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THE CLEARING HOUSE
Advancing Payment Solutions Worldwide

June 30, 2004

Office of the Comptroller of the Currency
Public Information Room
Mailstop 1-5
250 E Street, S.W.
Washington, DC 20219
Attention: 1557-0081

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: 7100-0036

Steven F. Hanft
Clearance Officer, Legal Division
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room MB-3046
Washington, DC 20429
Attention: 3064-0052

Office of Thrift Supervision
Information Collection Comments
Chief Counsel's Office
1700 G Street, N.W.
Washington, DC 20552
Attention: 1550-0023

Re: Consolidated Reports of Condition and Income (Call Report)
Revisions Joint Notice and Request for Comment

Ladies and Gentlemen:

The New York Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks,[1] appreciates the opportunity to comment on the proposed revisions (the "Proposal") to the Consolidated Reports of Condition and Income ("Call Report") jointly published by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Office of Thrift Supervision (the "Agencies") in the April 29, 2004, Federal Register. With regard to this proposal, The Clearing House members are particularly concerned about the Agencies' proposed change to the reporting

1 The members of The Clearing House are Bank of America, National Association, The Bank of New York, Bank One, National Association, Citibank, N.A., Deutsche Bank Trust Company Americas, Fleet National Bank, HSBC Bank USA, JPMorgan Chase Bank, LaSalle Bank National Association, U.S. Bank National Association, Wachovia Bank, National Association, and Wells Fargo Bank, National Association.

of "when-issued" securities transactions in the Call Report from settlement date accounting to trade date accounting. Our comments on this issue are set forth below.

The Agencies refer in the Proposal to a "potential difference in the accounting for 'when-issued' securities between the Call Report instructions and generally accepted accounting standards," noting that the American Institute of Certified Public Accountants' Audit and Accounting Guide for Banks and Savings Institutions (the Bank Audit Guide) indicates that purchases and sales of securities are to be recorded on the balance sheet as of the trade date. The Proposal further states that "GAAP and industry practice seem to predominately follow trade date accounting for such securities."

The members of The Clearing House feel the reference to industry practice is not indicative of what true industry practice is. Among The Clearing House banks themselves, there is a diversity of practice regarding the accounting for when-issued securities. Additionally, the members believe a statement that US GAAP *requires* accounting for when-issued securities on a trade-date basis is not true.

The US GAAP reference in the Bank Audit Guide is for treatment of securities in general and does not specifically address when-issued securities. In fact, there is no specific accounting guidance for when-issued securities that do not fall within derivative guidance. Many of the members of The Clearing House feel a when-issued security is different than a security as defined in specific accounting literature (Statement of Financial Accounting Standards (SFAS) No. 115, *Accounting for Certain Investments in Debt and Equity Securities*) because of its contingent nature and its similarities to a forward contract.

Because of these factors, the application of this guidance in practice follows different forms, particularly for the balance sheet presentation of the when-issued securities. In certain situations, an institution may record the when-issued security as an asset at trade date and will record a liability for the related obligation to the seller. In other situations, the obligation may be recorded as a contra-asset. In both of these situations, market value changes for securities classified as trading are reflected in the income statement from trade date; for securities classified as available for sale, market value changes are reflected in other comprehensive income from the trade date. Alternatively, the same impact of the latter treatment may be achieved by recording the asset only after settlement, but reflecting market value changes from trade date.

To further clarify these thoughts, we summarize below certain accounting literature that does relate to when-issued instruments.

SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as amended, provides a scope exception in paragraph 59a for when-issued securities "as a regular-way security trade if (1) there is no other way to purchase or sell that security, (2) delivery of that security and settlement will occur within the shortest period possible for that type of security, and (3) it is probably at inception and throughout the term on the individual contract that the contract will not settle net and will result in physical delivery of a security when it is issued." Thus, when-issued transactions that do not meet these criteria are accounted for as derivatives and subject to the other accounting guidance in SFAS 133 and the normal treatment of derivatives in the Call Report.

The 2003 edition of the Depository and Lending Institutions Audit Guide notes in paragraph 7.92 that "regular-way purchases and sales of securities should be recorded on the trade date. Gains and losses from regular-way security sales or disposals should be recognized as of the trade date in the statement of operations for the period in which securities are sold or otherwise disposed of." However, SFAS No. 133, paragraph 58(a) notes that "This Statement does not change whether an entity recognizes regular-way security trades on the trade date or the settlement date."

As noted earlier, the Bank Audit Guide does not specifically address when-issued securities. However, the 2003 Broker and Dealers in Securities Audit and Accounting Guide (the Broker-Dealer Guide) does and notes the conditional nature of these instruments in paragraph 1.59, which states that when-issued transactions are "contingent upon the issuance of the securities." Further, in Paragraph 7.36, the Broker-Dealer Guide notes:

> "Certain transactions (for example, those for when-issued securities) are, by their nature, conditional; that is, their completion is dependent on the occurrence of a future event or events… For those transactions in which completion is assured beyond a reasonable doubt, the recording of the transactions and related profit and loss should be the same as for unconditional transactions. For those transactions in which completion is not assured beyond a reasonable doubt, only mark-to-market losses should be provided, while market-value gains should be deferred until the uncertainty is eliminated."

In summary, because of the lack of specific US GAAP guidance and the nature of when-issued securities, many industry participants do follow settlement date accounting for the balance sheet. In fact, a majority of the members of The Clearing House follow settlement date accounting for when-issued securities.

Therefore, we suggest the Agencies revisit their conclusion for the treatment of when-issued securities, as we do not believe it is consistent with US GAAP and industry accounting practices. We would be happy to meet with the Agencies to discuss this issue further.

* * *

Thank you for considering the views expressed in this letter. If you have any questions, please contact Norman R. Nelson, General Counsel of The Clearing House, at 212-612-9205.

Sincerely yours,

cc: Mr. Kenneth P. Lamar
Federal Reserve Bank of New York

Mr. Gerald A. Edwards, Jr.
Board of Governors of the Federal Reserve System

Mr. Zane Blackburn
Office of the Comptroller of the Currency

Mr. Robert Storch
Federal Deposit Insurance Corporation

Mr. Mark Menchick
Office of Management and Budget