FDIC Response to December 8, 2023 Letter from Senators Vance and Warren regarding the Marketing and Sale of the Former First Republic Bank

Federal Deposit Insurance Corporation (FDIC)

Martin J. Gruenberg
February 20, 2024

The Honorable J.D. Vance  
United States Senate  
Washington, D.C. 20510

The Honorable Elizabeth Warren  
United States Senate  
Washington, D.C. 20510

Dear Senator Vance and Senator Warren:

Thank you for your letter of December 8, 2023 to the Federal Deposit Insurance Corporation (FDIC) regarding the purchase and assumption of the former First Republic Bank by JPMorgan Chase Bank, N.A. following the closure of First Republic Bank by the California Department of Financial Protection and Innovation (CADFPI) on May 1, 2023. I welcome the opportunity to share additional details about the process by which the FDIC successfully marketed and sold the failed institution on closing weekend in a manner that protected all depositors and minimized cost to the Deposit Insurance Fund.

The enclosed document contains information prepared by FDIC staff that responds to the specific questions outlined in your letter. Regarding your request for the bids received for the former First Republic Bank, the FDIC has established a bid disclosure policy that balances the public interest in disclosure and the Congressionally-mandated objective to achieve the least costly resolution of failed banks.\(^1\) The names of all of the bidders and summaries of all the bids received are published on the FDIC’s public website.\(^2\) The bids themselves, however, are generally not released publicly due to the need to protect failed bidders’ proprietary business information and avoid potential impairment of the FDIC’s statutory program for failed bank resolutions and asset sales. Nonetheless, FDIC staff are available to provide you or your staff with a briefing on the bids received and the general methodology for determining the winning bid in failed bank transactions.

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Your interest in this matter is appreciated. If you or your staff have additional questions, please contact me or Andy Jiminez, Director, Office of Legislative Affairs at (202) 898-6761.

Sincerely,

[Signature]

Martin J. Gruenberg

Enclosure
On April 24, 2023, First Republic Bank reported financial results for the first quarter of 2023. The disclosure of a significant loss of deposits prompted a negative market response, a significant decline in the bank’s stock price and a resumption of deposit outflows of more than $10 billion between Wednesday, April 26 and Friday, April 28, 2023. Given the further deterioration in the bank’s condition with the additional deposit loss, and the lack of progress and prospects for improving the bank’s condition, the Federal Deposit Insurance Corporation (FDIC) and the California Department of Financial Protection and Innovation (CADFPI) downgraded the bank to problem status on April 28, 2023. The downgrade shifted the bank’s borrowing status with the Federal Reserve to Secondary Credit, which eliminated the bank’s capacity to meet liquidity demands due to additional collateral haircuts.

During the week of April 24, 2023, a small number of institutions contacted the FDIC to express their interest in acquiring First Republic Bank should it be placed into receivership. On April 27, 2023, the FDIC engaged with these institutions to better understand the nature of their interest, and, subsequently, requested indicative bids from these institutions by 5:00 P.M. on April 28, 2023 so that the agency could gauge the strength of the market for the bank and prepare for a formal marketing process. The formal marketing process was then initiated on the evening of April 28, 2023, with a bid deadline of April 30, 2023 at 12:00 P.M.

The FDIC conducted the formal marketing process for First Republic in accordance with its guidelines and procedures and invited forty-two qualified institutions, twenty-one banks and twenty-one private equity firms, to participate in a competitive auction. The FDIC did not discourage any qualified financial institution, either bank or non-bank, from submitting a bid for First Republic and expressly welcomed non-conforming bids in its solicitation to potential bidders. The FDIC received 12 bids from four bidders. As a result of the competitive first round of bidding, the FDIC requested best and final offers from the four bidders by 7:00 P.M. on April 30, 2023.

On May 1, 2023, First Republic Bank was closed by the CADFPI, which simultaneously appointed the FDIC as receiver. The FDIC entered into a purchase and assumption agreement with JPMorgan Chase Bank, National Association, Columbus, Ohio (JPMC) to assume all of the deposits and substantially all of the assets of First Republic. As part of the transaction, First Republic Bank’s 84 offices in eight states reopened that same morning as branches of JPMC. All depositors of First Republic Bank became depositors of JPMC.

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1 These bidders were JP Morgan Chase Bank, National Association, Columbus, Ohio; Citizens Bank, National Association, Providence, Rhode Island; Fifth Third Bank, National Association, Cincinnati, Ohio; and PNC Bank, National Association, Wilmington, Delaware.

2 Summaries of all bids received for the sale of First Republic Bank are posted to the FDIC’s website and available at https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/first-republic-bid-summary.html.

