

Banking and Finance Law Daily Wrap Up, FINANCIAL STABILITY—First Republic Bank repossessed, liquidated, and sold to Chase, (May 1, 2023)

Banking and Finance Law Daily Wrap Up

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The drastic action was mandated by severe operational concerns at San Francisco-based First Republic Bank and the need to protect depositors, creditors, shareholders, and the public.

In a series of coordinated actions [designed](#) to protect depositors and stave off a banking crisis, the California Department of Financial Protection and Innovation [took possession](#) of the failed First Republic Bank of San Francisco, [liquidated](#) its assets, and then [appointed](#) the Federal Deposit Insurance Corporation (FDIC) as bank receiver, which then sold First Republic Bank's assets and deposits to JPMorgan Chase Bank. As part of the transaction with Chase, the FDIC [agreed](#) to assume First Republic Bank's corporate debt and preferred stock, estimated to be about \$13 billion.

On May 1, 2023, 84 First Republic Bank branch locations in eight states reopened as Chase branches, with all normal operations continuing. First Republic Bank depositors became Chase depositors, with full access to all deposits because, under the loss-share agreement with the FDIC, Chase purchased all insured and uninsured deposits, as well as all single family, residential, and commercial loans. Chase did not, however, purchase any of First Republic Bank's corporate debt or preferred stock.

After the FDIC assumed its role as bank receiver, it put purchase of Republic Bank's assets up for bids, a process that Chase won. "Our government invited us and others to step up, and we did," said Jamie Dimon, Chase's chairman and CEO, in a [press release](#). "This acquisition modestly benefits our company overall, it is accretive to shareholders, it helps further advance our wealth strategy, and it is complementary to our existing franchise." The deal includes \$173 billion in loans, \$30 billion in securities, and \$92 billion in deposits. Under the loss-share agreement, the FDIC is also to provide Chase with \$50 billion in five-year, fixed-rate financing.

On May 1, 2023, the California Department of Financial Protection and Innovation (CDFP) entered three orders in In the Matter of First Republic Bank. The first was an Order of Possession of Property and Business, which noted that First Republic Bank's \$104.1 in deposits represented a 41 percent decrease in the first quarter of 2023. The order went on to say that the CDFP Commissioner, Clothilde v. Hewlett, "has a reasonable expectation that deposit outflows will continue." The order also noted that First Republic Bank had exhausted its funding options from the Federal Home Loan Bank Board (FHLB) and the Federal Reserve, due to its recent advances of \$28.1 billion from the FHLB and \$93.2 billion from the Federal Reserve. This combination of continuing deposit outflows with future funding shortfalls meant that the bank was being operated "in an unsafe and unsound manner," the order said, and the market had lost confidence in the bank. As a result, the Commissioner issued an order taking possession of "the property and business of First Republic Bank."

The second was an Order of Liquidation, ordering that the deposit liabilities and certain assets of First Republic Bank be sold to another bank. The filing stated that the Commissioner gave First Republic Bank the opportunity to rehabilitate itself, but the bank had failed to do so. Given that "no reasonable prospect" existed for rehabilitation, the Commissioner entered the order liquidating the bank for the benefit of all bank depositors, bank creditors, bank shareholders, the bank itself, and the public.

The third order was an Appointment and Tender of Appointment as Receiver, naming the FDIC as receiver of the liquidated bank because it was "in the best interests of all those impacted by the Order of Possession and Order of Liquidation."

Jonathan McKernan, a member of the FDIC board of directors, [urged](#) Congress not to read the First Republic Bank collapse as a call for more banking regulation. “Instead,” he said in a press release, “we should acknowledge that bank failures are inevitable in a dynamic and innovative financial system.” The key to avoiding future bank collapses, he said, was to focus “on strong capital requirements and an effective resolution framework as our base hope for eventually ending our country’s bailout culture that privatizes gains while socializing losses.” McKernan also expressed relief that the FDIC addressed the situation without the need to exercise its emergency powers, which he said should be “approached skeptically.”

A banking trade group weighed in in a favor of the latest developments. “While the failure of any bank is regrettable,” Rob Nichols, president and CEO of the American Bankers Association, said in a [press release](#), “today’s decision by federal and state regulators to close First Republic Bank and sell its deposits and assets through a competitive auction will bolster confidence in the nation’s banking system.”

Companies: American Bankers Association; First Republic Bank; JPMorgan Chase Bank

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