February 28, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1402
RIN 7100-AD62

Office of the Comptroller of the Currency
250 E Street, SW
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Docket No. OCC-2010-0009
RIN 1557-AD33

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments/Legal ESS
RIN 3064-AD58

Re: Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor

Dear Sir or Madam:

The Clearing House Association L.L.C. ("**TCH**")[1] and the Securities Industry and Financial Markets Association ("**SIFMA**")[2] appreciate the opportunity to comment on the joint notice of proposed

[1] TCH is an association of major commercial banks. Established in 1853, TCH is the United States' oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. TCH is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs, and white papers the interests of its member banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated clearing-house, funds-transfer, and check-image payments made in the U.S. See TCH's web page at www.theclearinghouse.org.

[2] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

rulemaking (the "**NPR**")[3] issued by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"), the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (the "**agencies**") to modify their respective Basel II-based[4] Internal-Ratings-Based and Advanced Measurement Approaches for risk-based capital (the "**Advanced Risk-Based Approach**") to be consistent with Section 171(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"). In order to implement Section 171(b)(2), the NPR proposes replacing the transitional floors in Section 21(e) of the Advanced Risk-Based Approach with a permanent floor equal to the Tier 1 and Total risk-based capital ratios as calculated under the generally applicable risk-based capital rules applicable to U.S. banks based upon the initial Basel Accord from 1988 (the "**U.S. Basel I Standards**"). Section 171 of Dodd-Frank (the "**Collins Amendment**") requires floors, both as to risk-based capital requirements (as addressed in the NPR) and leverage capital requirements (not addressed in the NPR), that are not "quantitatively lower" than the "generally applicable" **[**risk-based**] [**leverage**]** capital requirements," each as defined in Section 171(a), as in effect on July 21, 2010.

The agencies are required to implement the Collins Amendment, and we appreciate this opportunity to assist them in doing so, notwithstanding our disagreement with the appropriateness of the floor requirements in the Collins Amendment. We do have concerns with respect to the agencies' approach as set forth in the NPR, however, primarily focused on the interplay between amendments proposed in the NPR and other upcoming amendments in bank capital regulation, including Basel III.[5] Section I of this letter summarizes our comments. Sections II and III address, in additional detail, our key concerns about the NPR and our responses to certain of the questions posed in the NPR, respectively.

I. EXECUTIVE SUMMARY

Our key concerns, both of which fundamentally go to whether the agencies' implementation of the Collins Amendment floors may go beyond what the Collins Amendment requires and which are detailed in Section II, are as follows:

- The NPR's approach to the risk-based floor requirement does not accommodate the possibility that the agencies' implementation of Basel III's risk-based standards may apply differently to core banks[6] as compared to small banks, particularly with respect to Basel III minimum required ratios (or "**calibrations**", using Basel III terminology), buffers and sanctions that may be embodied in amendments to the Advanced Risk-Based Approach but not the U.S. Basel I

[3] 75 Fed. Reg. 82317 (December 30, 2010).

[4] "**Basel II**", as used in this letter, refers to the capital framework set forth in the Basel Committee on Banking Supervision's June 2006 publication, *International Convergence of Capital Measurement and Capital Standards – A Revised Framework*.

[5] "**Basel III**", as used in this letter, refers to the capital framework set forth in the Basel Committee on Banking Supervision's December 2010 publication, *Basel III: A global regulatory framework for more resilient banks and banking systems*.

[6] "**Core banks**", as used in this letter, are those that are required or elect to apply the Advanced Risk-Based Approach.

standards, for example. This results from the NPR's requirement that core banks meet the minimum Total risk-based and Tier 1 risk-based capital ratios set forth in the Advanced Risk-Based Approach (currently 8.0% and 4.0%, respectively) but that the determination of whether a core bank meets the minimum ratios is made by looking to the lower of its ratios as calculated under the Advanced Risk-Based Approach and the U.S. Basel I standards. If Basel III is applied only to core banks as amendments to the Advanced Risk-Based Approach (and not the U.S. Basel I Standards), the consequence of the NPR's approach would be to subject core banks to (a) substantially higher capital requirements than would apply, and (b) possible limitations on capital distributions for banks in their buffer zone[7] that would not apply, if the floor were implemented simply by requiring core banks to maintain at a minimum the amount of capital required under the U.S. Basel I Standards as in effect from time to time. The Collins Amendment does not require either result.

