Written Testimony of James Barresi
Hearing before the United States House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions

Hearing Entitled: Promoting the Health of the Banking Sector:
Reforming Resolution and Broadening Funding Access for Long-Term Resilience
September 9, 2025

Thank you, Chair Barr, Ranking Member Foster, and Members of the Subcommittee, for the opportunity to testify today.

My name is James Barresi. I lead the financial services practice at Squire Patton Boggs, a global law firm that serves business enterprises, financial intermediaries and governments around the world. I am appearing here in my personal capacity and not on behalf of my firm or any client.

Background

For more than thirty years, I have dedicated my career to primarily serving Main Street financial institutions. My experience, which is briefly outlined below, shapes my testimony, which is intended to be practical and reflect what actually happens in the "real world" of commercial banking outside of Washington, D.C. and Wall Street.

Context for Testimony

In addition to my experience as a long-time outside advisor to financial institutions on strategic, transactional and regulatory matters, I have twice spent multi-year stints serving as the Deputy General Counsel of commercial banking clients. This includes working for a $9 billion Midwest-based bank that leveraged strong management and support from institutional investors, including private equity, to complete a string of merger of equals transactions and become a leading super-regional bank, successfully managing such growth and the implementation of new technology in the process. During the Great Financial Crisis, I advised Main Street banks attempting to manage exposure to Lehman Brothers, Bear Stearns and others, and led our law firm's representation of the U.S. Department of Treasury on multiple, significant projects, including the Troubled Asset Relief Program (T.A.R.P.). In 2023, I advised: (i) clients with exposure to Silicon Valley Bank, Signature Bank, First Republic Bank and others, and (ii) community and regional banks all across the U.S. that struggled to successfully execute their contingency funding plans and to retain insured and uninsured deposits that were flowing rapidly to banks deemed Too Big to Fail.

I have advised: (i) buyers and sellers and boards of scores of healthy, troubled and failed banks, (ii) two banks that failed; and (iii) several other banks that were recapitalized by private capital while on death's doorstep, preserving the life blood of the communities they serve and jobs for many employees. Also, I have advised countless banks in raising all forms of capital and liquidity and many investors in banks, in both good times and bad times. In recent years, I have spent significant time advising financial technology firms, commercial banks struggling to fund and deploy financial technology (including both traditional banks and banks that offer embedded banking), and investors who invest risk capital in all of the above.

Given the global nature of my law firm and our practice, I have had many opportunities to work or interact with foreign banks operating in the U.S., U.S. banks operating abroad and non-U.S. banks operating exclusively in foreign markets. Thus, I have some practical experience comparing our U.S. banking system with that of certain other countries.

In short, I have a lot of practical experience helping commercial banks attempt to navigate the maze of laws, regulations and rules promulgated in Washington so they can serve their communities and attract the capital needed to do so. I intend to focus on that practical experience, and do not intend for this testimony to be political, academic or otherwise theoretical.

Our Banking System Has Fueled American Growth and Prosperity, in Part Because Our Regulatory Regime Has Kept it Strong and Stable, but Modernization (and Streamlining) is Needed

Based on my experience, as outlined above, I believe the U.S. is incredibly fortunate to operate a banking system that is both: (i) the envy of the world; and (ii) the engine for America's historic prosperity. Our banking system has consistently demonstrated characteristics that many of us describe with pride as "American." It has been resilient, service-minded, creative, growth-oriented, and it includes a wide variety of financial institutions with different attributes, resources and business plans. Our diverse banking system has enabled prosperity, upward-mobility and stability across wide and very different swaths of America including, among many others, large corporations and small businesses in every industry imaginable, schools, charitable organizations, hospital systems and, of course, citizens in every economic bracket and in big cities and small towns all across America.

America's banking industry has benefitted from a strong and just legal system and a regulatory regime that has, for the most part, helped keep it safe, sound and stable. Regulatory agencies have served as valuable partners to the banks they oversee and the American public. However, like many industries, the banking industry is struggling to adapt to technological change and innovation that is occurring at the fastest pace in human history. In my opinion, the nature of our bank regulatory regime makes it significantly more difficult for banks to adapt to technology and innovation than for companies in most other industries, including in many heavily regulated industries.

