American Bankers Association
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March 9, 2015

The Honorable Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

The Honorable Daniel Tarullo
Governor
Federal Reserve Board
Eccles Board Building
20th and C Street, N.W.
Washington, D.C. 20219

Re: Application of Basel III Capital Rules to Highly Capitalized Banks

Dear Comptroller Curry, Chairman Gruenberg, and Governor Tarullo:

Thank you once again for meeting with me and my colleagues to discuss the recommendation of ABA and the state bankers associations that the federal banking regulators establish a highly capitalized bank approach that would facilitate identification of banks that would significantly exceed capital requirements under Basel III. I appreciate the attention that you have given to this proposal.

I understand that ABA and banking agency staff have had subsequent productive meetings. One of the concerns raised during these discussions was whether one of the options proposed by the ABA, the GAAP approach, would comply with legislative requirements of the Collins Amendment in the Dodd-Frank Act. We believe that it does. ABA engaged outside counsel to review the issue and memorialize the legal arguments in support of our view. I am attaching that legal memorandum. I hope this material will expedite your consideration of the proposed highly capitalized bank approach.

Sincerely,

Frank Keating

COVINGTON & BURLING LLP

March 9, 2015

Memorandum

To: American Bankers Association

From: John C. Dugan, Keith A. Noreika & Randy Benjenk

Re: Federal Banking Agencies' Authority to Allow Highly Capitalized Banking Organizations to Use a Simple GAAP-Based Capital Ratio As a Means to Comply with Risk-Based Capital Requirements

You have asked us whether the federal banking agencies[1] have the legal authority to allow highly capitalized banking organizations to use a simple but substantial capital ratio consisting primarily of equity to assets calculated under Generally Accepted Accounting Principles (the "GAAP Ratio") as a means of satisfying generally applicable risk-based capital requirements.[2] Under this proposal, the U.S. capital rules implementing international risk-based bank capital standards established by the Basel Committee would be amended to provide that a U.S. banking organization that meets or exceeds a GAAP Ratio of 10 percent would satisfy its common equity tier 1 risk-based capital ratio, tier 1 risk-based capital ratio, total risk-based capital ratio, and risk-based capital conservation buffer under the Standardized Approach to risk-based capital requirements (collectively, the "Standardized Risk-Based Requirements").[3] Similarly, the

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[1] In this memorandum, the terms "federal banking agencies," "banking agencies" or "agencies" refer to 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 charged with implementing capital requirements for banking organizations.

[2] The GAAP Ratio would include the following minor adjustments: (1) consistent with the regulation establishing the Standardized Risk-Based Capital Requirements as applied to institutions not also subject to the Advanced Approaches (*see* note 5, *infra*), the GAAP Ratio would not reflect unrealized gains and losses on available for sale securities, (2) consistent with provisions of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, the GAAP Ratio would maintain a 50 percent risk weight for certain pre-sold construction loans and multifamily mortgages, and (3) consistent with section 221 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. § 1828(n)), the GAAP Ratio would exclude goodwill. In addition, as described below, the GAAP Ratio could include other adjustments necessary to ensure that an institution satisfying the ratio would be highly likely to satisfy the generally applicable risk-based capital requirements.

[3] The Standardized Risk-Based Requirements are set forth in sections _.10(a)(1)-(3) & _.11(a) of the capital regulations applicable to U.S. banking organizations, which are found in 12 C.F.R. Parts 3 (for national banks and federal savings associations), 217 (for bank holding companies, savings and loan holding companies, and state member banks), and 324 (for state non-member banks).

banking agencies' Prompt Corrective Action ("PCA") regulations would be amended to provide that an insured depository institution that meets or exceeds a GAAP Ratio of 10 percent would also satisfy the risk-based capital measures necessary to be a "well capitalized" institution under such regulations.[4] Such banking organizations and insured depository institutions would, however, continue to calculate and be subject to the generally applicable leverage ratio and all other regulatory capital requirements in the same manner as they are currently.[5]