- It is not possible to understand the operation and consequences of the Collins Amendment floors without addressing, at the same time, the broader range of related changes in capital regulation, including not only the implementation of Basel III's risk-based standards, but also the Basel III leverage ratio, implementation of the Collins Amendment leverage floor requirement, implementation of other Dodd-Frank provisions that bear on capital, and possible changes in the agencies' regulations implementing the prompt corrective action ("**PCA**") provisions in the Federal Deposit Insurance Act.[8]

- Accordingly, it is critically important, indeed necessary, that the agencies revisit the NPR's amendments to the Advanced Risk-Based Approach as they address other changes in capital and capital-related regulations with a view to ensuring that the amendments and changes do not do more than the Collins Amendment requires – namely, establishing as a floor for all banks (including core banks) the minimum amount of capital required under the risk-based and leverage standards applicable to small banks, with the required floor amount not being "quantitatively lower" than those standards in effect on the date of Dodd-Frank's enactment.[9]

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7 By "**buffer zone**", we mean the incremental 2.5% of common equity Tier 1 that, under Basel III's capital conservation buffer requirements, is added to the minimum common equity Tier 1, Tier 1 and Total capital ratios (and may be expanded to a larger percentage range by national regulators if they invoke the countercyclical buffer). Basel III limits capital distributions by banks that meet minimum required capital ratios but whose capital ratio falls within the buffer zone.

8 Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831o.

9 Section 168 of Dodd-Frank, although it refers only to the Federal Reserve, may require the agencies to adopt regulations implementing the Collins Amendment by not later than January 21, 2012, while the final Basel III framework provides for implementation commencing January 1, 2013. Although in the ideal world the agencies would be able to address – and banks consider – proposed capital reform at a single time and holistically in a single NPR, we realize that may not be practical.

Our responses to certain of the questions posed in the NPR are provided in Section III. They are as follows:

- Question 1: Capital equivalency determinations should not require the agencies to find that foreign banks are subject to a Basel I floor in their home countries.

- Question 2: We believe the Collins Amendment floor requirements are conceptually flawed and urge the agencies to proceed cautiously in implementing the floors so as to ensure that their application is not more severe than the Collins Amendment requires.

- Question 3: Certain assets, such as separate account assets, should receive a minimal, or no, risk weighting because banks, as a practical matter, are not exposed to them.

II. KEY CONCERNS

A. The Collins Amendment floors should be implemented in a manner that is not more constraining than the Collins Amendment requires – namely, establishing as a floor for all banks (including core banks) the minimum amount of capital required under the risk-based and leverage standards applicable to small banks, with the required floor amount not being "quantitatively lower" than those standards in effect on the date of Dodd-Frank's enactment. The amendments proposed by the NPR will need to be revisited as other changes to capital regulation of U.S. banks are implemented, including Basel III, to ensure that the amendments do not require higher levels of capital or have consequences (capital buffer sanctions, for example) that the Collins Amendment does not require.

The Collins Amendment requires the agencies to establish capital floors in two areas:

- the risk-based capital measures, which are addressed in the NPR and which require the agencies to make decisions regarding the capital regulation of (i) core banks subject to Basel II as compared to non-core banks, and (ii) U.S. banks as compared to other banks that are not likely to be subject to similar floors in their home jurisdictions; and

- the leverage measure, which affects the regulation of U.S. banks as compared to international banks more generally, recognizing that currently there is no international leverage requirement and Basel III proposes an international leverage requirement for the first time.