For the last century, Congress and regulatory agencies have consistently added layer after layer of laws, agencies, regulations and rules, without either eliminating laws and regulations designed for eras and environments that no longer exist or updating the regime to make it more efficient. This approach has made our system extraordinarily complex, layered, bureaucratic, slow and expensive. In short, many aspects of our regulatory regime are antiquated and ill-designed to deal with the modern world of real-time digital banking. Moreover, our bank regulatory agencies and the dedicated professionals they employ too often operate with inadequate technological resources. As a result, our system routinely slows and sometimes thwarts innovation and banks' ability to leverage technology. As the pace of technological progress increases, this problem becomes worse, and the technological gap between: (i) our laws, regulations, and regulatory agencies (on the one hand); and (ii) the banks they regulate, as well as the environment in which they compete (on the other hand), grows larger at an ever-increasing rate.

Hopefully, we are on the brink of positive change. I commend Congress for its broad, bipartisan passage of the GENIUS Act, which represents dramatic change and innovation in finance. While the GENIUS Act is not perfect from the perspective of most banks, and much remains to be done from a regulatory perspective, it is a strong step in the right direction. It is absolutely imperative to America's financial success that Congress continue to take bipartisan action to implement common sense regulatory reform and facilitate innovation and the greater use of technology in our financial system, including by our regulatory agencies as well as our banks.

American Innovation in Practice -- The Art of the Possible

In the digital age, Congress and bank regulatory agencies have often viewed financial innovation and technology with trepidation and skepticism (and sometimes, the apparent belief that technological innovation should be micro-managed and significantly delayed because it might create risk). To the contrary, innovation and technology are core components of safety and soundness. They should be pursued with thoughtful zeal.

To illustrate: I was born and raised in Detroit Michigan, the historic home of the U.S. auto industry. Innovation and technology in the auto industry have, in modern times, led to widespread adoption of air bags, automatic emergency breaking, lane-keeping assistance, blind spot monitoring, and other automated safety features. Does anyone doubt that these innovations improve safety or the efficiency of transportation?

The same can be done in banking, but Congress and regulatory agencies must be willing to do the financial version of building the Interstate Highway System, like the Bureau of Public Roads and later the Federal Highway Administration did more than half a century ago.

To continue this analogy, tankers carrying hazardous substances on our highways are regulated differently from school buses carrying children and small sport utility vehicles carrying lawyers with briefcases. Regardless, when a crisis occurs on a road, it is imperative that first responders arrive outfitted with appropriate tools, resources and training to safely administer aid and prevent further damage based on the risks involved. Stated differently, a slow-to-arrive tow truck may be sufficient to assist with a flat tire on my SUV, but it is not appropriate to handle a tanker containing hazardous substances that is on fire under a highway bridge where seriously injured people need an immediate airlift to a trauma center. Of course, the inverse is also true.

It is imperative that Congress take bipartisan action to empower bank regulatory agencies to leverage technology in a manner that provides early warning of: (i) potentially catastrophic financial risks (such as the high concentrations of uninsured deposits combined with long dated bond portfolios at Silicon Valley Bank) and (ii) the most probable and efficient solutions to such risks. It is equally important to ensure that bankers and regulators are focused on real, financial risks and not a litany of highly qualitative items that have relatively little impact on financial risk but consume tremendous time and valuable resources.

Recommendations for Congress to Promote Innovation and Competitiveness Banking on Topics Related to this Hearing

I. The Bank Resolution Process Should be Updated, and the FDIC Needs More Advanced Tools

The failures of Silicon Valley Bank, Signature Bank, and First Republic Bank in the spring of 2023 revealed vulnerabilities in: (i) the resolution process that has served us well for decades; and (ii) the tools available to the FDIC and other bank regulators. High concentrations of uninsured deposits, long-dated bond portfolios, the inability to quickly obtain liquidity from the Federal Reserve Discount Window and other factors were both amplified and accelerated by social media, networked depositors, and digital banking. Deposit outflows occurred at unprecedented speed (e.g., $42 billion was reportedly withdrawn from Silicon Valley Bank on March 9, 2023 alone). Stated differently: in the context of bank runs, speed kills, and money moves fast in the digital era. We need to update our resolution process and outfit bank regulators with appropriate technology and personnel with experience using such technology to enable them to better predict (and prevent or mitigate) liquidity crises with the speed at which they now occur. Solutions lie, in part, in pre-crisis work, in part, in partnership with third-party professional support and, in part, in technology.