The GAAP Ratio proposal recognizes that a large number of U.S. banking organizations and depository institutions are so highly capitalized that they clearly meet or significantly exceed the minimum levels of risk-based capital required by the Standardized Risk-Based Requirements and for the "well capitalized" designation under the PCA regulations. Yet such institutions are required to spend significant time, effort, and expense building the systems and making the calculations necessary to demonstrate compliance with such regulatory requirements. Implementation of the GAAP Ratio would significantly reduce the burden of complying with these requirements for the banking organizations that would meet or exceed such requirements by complying with the proposed ratio. These highly capitalized banks could deploy the substantial resources associated with calculating their minimum risk-based capital ratios to other important compliance and business activities.

This memorandum describes how implementation of the proposed GAAP Ratio by the U.S. banking agencies would (1) constitute a valid exercise of the banking agencies' delegated rulemaking authority from Congress, and (2) satisfy the requirements of section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, also known as the "Collins Amendment," which imposes certain statutory requirements on the banking agencies' implementation of risk-based and leverage capital requirements for banking organizations.[6]

Specifically, Section I describes the agencies' statutory authority, independent of the limitations of the Collins Amendment, to amend their capital regulations to implement the GAAP Ratio. Section II summarizes the relevant statutory requirements of the Collins Amendment. Finally, section III explains why implementation of the GAAP Ratio would comport with the limitations of the Collins Amendment.

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4 The agencies' PCA regulations are set forth in 12 C.F.R. Part 6 (for insured national banks and insured Federal savings associations), 208 Subpart D (for insured member banks) and 324 Subpart H (for insured non-member banks).

5 The GAAP Ratio and the Standardized Risk-Based Requirements would continue to work in tandem with numerous other regulatory capital requirements, including the leverage ratio; the supplemental leverage ratio (as well as the enhanced supplemental leverage ratio applicable to some organizations); risk-based capital requirements under the Advanced Approaches; and a proposed capital surcharge for globally systemically important banks (G-SIBs). These other capital requirements would continue to require affected banking organizations to hold additional levels of capital 'on top of' the capital necessary to meet the amended Standardized Risk-Based Requirements. In addition, to be "well capitalized," an insured depository institution would still need to calculate and meet the applicable leverage measure under the PCA framework, and not be subject to any written agreement, order, capital directive, or prompt corrective action directive issued by its primary Federal regulator pursuant to section 8 of the Federal Deposit Insurance Act, the International Lending Supervision Act of 1983, or section 38 of the Federal Deposit Insurance Act, or any regulation thereunder.

6 Pub. L. 111-203 § 171, 124 Stat. 1376, 1435-38 (2010) (codified at 12 U.S.C. § 5371).

I. Independent of the Limitations of the Collins Amendment, the Banking Agencies Have the Statutory Authority to Implement the GAAP Ratio.

The banking agencies have broad statutory authority to promulgate, administer, and revise capital requirements. The International Lending Supervision Act of 1983 provides the agencies with authority to "cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate," and to "establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution."[7] The Federal Deposit Insurance Corporation Improvement Act of 1991 further provides that the agencies' capital standards shall include a "risk-based capital requirement," a term the statute does not define.[8] In addition, the Dodd-Frank Act provides the Federal Reserve authority to issue "regulations and orders relating to capital requirements" for bank holding companies and savings and loan holding companies as the Federal Reserve deems necessary or appropriate.[9] These statutes provide the agencies considerable discretion to establish methods for banking organizations to calculate and demonstrate their compliance with capital requirements.

It is well established that an administrative agency is accorded substantial deference when exercising its delegated rulemaking authority.[10] A reviewing court looks only to whether the agency's interpretation is reasonable, even where the court would reach a different interpretation of the statute on its own.[11] Moreover, agencies are free to change their interpretations through a reasoned administrative law process such as informal notice-and-comment rulemaking.[12]

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7 Pub. L. 98-181 § 908, 97 Stat. 1153, 1280 (codified at 12 U.S.C. § 3907).