Senator Collins, in commenting on the Dodd-Frank provision bearing her name when proposed, noted : "Our amendment would tighten the standards that would apply to larger financial

institutions by requiring them to meet, at a minimum, the standards that already apply to small banks."[10]

We have two principal concerns with the NPR's approach, both of which fundamentally go to whether the agencies' implementation of the Collins Amendment floors may go beyond what the Collins Amendment requires: first, that the NPR's approach to the risk-based floor requirement does not accommodate the possibility that the agencies' implementation of Basel III's risk-based standards may apply differently to core banks as compared to small banks (particularly with respect to Basel III calibrations, buffers and sanctions that may be embodied in amendments to the Advanced Risk-Based Approach but not the U.S. Basel I Standards, for example); and, second and more generally, that it is not possible to understand the operation and consequences of the Collins Amendment floors without addressing, at the same time, the broader range of related changes in capital regulation, including not only the implementation of Basel III's risk-based standards, but also the Basel III leverage ratio, implementation of the Collins Amendment leverage floor requirement, implementation of other Dodd-Frank provisions that bear on capital, and possible changes in the agencies' PCA regulations.

1. The NPR's approach to the risk-based floor requirement may have inappropriate consequences not required by the Collins Amendment, depending upon decisions yet to be made with respect to Basel III and Dodd-Frank, and likely will need to be revisited as both are implemented.

The NPR addresses the Collins Amendment risk-based floor requirement by requiring core banks to calculate their Total risk-based and Tier 1 risk-based capital ratios under both the Advanced Risk-Based Approach and the U.S. Basel I Standards and then use the lower of the ratios under the two calculations to determine whether the bank meets minimum requirements; the minimum requirements are those specified in the Advanced Risk-Based Approach (currently 8.0% and 4.0%, respectively). Although there are a number of differences between the existing Advanced Risk-Based Approach and U.S. Basel I Standards beyond the calculation of risk-weighted assets, the principal difference is the calculation of risk-weighted assets. The effect of the NPR is primarily to address the denominator in the calculation of risk-based capital ratios. The NPR does not address the possibility that, because of determinations yet to be made with respect to the application of Basel III or otherwise, (a) calibrations may be different under the Advanced Risk-Based Approach as compared to the U.S. Basel I Standards, (b) additional differences may be introduced by Basel III into the calculations of the components of capital in the numerator of the ratios under the Advanced Risk-Based Approach as compared to the U.S. Basel I Standards, or (c) there may be more than two sets of capital standards –for example, core banks, some group of large banks other than core banks (perhaps banks with total assets of $50 billion or more by reference to Section 165 of Dodd-Frank), and other banks.

We understand the agencies currently are making decisions as to which banks Basel III (or components of Basel III, such as its calibrations) will apply.[11] If the Basel III calibrations, definitions,

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[10] Congressional Record – Senate, May 10, 2010, S3459.

[11] John Walsh, the Acting Comptroller of the Currency, addressed this issue at some length in his comments before the Exchequer Club in Washington, D.C. on January 19, 2011, noting: "If we do decide to go with wider application **[**that is, of Basel III to a broader group than just core banks**]**, we would need to make appropriate exceptions for smaller institutions that received different treatment under Dodd-Frank."

buffers and sanctions are applied uniformly to all U.S. banks (core banks and all other banks), then the NPR's approach may be the correct one. If the Basel III calibrations, definitions, buffers and sanctions do not apply to all banks (including, for example, in connection with a decision to create multiple sets of standards for non-core banks, such as community banks having total assets below a designated threshold and other banks above that threshold that are not core banks), then the NPR's approach to the risk-based floor could have the consequence of requiring substantially higher proportionate amounts of capital for core banks than for the small banks encompassed by the definitions of "generally applicable **[**leverage**]** **[**risk-based**]** capital requirements" in the Collins Amendment.[12] That result is not required by the Collins Amendment. It only requires the establishment as a floor for all banks (including core banks) the minimum amount of capital required under the risk-based and leverage standards applicable to small banks, with the required floor amount not being "quantitatively lower" than those standards in effect on the date of Dodd-Frank's enactment.

Similarly, if a core bank's capital ratio(s) are lower when calculated under the U.S. Basel I Standards as opposed to the Advanced Risk-Based Approach, the lower ratio(s) may cause the bank to fall into its buffer zone and be subject to limitations on capital distributions when (a) they would not be subject to such limitations if buffer zone determinations and related limitations on capital distributions were made only by looking to the Advanced Risk-Based Approach (as opposed to the lower of that approach and ratios calculated under the U.S. Basel I Standards) and (b) small banks may not be subject to such limitations (depending upon whether Basel III is applied to them).[13] That is not a result required by the Collins Amendment; it addresses minimum amounts of required capital, not whether limitations on capital distributions or other sanctions apply at different capital levels.