First, thinly staffed bank regulatory agencies should benefit from advanced artificial intelligence and other tools that may aid in predicting problems (and optimal solutions) with more accuracy and speed and in automatically tracking corrections.

Second, clients who evaluated potential emergency acquisitions of and/or investments in the banks that failed in the spring of 2023 explained that the financial information provided to them came from manual downloads from these banks, that the data was incomplete at best and, in some cases, the data was quickly updated on multiple occasions with materially different information. At the very least, this slows down potential buyers and investors in circumstances that require speed. More likely, this causes potential buyers and investors to question their knowledge of the distressed bank and materially reduce the price of any offer or to simply walk away.

Third, more complex, modern accounts and relationships (coupled with complex rules governing deposit insurance) may make it difficult for the FDIC to quickly make deposit insurance coverage determinations. Delays in making deposit insurance coverage determinations can lead to customer fear and exacerbate digital bank runs.

Finally, in the spring of 2023, the FDIC was not in a position to evaluate or consider the capital capacity of potential buyers (e.g., the ability of potential buyers to supplement their existing capital with capital available from partners, such as private investors) to complete acquisitions out of receivership. As a result, I understand it may be easier or more expedient to sell a troubled bank to the bidder with the biggest balance sheet, which can exacerbate our existing and ever-growing Too Big to Fail problem.

II. Recommendations re: Resolution Process

In a world where bank runs happen digitally and at break-neck speed, our resolution process needs to be updated to keep pace. I recommend:

1. Outfitting bank regulators, including the FDIC, with state-of-the art technology, such as better and more up-to-date artificial intelligence tools (and related training, including retention of expert personnel) to enable earlier and more accurate predictions of: (a) deposit runs and bank failures; (b) corrective measures most likely to prevent bank runs and failures; and (c) automated tracking of the implementation of such corrective measures. Regulators should also be equipped to consider and evaluate such analyses provided to them by the banks they regulate. Such tools may also enable the FDIC to more quickly evaluate complex account arrangements and make faster decisions regarding deposit insurance coverage;

2. Establishing a "Liquidity SWAT team" at the FDIC (or via key vendors to the FDIC) to help troubled banks access liquidity faster and more effectively from the Federal Reserve Discount Window and/or Federal Home Loan Banks ("FHLBs"), all of which, I understand, have distinct operating methodologies and idiosyncrasies with respect to acceptable collateral, collateral discounts per type of collateral, pledging mechanics, and others. Below I address routine "testing" or "tapping" the Discount Window by banks and the operational readiness improvements that clearly were needed and appear to be in process at the Federal Reserve;

3. Making it easier for the FDIC to retain expert outside resources specializing in artificial intelligence, bank mergers and acquisitions and bank capital raising. This recommendation requires improving the FDIC's existing contracting process, which, I understand, is so cumbersome that many outside contractors are unwilling to work with it;

4. Simplifying existing bank resolution plans, which, in many cases, are so complex that they cannot be executed quickly;

5. Requiring all banks with at least $50 billion in total assets to maintain a virtual data room with up-to-date, critical information of the type customarily analyzed by buyers of troubled banks. Using outside assistance from bank M&A experts to determine data room contents and technology to facilitate efficient monitoring of data rooms to ensure they are complete and current;

6. Requiring the FDIC, as Receiver, to consider the ability of bidders to bring additional capital resources (e.g., private equity) to a transaction and to conduct a marketing and sale process that is conducive to participation by private equity and other institutional investors;

    a. Amending "control" rules under the Bank Holding Company Act, which are overly restrictive, unnecessarily complicated and create impediments to resolutions by impairing the ability of a buyer to bring third party capital to a transaction. This also results in exacerbating our existing (and growing) Too Big to Fail problem by quickly consolidating failed banks with banks that have the largest balance sheets versus other potential acquirors who are able to raise additional capital;

b. Shelfing charters and other techniques that would attract private capital to the resolution process would also be helpful and facilitate a more effective process for selling banks out of receivership;

7. Appointing a Chief Innovation Officer (or similar officer) at the FDIC and allocating appropriate resources to such officer to innovate on: (i) regulatory matters generally, such as charter types and deposit insurance; and (ii) preventing and quelling rapid bank runs and contagion. Although the following is beyond the topic of resolutions, such Chief Innovation Officer should also focus on financial products and streamlining regulation to facilitate efficiency.

