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Via Electronic Mail:

January 5, 2023

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Attention: Ms. Ann E. Misback
Secretary
regs.comments@federalreserve.gov
Docket No. Op-1786

Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429

Attention:
Mr. James P. Sheesley
Assistant Executive Secretary
comments@fdic.gov
RIN 3064-AF86

Re: ANPR Resolution-Related Resource Requirements for Large Banking Organizations

Dear Ms. Misback and Mr. Sheesley,

On behalf of Piper Sandler & Co., I am responding to the request for comments from The Board of Governors of the Federal Reserve System (the "Board") and the Federal Deposit Insurance Corporation (the "FDIC") regarding the advance notice of proposed rulemaking ("ANPR") on whether an extra layer of total loss-absorbing capacity ("TLAC") should be added to help in resolving a large banking organization or its insured depository institution. [1]

Piper Sandler is a market-leading, full-service investment banking firm and broker-dealer with a focus on the financial services sector along with several other sectors.[2] Our clients include almost a thousand banks and thrifts (together, "banks") and their holding companies. This letter has been prepared from the perspective of experienced practitioners in the financial sector at a 120-year-old firm that, with its clients, have navigated multiple periods of crisis and regulatory reform. We are currently ranked as the leading M&A financial advisory services for depository institutions and have been ranked #1 based on number of deals each of the past ten years. [3] In addition, we have also consistently been among the top advisors for debt and equity capital raising for U.S. banks and their holding companies.

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[1] Advanced Notice of Proposed Rulemaking. Resolution-related Resource Requirements for Large Banking Organizations. Federal Reserve System, Federal Deposit Insurance Corporation. October 24, 2022.
[2] For further information on Piper Sandler: https://www.pipersandler.com/
[3] S&P Capital IQ M&A League table for the years 2012 – 2022 YTD, Data as of December 21, 2022

The ANPR requests comments on the merits of requiring an extra layer of TLAC at large banks, which are currently exempt from this capital requirement. TLAC requirements are currently applied to the eight U.S. Global Systemically Important Banks ("GSIBs")[4] but not to other large banks exceeding $100 billion in assets nor do they apply to foreign GSIBs. TLAC is designed to enhance financial stability by limiting contagion risk through the reduction in the likelihood of uninsured depositors suffering loss. TLAC also potentially provides more options for the FDIC to resolve a failed bank in a way that reduces long term financial stability risk and preserves optionality.

This ANPR requests public input on 12 questions covering a variety of considerations and nuances on the proper way to structure TLAC requirements and the types of companies to which the requirements should apply. In many respects, these questions are comparable to the request for information that the FDIC published in March of 2022 to determine "what if any additional requirements should be included in the existing regulatory framework to address the financial stability risk factor included in the Dodd-Frank Act ("DFA")? Should any merger transaction that results in a financial institution that exceeds a predetermined asset size threshold, for example $100 billion in total consolidated assets, be presumed to pose a systematic risk?"[5]

As was the case in our response for the request for information on changes to the Bank Merger Act, the fundamental issue is whether an increase in asset size poses a systemic risk that the current regulatory framework does not address.[6] If the current regulatory, legislative, and accounting framework does not properly address the risk of increased asset size, then additional protective measures such as requiring additional TLAC could be needed to absorb potential losses.

From our view, the existing framework with Basel III capital and liquidity requirements and the DFA prudential risk standards, along with CECL reserve requirements, adequately address the financial stability risk included in the DFA. The U.S. regulatory capital system is currently tiered based on asset size, complexity, and risk. Banking organizations below $100 billion in assets have the choice of three capital regimes ranging from: (i) the small bank holding company policy statement for banks with $3 billion or less in assets, (ii) the community bank leverage ratio for banks with $10 billion or less in assets, or (iii) the Basel III Standardized Approach.