These results would be inappropriate and punitive and, as noted, not required by the Collins Amendment. We understand the agencies' practical need to address the Collins Amendment risk-based floor before final decisions are made with respect to the implementation of Basel III in the United States. However, the examples described in the preceding paragraphs point to the likelihood that the amendments to the Advanced Risk-Based Approach set forth in the NPR, if implemented, will need to be revisited as decisions are made with respect to the implementation of Basel III.

The Collins Amendment was enacted in the context of current requirements that are essentially binary – the U.S. Basel I Standards, as a base set of capital requirements applicable to banks

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[12] This result would apply if Section 3(a)(1) of the Advanced Risk-Based Approach were amended, in connection with the implementation of Basel III, to increase the required Tier 1 risk-based capital ratio from 4.0% to 6.0% or add the common equity Tier 1 ratio required by Basel III, but corresponding changes were not made to the U.S. Basel I Standards or implemented in new standards that may be applied for some other category of non-core banks.

[13] Consider, for example, a core bank whose Tier 1 risk-based capital ratio is 8.5% as calculated under the Advanced Risk-Based Approach but 8.11% as calculated under the U.S. Basel I Standards. Under the NPR, that core bank's Tier 1 risk-based capital ratio would be 8.11%, with the consequence that, if the 8.11% ratio instead of the 8.5% ratio is used for purposes of determining whether the bank is within its buffer zone, it would be in its buffer zone and subject to Basel III's limitations on capital distributions (assuming Basel III is fully applicable to core banks), notwithstanding that its capital ratios calculated in accordance with Basel II and Basel III in accordance with international standards (and without giving effect to the Collins Amendment or the NPR) would be 8.50% and would not subject the bank to buffer zone sanctions.

other than core banks, and, insofar as risk-based capital requirements are concerned, the Advanced Risk-Based Approach for core banks, with the differences between the two being largely in the calculation of risk-weighted assets and not in the calibrations of minimum required capital ratios or, with limited exceptions, in the definitions of capital. U.S. capital regulations after Basel III may have more than the current two approaches or groupings. Moreover, even if U.S. capital regulations after Basel III continue to have only two approaches or groupings (that is, core banks subject to the Advanced Risk-Based Approach and other banks subject to the U.S. Basel I Standards, each as amended), the calibrations and definitions of capital in the two approaches may differ. Additionally, whether the agencies ultimately determine to make a version of Basel II's standardized approach available for U.S. banks will bear upon this.

2. Other changes to U.S. bank capital regulation apart from Basel III's risk-based standards likely will require that the NPR's approach to capital floors be revisited.

It is not possible to understand the operation and consequences of the Collins Amendment risk-based floor without understanding, at the same time, other upcoming changes in bank capital regulation and how they will be addressed. We have commented on Basel III's risk-based standards in Part II.A.1. We are addressing others, more generally (because the parameters of the proposed changes are less known at this time), below. As stated earlier, we appreciate the impracticality of addressing all upcoming changes in capital regulation within the narrow timeframe required by Dodd-Frank for the Collins Amendment provisions. However, we do believe that other upcoming regulatory actions in the capital area may affect how the agencies and banks think about the Collins Amendment floors and, depending upon their contours, may require that the NPR's approach to implementing the risk-based floor be revisited.

Insofar as the Collins Amendment's leverage capital floor requirement is concerned, given the similarities in the language between Sections 171(a)(1) and 171(b)(1), on the one hand, and Sections 171(a)(2) and 171(b)(2), on the other hand, the agencies may feel compelled to implement the leverage capital floor in a manner analogous to the approach in the NPR with respect to the risk-based capital floor. Again, depending upon how the Basel III standards are implemented in the United States (and, in particular, to which banks they apply or how they apply differently to different groupings of banks), the consequences are difficult to estimate.

