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### State St Letter to OTS

John R. Towers

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**STATE STREET**  
*Serving Institutional Investors Worldwide*

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November 14, 2003

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Public Information Room, Mailstop 1-5  
Washington, D.C. 20219  
Attention: Docket No. 03-22

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429  
Attention: Mr. Robert E. Feldman  
Reference: Comments/OES

Board of Governors of  
the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551  
Attention: Ms. Jennifer J. Johnson  
Reference: Docket No. R-1162

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention: No. 2003-47

Dear Sir or Madam:

State Street Corporation is pleased to have the opportunity to comment on the Interim Final Rule and joint Notice of Proposed Rulemaking (NPR) related to capital standards for asset-backed commercial paper (ABCP) programs published by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Office of Thrift Supervision (OTS) (the Agencies) on October 1, 2003.

State Street appreciates the Agencies' interest in providing appropriate capital requirements for ABCP programs consolidated onto banks' balance sheets as a result of the Financial Accounting Standards Board (FASB) issuance of interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46). In particular, we agree with the Agencies' explicit acknowledgment that "banking organizations generally face limited risk exposure to ABCP programs," and that "consolidation of ABCP program assets onto the balance sheets of sponsoring banking organizations could result in risk-based capital requirements that do not appropriately reflect the risks faced by banking organizations that sponsor these programs." We support the Agencies' proposal in the Interim Final Rule to exclude assets held by ABCP programs from a bank's risk-weighted asset calculations.

We are, however, concerned that the proposal in the NPR extends well beyond necessary and appropriate changes addressing FIN 46 impacts, and creates an entirely new capital regime for all ABCP programs. While some changes to the capital requirements for



ABCP programs may eventually be appropriate, we suggest the Agencies separate such broader regulatory changes from the immediate issues related to FIN 46.

The potential accounting changes resulting from FIN 46 have no bearing on the risk profiles of bank sponsors of ABCP programs, whether the assets of such programs are consolidated or not. In addition, the Agencies, as members of the Basel Committee on Banking Supervision, recently announced plans to rewrite the ABCP related provisions of the proposed New Basel Capital Accord (New Accord). Any broad changes in capital rules for ABCP programs should be considered in the context of the overall U.S. implementation of a possible New Accord.

We urge the Agencies to limit the current rulemaking to issues specifically raised by consolidation of assets required under FIN 46.

In addition to this overall concern, we submit the following additional comments:

- We suggest the Agencies adopt a consistent definition of "asset-backed commercial paper programs." The OCC definition appears to sufficiently define such programs.
- The NPR's proposed April 1, 2004 effective date may not provide suitable time for banks to implement any new requirements adopted in a final rule. Ideally, any changes to capital requirements should be implemented in the context of program renewals, which could be accomplished through a phased-in implementation over the period of one year.
- We suggest that the Agencies provide greater clarity, and a suggested methodology, for treating unrated assets held by ABCP programs.
- The proposed 20% Credit Conversion Factor (CCF) for liquidity facilities may be excessively conservative. In our experience, such facilities carry an extremely low rate of default. We suggest the Agencies conduct additional analysis, and develop a quantitative basis for the CCF calibration.
- The definition of "eligible liquidity facility" should be changed to incorporate a reasonable asset quality test that is general and flexible enough to apply in all situations, and for all asset classes. The NPR's "60 day or more past due" criteria uses a trade receivables concept that is inappropriate for many types of exposures. In addition, the definition should provide alternative eligibility criteria based on either the ratings of the structured deal itself, or ratings of external guarantors. In certain cases, such factors may be more relevant in determining eligibility for regulatory capital relief than an asset quality test based solely on the status of the underlying assets.
- Any regulatory capital relief for conduits consolidated under FIN 46 should apply equally to current QSPE conduits, which may eventually be consolidated due to changes in FAS 140 QSPE qualifying criteria.
- We urge the Agencies to ensure that a final rule avoids any potential "double counting" for assets held by ABCP programs.



- In addition to the proposed regulatory capital relief, the Agencies should provide suitable relief for other regulatory issues arising from FIN 46 consolidations. For example, the Agencies should take appropriate action to avoid the negative consequences that will result from deeming consolidated ABCP liabilities "deposits" for purposes of Reg D and Reg Q.

Once again, State Street appreciates the opportunity to comment on these proposals. ABCP programs provide an important source of liquidity for U.S. financial markets, and we appreciate the Agencies' efforts to ensure that banks sponsoring ABCP programs are not inappropriately disadvantaged by the accounting changes resulting from FIN 46.

Sincerely,

A handwritten signature in cursive script that reads "John G. Jones".