Banking organizations above $100 billion in assets are determined to be either Category I, Category II, Category III, or Category IV banking organizations based on their asset size and their scores on four risk components including cross-jurisdictional activity, total short term wholesale funding, nonbank assets, and off-balance sheet exposure. Advanced approaches banking organizations are those in Category I and II; (i.e., U.S. GSIBs and banking organizations that have $700 billion or more in total consolidated assets or $100 billion or more in total consolidated assets and $75 billion or more in cross-jurisdictional activity). Banking organizations that are not determined to be Category I or II institutions but have $250 billion or more in total consolidated assets or $100 billion or more in

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[4] As of September 30, 2022, these banks consisted of JPMorgan Chase & Co., Bank of America, Citigroup, Inc. Wells Fargo & Company, The Goldman Sachs, Group, Inc. Morgan Stanley, The Bank of New York Mellon Corporation, and State Street Corporation.
[5] Request for Information on the Bank Merger Act. Federal Deposit Insurance Corporation. March 25, 2022.
[6] For further information on Piper Sandler's response to the request for information on the Bank Merger Act please see: https://www.pipersandler.com/insight/piper-sandler-comment-letter-fdic-regarding-bank-merger-act

total consolidated assets and $75 billion or more in weighted STWF, nonbank assets or off-balance sheet exposure would be considered Category III banking organizations. Banking organizations that are not Category I, II or III but have $100 billion or more but less than $250 billion in consolidated total assets and do not meet or exceed any of the four risk component indicators would be classified as Category IV. Both Category III and IV institutions are subject to the Basel III Standardized Approaches rules. It is important to note that for banking institutions above $100 billion in assets their risk category is strongly influenced by the four risk components in addition to asset size.

Chart A below illustrates the impact of the calculation of these risk factors on the determination of Category I through IV status. As you can see, despite having less than $250 billion in total consolidated assets, Northern Trust Corporation is considered a Category II bank due to its very high level of cross-jurisdictional activity at $121 billion, which far exceeds the $75 billion threshold.

Chart A

Regulatory Risk Categories with Calculations of Four Risk Components

Category	Asset Size Rank	Company Name	Total Assets ($000)	Cross-Jurisdictional Activity[1] ($000)	Short-term Wholesale Funding[2] ($000)	Nonbank Assets[3] ($000)	Off-Balance Sheet Exposures[4] ($000)
I	**1**	JPMorgan Chase & Co.	3,773,884,000	**1,963,553,000**	**654,751,950**	**809,904,000**	**661,233,700**
I	**2**	Bank of America Corporation	3,072,953,000	**946,108,000**	**517,660,400**	**709,045,000**	**525,593,400**
I	**3**	Citigroup Inc.	2,381,064,000	**2,199,155,000**	**389,124,500**	**763,314,000**	**520,250,900**
I	**4**	Wells Fargo & Company	1,877,745,000	**242,483,272**	**132,805,608**	**203,900,000**	**378,478,232**
I	**5**	The Goldman Sachs Group, Inc.	1,555,994,000	**1,232,447,000**	**441,230,150**	**1,283,540,000**	**380,256,100**
I	**6**	Morgan Stanley	1,160,029,000	**680,492,000**	**370,290,000**	**903,313,480**	**252,119,700**
I	**12**	The Bank of New York Mellon Corporation	427,953,000	**327,023,000**	**86,496,450**	69,599,000	29,580,900
I	**13**	State Street Corporation	303,568,000	**269,291,000**	42,321,366	14,864,000	37,780,300
II	**22**	Northern Trust Corporation	159,839,583	**121,413,000**	33,065,530	210,372	16,568,640
III	**8**	The Charles Schwab Corporation	577,563,000	35,531,000	**129,763,450**	**163,091,000**	4,179,900
III	**7**	U.S. Bancorp	600,973,000	64,097,000	46,345,150	9,188,130	**140,258,900**
III	**9**	The PNC Financial Services Group, Inc.	559,495,699	21,510,000	33,949,913	8,735,492	**99,934,962**
III	**10**	Truist Financial Corporation	548,438,000	9,032,000	42,176,450	15,639,000	**91,824,600**
III	**11**	Capital One Financial Corporation	444,232,099	7,624,237	13,441,748	4,258,483	**78,449,026**
IV	**16**	SVB Financial Group	212,868,000	62,157,000	53,517,400	0	16,810,600
IV	**17**	Fifth Third Bancorp	205,463,245	5,056,609	14,887,626	960,575	33,666,944
IV	**14**	Citizens Financial Group, Inc.	225,138,533	5,014,782	18,943,394	530,740	33,388,053
IV	**15**	American Express Company	214,915,000	48,797,000	8,819,850	53,010,521	40,130,300
IV	**19**	KeyCorp	190,232,450	2,130,000	14,511,785	1,768,183	40,251,666
IV	**20**	Ally Financial Inc.	188,640,000	1,068,000	7,335,200	9,593,000	6,589,800
IV	**21**	Huntington Bancshares Incorporated	179,402,155	2,040,000	8,837,614	263,078	18,958,265
IV	**23**	Regions Financial Corporation	157,943,000	2,081,000	15,969,600	403,000	27,903,600
IV	**18**	M&T Bank Corporation	197,955,479	684,139	18,762,159	260,320	17,789,450
IV	**24**	Discover Financial Services	121,885,743	80,000	4,450,188	3,268,391	26,349,326