We do not believe the floors can be evaluated and their consequences understood without, at the same time, understanding the interplay not only between the Collins Amendment floors and Basel III, but also possible amendments to the agencies' PCA regulations. We are particularly concerned about how any recalibration will be implemented. It is crucial that, when ultimately implemented, the minimum required leverage ratio, as well as the leverage ratios used for determining thresholds under the PCA regulations (that is, well capitalized, adequately capitalized, undercapitalized or significantly undercapitalized), not embody the most restrictive elements of Basel III and the PCA regulations – that is, the numerator of the leverage ratio should not use the narrower capital measure while the denominator uses the more expansive exposure measure of the two standards – without a recalibration of the existing minimum requirements as well as PCA thresholds to reflect the redefined numerator and denominator in the ratio.

The Collins Amendment does not address (or impose requirements with respect to) how the agencies might modify their PCA regulations in view of Basel III and Dodd-Frank. Applying the more narrow Basel III numerator and the more expansive Basel III denominator to the leverage test without a recalibration for PCA purposes, and the related limitations on their operations that could result from a lower classification under the PCA standards, would put U.S. banks at a significant competitive disadvantage. This disadvantage would be especially acute in the event that either the international community or certain foreign countries lower the target numerical threshold for the Basel III leverage ratio below the threshold applicable under the PCA regulations.

The manner of implementation of other changes in capital rules, including the market-risk rules, and of Dodd-Frank Section 165's requirement that prudential (including capital) standards for banks with $50 billion or more of total consolidated assets be "more stringent," may also impact the Collins Amendment floor requirements.

B. Section 21(d) of the Advanced Risk-Based Approach requires amendment to clarify how a bank exits its "parallel run" and becomes subject to the Advanced Risk-Based Approach as a requirement.

The NPR removed Section 21(e) from the Advanced Risk-Based Approach. That section deals with transitional floor periods that, we agree, no longer apply given the Collins Amendment risk-based floor requirements. Section 21(d), however, provides in effect that a core bank exits its parallel run period (and become subject to the Advanced Risk-Based Approach as a requirement) when the relevant agency notifies the bank that it "may begin its first floor." Section 21(d) will need to be amended to eliminate the transition to a floor period as the test for becoming subject to the Advanced Risk-Based Approach. The agencies could do that by revising the introductory language in Section 21(d) to read: "**[**T**]**he **[**applicable**]** agency will notify the **[**bank**]** **[**bank holding company**]** of the date that the **[**bank**]** **[**bank holding company**]** is required to commence determining its risk-based capital requirements under this appendix if . . ." We appreciate that the need for revision to Section 21(d) is only a technical drafting matter.

C. The 1.06 multiplier in the Advanced Risk-Based Approach's definition of "credit-risk-weighted assets" should be eliminated.

In TCH's letter, dated November 5, 2010, to the U.S. banking agencies, TCH argued that the 1.06 multiplier in the Advanced Risk-Based Approach's definition of credit-risk-weighted assets was no longer appropriate. In that letter TCH pointed to the extensive experience that regulators and banks have now had with Basel II's probability of default and loss given default calculations and the more robust capital standards being implemented through Basel III in any event. The Collins Amendment's floors are yet another factor that make the 1.06 multiplier unnecessary.

III. Responses to Specific Questions

A. Question 1. How should the proposed rule be applied to foreign banks in evaluating capital equivalency in the context of applications to establish branches or make bank or nonbank acquisitions in the United States, and in evaluating capital comparability in the context of foreign bank FHC declarations?

The Collins Amendment does not mandate that foreign banks be subject to a Basel I capital floor in order for the Federal Reserve to approve their financial holding company declarations or applications to establish branches or agencies or make bank or nonbank acquisitions. We do not believe that the Federal Reserve should require a home country equivalent of the Collins Amendment floors in these contexts. In our view, the presence or absence of a Basel I capital floor may be taken into account as a relevant factor, but should not be applied as a *per se* requirement, in capital equivalency determinations.

