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December 6, 2007

Ms. Taiya Smith  
Executive Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Re: Regulatory Structure Associated with Financial Institutions  
(TREAS-DO-2007-0018)

Dear Ms. Smith:

The Clearing House Association L.L.C. (the “Clearing House”)<sup>1</sup> appreciates the opportunity to respond to the request of the Department of the Treasury for comment on its review of the regulatory structure associated with financial institutions. We strongly commend the Treasury Department for its recognition of the competitive issues raised by regulatory structure and the Department’s initiatives to deal with this vital matter.

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<sup>1</sup> The members of The Clearing House are: ABN AMRO Bank, N.V.; 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; UBS AG; U.S. Bank, National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

Our response is limited to a single issue that is raised by a number of the Treasury Department's specific questions. This issue is the increasing reliance on enforcement actions, rather than a supervisory approach, for dealing with violations involving financial institutions. These enforcement actions are taken not only by the designated regulator(s) of financial institutions, but also are increasingly taken by federal, state and local law enforcement authorities that may not have the regulators' expertise, context and understanding of the complexities of the financial services industry. The enforcement actions involve increasingly large fines, reputational damage and restrictions on operations and expansion. They appear to be increasingly used, as a substitute for rulemaking or formal interpretations, to provide industry guidance.

We respectfully submit that this enforcement aspect of our regulatory system creates a significant competitive disadvantage for U.S. financial institutions and a major disincentive for non-U.S. financial institutions to conduct operations or issue capital in our markets. In an environment where the laws and regulations are inherently comprehensive, complex and subjective in application, violations are inevitable. If those violations are punished too severely, both the financial institutions and the customers they serve will be treated inequitably.

The enforcement approach is made considerably more burdensome because of the number of governmental authorities that pursue enforcement actions. These authorities often disagree as to the appropriate course of action and sometimes do not even consult with one another. In some situations, enforcement actions have been taken against financial institutions

for long-standing practices that have been well known in the marketplace and have not previously drawn regulatory criticism.

In order to deal with these issues, we believe that the U.S. regulatory and law enforcement authorities should implement the following basic principles:

- A public enforcement action should normally be taken by a financial institution regulatory authority only if that authority determines that neither a supervisory action nor a nonpublic enforcement action is sufficient.
- Such a determination should normally not be made if the conduct that is the subject of the action has been previously reviewed and not criticized by a regulatory authority.
- Such a determination should normally not be made if the organization that is the subject of the action has previously been responsive to prior supervisory actions and regulatory criticism.
- Law enforcement authorities should not commence public enforcement actions against regulated financial institutions unless they first consult with the principal regulator. Although the law enforcement authorities are not bound by the views of the principal regulator, those views should be given substantial weight.
- Law enforcement should not normally commence a public enforcement action against a financial institution if the conduct at issue (i) has been previously reviewed by a regulatory authority and not been the subject of prior regulatory criticism and (ii) involves only a small number of individuals who do not include any members of senior management.

Each of the these principles (except for consultation) is qualified by “normally” to take into account the wide variety of facts and circumstances that can exist and that very serious or systemic misconduct, widespread consumer harm or a material threat to the institution’s viability would likely require public enforcement action.

We appreciate your consideration of our comments. If you have any questions, please call Norman R. Nelson, General Counsel, at 212-612-9205.

Very truly yours,

A handwritten signature in cursive script, appearing to read "N. Nelson", with a horizontal line underneath.