Source: S&P Capital IQ; Data as of September 30, 2022

Numbers highlighted in orange illustrate levels exceeding the $75 billion threshold

(1) *Calculated as the sum of cross-jurisdictional assets and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 reporting form.*

(2) *Based on the calculation for weighted short-term wholesale funding used for purposes of the GSIB surcharge rule consisting of wholesale or retail brokered deposits and sweep accounts with a remaining maturity of 1 year or less. Categories of STWF are then weighted based on four residual maturity buckets, the asset class of collateral (if any), and the characteristics of the counterparty.*

(3) *Based on the average amount of equity investments in consolidated nonbank subsidiaries and equity investments in unconsolidated nonbank subsidiaries but excluding assets held in a depository institution as well as assets held in each Edge Act or Agreement Corporation through a bank subsidiary.*

(4) *As currently reported on the FR Y-15 by BHCs with more than $100 billion in assets, this measure would define total exposure as on-balance sheet assets plus certain off-balance sheet assets, including derivative exposures, repo-style transactions, and other off-balance sheet exposures such as loan commitments.*

As shown in Chart B below, the categorization of large banks ranging from Category I, II, III or IV, determines the level of stress testing, capital, and liquidity requirements. To the extent a banking institution exceeds $100 billion in assets and therefore falls into measurement as either a Category I, II, III or IV institution, it would be required to calculate its level of cross-jurisdictional activity, total short term wholesale funding, nonbank assets, and off-balance sheet exposure. Based on its asset size and the calculations of its four risk components, it could change its risk category from being a Category II, III or IV bank. However, to be classified as a Category I banking institution, it would have to be a Category II bank and meet additional risk parameters based on Method 1 or Method 2 scores[7]. If determined to be a Category I institution, it would be expected to comply with additional requirements including TLAC.

Chart B

Revised Stress Testing, Liquidity and EPS Requirements
(effective December 31, 2019)

		Capital			Liquidity		
Category	**Stress Testing**	**TLAC**	**B3 Risk Based Capital**	**Leverage**	**LCR**	**NSFR**	**Internal**
Category I (8 banks)	Annual CCAR *(qualitative & quantitative)* Annual Supervisory DFAST Annual Company Run Annual Capital Plan	TLAC	Advanced Approaches GSIB Surcharge Countercyclical Buffer No opt-out of AOCI	Enhanced Supplementary Leverage Ratio	100% LCR	100% NSFR	Monthly Stress Test
Category II (1 banks)	Annual CCAR *(qualitative & quantitative)* Annual Supervisory DFAST Annual Company Run Annual Capital Plan	N/A	Advanced Approaches Countercyclical Buffer No opt-out of AOCI	Supplementary Leverage Ratio	100% LCR	100% NSFR	Monthly Stress Test
Category III (5 banks)	Annual CCAR *(qualitative & quantitative)* Annual Supervisory DFAST Bi-Annual Company Run DFAST Annual Capital Plan	N/A	Countercyclical Buffer Allow opt-out of AOCI	Supplementary Leverage Ratio	85% LCR If Wt. STWF <$75 B	85% NSFR If Wt. STWF <$75 B	Monthly Stress Test
Category IV (10 banks)	Bi-Annual CCAR *(quantitative only)* Bi-Annual Supervisory DFAST Annual Capital Plan	N/A	Allow opt-out of AOCI	Leverage Ratio	70% LCR if Wt. STWF => $50 B	70% NSFR if Wt. STWF => $50 B	Quarterly Stress Test