8 Pub. L. 102-242 § 131, 105 Stat. 2236, 2253 (codified at 12 U.S.C. § 1831o).

9 Pub. L. 111-203 § 616, 124 Stat. 1376, 1615 (codified at 12 U.S.C. §§ 1844(b) & 1467a(g)(1)). *See also* 12 U.S.C. § 5371(b)(2) (directing agencies to implement minimum risk-based capital requirements for depository institutions, depository institution holding companies, and certain nonbank financial companies supervised by the Federal Reserve).

10 *See* United States v. Mead Corp., 533 U.S. 218, 219 (2001) ("A very good indicator of delegation meriting *Chevron* treatment is express congressional authorizations to engage in the rulemaking or adjudication process that produces the regulations or rulings for which deference is claimed.").

11 *See* Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 843-44 (1984); *see also, e.g.*, Nat'l Ass'n of Cas. & Sur. Agents v. Bd. of Governors of Fed. Reserve Sys., 856 F.2d 282, 289 (D.C. Cir. 1988) (deferring to Federal Reserve interpretation even where court would reach alternative construction of statute were court confronted with question in first instance).

12 Provided an agency takes in account any reliance on a prior interpretation, a changed interpretation "is not invalidating, since the whole point of Chevron is to leave the discretion provided by the ambiguities of a statute with the implementing agency." Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 742 (1996). *See also* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 514 (2009) ("We find no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subjected to more searching review."); Chevron, 467 U.S. at 863-64 ("An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.").

Accordingly, it is within the banking agencies' discretion to determine, based on their experience and expertise, that a banking organization that meets or exceeds the GAAP Ratio should be deemed to meet or exceed (1) each of the Standardized Risk-Based Requirements, and (2) the risk-based measures necessary to be "well capitalized" under the PCA framework. The agencies need only find that a 10 percent GAAP Ratio highly correlates with the minimum amount of capital needed by banking organizations to otherwise satisfy each of the Standardized Risk-Based Capital Requirements, and by insured depository institutions to otherwise satisfy the risk-based measures necessary to be "well capitalized." If necessary to establish this correlation, the GAAP Ratio could include other adjustments that ensure that an institution satisfying the ratio would be highly likely to otherwise satisfy the Risk-Based Capital Requirements and the risk-based measures for a PCA "well capitalized" designation. Once such a correlation were reasonably established, it should be well within the banking agencies' discretion to accept the GAAP Ratio as a method for demonstrating compliance with the Standardized Risk-Based Requirements for those banking organizations for which the agencies, in their expert judgment, have determined such a correlation to exist.[13] Similarly, the same conclusion should apply with respect to the agencies' discretion to accept the GAAP Ratio as a method for an insured depository institution to demonstrate compliance with the risk-based measures necessary for a PCA "well capitalized" designation.[14]

II. The Collins Amendment Provides the Banking Agencies Considerable Discretion to Implement Capital Regulations for Banking Organizations.

The Dodd-Frank Act provided the agencies express statutory authority to establish capital regulations for depository institution holding companies.[15] In connection with this grant of authority, the Collins Amendment further required the agencies to apply certain common capital requirements to a broad range of banking organizations. The part of the Collins Amendment applicable to risk-based capital establishes the following requirements:

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13 Courts will defer to an agency's reasonable estimate that one factor is correlated with another. *See, e.g.*, Cement Kiln Recycling Coal. v. E.P.A., 255 F.3d 855, 866 (D.C. Cir. 2001) (where agency "can demonstrate with substantial evidence" that one factor controls a statutory factor, "or that factors other than the control have a negligible effect," the agency may use the controlling factor as a surrogate for the statutory factor); Nat'l Lime Ass'n v. E.P.A., 233 F.3d 625, 637 (D.C. Cir. 2000) (permitting agency to use "reasonable surrogate" for statutory standard). *See also* Small Refiner Lead Phase-Down Task Force v. U.S.E.P.A., 705 F.2d 506, 535 (D.C. Cir. 1983) ("[A]dministrative agencies have undoubted power to use predictive models . . . . we must defer to the agency's decision on how to balance the cost and complexity of a more elaborate model against the oversimplification of a simpler model.").