III. FDIC Deposit Insurance

Of course, no serious discussion of FDIC resolution can fail to refer to deposit insurance reform. The most effective way to improve resolution outcomes is to prevent resolutions. Our system of fractional banking is heavily dependent on confidence, and effective FDIC deposit insurance is a key to confidence.

Our deposit insurance system has worked extraordinarily well since it was implemented in 1934, and it has contributed mightily to the stability of the banking system in the United States. But it must be updated to continue to function so effectively in the digital era. The FDIC's report on deposit insurance reform contains reasonable recommendations, as do the reports of certain other commentators. Reforming the deposit insurance program is challenging and risks increasing moral hazard, on the one hand, and enabling the continued migration of deposits to Too Big to Fail banks, on the other hand. I recommend somewhat modest, targeted reform, - paid for, in full, by risk-based assessments on the banking industry, including:

1. Insurance on non-interest bearing transaction accounts of up to $5 million;

    a. Increased risk-based assessments should include, among other things, consideration of the amount of uninsured deposits maintained at a bank;

2. Establishing a program to sell, for an appropriate risk-based premium (or permit sale by private insurers of), excess deposit insurance coverage. Banks could choose to use such coverage, or not, based on their business models and circumstances;

3. Evaluating reciprocal deposit programs and issuing a "Good Housekeeping Seal of Approval" (i.e., confirming a particular program satisfies requirements to qualify for FDIC deposit insurance coverage) or a determination that the program does not work and why.

Failure to update our deposit insurance program incentivizes deposit migration to the largest banks in the U.S. and exacerbates our growing Too Big to Fail problem. Sensible, limited deposit insurance reform could be paid for by the industry in the form of increased, risk-based assessments, in an effort to minimize any potential increase in moral hazard. The overwhelming majority of bankers to whom I speak (and I speak to several every day) highlight this issue as the single most impactful lever Congress could pull to mitigate risk to the financial system.

It is also worth noting that payment stablecoins, as contemplated by the GENIUS Act, are expected to pull deposits from the banking system and further tilt the playing field in favor of the largest banks because such banks will have superior technological and other resources to compete for stablecoin business.

IV. Liquidity and the Importance of the Lender of Last Resort

The events of March 2023 underscored how critical it is for institutions to have predictable and immediate access to emergency liquidity. Our system of lender-of-last-resort facilities – including the Federal Reserve's Discount Window and the FHLB System – must function seamlessly to prevent liquidity shortfalls from cascading into systemic crises.

1. Discount Window Preparedness

The Federal Reserve's April 2023 review of Silicon Valley Bank concluded that the bank was not operationally ready to access the Discount Window in a timely manner. Vice Chair for Supervision Michael Barr wrote that the failure was a *"textbook case of mismanagement,"* noting that inadequate collateral pre-positioning and lack of operational readiness left the bank unable to draw liquidity when it was most needed. This may be true for Silicon Valley and many other banks. My discussions with clients who attempted to use the Discount Window for emergency funding in March of 2023 also reveal a substantial lack of operational readiness at the Federal Reserve at that time.

Since then, I understand that the Federal Reserve and many financial institutions have taken steps to improve, including:

- Pre-positioning collateral, and
- Conducting periodic test borrowings (typically in nominal amounts) to develop experience with Discount Window use.

That said, I still hear from some clients that the process is not yet smooth or fast. Also, it is important to confirm that, in addition to being able to quickly process many liquidity requests, the Federal Reserve can effectively prioritize requests from the most to least important and urgent. I understand from clients that this was an issue in 2023. Immediate and automated access to data for banks making emergency funding requests, and other tools, as discussed above, would seem necessary.

Of course, persistent stigma associated with the Discount Window continues to inhibit its effectiveness. In my experience, clients continue to be very concerned about the stigma of utilizing the Discount Window for more than a small test. Industry participants have proposed stronger confidentiality protections to normalize the Discount Window as a prudential tool rather than an act of desperation.