Enclosure: To Accompany FDIC Response to December 8, 2023 Letter from Senators Vance and Warren regarding the Marketing and Sale of the Former First Republic Bank

Because the winning bid assumed both the insured and uninsured deposits, uninsured depositors did not bear losses. This is frequently the outcome when there is a bid that results in the least-cost resolution option, presumably because bidders recognize the franchise value of the going concern and submit “all deposit” bids to maintain that value.

As part of the transaction, the FDIC and JPMC also entered into a loss-share agreement on the single-family mortgage and commercial loan portfolios it purchased of First Republic Bank. The FDIC and JPMC will share in the losses and potential recoveries on the loans covered by the loss-share agreement, which is projected to maximize recoveries on the assets by keeping them in the private sector. In addition, JPMC also assumed all Qualified Financial Contracts.

The resolution of First Republic Bank involved a highly competitive bidding process that resulted in a transaction that clearly represented the least cost option to the Deposit Insurance Fund (DIF), was consistent with the least cost requirements of the Federal Deposit Insurance Act (FDIA), and could be pursued upon the closure of the bank. Under Sec. 13(c)(4) of the FDIA (12 U.S.C. 1823(c)(4)), the FDIC is required to pursue the resolution that is the least costly to the DIF. The limitation set forth in the Bank Merger Act on interstate mergers which would result in an insured depository institution with more than 10 percent of total U.S. deposits does not apply in the case of “an interstate merger transaction ... with respect to which the [FDIC] provides assistance under section 1823(c) of [Title 12],” as was the case in the resolution of First Republic Bank.4 For this reason, the primary federal regulator of the winning bidder could provide its consent under the Bank Merger Act notwithstanding the 10 percent deposit cap. This same approach was followed in the bidding for Silicon Valley Bank (SVB) and Signature Bank (Signature), which failed in early 2023. Although no bid was received from any institution that would have exceeded the 10 percent deposit cap in those cases, certain institutions that would have exceeded the 10 percent deposit cap were invited to bid, including JPMC. In sum, application of the exception to the 10 percent deposit cap is not inconsistent with the least-cost resolution requirement of 12 U.S.C. § 1823(c)(4). This provision requires the FDIC, in any resolution transaction utilizing assistance under Section 13 of the FDI Act, to utilize the resolution transaction that is “least costly to the Deposit Insurance Fund” of all possible resolution methods, even if that should result in a purchase and assumption of a failed bank by another institution that exceeds the 10 percent deposit cap.5 In the case of the resolution of First Republic Bank, the least-costly resolution transaction was the bid provided by JPMC.

The FDIC conducts Least Cost Test analysis for bank failures using a well-established, standardized process and methodology that makes use of historical data sets and analysis provided by third-party valuation advisors based on detailed asset-level data of the failing institution. In assessing bids received, the FDIC evaluates each bid compared to one another and

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the FDIC’s estimated cost of liquidation, which is valued using valuation models to estimate the market value of the assets. The FDIC did not conduct a market analysis regarding the competitive impact to consumers from the resultant sale of First Republic Bank to JPMC compared to other bids from institutions that would not exceed the 10 percent deposit cap. The constraints of the least-cost test are such that even were the FDIC to conclude that there was a material competitive impact to consumers, the FDIC would nonetheless be required to select that bid so long as it was the least costly to the Deposit Insurance Fund of all possible resolution methods.

Using the standardized process for conducting the Least Cost Test analysis, the spread between the least-cost bid and the next most competitive bid was just under $20 billion (about $19.75 billion). Given the significance of this transaction, the FDIC took the additional step of evaluating alternative recovery methods on large pools of assets (exceeding $100 billion) that would have been retained in the First Republic Bank receivership as a result of competing bids made by large regional banks. The FDIC worked with third party financial advisors to conduct this analysis, which incorporated some optimistic assumptions in order to evaluate a “best case scenario” for the bids provided by large regional banks (these included favorable assumptions about interest rate projections, financing costs, and FDIC expenses). Using this approach significantly narrowed the estimated bid spread, however, even with this more favorable analysis JPMC’s bid remained the least-cost bid. It should also be noted that in addition to added market and analytical uncertainty involved in the quantitative analysis using this alternative method, there would also have been increased execution risk.

As of May 2023, the FDIC estimates that the cost of resolution to the DIF will be $16.52 billion.6 Unlike the resolutions of SVB and Signature, First Republic was not resolved using a systemic risk determination under 12 U.S.C. § 1823(g). As such, the cost of resolving First Republic will be borne by the DIF, which is paid through assessments made by all insured depository institutions and not through a special assessment on just those institutions that benefit from the systemic risk determination.

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6 This initial loss estimate is subject to further revision, and the final cost will be determined when the FDIC terminates the receivership.