14 The GAAP Ratio could also be adjusted over time to ensure ongoing correlation to both the Standardized Risk-Based Capital Requirements and the risk-based measures necessary for an insured depository institution to be "well capitalized" under the PCA framework. To the extent that there are any concerns about the ongoing correlation between these capital measures, such concerns could be fully addressed by the banking agencies' exercise of their discretion to change course if their expert judgment and experience changed at a future point. *See supra* note 12.

15 Pub. L. 111-203 § 616, 124 Stat. 1376, 1615 (codified at 12 U.S.C. §§ 1844(b) & 1467a(g)(1)) (providing express authority for the Federal Reserve to establish capital requirements for bank holding companies and savings and loan holding companies).

- First, the federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and certain nonbank financial companies supervised by the Federal Reserve.

- Second, the minimum risk-based capital requirements shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agencies may require.

- Finally, the minimum risk-based capital requirements shall not be quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of the enactment of the Dodd-Frank Act (July 21, 2010).[16]

The statute defines the term "generally applicable risk-based capital requirements" as the risk-based capital requirements established by the federal banking agencies to apply to insured depository institutions under the PCA regulations implementing section 38 of the Federal Deposit Insurance Act.[17] When the banking agencies issued the final rule establishing the Standardized Risk-Based Requirements, the preamble to the rule stated that section _.10(a) of the rule — which includes the Standardized common equity tier 1 risk-based ratio, the Standardized tier 1 risk-based ratio, and the Standardized total capital risk-based ratio — sets forth the "generally applicable risk-based capital requirements" under the Collins Amendment.[18]

The Collins Amendment does not define the term "minimum risk-based capital requirements." The statute uses that term in contrast to the term "minimum leverage capital requirements," which, in turn, are subject to a similar set of requirements under the Collins Amendment.[19] Minimum risk-based capital requirements are commonly understood to mean required ratios of capital to the value of exposures, with the value weighted according to the riskiness of such exposures. Minimum leverage capital requirements are commonly understood to mean required ratios of capital to the value of exposures, *without* the value weighted according to the riskiness of such exposures. Nevertheless, the statute provides the banking agencies significant discretion to define the appropriate exposure types to be counted in minimum risk-based capital requirements, the risk-weights for each exposure type, and most important for present purposes, the methods for calculating and demonstrating compliance with the minimum risk-based capital requirements.

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[16] 12 U.S.C. § 5371(b)(2).

[17] 12 U.S.C. § 5371(a)(2).

[18] 78 Fed. Reg. 62,018, 62,021.

[19] Likewise, section 38 of the Federal Deposit Insurance Act provides that the banking agencies shall implement a "leverage limit" and a "risk-based capital requirement" without defining the latter term. 12 U.S.C. § 1831o. As noted, we understand that the GAAP Ratio would not be used to calculate the leverage ratio or any risk-based capital ratios other than those required by the Standardized Risk-Based Requirements and PCA regulations.

III. The Collins Amendment Does Not Diminish the Banking Agencies' Statutory Authority to Implement the GAAP Ratio.

The GAAP Ratio would comport with the Collins Amendment. First, the Standardized Risk-Based Requirements — and the minimum amount of capital required by the existing Standardized Risk-Based Capital Requirement — will continue to serve as the minimum risk-based capital requirements for banking organizations; as such, they would satisfy the first prong of the Collins Amendment that such requirements be "risk-based." Second, because the minimum amount of capital required for banking organizations under the amended Standardized Risk-Based Capital Requirements would remain the same as under the existing Requirements, and because such amended requirements would apply in the same way to insured depository institutions and banking organizations more generally, they would satisfy the second prong of the Collins Amendment that the minimum risk-based capital requirements applicable to banking organizations be no less than the "generally applicable risk-based capital requirements." Third, and similarly, because the minimum amount of capital required for banking organizations under the amended Standardized Risk-Based Capital Requirements would remain the same as under the existing requirements, the amended requirements would continue to satisfy the third prong of the Collins Amendment — that such requirements be no less than the "generally applicable risk-based capital requirements" on the date of enactment of the Dodd-Frank Act — to the same extent as the existing requirements.

