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*By Electronic Submission*

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*Re: Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions (FRB Docket No. R-1815, RIN 7100-AG66; FDIC RIN 3064-AF86; OCC Docket ID OCC-2023-0011)*

Ally Financial Inc. ("Ally," "we," "our" or "us") appreciates the opportunity to comment on the Notice of Proposed Rulemaking on Long-Term Debt Requirements ("Proposal") issued by the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("OCC," and together with the FRB and the FDIC, the "Agencies").[1]

We recognize that the Agencies seek to enhance the resilience and resolvability of large banking organizations[2] ("LBOs") after the failures of Silicon Valley Bank ("SVB"), Signature Bank ("Signature"), and First Republic Bank in the spring of 2023. While long-term debt ("LTD")

[1] Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 Fed. Reg. 64,524 (proposed, September 19, 2023).

[2] For purposes of this letter, references to large banking organizations are consistent with the Proposal, which applies to non-GSIB U.S. banking organizations in Categories II, III, and IV. *See id.* at 64,529.

requirements may advance these goals to some degree, the rigid and untailored capital-refill framework set forth in the Proposal is not a proportionate solution.

Tailoring of enhanced prudential requirements, including LTD, for banking organizations between $100 billion and $250 billion in total consolidated assets ("Category IV LBOs")[3] is required by the Economic Growth, Regulatory Relief, and Consumer Protection Act ("S. 2155").[4] The Proposal effectively eliminates any differentiation across firms, holding Category IV LBOs to the same requirements as the largest and most complex banking organizations.[5] In doing so, the Agencies must have concluded that the S. 2155 statutory risk factors of capital structures, riskiness, complexity, financial activities (including financial activities of subsidiaries), sizes, and other risk-related factors of the Category IV LBOs are equivalent to theirs. Such a position is not supported by quantitative analysis. Ally—which has a risk profile that is representative of most Category IV LBOs—does not present financial-stability or safety-and-soundness risks that are remotely comparable to the global systemically important banking organizations ("GSIBs") or the LBOs in Categories II and III.[6]

Ally is the nation's largest all-digital bank and an industry-leading automotive-financing and insurance business. We serve customers through a full range of online banking services—including deposits, mortgage lending, point-of-sale personal lending, and credit-card products—as well as securities-brokerage and investment-advisory services. We also have a corporate-finance business that offers capital for equity sponsors and middle-market companies. As of September 30, 2023, we had approximately $196 billion in total consolidated assets, a common equity tier 1 ("CET1") capital ratio of 9.3%, and approximately $64 billion of available liquidity (including $26 billion of pledged discount-window capacity). Almost all of our business is conducted through our single insured depository institution ("IDI") subsidiary, Ally Bank. As of September 30, 2023, Ally Bank's total consolidated assets of $186 billion constituted

[3] Category IV LBOs in this letter refer to those U.S. large banking organizations with total consolidated assets of $100 billion or more and do not meet the thresholds for weighted short-term wholesale funding, non-bank assets, or off-balance sheet exposure pursuant to the FRB's tailored framework for regulatory capital and liquidity requirements. *See* Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 Fed. Reg. 59,230, 59,235 (final, November 1, 2019).

[4] Economic Growth, Regulatory Relief, and Consumer Protection Act § 401, Pub. L. No. 115–174 (2018).

[5] *See* Statement by Governor Michelle W. Bowman on the Proposed Long-term Debt Requirements and Proposed Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers (August 29, 2023), *found at* https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm ("I am concerned that collapsing Categories II, III, and IV into a single prudential category may call into question whether the Federal Reserve is complying with the statutory requirements to tailor prudential requirements for large firms."); Statement by Vice Chairman Travis Hill on the Proposed Long-term Debt Requirements for Large Banks (August 29, 2023), *found at* https://www.fdic.gov/news/speeches/2023/spaug29231.html ("As we consider how to balance costs and benefits in calibrating the requirement, we should also be mindful that . . . we are required by law to tailor enhanced prudential standards for large firms.")

[6] *See id.*

approximately 95% of Ally's total consolidated assets, and approximately 92% of the deposits at Ally Bank were FDIC-insured. See Appendix for more details on Ally's risk profile.