First, the provisions requiring the Federal Reserve to make capital equivalency determinations[14] do not require that the Federal Reserve find that foreign bank applicant's home country capital regime contain every element of the U.S. regime. Rather, they provide the Federal Reserve with flexibility by requiring a finding of, for example, "comparable" capital standards and listing various factors to taking into consideration, including accounting standards, long-term debt ratings and reliance on government support to meet capital requirements.[15]

Second, we are concerned that aggressively applying the Collins Amendment floor to foreign banks could prompt foreign regulators to adopt an aggressive interpretation of their local laws as applied to U.S. banks, including in unanticipated contexts that may not be limited to capital regulations, and thereby potentially hinder the ability of U.S. banks to expand and transact business abroad.

Third, the unilateral imposition of capital standards by the agencies on non-U.S. banks would be contrary to the international efforts the agencies have participated in and supported regarding the advancement of international capital standards, namely the Basel Accords. If the United States were to choose to act independently in this manner, it will be putting at risk Basel III as an international framework endorsed by the G20 leaders at their meeting last November in South Korea, in which the United States participated. Additionally, those countries that do abide by the Basel Accords have either transitioned beyond the Basel I methodology, or are in the process of doing so. To impose the requirement that firms revert to this standard would require such impacted firms to undertake costly and time consuming operational, technical and business management changes in order to be compliant with the proposal. Given the allocation of resources required to re-implement the Basel I infrastructure, this will have a direct and adverse impact on these firms' ability to adopt the more advanced and robust Basel II.5 and Basel III standards.

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14 *See, e.g.*, 12 U.S.C. §§ 1842(c) and 1843(l)(3); 12 C.F.R. § 225.92(e).

15 *See*, 12 C.F.R. § 225.92(e)(1).

B. Question 2. The agencies seek comment generally on the impact of a permanent floor on the minimum risk-based capital requirements for banking organizations subject to the Advanced Risk-Based Approach, and on the manner in which the agencies are proposing to implement the provisions of section 171(b) of the Act.

As noted in the introduction to this letter, we appreciate that the agencies are required to implement the Collins Amendment's floor requirements, notwithstanding our disagreement with the appropriateness of those requirements. We have summarized below six fundamental concerns with the floor requirements and urge the agencies to consider these concerns as they implement the floor requirements.

First, the Collins Amendment is a direct and express repudiation of risk-based approaches to capital. We strongly support a risk-based approach, irrespective of whether its application to a particular bank requires that bank to maintain less capital or more capital (which sometimes will be the case), and disagree with the Collins Amendment's premise. As we have learned from experience with Basel I, imposing a non-risk-based approach will give banks an incentive to take on higher-risk assets and encourages regulatory arbitrage. A non-risk-based approach is not sensible or desirable, in our view, from either a supervisory or management perspective.

Second, the Collins Amendment risk-based floor implicitly rests on the conclusion that more risk-sensitive approaches to evaluating capital requirements are helpful and reliable only in identifying increased risk as compared to the floor requirements but not decreased risk. We do not believe that premise is sustainable. The financial crisis exposed weaknesses in capital regulation, including aspects of the Advanced Risk-Based Approach, the market risk rules and other components of capital regulation. Basel III is itself an intensive and sustained effort to address those weaknesses. Moreover, the leverage requirement – now included as an international standard in Basel III – is also a safety and soundness backstop for risk-based measures.

Third, the Collins Amendment's floors have the potential, at least theoretically, to distort decision making in a manner that could actually increase risk-taking. Consider, for example, a bank (i) that has a high-quality commercial loan portfolio and (ii) for which risk-weighted assets under the U.S. Basel I Standards are currently higher than risk-weighted assets calculated under the Advanced Risk-Based Approach. Were capital calculations the only consideration, that bank would be encouraged to take more risk up to the point where risk-weighted assets under the Advanced Risk-Based Approach equal risk-weighted assets under the U.S. Basel I Standards.

Fourth, the large differences in the risk-weighted assets for an exposure under the U.S. Basel I Standards and the Advanced Risk-Based Approach will make capital management and related business decisions extremely difficult for core banks. The capital cost attendant to a particular activity or ownership of a particular asset is, of course, only one of a multitude of supervisory and management considerations that bear on the activity or asset. However, capital is a critical driver of decision-making, and a determination as to whether or not to engage in particular activities or originate or acquire particular assets inevitably in many cases will differ depending upon whether the constraint is the U.S. Basel I Standards or the Advanced Risk-Based Approach.