A. The GAAP Ratio Comports with the Collins Amendment's Requirement to Establish Minimum Capital Requirements That Are Risk-Based.

In the Collins Amendment, Congress delegated to the federal banking agencies the authority to establish "minimum risk-based capital requirements" for banking organizations.[20] As noted above, the term minimum risk-based capital requirements is not defined in the statute but is generally understood to mean minimum capital ratios that weigh the relative risk of a banking organization's exposures in their denominator.[21] Further, the statute does not supplant the banking agencies' statutory authority to determine the *methods* by which a banking organization can demonstrate that it maintains adequate risk-based capital.[22]

As discussed in section I above, a court will accord substantial deference to an administrative agency exercising delegated rulemaking authority. Moreover, where "Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a

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20 12 U.S.C. § 5371(b)(2).

21 *See supra* section II.

22 With respect to depository institutions, each banking agency is expressly authorized to cause banking institutions to maintain adequate capital by "establishing minimum levels of capital and by using *such other methods as the appropriate Federal banking agency deems appropriate*." 12 U.S.C. § 3907(a)(1) (emphasis added). For bank holding companies, the Federal Reserve is authorized to implement any regulations or orders relating to capital requirements "as may be necessary" to administer the Bank Holding Company Act of 1956 and prevent evasions thereof. 12 U.S.C. § 1844(b). For savings and loan holding companies, the Federal Reserve is authorized to implement any regulations or orders relating to capital requirements as the Federal Reserve "deems necessary or appropriate" to administer and carry out the Savings and Loan Holding Company Act of 1967. 12 U.S.C. § 1467a(g)(1).

specific provision of the statute by regulation."[23] And, an agency charged with administering a statute is accorded deference even where the legislative "gap" is an implicit, rather than explicit, delegation to the agency to decide a particular question.[24] In all such cases, a reviewing court looks only to whether the agency's interpretation is reasonable, even where the court would reach a different interpretation of the statute on its own.

Given the express delegation by Congress to the federal banking agencies to establish "minimum risk-based capital requirements" as well as the "gap" that Congress left in defining that term and the method for demonstrating compliance, it is well within the banking agencies' discretion to determine, based on their experience and expertise, that a banking organization that meets or exceeds the GAAP Ratio by definition meets or exceeds the minimum risk-based ratios otherwise required by the Standardized Risk-Based Capital Requirements. As described above, under the proposal, the GAAP Ratio would ***not*** be a substitute or alternative standard to satisfying the risk-based measures of the Standardized Risk-Based Capital Requirements. Instead, based on the agencies' expert determination that institutions satisfying the GAAP Ratio are highly likely to have enough capital to satisfy the minimum risk-based ratios, the GAAP Ratio is merely a ***method for determining*** that such minimum risk-based ratios are satisfied. In such circumstances, the agencies could credibly determine that the use of the GAAP Ratio as a method for compliance does not change the existing character of the regulation as one that is "risk-based" within the meaning of the Collins Amendment. We believe that courts should uphold such a determination as a reasonable exercise of agency discretion in interpreting the meaning of the Collins Amendment.

B. Use of the GAAP Ratio Would Not Make the Risk-Based Capital Requirement Applicable to Banking Organizations Different from the Risk-Based Capital Requirement Generally Applicable to Insured Depository Institutions.

The Collins Amendment requires that the risk-based minimum capital requirements that the banking agencies apply to banking organizations not be less than the "generally applicable risk-based capital requirements for insured depository institutions." Further, the Collins Amendment defines generally applicable risk-based capital requirements as the banking agencies' PCA regulations implementing section 38 of the Federal Deposit Insurance Act. These regulations are set forth in 12 C.F.R. Part 6 (for insured national banks and insured Federal savings associations), 208 Subpart D (for insured member banks) and 324 Subpart H (for insured non-member banks), and such regulations rely on and incorporate minimum risk-based ratios, definitions, and other aspects of the separate regulation establishing the Standardized Risk-Based Requirements. In this context, when the banking agencies issued the final rule establishing the Standardized Risk-Based Requirements, the preamble to the rule stated that section _.10(a) of the rule — which includes the Standardized common equity tier 1 risk-based ratio, the Standardized tier 1 risk-based ratio, and the Standardized total capital risk-based ratio

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23 Chevron, 467 U.S. at 843-44.