Given how readily the risk profiles of Category IV LBOs like Ally can be distinguished from the risk profiles of larger, more complex firms, we respectfully request the Agencies tailor the Proposal by revising the LTD requirements as follows:

1. Lower the proposed LTD requirements for a Category IV LBO from no greater than 6% to no greater than 2% risk-weighted assets ("RWAs") with proportional decreases made to the leverage-exposure and average-total-consolidated-assets ratios;

2. Further calibrate the proposed LTD requirements by providing LBOs with relatively lower levels of uninsured deposits with a scaling scale credit toward its LTD requirement as its percentage of insured deposits to total deposits increases ("LTD Credit Calibration"); and

3. Reissue a revised LTD proposal for comment after the proposed regulatory capital requirements (commonly-known as the Basel III endgame rule) ("Basel Proposal")[7] are finalized.

We also support the comment letters of a group of Category IV LBOs to which we are a signatory ("Category IV Letter"); of a coalition of Category III and IV LBOs providing comments on the LTD Credit Calibration to which we are a signatory ("LTD Credit Letter"); and of the Bank Policy Institute ("BPI Letter," and together with the Insured Deposits Letter and the Category IV Letter, the "Industry Letters"). Our comments in this letter supplement the Industry Letters. In particular, we echo their collective theme that the Agencies must tailor and calibrate LTD requirements to the risks presented by LBOs.

I. Lower the Proposed LTD Requirements

We recommend the Agencies tailor the Proposal by lowering the amount of LTD required to be held by a Category IV LBO from no more than 6% to no more than 2% of RWAs and that proportional decreases be made in the leverage-exposure and average-total-consolidated-assets ratios.

The calibration of the RWA ratio at 6% in the Proposal is borrowed from the GSIB total loss absorbing capital ("TLAC") rule, which assumed a single-point-of-entry ("SPOE") resolution strategy where the GSIB's equity at the time of failure is zero and its LTD is converted into capital

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7 Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity, 88 Fed. Reg. 64028 (proposed, September 18, 2023). Ally has also submitted a comment letter to the Basel Proposal.

to support the continuing operation of material subsidiaries.[8] Nothing in this approach is suited to a Category IV LBO like Ally. In our case, a multiple-point-of-entry resolution strategy is in place, and none of our subsidiaries—including Ally Bank—would need to be recapitalized to operate for any appreciable period of time. Other reasons for adopting the capital-refill framework in the TLAC rule—to instill market confidence,[9] to mitigate the risks of destabilizing funding runs,[10] and to address the potential for ring-fencing by foreign regulators[11]—are equally inapt for us and other Category IV LBOs.

Our recommendation to calibrate the RWA ratio at no more than 2% recognizes that, for Category IV LBOs, resolvability should center around a least-cost resolution of the IDI and not the continuing viability of the holding company. This is undoubtedly appropriate for us, with approximately 95% of our total consolidated assets sitting in Ally Bank and its subsidiaries and approximately 84% of our total liabilities being deposits as of September 30, 2023. As a result, we propose a partial bail-in of LTD that facilitates either an expeditious sale of the IDI or the creation of a bridge bank with no regulatory-capital requirements and a reasonable lifespan to market the franchise. This recommendation includes a meaningful cushion to enhance resolvability in more challenging circumstances. We are aware of no evidence to support an assumption that CET1 would likely be zero at the time of failure; rather, since an IDI is typically closed when critically undercapitalized, we assume CET1 of 2% at the time of failure.[12] While this alone should be adequate in the resolution of a Category IV IDI, we double it with a bail-in of 2.5% to reach the adequately capitalized threshold of 4.5%[13] and a more conservative balance-sheet runoff of 0.5%. The result is an RWA ratio of 2%.

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[8] Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8,266 (final, Jan. 24, 2017).

[9] *Id.* at 8,275 (reasoning that "an orderly SPOE resolution requires that a firm exiting from resolution have sufficient gone-concern capital to maintain market confidence in its solvency so that other market participants will do business with it").

[10] *Id.* at 8,298 (providing that "[o]ne objective of SPOE resolution is to mitigate the risk of destabilizing funding runs.").

[11] *Id.* at 8,292 (arguing for "the need to maintain sufficient loss-absorbing capacity in the United States so that a covered IHC can be maintained as a going concern or subjected to an orderly resolution in the United States if the foreign GSIB is not successfully resolved in an SPOE resolution or is otherwise unable to provide support to a non-resolution covered IHC").

[12] *See* 12 U.S.C. § 1831o. *See also* 12 C.F.R. § 6.4(b)(5); 12 C.F.R. § 208.43(b)(5); 12 C.F.R. § 324.403(b)(5).

