk.

Question 2 of the Proposed Rulemaking asks;

> *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.*

As proposed, would incur a loss on the date that the Special Assessment is published as a final rule in the Federal Register. Once the loss is incurred on that date, the total amount of the Special Assessment would be reasonably estimable and should be recognized. Additionally, it would be inappropriate to recognize the loss prior to the publication of the final rule. As the FDIC notes, the loss would be treated as a one-time loss. While the one-time loss may have marginal effect on the financial statements of larger banks, it can have an outsized impact on mid-size and regional banks given their concentrated reliance on revenue through traditional banking. The FDIC should consider restructuring the assessment as a prepaid expense that can be amortized over a multi-year period rather than a one-time loss as of the date when the final rule is published. This greater flexibility would allow banks to reduce the immediate and one-time impact to earnings and capital and remain GAAP compliant.

Question 3 of the Proposed Rulemaking asks;
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?

The reporting date of December 31, 2022, does not consider the impact of the volatility experienced by many banks. Using March 31, 2023, or June 30, 2023, as the reporting date would be better options. The gain or loss of deposits at each bank and therefore the impact of the systemic risk declaration could be more accurately measured by those later time periods. Our mid-size bank lost 16% of uninsured deposit balances between December 31, 2022, and March 31, 2023.

Question 4 of the Proposed Rulemaking asks;
Question 4: Should the assessment base for the special assessments be equal to estimated uninsured deposits or some other measure?
Estimated uninsured deposits is an appropriate starting point for the assessment base. But using only a static figure does not measure the impact an institution had on the systemic risk nor the benefit or harm each institution experienced from the systemic risk declaration.

Question 5 of the Proposed Rulemaking asks;
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?

The proposal describes the $5 billion exception as preventing small banks from bearing the burden of the assessment and prevents banking organizations with multiple insured institutions from stacking exceptions for each of their subsidiaries. Mid-size banks between $10 – 50 billion in deposits were proportionately impacted by deposit flight to large banks. As the proposal references, the average ratio of uninsured deposits for this group is 39.9% which means the range of average uninsured deposits is $3.99 – 19.95 billion and the size of the range is $15.96 billion. The exclusion therefore only has a range penetration of 6% ($5 – 3.99 billion = $1.01 billion; $1.01 / $15.96 billion = 6%) of the average uninsured deposits. Based on the overall impact to this group, an exemption falling within the average range that is closer to this group's average reliance on uninsured deposits, or $10 billion, would be more appropriate ($15.96 billion x 39.9% = $10.36 billion).

Question 6 of the Proposed Rulemaking asks;
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?

Considering the possibility of a future assessment to address the projected DIF loss at First Republic, a lengthier period of 3-4 years for this assessment would be beneficial. While this would help cash flow, the benefit would be diminished without a change to timing of recognition as addressed in question 2.

Question 7 of the Proposed Rulemaking asks;
Question 7: Should the FDIC consider an exemption for specific types of deposits from the base for special assessments? On what basis?

Exclusions should be considered for intercompany deposits and public funds which must be collateralized to meet statutory requirements. These accounts would not be subject to resolution by the FDIC and therefore should be excluded from the base assessment.

Question 8 of the Proposed Rulemaking asks;
Question 8: Should any shortfall special assessments be calculated as proposed?

The methodology for the shortfall calculation is only reasonable as long as the assessment base calculation is changed to both incorporate a risk-based component and reflect the full impact from the systemic risk determination, as detailed herein.

As a mid-sized bank, we support the FDIC's ability to protect deposits in response to events the banking industry experienced this year. Banks have faced strong headwinds over the past three years for a variety of reasons but have generally persevered because of the commitment to strong capital levels and responsible growth. Although multiple economic and market uncertainties remain present, domestic banks show the ability to operate under not just stress testing scenarios but actual disruptive events. To promote the ongoing diversity and vitality of the industry, the special assessment should be modified to better apportion the burden.

Thank you for your consideration of our comments. If you have any questions or need clarification on any issues raised, please contact me at (303) 235-1356.

Sincerely,

[redacted]

Mike Kirby
Controller
FirstBank Holding Company