ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
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FINANCE
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510–2105
P: 202–224–4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617–565–3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413–788–2690

www.warren.senate.gov

May 17, 2023

The Honorable Martin J. Gruenberg
Chair
Federal Deposit Investment Corporation
550 17th St. NW
Washington, DC 20429

Mr. Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Dear Chair Gruenberg and Acting Chair Hsu:

I write with questions regarding the terms of the deal regulators arranged to facilitate the sale of First Republic Bank to JPMorgan Chase and the rationales undergirding the approval of the sale by the FDIC and OCC.[1]

The executives at First Republic – who took excessive risks and did not appropriately manage them as interest rates increased throughout 2022 and 2023 – bear primary responsibility for this failure. I am continuing to seek answers from the bank's executives, and attempting to pass bipartisan legislation that would claw back their excessive compensation.[2]

But the outcome of this seizure and sale were deeply troubling: it resulted in a $13 billion cost to the Federal Deposit Insurance Fund – which will ultimately be passed on to ordinary bank consumers across the country – and made JPMorgan, the nation's biggest bank, even bigger.[3] JPMorgan will also record a $2.6 billion gain from the deal.[4] I ask that you come prepared to address this matter at the May 18, 2023 hearing before the Senate Committee on Banking, Housing, and Urban Affairs.

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[1] FDIC, "JP Morgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California," May 1, 2023, https://www.fdic.gov/news/press-releases/2023/pr23034.html.

[2] Letter from Sen. Elizabeth Warren to Michael J. Roffler, Former President and CEO, First Republic Bank, May 3, 2023, https://www.warren.senate.gov/imo/media/doc/2023.05.03%20Letter%20to%20First%20Republic%20CEO%20Michael%20Roffler.pdf.

[3] American Banker, "Banks' deposit insurance costs could soar after First Republic failure," Ebrima Santos Sanneh and Kyle Campbell, May 1, 2023, https://www.americanbanker.com/news/banks-deposit-insurance-costs-could-soar-after-first-republic-failure.

[4] CNN, "JPMorgan Chase to buy most First Republic assets after bank fails," Chris Isidore and Olesya Dmitracova, May 1, 2023, https://www.cnn.com/2023/05/01/business/first-republic-purchase-hnk-intl/index.html/.

One set of questions involves the $13 billion loss to the Federal Deposit Insurance Fund, and why the fund was allowed to take this loss while the FDIC deal made nearly $50 billion worth of uninsured deposits at First Republic – including $30 billion in uninsured deposits from big banks - whole.[5] Under the law, the FDIC is required to resolve bank failures at the least cost to the insurance fund.[6] But that did not appear to happen here – instead, the FDIC appeared to prioritize First Republic's uninsured deposits at the bank before the Insurance Fund, while accepting loses to the Fund.

The FDIC, with the Federal Reserve and Treasury Department, can avoid taking the least-cost route and guarantee uninsured accounts if it declares a systemic risk exception because of a threat to the financial system.[7] The FDIC used this approach to guarantee depositors for uninsured funds in the aftermath of the failures of Silicon Valley Bank and Signature Bank – but did not do so for First Republic.[8] But the FDIC's final deal with JPMorgan still appeared to guarantee the uninsured deposits at that bank.[9]

On May 11, 2023, the FDIC announced a proposed rule to impose a special assessment on banks to recover the loss to the Deposit Insurance Fund that would exempt small banks and would be imposed on bank's uninsured deposits.[10] This is a positive development but raises questions about why and how the FDIC took such a complex approach designed to protect big banks when it seized First Republic, only to later require them to provide the bulk of the funds to replenish the Deposit Insurance Fund.

My second set of concerns involves the decision to choose JPMorgan – which was already the nation's largest bank – to acquire First Republic and become even bigger.[11] The FDIC reportedly received multiple bids for the takeover of the failed bank, "with roughly half a dozen banks bidding."[12] JPMorgan got a good deal: it reportedly "acquir[ed] the total package of [First Republic] assets for less than they are worth," and the deal included a provision that under which risks were limited because "the FDIC will agree to bear 80% of the credit losses on First

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[5] CNN, "JPMorgan Chase to buy most First Republic assets after bank fails," Chris Isidore and Olseya Dmitracova, May 1, 2023, https://www.cnn.com/2023/05/01/business/first-republic-purchase-hnk-intl/index.html. Politico, "JPMorgan Chase buys First Republic in bid to end bank turmoil," Victoria Guida, May 1, 2023, https://www.politico.com/news/2023/05/01/jpmorgan-chase-first-republic-fdic-00094622.
[6] 12 CFR § 360.1
[7] 12 U.S.C. §1823(c)(4)(G)
[8] Financial Times, "The difference between First Republic and other recent bank failures," Brooke Masters, Stephen Gandel, James Fontanella-Khan, James Polti, and Colby Smith, May 1, 2023, https://www.ft.com/content/3044e4c8-d26a-4f75-b33f-376b9865aa22.
[9] CNN, "JPMorgan Chase to buy most First Republic assets after bank fails," Chris Isidore and Olesya Dmitracova, May 1, 2023, https://www.cnn.com/2023/05/01/business/first-republic-purchase-hnk-intl/index.html/.
[10] FDIC, Notice of Proposed Rulemaking: Special Assessments Pursuant to Systemic Risk Determination, May 11, 2023, https://www.fdic.gov/news/board-matters/2023/2023-05-11-notice-dis-a-fr.pdf.
[11] Washington Post, "JPMorgan's acquisition of First Republic revives too-big-to-fail talk," David J. Lynch, Jeff Stein, and Rachel Siegel, May 1, 2023, https://www.washingtonpost.com/business/2023/05/01/first-republic-bank-seized-jp-morgan/.
[12] Reuters, "PNC, JPMorgan putting in final bids for First Republic Bank in FDIC auction," Chris Prentice, Nupur Anand, and Saeed Azhar, May 1, 2023, https://www.reuters.com/business/finance/pnc-jpm-putting-final-bids-first-republic-fdic-auction-sources-2023-04-30/.

Republic's mortgages and commercial loans."[13] One analyst called this "JPMorgan's best deal in decades" and estimated that it could earn the bank could earn up to $1 billion annually.[14] Equally troubling is the fact that JPMorgan, the nation's biggest bank – already too big to fail – became even bigger as the result of the deal.[15] Under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, a bank holding company may not consummate a merger that would result in the bank holding more than 10% of the nation's total deposits[16] – a standard that JPMorgan already exceeds.[17] However, because Riegle-Neal includes an exception for failed banks, the OCC has indicated that it did not need to take any action because the statute automatically provides a waiver.[18] Separately, this merger required approval under the Bank Merger Act, which was granted by OCC.[19] In its May 1 letter approving JPMorgan's acquisition of First Republic, the OCC concluded that "The Transaction does not increase risk to the stability of the United States banking or financial system as it facilitates the orderly resolution of an insured depository institution in default," though it provides little detail about its analysis.[20]

The net result of these machinations is that, without a complete regulatory review, and at a cost of $13 billion to the Federal Deposit Insurance Fund, the nation's biggest bank – already too big to fail – got a bargain deal on a failing bank that made it even bigger. This is a troubling outcome, leaving me with numerous questions. I ask that you provide me with written answers to these questions no later than May 31, 2023.

1. Why did the FDIC fail to impose losses on First Republic's uninsured depositors, and what legal authority did it use to do so?

2. Did any of the banks that deposited $30 billion in First Republic Bank in March 2023[21] – Bank of America, Wells Fargo, Citigroup, JPMorgan Chase, Goldman Sachs, Morgan Stanley, Truist, PNC, U.S. Bancorp, State Street, or Bank of New York Mellon – contact

[13] Bloomberg, "JP Morgan Got a Deal on First Republic," Matt Levine, May 1, 2023, https://www.bloomberg.com/opinion/articles/2023-05-01/jpmorgan-got-a-deal-on-first-republic.
[14] Bloomberg, "Bove Says First Republic May Be JPMorgan's Best Deal in Decades," Breanna Bradham, May 1, 2023, https://www.bloomberg.com/news/articles/2023-05-01/odeon-s-dick-bove-says-first-republic-may-be-jpmorgan-s-best-deal-in-decades.
[15] Wall Street Journal, "Why Washington Let JPMorgan Buy First Republic," Ben Eisen and Andrew Ackerman, May 2, 2023, https://www.wsj.com/articles/how-washington-got-on-board-with-a-big-bank-deal-for-first-republic-609188aa; NPR "Has JPMorgan Chase grown too large? A former White House economic adviser weighs in," Destinee Adams and H.J. Mai, May 2, 2023, https://www.npr.org/2023/05/02/1173247344/with-a-recent-takeover-there-are-worries-jpmorgan-chase-has-grown-too-large.
[16] P.L. 103-328, Sec. 102..
[17] Wall Street Journal, "Why Washington Let JPMorgan Buy First Republic," Ben Eisen and Andrew Ackerman, May 2, 2023, https://www.wsj.com/articles/how-washington-got-on-board-with-a-big-bank-deal-for-first-republic-609188aa.
[18] 12 U.S.C. 1828(c)(13).
[19] Letter from Stephen A. Lybarger, OCC Deputy Comptroller for Licensing, to John H. Tribolati, Secretary, JPMorgan Chase Bank, May 1, 2023, p.2, https://www.occ.gov/topics/charters-and-licensing/app-by-jp-morgan-chase-bank.pdf.
[20] *Id.*
[21] NBC News, Wall Street rides to the rescue as 11 banks pledge $30 billion to First Republic Bank, Jesse Pound, March 16, 2023, https://www.nbcnews.com/business/business-news/11-banks-pledge-30-billion-rescue-first-republic-bank-rcna75355.

you regarding FDIC coverage or other resolution of their deposits? If so, please list all such contacts and describe the nature of the discussions.

3. How many banks ultimately bid on First Republic?
    a. How many of these banks had less than 10% of the nation's total deposits?
    b. Why were these banks not chosen to take over First Republic?
    c. What were the detailed criteria used to determine that JPMorgan had the winning bid on First Republic?

4. As required by the law, the OCC conducted an analysis of this merger under the Bank Merger Act.
    a. How did this analysis differ from the analysis that would have been conducted under the Riegle-Neal Act had the 10% deposit cap under the Riegele-Neal analysis not been waived?

    b. The OCC's May 1, 2023 letter approving JPMorgan's merger application described the factors it considered when determining whether JPMorgan's acquisition of First Republic constituted a risk "to the stability of the U.S. banking or financial system, financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served," including whether the transaction would increase the interconnectedness of the financial system and make it more difficult to resolve the combined business in the event of a failure.[22] Please provide your detailed analysis of each of the factors listed in footnote 1 of your May 1, 2023 letter, any others factors considered, and any relevant supporting evidence.

5. What additional regulatory requirements will be placed on JPMorgan to ensure that the bank's acquisition of First Republic does not increase systemic risks to the financial system or reduce competition?

Sincerely,

Elizabeth Warren

Elizabeth Warren
United States Senator

[22] Letter from Stephen A. Lybarger, OCC Deputy Comptroller for Licensing, to John H. Tribolati, Secretary, JPMorgan Chase Bank, May 1, 2023, p.2, https://www.occ.gov/topics/charters-and-licensing/app-by-jp-morgan-chase-bank.pdf.