[13] *See* 12 U.S.C. § 1831o. *See also* 12 C.F.R. § 6.4(b)(2)(iii); 12 C.F.R. § 208.43(b)(2)(iii); 12 C.F.R. § 324.403(2)(iii).

We note the Proposal also fails to adequately consider the cost of down-streaming under the faulty assumption that the IDI LTD requirement would be "costless."[14] Since Ally's subsidiary IDI—Ally Bank—does not issue external debt and has no outstanding unsecured debt today, Ally would be required to issue the amount of the IDI's shortfall in order to generate the cash necessary to exchange for the IDI-issued debt to meet the IDI's internal LTD requirement. While prospective excess capital generation may reduce the amount of external bank holding company debt required over the transition horizon, the cost of the IDI requirement is expected to be significant to Ally.

Consequently, it would be appropriate to consider the risk of a government-induced barbell in the competitive landscape for banking. The innovative value delivered by regional banks to consumers and businesses across the country is well documented[15] and recognized by the Agencies.[16] But this could be meaningfully threatened if Ally and other Category IV LBOs were compelled by the government to issue and maintain LTD that is more costly and less stable than deposits and other alternative funding sources, especially when considered together with the effects of the not-yet-tailored Basel Proposal and other regulatory and supervisory initiatives. We agree with Governor Bowman that, as "the differences between the regulatory requirements for GSIBs and firms with more than $100 billion in assets continue to be eroded, it will become less economically rational for firms to remain in Category IV," which "could exacerbate the pressure on banks to grow larger through acquisition resulting in harmful effects on competition, the

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[14] *See supra* note 1 at 64,552 ("For purposes of the incremental shortfall approach, the agencies estimate the level of future eligible LTD for the analysis population in the absence of the proposed rule as equal to the current level of outstanding LTD at the analysis population that is unsecured, has no exotic features, and is issued externally at any level of the organization (that is, either by a covered entity itself or a subsidiary IDI). Implicit in this definition is the assumption that over the long term, it will be costless to substitute external holding company-issued debt for external IDI-issued debt, as well as downstream resources from holding companies to IDIs through eligible internal debt securities, to fulfill the requirements of the proposed rule and general funding needs. It is assumed in other words, that there are no additional costs of IDIs to maintain eligible internal debt securities to holding companies beyond those attributable to external holding company LTD that may be passed through to IDIs.").

[15] *See, e.g.*, Bank Policy Institute, The Importance of Regional Banks for Small Business Lending and Economic Growth (May 16, 2023), *found at* https://bpi.com/the-importance-of-regional-banks-for-small-business-lending-and-economic-growth/.

[16] *See, e.g.*, Oversight of Financial Regulators: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs, 118th Congress (November 14, 2023), *found at* https://www.federalreserve.gov/newsevents/testimony/barr20231113a.htm (statement of Hon. Michael S. Barr, Vice Chair for Supervision, Board of Governors of the Federal Reserve System) ("In considering improvements to supervision, we are very mindful of the differences in size, risk, and complexity of supervised institutions and the importance of maintaining the strength and diversity of banks of all sizes that serve communities across the country.").

reduction of banking options in some geographic or product markets, and rendering some institutions competitively unviable."[17]

II. Further Calibrate the Proposal By Providing LBOs That Have Relatively Lower Levels of Uninsured Deposits with a Sliding Scale Credit Toward their LTD Requirements

As discussed in more detail in the LTD Credit Letter, we also support providing LBOs with lower levels of uninsured deposits a sliding scale credit toward their LTD requirements as their percentage of insured deposits to total deposits increases (*i.e.* LTD Credit Calibration).

The resilience and resolvability of LBOs are enhanced by diverse sources of stable funding. To the extent that an LBO has concentrations of, or otherwise is reliant on, less stable sources—such as nonoperational wholesale deposits that are not FDIC-insured—mitigating the risk with higher LTD requirements is reasonable. Conversely, no public policy is advanced by requiring an LBO to replace insured deposits with wholesale LTD. Not only would the LTD Credit Calibration align with the Agencies' stated policy goals of facilitating orderly resolution,[18] minimizing losses to the Deposit Insurance Fund in resolution[19] and promoting ex ante resilience,[20] but it would also

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17 *See* Statement by Governor Michelle W. Bowman, *supra* note 5; *see also* Statement by Jonathan McKernan, Director, FDIC Board of Directors, on the Proposed Long-term Debt Requirements for Certain Banking Organizations (August 29, 2023), *found at* https://www.fdic.gov/news/speeches/2023/spaug2923e.html ("I am also concerned that this disparity could put covered banking organizations at a competitive disadvantage relative to the U.S. GSIBs, whether now or in the future.")

