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June 15, 2006

Office of the Comptroller of the Currency
250 E Street, SW
Public Reference Room
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 06-06

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. OP-1254

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments/OES

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006-20

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: File No. S7-08-06

Re: Proposed Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities

Ladies and Gentlemen:

The member banks of The Clearing House Association L.L.C. ("The Clearing House")[1] appreciate the opportunity to comment on the proposed Interagency Statement on

[1] The member banks of The Clearing House are: Bank of America, National Association; The Bank of New York; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; LaSalle Bank, National Association; UBS AG; U.S Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

Sound Practices Concerning Elevated Risk Complex Structured Finance Activities issued by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation and the Securities and Exchange Commission (collectively, the "Agencies"). 71 Fed. Reg. 28326-28334 (2006) (the "Proposed Statement").[2]

We appreciate and support the Agencies' proposal to provide guidance to financial institutions in developing internal controls and risk management procedures to help identify and address the reputational, legal and other risks associated with complex structured finance transactions ("CSFTs"). We agree with the Agencies that financial institutions should have effective policies and procedures in place to identify CSFTs that may involve heightened reputational and legal risk, to provide for a level of review that is commensurate with those risks, and to protect the institution from participating in transactions of questionable legality.

The well-publicized events at Enron and a number of other public companies in recent years were shocking for all affected constituencies and parties, including financial institutions. Even before the prior version of the Proposed Statement released in 2004 (the "2004 Proposal"), our member banks and financial institutions more generally were taking substantive steps to re-evaluate their participation in CSFTs and implement enhanced internal controls and risk management procedures. We have reviewed the letter, dated June 2, 2006, submitted by four law professors to the Agencies concerning the Proposed Statement (the "Four Professors' Letter"). A proposed transaction that appears to the relevant institution to have any of the characteristics of the seven examples for elevated risk CSFTs in Part A of the Proposed Statement, and quoted in the Four Professor's Letter, will be subject to further scrutiny and, unless concerns are resolved, almost certainly be disapproved. But beyond that observation, we strongly disagree in almost every respect with the characterizations and conclusions in the Four Professors' Letter.[3]

We believe that the Proposed Statement represents a substantial improvement over the 2004 Proposal. We appreciate the Agencies' efforts to address the concerns expressed by the Clearing House and other commentors that the 2004 Proposal was too detailed and prescriptive and might have been misinterpreted as altering or expanding financial institutions' legal duties or obligations.

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2 The Clearing House believes that the coordination among the Agencies in formulating guidance on this important issue is very constructive.

3 The purpose of this letter is to comment on the Proposed Statement, not on the Four Professors' Letter. However, if you would find it useful for us to comment further on the Four Professors' Letter, either in writing or at a meeting, we will do so. We add only that the assertion that the Proposal "can be (and we fear will be) read to encourage and condone illegal conduct" is, at a minimum, intemperate.

The Proposed Statement instead adopts a "principles based" and "more risk-focused" approach, which we believe is the correct approach. It is both more concise and precise. It recognizes explicitly that its adoption is not meant to establish new private rights of action or new legal duties or obligations to customers, shareholders or other third parties. We also appreciate the Proposed Statement's attempt to focus on CSFTs that involve "elevated risk" and to identify types of transactions that do not constitute CSFTs.

We do, however, have several suggestions for improvement of the Proposed Statement.

First, in the introduction to Section III of the Proposed Statement there is a discussion, in footnote 6, of the application of the Proposed Statement to U.S. branches and agencies of foreign banks. The first sentence of the footnote indicates that U.S. branches and agencies should coordinate their policies with the foreign bank as a whole, a principle with which we agree. The second sentence, however, states that "In addition, the U.S. branches and agencies of foreign banks should implement a control infrastructure for CSFTs . . . that is consistent with the institution's overall corporate and management structure . . ." (emphasis added).

We are concerned that the words "In addition" might be read to suggest that a U.S. branch or agency's policies and procedures for CSFTs are deficient if they are in any way dependent upon or interconnected with those of the foreign bank as a whole. Such a requirement would create inefficiencies and possible inconsistencies, and thus we request that the footnote be clarified to confirm that integrated policies and procedures are permissible.

Second, we note that in Section III.B. of the Proposed Statement, in the part discussing "Documentation", there is a statement that an institution should "create and collect sufficient documentation to allow the institution to: . . . Confirm that customers have received any required disclosures concerning the transactions." We are concerned that this language may be misinterpreted to apply to disclosure by an institution's customer to that customer's customers, and suggest that it be revised as follows: "Confirm that the institution's customers have received any disclosures concerning the transaction that the institution is required to make or provide to them."

Third, we note that in the same part of the Proposed Statement there is a statement that institutions "should maintain the transaction-related documentation provided to senior management as well as other documentation that reflect management's approval (or disapproval) of the transaction, any conditions imposed by senior management, and the reasons for such action" (emphasis added). It is not clear whether the antecedent in the phrase "the reasons for such action" is the act of approval or disapproval or, instead, the imposition of conditions (or both). In either case, our preference would be that the Agencies delete the phrase in the final statement. Practices among institutions will vary as to whether and how the reasons for a particular action are documented, absent a particular regulatory requirement. We urge the

Agencies to permit institutions to follow whatever practice they think is sensible and useful for their purposes. We do not believe there is a benefit either to institutions or for the Agencies as supervisors in requiring institutions to document their reasons for approving or disapproving transactions or for conditions that may be attached to approval.

Fourth, in the part of Section III.C. entitled "Monitoring Compliance with Internal Policies and Procedures", the Proposed Statement indicates that financial institutions should "conduct periodic independent reviews of their CSFT activities . . . ". We agree with the concept of independent reviews, but suggest that the Agencies confirm that the involvement of "appropriate control areas that are independent of the business line(s) involved in transaction[s]" in approving transactions, as provided for in Section III.B. under "Approval Process", does not disqualify those "control areas" from conducting such periodic independent reviews, provided that different individuals are involved. For example, the legal and compliance areas will in many cases be involved in evaluating and approving transactions.

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As the Agencies recognize, CSFTs play a productive role in diversifying and minimizing risks and creating more efficient financing opportunities. We believe that the Proposed Statement's valid effort to prevent abuse would be enhanced by adopting the modifications we have suggested.

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The Clearing House appreciates the opportunity to comment on the Proposed Statement and would be pleased to discuss any of the points raised in this letter in more detail. Should you have any questions, please contact Norman R. Nelson, General Counsel of The Clearing House, at (212) 612-9205.

Sincerely yours,