24 *Id.* at 844 ("Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency."); NACS v. Bd. of Governors of Fed. Reserve Sys., 746 F.3d 474, 488 (D.C. Cir. 2014) (deferring to interpretation by Federal Reserve of Dodd-Frank Act provision where interpretive authority was implied).

— constitutes the "generally applicable" risk-based capital requirements under the Collins Amendment.[25]

Under the proposal, as compared with the existing regulation, the minimum amount of capital required under the Standardized Risk-Based Requirements would not change for either banking organizations or insured depository institutions. Instead, the proposal would allow both a banking organization and an insured depository institution to demonstrate compliance with such minimum risk-based requirements through satisfaction of the GAAP Ratio. As a result, the existing Standardized Risk-Based Requirements would remain the "minimum risk-based capital requirements" as well as the "generally applicable risk-based capital requirements" under the Collins Amendment. Put another way, under the proposal the Standardized Risk-Based Requirements, would, by definition, remain "not less than" – but rather equivalent to – the generally applicable risk-based capital requirements applicable to insured depository institutions.

C. The Proposal Would Not Affect a Determination that the Standardized Risk-Based Requirements Are Not Quantitatively Lower than the Risk-Based Requirements in Place When the Dodd-Frank Act Was Enacted.

As described above, the proposal does not change the amount of capital that banking organizations would be required to hold under the Standardized Risk-Based Requirements; instead, it simply provides a different means to demonstrate compliance with such requirements. As a result, the proposal would not affect any previous determination that the third prong of the Collins Amendment is satisfied, *i.e.*, that the Standardized Risk-Based Requirements are not quantitatively lower than the generally applicable risk-based requirements in place on the date of the enactment of the Dodd-Frank Act.

D. The GAAP Ratio Comports With the Purpose of the Collins Amendment.

As demonstrated above, the GAAP Ratio is consistent with the text of the Collins Amendment. The GAAP Ratio is also consistent with the purpose of the Collins Amendment.

During the debate on her amendment, Senator Collins made clear that the purpose of her Amendment is to subject banking organizations of all types and sizes to the capital adequacy standards that apply to insured depository institutions.[26] The GAAP Ratio proposal is consistent

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[25] 78 Fed. Reg. 62,018, 62,021; *see also* _.30 of the final rule, providing that the Standardized Approach serves as the generally applicable risk-based capital requirements.

[26] Cong. Rec. S3459 (daily ed. May 10, 2010) (statement of Sen. Collins) ("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. This only makes sense. If a small bank fails, the FDIC can close down that bank over a weekend, allow it to operate, avoid a run on the bank, and deal with it in an orderly way. But if a large bank holding company fails, it is so interconnected in our economy that it sets off a cascade of dire economic consequences. . . . 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.").

with this purpose because it would not treat any class of banking organization more leniently than insured depository institutions. All banking organizations would be able to demonstrate their compliance with the minimum risk-based ratios of the Standardized Risk-Based Requirements and the PCA ratios through satisfaction of the highly correlated GAAP Ratio.

IV. Conclusion

For the foregoing reasons, we believe that adoption of the GAAP Ratio as a means by which highly capitalized banking organizations could demonstrate compliance with the Standardized Risk-Based Requirements (and highly capitalized insured depository institutions could demonstrate compliance with the risk-based measures to be "well capitalized" under the PCA framework) is well within the delegated rulemaking authority granted to the federal banking agencies by Congress. Moreover, in our view, the adoption of such a GAAP Ratio by the banking agencies would comport with the text and purpose of the Collins Amendment.