2. FHLBs vs. Federal Reserve on Collateral Expertise

A critical distinction frequently raised by clients is the comparative experience of the FHLBs versus the Federal Reserve in processing funding requests. I understand that the FHLBs' deep experience with processing and funding transactions, coupled with its continuous, member-specific data pipelines, enables it to ingest and value mortgage collateral quickly. By contrast, I understand the Federal Reserve historically required more extensive legal and operational setup before collateral could be pledged and transactions could be processed and funded. I understand that the Federal Reserve has been working to close this gap. It is important that the gap be closed quickly.

Some clients have advised us that harmonizing eligible collateral, loan to collateral value discounts and data requirements between each of the FHLBs (which, I understand, use different methodologies) and the Federal Reserve Discount Window would allow collateral to be shifted seamlessly between the two systems, reducing friction and strengthening the resilience of the lender-of-last-resort framework.

3. Lender of Last Resort: Recommendations

Based on the above and on my experience advising financial institutions attempting to access liquidity shortly before failure, I offer the following recommendations:

a. Normalize Discount Window usage by requiring periodic test borrowings and integrating bank operational readiness into supervisory ratings, which many banks already do;

b. Require "operational readiness" at the Federal Reserve – and at each of the FHLBs – to handle with dexterity (and prioritize among) large volumes of liquidity requests during periods of extreme stress;

c. Evaluate whether it is feasible to harmonize collateral and funding practices between each of the FHLBs and the Federal Reserve, including common collateral types and haircuts and data standards;

d. Enhance and enforce confidentiality and communications around Discount Window usage, to the extent possible, to mitigate stigma;

e. Clarify the FHLBs' crisis role, balancing their housing mission with their repeatedly demonstrated prowess at funding liquidity requests quickly and efficiently;

f. Coordinate resolution policy to align FHLB super-lien practices with FDIC loss-allocation objectives.

4. Brokered and Reciprocal Deposits

Brokered deposits have long served as a vital tool for banks to access diversified funding sources, enhancing liquidity and supporting lending activities across the economy. In the digital banking era, they are often very granular and insured. A 2023 attempt to dramatically restrict brokered deposits, under safety and soundness pretexts, would have impaired the ability of community and regional banks to access liquidity that is needed to enable competition with larger institutions and maintain liquidity generally. Brokered deposits were not the cause of the liquidity problems at Silicon Valley Bank, Signature Bank and First Republic Bank. Bank regulators have more than sufficient authority to manage issues related to brokered deposits by evaluating rapid growth and underwriting quality in its exam process, and statutory restrictions on brokered deposits should be repealed.

Similarly, reciprocal deposits are a valuable tool that community and regional banks can use to expand deposit insurance coverage and compete with larger banks. Proposals to increase the amount of reciprocal deposits permitted for community and regional banks make practical sense and help mitigate our growing Too Big to Fail problem.

The Role of Bank Mergers in a Healthy Banking Sector

Bank mergers are essential for maintaining a dynamic and resilient banking system that includes institutions of varying sizes and business models, among other things. Mergers enable banks to afford technology that is needed to properly serve customers in the digital age and compete with non-bank providers of financial services. Mergers also enable banks to achieve economies of scale and enhance operational efficiency so they can better compete in an evolving financial landscape and attract the capital needed to serve customers and communities. Bank mergers can lower loan costs for consumers, foster innovation in services, and strengthen cybersecurity and data privacy measures. Mergers can also solve challenging succession planning problems for banks.

Without viable merger options, the banking sector risks becoming a "barbell" system, dominated by a few very large banks at one end and small, community-focused institutions at the other who may struggle to "future proof" their business models. A barbell structure could reduce overall competition, limit credit availability in underserved areas, and hinder economic growth by creating "zombie banks" that struggle to attract capital and remain viable or vibrant. Such a system might also exacerbate financial instability, as mid-sized banks often bridge the gap between local needs and national-scale operations, providing balanced credit access and services.

Bank mergers are sometimes criticized as anti-competitive or harmful to consumers, but the "real world" evidence is clear they are a necessary ingredient for sector health and innovation. I consistently see clients struggle to afford technology unless they can use it in scaling their business, including through mergers. As the CFO of a regional bank recently told me: "Technology platforms that enable us to serve customers where and when they want are expensive. You can't cut enough expense to pay for them. You have to use them to scale the business."

