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February 28, 2011

Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II:
Establishment of a Risk-Based Capital Floor; Docket ID OCC-2010-0009; Fed Docket
No. R-1402; RIN 3064-AD58

Dear Sir or Madam:

The Independent Community Bankers of America¹ (ICBA) welcomes the opportunity to comment on a proposal to amend the advanced risk-based capital adequacy standards (advanced approaches rules) to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, Section 171(b) of the Dodd-Frank Act states that the agencies must establish minimum risk-based capital requirements for all insured depository institutions, depository institution holding companies supervised by the Federal Reserve, and nonbank financial companies supervised by the Federal Reserve. Furthermore, the minimum leverage and risk-based capital requirements established under Section 171 shall not be less than “generally applicable” capital requirements, and cannot be lower than the generally applicable

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA’s website at www.icba.org.

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leverage or risk-based capital requirements in effect for insured depository institutions as of the date of enactment of the Act.

On December 7, 2007, the agencies implemented the advanced approaches rules, which are mandatory for U.S. depository institutions and bank holding companies meeting certain thresholds for total consolidated assets or foreign exposure. The advanced approaches rules establish a series of transitional floors and limits temporarily the amount by which a banking organization's risk-based capital requirements can decline relative to the general risk-based capital rules over a period of at least three years following completion of a satisfactory parallel run. However, banking organizations using the advanced approaches rule can operate with lower minimum risk-based capital requirements during this transitional floor period and potentially thereafter, than would be required under the general risk-based capital rules. Although no large banking organizations have yet entered into a transitional floor period, it is possible that some may do so as early as this year.

ICBA's Position

ICBA fully supports the agencies modifying the advanced approaches rules by replacing the transitional floors with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. Under the proposal, each banking organization subject to the advanced approaches rules would have to calculate and compare on a quarterly basis its minimum tier 1 and total risk-based capital ratios as calculated under the general risk-based capital rules and the advanced approaches risk-based capital rules. The banking organization would then compare the lower of the two tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios to the minimum tier 1 ratio requirement of 4 percent and total risk-based capital ratio requirement of 8 percent to determine if it met its minimum capital requirements. For bank holding companies, the proposal also incorporates the phase-in restrictions on the regulatory capital treatment of debt or equity instruments issued before May 19, 2010 as described under the Collins Amendment of the Dodd-Frank Act.

ICBA believes the proposal carries out the mandate of the Dodd Frank Act. That Act requires the agencies to adopt minimum risk-based capital standards that are "not less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require." The proposal requires those institutions subject to the advances approaches to be subject to minimum capital ratios of 4 percent for the tier 1 ratio and 8 percent for the total risk-based capital ratio, which are the "minimum risk-based capital standards" under the "generally applicable risk-based capital requirements."

In 2007 when the U.S. banking agencies proposed applying the Basel II standardized and advances approaches to U.S. banks, ICBA fully supported the banking agencies decision to retain the tier 1 leverage ratio. In our letter to the agencies in response to the Basel II

NPR², we stated that the retention of the leverage ratio was essential to maintaining the safety and soundness of our banking system since the Basel II framework was so dependent on internal bank inputs and risk parameters. We also said that it was important for our largest financial institutions to have a minimum capital cushion to ensure their safety and soundness in all economic conditions. Our reasons for supporting the leverage ratio are the same reasons we also support the current proposal—to make sure that our largest “too big to fail” institutions have adequate minimum capital levels.

However, even with the implementation of the leverage ratio and the proposed minimum risk-based capital requirements, ICBA still remains concerned about the implementation of Basel II Advanced Approaches in the United States. The past banking crisis and the failures of our largest investment banks that were subject to Basel II-like, risk-based capital requirements have demonstrated the inadequacies of a capital framework that allows a large financial institution to determine its own minimum capital requirements subject to supervisory review. The largest financial institutions in the United States that are now considered “too big to fail” need to be subject to a rigorous standard of risk-based capital requirements that are established by the banking agencies. These capital requirements should not be determined by the institutions based on internal risk-based formulas that are only reviewed by the agencies. Furthermore, ICBA remains very concerned about implementing any type of bifurcated risk-based capital framework that may disadvantage community banks from other sized financial institutions.

ICBA also supports the agencies performing a quantitative analysis on any future amendment to the capital rules to ensure that such amendment does not reduce or quantitatively lower the minimum capital requirements in effect as of the date of enactment of the Dodd-Frank Act. The agencies will need to come up with a quantitative method for measuring the equivalence of current, historic, and proposed future capital frameworks not only to comply with the Dodd-Frank Act but also to ensure that our largest institutions in the future are holding adequate capital.

Conclusion

ICBA fully supports the agencies modifying the advanced approaches rules by replacing the transitional floors with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. ICBA believes the proposal carries out the mandate of the Dodd Frank Act which requires those institutions subject to the advanced approaches to be subject to minimum capital ratios of 4 percent for the tier 1 ratio and 8 percent for the total risk-based capital ratio, which are the “minimum risk-based capital standards” under the “generally applicable risk-based capital requirements.” Our reasons for supporting the proposal are the same as those we stated in favor of retaining the leverage ratio in Basel II—that it is important for our largest financial institutions to have a minimum capital cushion to ensure their safety and soundness in all economic conditions.

² ICBA letter dated March 26, 2007, to the OTS, the OCC, the FDIC and the Federal Reserve in response to a Notice of Published Rulemaking on “Risk Based Capital Standards; Advanced Capital Adequacy Framework.”

However, even with the implementation of leverage ratio and the proposed minimum risk-based capital requirements, ICBA still remains concerned about the implementation of Basel II Advanced Approaches in the United States. The largest financial institutions in the United States that are now considered “too big to fail” need to be subject to a rigorous standard of risk-based capital requirements that are established by the banking agencies. ICBA also remains very concerned about implementing any type of bifurcated risk-based capital framework that may disadvantage community banks.

As required by the Dodd-Frank Act, ICBA also supports the agencies performing a quantitative analysis on any future amendment to the capital rules to ensure that such amendment does not reduce or quantitatively lower the minimum capital requirements in effect as of July 21, 2010.

ICBA appreciates the opportunity to comment on the agencies’ proposal to amend the advanced risk-based capital adequacy standards to be consistent with certain provisions of the Dodd-Frank Act. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel