

SHERROD BROWN, OHIO, CHAIRMAN  
TIM SCOTT, SOUTH CAROLINA, RANKING MEMBER

JACK REED, RHODE ISLAND  
ROBERT MENENDEZ, NEW JERSEY  
JON TESTER, MONTANA  
MARK WARNER, VIRGINIA  
ELIZABETH WARREN, MASSACHUSETTS  
CHRIS VAN HOLLEN, MARYLAND  
CATHERINE CORTEZ MASTO, NEVADA  
TINA SMITH, MINNESOTA  
KYRSTEN SINEMA, ARIZONA  
RAPHAEL WARNOCK, GEORGIA  
JOHN FETTERMAN, PENNSYLVANIA

MIKE CRAPO, IDAHO  
MIKE ROUNDS, SOUTH DAKOTA  
THOM TILLIS, NORTH CAROLINA  
JOHN KENNEDY, LOUISIANA  
BILL HAGERTY, TENNESSEE  
CYNTHIA LUMMIS, WYOMING  
J.D. VANCE, OHIO  
KATIE BRITT, ALABAMA  
KEVIN CRAMER, NORTH DAKOTA  
STEVE DAINES, MONTANA

LAURA SWANSON, STAFF DIRECTOR  
LILA NIEVES-LEE, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

August 9, 2023

The Honorable Jerome Powell  
Chair  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

The Honorable Michael Barr  
Vice Chair for Supervision  
Board of Governors of the Federal Reserve System  
20th Street and Constitutive Avenue NW  
Washington, DC 20551

Dear Chair Powell and Vice Chair Barr:

We urge the Federal Reserve to review and reconsider its approach to big bank mergers, including the agency's framework for evaluating a bank merger's impact on financial stability. This is critical in light of the failures of several very large banks, Silicon Valley Bank (SVB), Signature Bank, First Republic, and Credit Suisse.

In the aftermath of the 2008 financial crisis, Congress passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act) to enhance the regulation and oversight of banks with more than \$50 billion in total assets.<sup>1</sup> Among its provisions, the Dodd-Frank Act included an amendment to the *Bank Merger Act*, which for the first time mandated federal banking regulators consider financial stability in evaluating bank mergers.<sup>2</sup> As a result, the Federal Reserve must now consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system," prior to approving a bank merger.<sup>3</sup> Congress created these important protections to prevent another crisis for the financial system and protect taxpayers. We are concerned that the Federal Reserve has still not issued any rules or guidance indicating the types of bank mergers that would implicate financial stability concerns.<sup>4</sup>

---

<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. § 5301 et seq.).

<sup>2</sup> *Id.* at § 604(f), 124 Stat. at 1602 (codified as 12 U.S.C. 1828(c)(5)).

<sup>3</sup> 12 U.S.C. § 1842(c)(7).

<sup>4</sup> See Jeremy C. Kress, *Modernizing Bank Merger Review*, 37 Yale J. on Regul. 435, 439 (2020), <https://www.yalejreg.com/print/modernizing-bank-merger-review/>.

The application of the financial stability factor has not been rigorous enough. In the past, Federal Reserve orders approving mergers have contained cursory analysis and reasoning to support the determination that such mergers would not result in greater financial stability risks.<sup>5</sup> In June 2021, the Federal Reserve approved SVB’s acquisition of Boston Private Bank & Trust, declaring that the resulting “organization would not be a critical services provider or so interconnected with other firms or markets that it would pose significant risk to the financial system in the event of financial distress.”<sup>6</sup> Yet less than two years later, in conjunction with the failures of SVB and Signature Bank, the Federal Reserve invoked the systemic risk exception to “reduce stress across the financial system” and “support financial stability.”<sup>7</sup> While rapid growth and poor risk management contributed to SVB’s ultimate failure, the lack of any financial stability analysis in the prior merger approval demonstrates that the Federal Reserve needs a more thoughtful way to consider and explain a merger’s risk to financial stability.

In addition, the assumption of failed bank assets by other banks, while necessary to maintain public confidence in the banking system during a period of stress, can also increase the financial stability risk of these banks in the long run. On April 14, the Federal Reserve approved the acquisition of Credit Suisse’s U.S. subsidiaries by UBS Group AG, with no substantive discussion of its impact on financial stability.<sup>8</sup> This acquisition could increase the total consolidated assets held by UBS’s U.S. holding company by \$47 billion, making it the 15<sup>th</sup> largest bank holding company in the United States and combined two of the primary dealers that are trading counterparties to the Federal Reserve Bank of New York.<sup>9</sup> JPMorgan Chase, which is already the largest bank in the United States with over \$3.7 trillion in assets and over 10 percent of the deposits in the United States, became even larger after its acquisition of failed First Republic Bank on May 1, 2023.<sup>10</sup>

Further, the four banks that failed this year were not subject to the strong regulatory standards originally required by the Dodd-Frank Act that were intended to improve the resiliency of banks and the banking system. The Federal Reserve’s 2019 tailoring rules and less rigorous supervision weakened regulatory safeguards even further for regional banks and foreign banks, resulting in

---

<sup>5</sup> Daniel K. Tarullo, Regulators should rethink the way they assess bank mergers, March 16, 2022, <https://www.brookings.edu/articles/regulators-should-rethink-the-way-they-assess-bank-mergers/>; Order Approving the Acquisition of a Savings and Loan Holding Company and Certain Nonbank Subsidiaries, FR Order 2020-05 (Sept. 30, 2020).

<sup>6</sup> Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, FRB Order No. 2021-08 at 18 (June 10, 2021), [https://www.federalreserve.gov/newsevents/press\\_releases/files/orders20210610a1.pdf](https://www.federalreserve.gov/newsevents/press_releases/files/orders20210610a1.pdf).

<sup>7</sup> Press Release, Dept. of the Treasury, Bd. of Govs. of the Fed. Rsrv. Sys., Fed. Deposit Ins. Corp., Joint Statement by Treasury, Federal Reserve, and FDIC (Mar. 12, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm>; Press Release, Bd. of Govs. of the Fed. Rsrv. Sys., Federal Reserve Board Announces It Will Make Available Additional Funding to Eligible Depository Institutions to Help Assure Banks Have the Ability to Meet the Needs of All Their Depositors (Mar. 12, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312a.htm>.

<sup>8</sup> See Letter from Ann E. Misback, Sec’y, Bd. of Govs. of the Fed. Rsrv., to Luigi L. De Ghenghi, Counsel, UBS Group AG (Apr. 14, 2013), <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20230414a1.pdf>.

<sup>9</sup> See *Large Holding Companies*, Federal Financial Institutions Examination Council (Mar. 31, 2022), <https://www.ffiec.gov/npw/Institution/TopHoldings>.

<sup>10</sup> Press Release, JPMorgan Chase Acquires Substantial Majority of Assets and Assumes Certain Liabilities of First Republic Bank (May 1, 2023), <https://www.jpmorganchase.com/ir/news/2023/jpmc-acquires-substantial-majority-of-assets-and-assumes-certain-liabilities-of-first-republic-bank>; *Primary Dealers*, Fed. Rsrv. Bank of New York, <https://www.newyorkfed.org/markets/primarydealers#primary-dealers>.

less stress testing by the Federal Reserve and less rigorous capital planning and liquidity requirements.<sup>11</sup>

Over a year ago, Chairman Brown sent a letter to Chair Powell and Acting Comptroller Michael J. Hsu urging the Federal Reserve and OCC to review and reconsider their approach to bank mergers.<sup>12</sup> The Federal Reserve has not begun that reevaluation nor asked for public feedback on its merger process, but instead has continued to approve mergers under the old rubric. There continues to be a need to update the way the federal banking agencies and the Department of Justice assess bank mergers. Recently, Department of Justice (DOJ) Assistant Attorney General Jonathan Kanter highlighted the need to reexamine bank merger policy, emphasizing the importance of competition in banking and its role in promoting a free and fair economy.<sup>13</sup> On July 19, the DOJ and Federal Trade Commission released proposed updates to the Merger Guidelines to better reflect how agencies determine a merger's effect on competition in the modern U.S. economy.<sup>14</sup> As the financial services industry has become more complex and diversified over the past thirty years, it is important to make sure that the analysis of competitive factors and market concentration adequately reflect the market realities of today.

We hope that, following the failures of SVB, Signature Bank and First Republic Bank, and the acquisition of Credit Suisse by UBS, we will see real changes to the bank merger process to protect financial stability and ensure that we have a fair and competitive banking system that serves all communities. We cannot perpetuate a banking system that favors the largest, most complex institutions and puts consumers, smaller institutions, and our financial system at risk.

Thank you for your prompt attention to this matter.

---

<sup>11</sup> See *Recent Bank Failures and the Federal Regulatory Response: Hearing Before the S. Comm. on Banking, Hous., & Urb. Affs.*, 118th Cong. (2023) (statement of Michael S. Barr, Vice Chair, Board of Governors of the Federal Reserve), <https://www.federalreserve.gov/newsevents/testimony/barr20230328a.htm>.

<sup>12</sup> Letter from Sherrod Brown, Chairman, S. Comm. on Banking, Hous., & Urb. Affs., to Jerome Powell, Chair, Bd. of Govs. of the Fed. Rsv. Sys., & Michael J. Hsu, Acting Comptroller, OCC (Apr. 6, 2022), <https://www.banking.senate.gov/download/brown-letter-on-bank-mergers-4-6-22>.

<sup>13</sup> See *Johnathan Kanter*, Address at Brookings Institution's Center on Regulation and Markets, *Merger Enforcement Sixty Years After Philadelphia National Bank*, (June 20, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-keynote-address-brookings-institution>

<sup>14</sup> Press Release, Justice Department and FTC Seek Comment on Draft Merger Guidelines, July 19, 2023, <https://www.justice.gov/opa/pr/justice-department-and-ftc-seek-comment-draft-merger-guidelines>.

Sincerely,



---

Sherrod Brown  
Chairman  
Senate Committee on  
Banking, Housing, and Urban  
Affairs



---

Jack Reed  
United States Senator



---

Elizabeth Warren  
United States Senator



---

John Fetterman  
United States Senator

cc: Hon. Martin Gruenberg, Chair, Federal Deposit Insurance Corporation  
Mr. Michael Hsu, Acting Comptroller of the Currency