Source: Federal Reserve

In the chart above, as previously mentioned, only the 8 GSIBs are currently subject to TLAC requirements which provide for the conversion of bank holding company debt to equity in the event of the failure of the bank. There are clear benefits in resolution of having BHC debt down streamed as equity to the bank to provide loss absorbing capital to support the resolution of the bank. As a practical matter, all BHCs that issue senior or subordinated debt and downstream the proceeds to their bank subsidiary as equity accomplish substantially the same result without the complexity or expense of issuing additional TLAC debt.

[7] All Category II BHCs must determine whether they are U.S. GSIBs by December 31st every year. GSIBs are considered Category I banking institutions. The GSIB assessment methodology is based on the higher of scores produced by two methods of risk assessment. Method 1 measures size, interconnectedness, substitutability, complexity and cross-jurisdictional activity. Method 2 replaces substitutability with short term wholesale funding.

As shown below in Chart C, the financial crisis of 2007 to 2009 brought regulatory, legislative, and accounting responses to the crisis to avoid future losses and risk to financial stability. While it has taken 13 years from the end of the financial crisis in 2009 to the first quarter of 2023, these responses will be complete with the required implementation of CECL in January of 2023 for smaller reporting companies, emerging growth companies, and all other companies.

Chart C

Timeline of the Financial Crisis and Response

CRISIS **Financial Crisis**	***REGULATORY AND LEGISLATIVE RESPONSE TO CRISIS*** **Basel III** **Dodd Frank Act**	***RESPONSE TO RESPONSE*** **U.S. Treasury Reports** **Fed's Basel III Simplification** **EGRRCPA**	***ACCOUNTING RESPONSE TO CRISIS*** **Lease Accounting** — **Reserves for Future Losses**
2007 2008	2009 2010 2011 2012 2013 2014 2015	2016 2017 2018	2019 2020 2021 2022 2023
	2010: DFA 2012: Basel III	2016: U.S. Election 2017: U.S. Treasury Core Principals Report; Basel III Simplification 2018: Economic Growth Regulatory Relief and Consumer Protection Act or EGRRCPA (S.2155)	2019: ASC 842 2020: CECL (ASC 326) For SEC Filer 2023: CECL For SRCs EGCs, and All Others

Reducing the likelihood of uninsured depositor losses may in fact uphold broad financial stability in a future financial crisis. However, creating a system of implied uninsured depositor protection for only the largest banking organizations may raise concerns about moral hazard risk. We should also consider the regulatory, legislative, and accounting responses to the last crisis that have already built a robust system of resolution planning, stress testing, capital, and liquidity requirements along with measurement of cross-jurisdictional activity, total short term wholesale funding, nonbank assets, and off-balance sheet exposure. Adding a requirement for additional TLAC outside of the existing framework for Category I, II, III, and IV banks, simply increases the cost to those banks with no nexus to additional risk other than asset size. Before adding a requirement for TLAC based solely on asset size, we would suggest amending the existing Category I, II, III and IV frameworks to better reflect and calibrate any perceived increase in risk.

Thank you for your consideration of our comments. We would welcome the opportunity to discuss these further with you or respond to any questions as the Board and FDIC consider updates to any TLAC requirements.

Respectfully submitted,

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Managing Director

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Tom Killian has over 40 years of capital markets and M&A transaction execution experience, with a long history at Piper Sandler of developing innovative capital instruments and representing the firm in conferences and private meetings with the Board, FDIC, OCC and others to discuss capital structure, restructuring and resolution strategies, CECL, Basel III and DFA related issues.

We would like to gratefully acknowledge the contributions to the preparation of this comment letter by Piper Sandler colleagues – Kevin Chaimowitz and Jennifer Chou.