18 The Proposal states that "the proposed rule would help improve the likelihood that, in the event a covered IDI fails, a sufficient amount of non-deposit liabilities will be available to absorb losses that otherwise might be imposed on uninsured deposits in resolution" and that "the additional loss-absorbing capacity from LTD in resolution may increase the likelihood that some or all uninsured deposits are protected from losses, even under the least-cost test." *See supra* note 1 at 64,550.

19 The Proposal states that the effectiveness of the LTD requirement in resolution "would depend on the extent of losses incurred by the failing institution and the extent of its reliance on uninsured deposits." *See supra* note 1 at 64,550. It follows that firms with lower levels of uninsured deposits would need a smaller layer of LTD that is available to refill their capital in order to reassure uninsured deposits that there is no need to withdraw their funds and contribute to a run on the bank that could cause contagion. *See* Federal Reserve Vice Chair for Supervision Michael S. Barr, The Importance of Effective Liquidity Risk Management (December 1, 2023), *found at* https://www.federalreserve.gov/newsevents/speech/barr20231201a.htm ("Despite their compliance with our capital rules, [banks that faced liquidity pressures in March 2023] lacked enough capital to reassure uninsured depositors that they had sufficient resources to weather this liquidity storm.").

20 The Proposal states that "high levels of uninsured deposit funding can pose an especially significant risk of bank runs when customers grow concerned over the solvency of their bank" and "the presence of a substantial layer of liabilities that absorbs losses ahead of uninsured deposits could have reduced the likelihood of those depositors running." *See supra* note 1 at 64,526 and 64,527. It follows that firms with lower levels of insured deposits withdrawing their funds and contributing to a run on the bank could cause contagion.

help comply with the statutory mandates of S. 2155 to tailor enhanced prudential standards (as discussed above).

Accordingly, consistent with the Agencies' policy goals and in response to the Proposal's questions,[21] we support a sliding-scale methodology that provides LBOs with lower levels of uninsured deposits with an increasing amount of credit toward an LBO's LTD requirements as the ratio of an LBO's insured deposits to total deposits increases. Please refer to the LTD Credit Letter for further details on the methodology utilized for the LTD Credit Calibration.

III. Reissue a Revised Proposal for Comment After the Basel Proposal Is Finalized

Lastly, we recommend the Agencies reissue a revised Proposal for comment after the Basel Proposal is finalized. We currently expect the RWAs ratio to dictate our LTD requirements. The degree to which this will be so, and whether this remains so at all, depends significantly on how the Basel Proposal is finalized. As a result, until the Agencies complete their work there, we will not have been afforded "a reasonable and meaningful opportunity to participate in the rulemaking process" here.[22]

This is no mere foot-fault violation of the Administrative Procedure Act. While the regulatory and supervisory environment is always changing, the Basel Proposal is far-reaching in its scope and effects and will directly and materially impact how we determine and manage the amount and composition of our RWAs and therefore our LTD requirements. This uncertainty—which the Agencies themselves can solve—precludes us from being able to assess the costs and benefits of the Proposal and to "raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule."[23]

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[21] See *supra* note 1, question 3 at 64,529, question 6 at 64,531, question 21 at 64533, question 23 at 64534.

[22] *See Forester v. CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977).

[23] *See Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977). Furthermore, this uncertainty and inability of Ally to assess the full impact of the Proposal will persist as the FRB stated it will be revisiting and evaluating other key aspects of the prudential regulatory framework. *See also* Board of Governors of the Federal Reserve System. *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley, found at* https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf, April 28, 2023 (statement of Hon. Michael S. Barr, Vice Chair for Supervision) (citing several other significant regulatory areas to be modified or reevaluated including management of interest rate risk, liquidity, stress testing, and incentives for bank managers).

Once again, we appreciate the opportunity to comment on the Proposal. If you have any questions, please contact me at russ.hutchinson@ally.com or our Corporate Treasurer, Bradley Brown, at bradley.brown@ally.com.

Respectfully submitted,

Russell Hutchinson
Chief Financial Officer
Ally Financial Inc.

