NEW YORK CLEARING HOUSE

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Letter of Comment No: /9
File Reference: 1100-163
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Ms. Suzanne Bielstein Director of Major Projects and Technical Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference 1100-163:

Proposed Statement of Financial Accounting Standards, Amendment of Statement 133 on Derivative Instruments and Hedging Activities

Dear Ms. Bielstein:

The New York Clearing House Association L.L.C.¹ (the "Clearing House") appreciates the opportunity to provide its views on the Financial Accounting Standards Board's ("FASB") May 1, 2002 Exposure Draft of the Proposed Statement of Financial Accounting Standards, Amendment of Statement 133 on Derivative Instruments and Hedging Activities, the guidance in related Statement 133 Implementation Issues A20, B12, B36, C17 and D2, and Ouestions and Answers Related to Derivative Financial

The member banks 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, Wachovia Bank, National Association and Wells Fargo Bank, National Association.

Instruments Held or Entered into by a Qualifying Special-Purpose Entity ("SPE").

The Clearing House is concerned that the broad changes proposed by the FASB in the Exposure Draft and related implementation quidance will create significant burdens for our member banks without notable improvement to current financial reporting. The proposed quidance will introduce an additional level of complexity to Statement 133, an accounting standard that is already complex in concept and application. Before the FASB proceeds with this quidance, the Clearing House believes that the costs companies will incur to change current systems and processes to accommodate the fundamental changes to the definition of a derivative and the accounting model for beneficial interests should be weighed against the expected financial reporting benefits.

The Clearing House supports the recommendations of the Joint Industry Working Group composed of members of The Bond Market Association, the International Swaps and Derivatives Association and the Securities Industry Association and urges the Board to consider their comments. The Clearing House would like to emphasize the following concerns, which are addressed in the Joint Industry Working Group's letter:

- . The Basis For Conclusions indicates that the FASB revised the definition of a derivative to assist in the evaluation of beneficial interests in securitized financial assets and to restrict the level of judgment exercised by companies to determine if an instrument should be considered a derivative in its entirety. The Clearing House does not support the establishment of thresholds by contract type to determine whether a contract is a derivative and notes that application of the proposed guidance will result in inconsistent accounting for contracts with similar economics.
- . The Clearing House urges the FASB to revisit the model for evaluating beneficial interest under Statement 133 as the Clearing House believes that beneficial interests should be accounted for based on their substance, not a series of rules or presumptions. Before issuing final quidance in this area, the Clearing House urges the FASB to apply the model to frequently occurring complex market transactions and consider the resulting effects on financial reporting. The Clearing House believes this is critical to ensuring that application of the quidance will result in transparent and comparable financial statement results.

• The Clearing House has significant concerns that the application of the proposed quidance to beneficial interests may result in certain qualifying special-purpose entities ("QSPE") losing their qualifying status simply due to a change in a beneficial interest holder's accounting for its interest. The Clearing House disagrees with this result and believes that the FASB should reconsider the interaction of Statement 140 and Statement 133 on the ability of a QSPE to hold derivatives prior to issuing a final standard. If the FASB chooses not to reconsider the interaction of these statements, the current accounting for many common securitization transactions may be overturned.

In summary, the Clearing House believes that the FASB should revisit the scope and complexity of the Exposure Draft and related implementation guidance and determine whether the potential financial statement impact and costs to implement the proposed guidance are warranted.

The Clearing House would be pleased to discuss any of the points made herein. If you have any comments, please contact Norman R. Nelson at (212) 612-9205.

Very truly yours,