Moreover, mergers play a critical role in addressing succession planning challenges faced by many community banks, where aging leadership and limited internal talent pools threaten long-term viability. In my advisory experience, numerous smaller institutions have turned to mergers as a strategic solution to ensure seamless transitions, preserving institutional knowledge and community ties while accessing broader resources from acquiring entities. More streamlined merger processes should facilitate "friendly" acquisitions that resolve succession gaps without disrupting local services. Regulatory barriers, such as protracted reviews, have exacerbated succession planning issues at community banks, deterring potential partners and risking abrupt closures. By expediting approvals for transactions demonstrating clear succession benefits, policymakers can support sustainable banking models that prioritize continuity and stability.

Most major Western countries have a relatively small number of banks. The U.S. has approximately 4,500 banks, even more credit unions (many of which provide all the services offered by many banks), and a very large number of specialty finance and other private lenders and payments businesses. I understand from Keefe, Bruyette & Woods, a leading investment bank that serves the financial sector, that more than half of all loans made in the U.S. in 2024 were made by non-banks. I have confirmed this is accurate for many types of loans such as mortgages and shared national credits. Regardless, it is unmistakably clear that most areas of the U.S. are not suffering from a lack of financial services providers, and competition is fierce. Of course, underserved communities do remain in the U.S., and they are often best served by community banks, many of which need to be able to merge to obtain the scale necessary to attract capital or leverage technology to serve customers or to succession plan in a manner that enables them to continue to operate effectively.

Additionally, historical data shows that mergers motivated by financial distress can lead to improved earnings and capital ratios, while those aimed at expansion enhance efficiency and risk management. In a post-financial crisis era, mergers have contributed to a more stable system by enabling stronger institutions to absorb weaker ones, as seen in responses to regional bank failures. However, overly restrictive policies could discourage these transactions, pushing the industry toward the barbell outcome where only the largest banks thrive through scale advantages, and smaller banks face barriers to growth.

Mergers also create opportunities to attract capital to the industry and, capital is, of course, necessary to fund loans and otherwise support communities and economic growth generally.

Lack of Timeliness, Transparency, Consistency, and Predictability in Regulatory Approvals

In recent years, the regulatory approval process for bank M&A, involving the FDIC, OCC, Federal Reserve, and DOJ, in addition to state bank regulators, suffered from significant duplication, and deficiencies in timeliness, transparency, consistency, and predictability. These duplications and deficiencies deter progress and contribute to the barbell risk described above. Delays in approval lead to increased costs, operational risks, staff attrition, and deal uncertainty for both acquirers and targets. This environment breeds mistrust of regulatory agencies and may cause potential buyers to avoid transactions that may help troubled or struggling institutions and the communities they should be serving.

In the recent past, regulatory agencies appear to be acting more responsibly with merger applications and not "slow-walking" them. Reforms like firm 120-day shot clocks, objective standards, and coordinated guidelines could streamline processes, ensuring mergers support a diverse sector without inappropriate and unproductive hurdles. While some view stricter scrutiny as protective (e.g., to curb consolidation), a balanced approach would promote competition and stability by enabling progress.

In summary, a more timely, transparent, consistent, and predictable approval process is crucial to harness mergers' benefits, incorporate broader competitive analyses beyond deposits, and prevent a barbell system that could stifle the banking sector's dynamism.

Conclusion

In conclusion, the U.S. banking industry is changing rapidly due to advancements in technology, extraordinary competition from non-banks, and other developments. To enable banks to continue to serve as an engine of U.S. growth and prosperity, Congress and regulatory agencies must update antiquated laws, regulations and rules. Congress has a real opportunity – as demonstrated by enactment of the GENIUS Act – to legislate in a bipartisan manner to reform the FDIC resolution process, liquidity and the lender-of-last resort policies, and the bank merger application and review process to enable our community and regional banks to continue to thrive in this period of rapid and dramatic change. Also, providing legislative mandates (and related funding) to the bank regulatory agencies to leverage technology, rather than avoid the inevitable advancement, is necessary for the continued safe and sound evolution of our banking industry and the ultimate success of our broad banking system.