June 15, 2006

Department of the Treasury
Office of the Comptroller of the Currency
250 E. Street, SW
Washington, DC 20219
Attention: Public Reference Room,
Mail Stop 1-5

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

Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Regulation Comments,
Chief Counsel's Office
No. 2004-27

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Nancy M. Morris,
Secretary

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Jennifer J. Johnson,
Secretary

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

Ladies and Gentlemen:

The American Securitization Forum[1] (ASF) appreciates the opportunity to comment on the revised Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities, 71 Fed. Reg. 28,326 (May 16, 2006) (the "Revised Proposed Guidance").

ASF commends the agencies identified in the salutation of this letter (the "Agencies") for proposing what we believe is a set of clear, operational and appropriately flexible principles that will meaningfully assist financial institutions in their ongoing efforts to design, and apply effective internal policies and controls for reviewing and approving complex structured finance transactions

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[1] The American Securitization Forum (ASF) is a broadly-based professional forum of participants in the U.S. securitization market. Among other roles, ASF members act as issuers, underwriters, dealers, investors, servicers, guarantors and professional advisers in connection with securitization and structured credit transactions. ASF represents the securitization market and its participants on a wide range of legal, regulatory, accounting and market practice issues. Additional information about ASF, and its members and activities, is available at www.americansecuritization.com

that may pose heightened levels of legal or reputational risk. We believe that the Revised Proposed Guidance represents a marked improvement from the original Proposed Interagency Statement on Sound Practices Regarding Complex Structured Finance Activities, 69 Fed. Reg. 28,980 (May 19, 2004) (the "Original Proposed Guidance"), and addresses the most significant issues and concerns raised by ASF and other commentators in response to the Original Proposed Guidance. We specifically wish to commend the Agencies for responding, through the public comment process, in a thoughtful and thorough manner to the recommendations that we and other industry representatives made in 2004. We believe that the modifications reflected in the Revised Proposed Guidance will promote sound internal risk management practices, by allowing financial institutions to develop and apply appropriate controls that are tailored to each institution's individual circumstances, and to the types of structured finance transactions in which they are involved.

As ASF noted in its comments on the Original Proposed Guidance, structured finance transactions, including a wide range of executions that are generally characterized as securitizations, are an important and growing segment of our economy. The securitization industry has developed as a large and significant market that provides an efficient funding mechanism for originators of consumer and business receivables. This industry performs a crucial role by providing liquidity to nearly every sector of the economy, including the residential and commercial mortgage industry, the automobile industry, the consumer credit industry, the leasing industry, the insurance industry, and to the commercial loan and corporate bond market. Additionally, securitization provides effective mechanisms for financial institutions and other entities to manage credit and other risks associated with their business activities. For these reasons, it is crucially important that regulatory guidance promote sound and effective risk management controls within financial institutions, while maintaining sufficient flexibility that avoids placing undue or unnecessary restrictions on the operation and growth of this important market. ASF believes that the Revised Proposed Guidance strikes an appropriate balance in this regard.

ASF's principal concerns in connection with the Original Proposed Guidance may be summarized as follows:

- The scope was too broad, and would have subjected too many routine, well-accepted securitization transactions to undue levels of scrutiny;

- The guidance was too prescriptive, and would have potentially created new and inappropriate risks and liabilities for financial institutions, rather than helping them identify and manage legal and reputational risks already presented by certain structured finance activities; and

- The guidance did not distinguish among the wide variety of roles that financial institutions may play in connection with structured finance transactions, and thus would have imposed inappropriate and overly broad risk management responsibilities in many instances.

We believe the Revised Proposed Guidance responds effectively to these concerns.

With respect to scope of application, the Revised Proposed Guidance indicates that:

> Most structured finance transactions, such as standard public mortgage-backed securities transactions, public securitizations of retail credit cards, asset-backed commercial paper conduit transactions, and hedging-type transactions involving "plain vanilla" derivatives and collateralized loan

> obligations, are familiar to participants in the financial markets, and these vehicles have a well-established track record. These transactions typically would not be considered CSFTs [Complex Structured Finance Transactions] for the purpose of this Statement.

ASF agrees with the above statement. The specific types of transactions identified therein are illustrative of a larger class of public and private securitization transactions, involving the use of both cash and derivatives market instruments and technology, that are well-known, widely used and broadly accepted throughout the financial markets. For that reason, this larger class of transactions would not typically present elevated levels of risk that should bring them within the ambit of the Revised Proposed Guidance.

With respect to prescriptiveness, the Revised Proposed Guidance makes clear throughout that financial institutions will be expected to tailor their internal controls in a manner that is appropriate in light of the nature, scope and complexity of risks of their activities, and that the controls and procedures set forth therein are neither all-inclusive, nor prescribed in all circumstances. In addition, the Revised Proposed Guidance includes an explicit statement that:

> This Statement does not create any private rights of action, and does not alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other third parties under applicable law. At the same time, adherence to the principles discussed in this Statement would not necessarily insulate a financial institution from regulatory action or any liability the institution may have to third parties under applicable law.

These revisions throughout the document, coupled with the statement excerpted above, are effective in eliminating the overly prescriptive nature of the Original Proposed Guidance, and with it the potential to expand—rather than help financial institutions to manage—the legal and other risks to which they are exposed. The Revised Proposed Guidance neither eliminates nor relieves responsibility on the part of financial institutions to implement effective legal and reputational risk management practices in connection with complex structured finance transactions that present elevated risks. Instead, it now obligates those institutions to develop internal policies, procedures and controls that are reasonably designed to manage the risks associated with their own activities, in light of the specific facts and circumstances presented by the transactions in which they are actually involved. Such guidance is far more likely to produce meaningful and effective risk management discipline within financial institutions, as oversight and control mechanisms can be more closely tailored to the precise type and nature of risks actually presented.

Finally, with respect to the failure of the Original Proposed Guidance to distinguish among the different roles that financial institutions play in connection with structured finance transactions, the Revised Proposed Guidance includes the following statements:

> Financial institutions that structure or market, act as advisor to a customer regarding, or otherwise play a substantial role in a transaction may have more information concerning the customer's business purpose for the transaction and any special accounting, tax or financial disclosure issues raised by the transaction than institutions that play a more limited role. Thus, the ability of a financial institution to identify the risks associated with an elevated risk CSFT may differ depending on its role.

ASF agrees with these statements, and believes they will be helpful in enabling financial institutions to base judgments concerning the nature and scope of its risk management activities upon, among other factors, the role they play in connection with a transaction. As we pointed out in our original comment letter, a financial institution that plays a more limited role—such as a trustee, payment agent or in a custodial or administrative capacity—should not be held to the same level of responsibility and expectations, as compared with an institution that is called upon to arrange or structure a customer's transaction.

Once again, ASF appreciates the opportunity to comment on the Revised Proposed Guidance. Should you have any questions, or desire clarification of any of the matters discussed herein, please contact the undersigned at 646.637.9216.

Sincerely,

George P. Miller
Executive Director