Fifth, core banks that are reporting companies under the Securities Exchange Act of 1934 likely will feel compelled to disclose not just their capital ratios as compared to minimum

requirements but also the sub-components as calculated under the U.S. Basel I Standards and the Advanced Risk-Based Approach. That disclosure, although likely necessary, may be confusing to market participants (investors, analysts, rating agencies and others). Similarly, it is not clear how the floor requirements will be taken into account for Pillar III disclosure requirements. The Pillar III disclosure requirements set forth in Section 71 of the Advanced Risk-Based Approach of each of the agencies, in its current form, will require substantial revision.

Sixth, as a result of the Collins Amendment, core banks will need to spend a substantial amount of time and money to maintain the systems, employees and processes necessary to comply with two sets of capital requirements on an ongoing basis. The costs of compliance extend to regulatory agencies as well, which will need to divert supervisory resources to confirm compliance with both the generally applicable capital requirements and Advanced Risk-Based Approach.

As noted in the Executive Summary to this letter, we believe the Collins Amendment floors are conceptually flawed. We urge the agencies, in implementing the floors, to proceed cautiously, complying with the requirements of Section 171(b) of Dodd-Frank – fundamentally, that minimum capital requirements applicable to core banks and other large banks not be less than those applicable to small banks – but in doing so taking into account the broader range of changes in capital regulation, including the implementation of Basel III and possible changes in the PCA regulations, that the agencies are currently addressing or are about to address.

C. Question 3. For what specific types of exposures do commenters believe this treatment is appropriate? Does the proposal provide sufficient flexibility to address the exposures of depository institution holding companies and nonbank financial companies supervised by the Federal Reserve? If not, how should the proposal be changed to recognize the considerations outlined in this section?

Although helpful, the standard proposed in the NPR is quite limiting – "[t]he risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk-weight category of less than 100 percent . . . ."[16] Insofar as insurance companies are concerned, the proposal seems geared toward general account assets. We urge the agencies to also consider providing relief for separate account assets. Separate account assets should not be risk-weighted at all (or minimally) because as a practical matter the entity holding them is not exposed to them. Although held on the balance sheet, these assets generally do not expose the insurance company to loss since the income, gains or losses of the separate account are generally credited to it without regard to the other income, gains or losses of the insurance company and vice versa.[17]

More generally, and not limited to the issues raised by the Collins Amendment or addressed in the NPR but analogous to the treatment of insurance company separate account assets, we urge the agencies in due course to reconsider the appropriateness of requiring banks to maintain capital against assets that are on the balance sheet because of the requirements of generally accepted

[16] 75 Fed. Reg. 82320 (December 30, 2010).

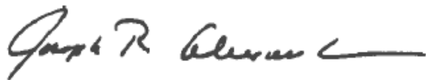
[17] The exact relationship between a separate account and general account of an insurance company is a matter of state law and thus the treatment of such account may vary from state to state.

accounting principles ("**GAAP**") but that pose no risk to the bank or the components of its shareholders' equity. GAAP may no longer be the appropriate test for whether assets should be included in risk-weighted assets (for risk-weighted capital requirements) or total assets (for a leverage test), at least in all cases. The important recent development in this area is the Financial Accounting Standards Board's FAS Nos. 166 and 167 (codified as ASC 810 and ASC 860), which apply a control test to sales of financial assets and have resulted in banks and others bringing on balance sheet large amounts of assets transferred in securitizations, and treated as sales under GAAP in effect at the time of initial transfer, that pose no risk to the selling bank or the components of its shareholders' equity.

* * *

TCH and SIFMA appreciate your consideration of the views expressed in this letter. If you have any questions, please contact Joe Alexander of TCH at 212-612-9234 (e-mail: joe.alexander@theclearinghouse.org) or Kenneth Bentsen of SIFMA at 202-962-7400 (e-mail: kbentsen@sifma.org).

Very truly yours,



Joseph R. Alexander
Senior Vice President, Deputy
General Counsel and Secretary
The Clearing House Association L.L.C.

Very truly yours,

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Executive Vice President, Public Policy
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cc: Hon. Jeffrey A. Goldstein
United States Department of the Treasury

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