## Appendix

Ally—as a Category IV LBO—does not present financial-stability or safety-and-soundness risks that are comparable to those presented by GSIBs or the LBOs in Categories II and III. This Appendix summarizes Ally's risk profile as of September 30, 2023 pursuant to the statutory tailoring factors of S. 2155:

- **Capital Structure**: Ally was well capitalized with a CET1 capital ratio of 9.4% and a total capital ratio of 12.5%. Ally's CET1 capital ratio exceeded the minimum regulatory requirement of 7.0%, which consisted of the 4.5% statutory requirement plus Ally's 2.5% stress capital buffer, by approximately $3.7 billion.

- **Riskiness**: 87% of Ally's total funding was derived from deposits, most of which were granular and diversified retail accounts. Ally's weighted short-term wholesale funding[24] totaled about $4.7 billion,[25] or approximately 3% of total liabilities. Non-bank assets[26]—which primarily arose from insurance services provided to automotive customers—totaled about $9.5 billion,[27] or less than 5% of Ally's total assets. Ally's off-balance sheet exposure[28] totaled about $1.7 billion[29]—less than 1% of Ally's total assets. Such off-balance sheet exposures were concentrated primarily within our commercial automotive and corporate finance business, in which we made routine lending commitments to our customers. Additionally, Ally had *de minimis* trading securities and assets measured at fair value on a recurring basis using Level 3 inputs.

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[24] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59,032, 59,043 (final, November 2, 2019) ("Reliance on short-term, generally uninsured funding from more sophisticated counterparties can make a banking organization more vulnerable to large-scale funding runs, generating both safety and soundness and financial stability risks.").

[25] Ally's Systemic Risk Report—FR Y-15, Schedule G, line item 6 (September 30, 2023).

[26] *See supra* note 24 at 59,239 ("The amount of a banking organization's activities conducted through nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant activities in nonbank subsidiaries are more likely to have complex corporate structures and funding relationships. In addition, in certain cases nonbanking subsidiaries are more likely to have complex corporate structures and funding relationships.").

[27] Ally's Systemic Risk Report—FR Y-15, Schedule A, line item M6 (September 30, 2023).

[28] *See supra* note 24 at 59,243 ("Off-balance sheet exposure complements the size indicator under the tailoring framework by taking into account additional risks that are reflected in a bank organization's measure of on-balance sheet assets. This indicator provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services stemming from off-balance sheet activities.").

[29] Ally's Systemic Risk Report—FR Y-15, Schedule A, line item M5 (September 30, 2023).

- **Complexity**: Ally's business and operations were based almost entirely in the United States, with total cross-jurisdictional activity of about $1.2 billion[30] or approximately 0.6% of Ally's total assets. Ally's organizational structure was not complex given that substantially all our business activity occurred at our single IDI, Ally Bank, which constituted approximately 95% of Ally's total consolidated assets.

- **Financial Activities**: Ally's primary business activities include traditional retail deposit services, consumer and commercial automotive financing products, mortgage finance, and corporate finance. Ally was not engaged in any material respect in activities related to payments, custody services, debt and equity underwriting, or sales and trading. Ally's consumer and commercial automotive financing businesses accounted for approximately 73% of Ally's total finance receivables and loans.

- **Size**: With $196 billion in total consolidated assets, Ally sat well below the boundary between Categories III and IV. Unlike the rapid growth rates of SVB and Signature from 2019 through 2021—198% and 134% respectively[31]—ours was 1%. That has not materially changed over the last seven quarters, when our growth rate was 7%.

- **Resolvability**: Ally has a simple organizational structure with a single IDI. Ally Bank's total consolidated assets of $186 billion constituted approximately 95% of Ally's, and its total deposits of $153 billion were approximately 84% of Ally's total liabilities. Approximately 92% of deposits at Ally Bank were FDIC-insured, compared to 12% for SVB and 33% for Signature at the time of their failures.[32]

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30 Ally's Systemic Risk Report—FR Y-15, Schedule E, line item 5 (September 30, 2023).

31 U.S. Gov't Accountability Office, GAO 23-106736, Preliminary Review of Agency Actions Related to March 2023 Bank Failures 11 (2023).

32 Special Assessment Pursuant to Systemic Risk Determination (final, Nov. 29, 2023), 88 Fed. Reg. 83,329, 83,331.

The following charts compare metrics and indicators of Ally to the thresholds used by S. 2155 and its implementing regulations as of each period-end date for the seven quarters ended September 30, 2023.