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BANK#ONE.

July 31, 2003

Mr. Robert Herz Chairman Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116

E-mail: director@fasb.org

Re: File Reference No. 1200-001

Exposure Draft: Qualifying Special-Purpose Entities and Isolation of Transferred Assets - an amendment of FASB Statement No. 140

Dear Mr. Herz:

Bank One Corporation ("Bank One") is pleased to have the opportunity to comment on the abovereferenced Exposure Draft ("ED"). Bank One is the nation's sixth-largest bank holding company, with assets of more than \$299 billion and over 50 million credit card customers. We believe Bank One is well qualified to comment on the ED as we manage \$74 billion of credit card receivables and sell originated credit card receivables in the public term securitization market. Currently, we have \$36 billion of securitized credit card receivables outstanding.

Our primary, secondary and general comments are outlined below.

Primary Comments:

Our primary comments focus on provisions of the ED related to the addition of assets to revolving master trusts and the ability to reissue beneficial interests.

We strongly recommend that the Board amend the ED to allow revolving master trust structures to be eligible for qualifying special purpose entity ("QSPE") status. Our understanding is that the Board did not intend that the ED eliminate QSPE status for revolving master trusts. However, the current provisions of the ED (in particular, paragraph 5.e. and 5.f.) do appear to taint QSPE status for revolving master trusts. Our proposed changes to the ED are outlined below.

Addition of Assets to Revolving Master Trusts (Paragraph 5.e):

We agree that QSPE status should be retained when a transferor transfers additional assets to an SPE under a forward contract as specified in paragraph 5.e. of the ED. However, this provision

only partially recognizes the unique nature of revolving period securitizations. In particular, paragraph 5.e. does not explicitly acknowledge other features of a revolving master trust that may contractually require the transferor to add assets to a master trust. In a typical revolving master trust structure, the transferor is contractually obligated to add assets as follows:

 Credit card receivables to maintain a minimum level of receivables (e.g., 4% to 7%) as required by credit rating agencies and other structural considerations.

The maintenance of a minimum level of receivables protects beneficial interest holders from the dilution of receivables that occurs from non-cash and non-credit adjustments to receivables (e.g., rebates and returns). In addition, the transferor may periodically transfer assets to the trust in order to facilitate the timely issuance of future beneficial interests, not due to contractual obligations.

 Credit card receivables that relate to fulfilling recourse (as opposed to a financial guarantee) provisions.

An example of a recourse provision would be an obligation to transfer additional credit card receivables due to standard representations and warranties related to eligible account or asset requirements.

 Remittance of payments each month to the master trust for the amount of interchange fee and related revenue, and collections on previously charged-off accounts received by a servicer on securitized card accounts.

These amounts are contractually due to the trust and must be remitted in accordance with the servicing agreement.

Please refer to the attached Exhibit "Schematic Representation of Revolving Master Trusts" illustrating when assets are generally added to revolving master trusts.

We recommend that paragraph 5.e. be expanded to read as follows:

e. It may not enter into an agreement (other than a forward contract in a revolving period securitization as discussed in paragraphs 77-79 or other contractual agreements to deliver additional assets, such as minimum maintenance provisions, recourse provisions, and pass through arrangements). Additionally, the transferor may transfer assets to the trust in order to facilitate the timely issuance of future beneficial interests. ...

Our rationale for this recommended change to paragraph 5.e. is provided below:

We do not believe a distinction should be made between adding assets under a forward
contract and adding assets under a minimum maintenance provision. We believe both
transfers of additional assets are consistent with the logic used in paragraph 79 of Statement
No. 140. Under paragraph 79, "... adding receivables to a master trust, in itself, is neither a

sale nor a secured borrowing under paragraph 9, because that transfer only increases the transferor's beneficial interest in the trust's assets"

- Recourse provisions are distinct from financial guarantees legally and for financial reporting
 purposes, as well as under contractual cash flows of a securitization trust. We believe the
 recommended change to paragraph 5.e. is consistent with Statement No. 140, paragraph 113,
 which states "... A transfer of receivables with recourse shall be accounted for as a sale,
 with the proceeds of the sale reduced by the fair value of the recourse obligation, if the
 criteria in paragraph 9 are met".
- Assets that are pass-through in nature, such as interchange fee and related revenue, and collections on previously charged-off accounts, should not taint QPE status because the transferor does not hold a legal claim for such assets. In particular, these amounts are the property of the trust and are remitted to the trust when collected by the transferor. For example, in a typical credit card securitization structure, the transferor, as servicer, agrees to remit to the trust the amount of interchange revenue received on securitized credit card accounts.

Definition of Ability to Reissue Beneficial Interests (Paragraph 5.f.):

We believe there is lack of clarity among financial statement preparers and their auditors with respect to the FASB's intended meaning of "reissuance" in the ED. Specifically, the ED does not define the term "reissue" and as a result, QSPE status will depend on how narrowly or how broadly a company defines the term "reissue." Different preparers have interpreted "reissuance" to mean refinancing or rollover of beneficial interests, issuance by a revolving master trust of new beneficial interests and remarketing of beneficial interests.

In a typical credit card securitization, the master trust issues beneficial interests to third parties for a fixed term. Beneficial interests held by third party investors in a typical master trust are paid off at maturity from the cash inflows on the underlying pool of assets. Any new issuance of beneficial interests is a sale of the seller's interest rethan the reissuance of beneficial interest in an existing transaction. For an illustration of why a typical revolving master trust does not engage in refinancings of beneficial interests, please refer to steps 4.b. and 4.c. in the attached Exhibit "Schematic Representation of Revolving Master Trusts."

We strongly recommend that the final standard clearly define the term "reissue" beneficial interests in paragraph 5.f. of the ED. We propose the following wording:

f. If it has the ability to reissue beneficial interests, the additional limitations discussed below apply. The ability to reissue beneficial interests refers solely to situations where previously issued beneficial interests are repurchased by the trust and refinanced from proceeds received as a result of issuing new beneficial interests, but excludes the ability to reissue in cases where no party (including affiliates or agents) has the discretion to more than trivially benefit from reissuing beneficial interests.

The above definition would exclude the ability to reissue beneficial interests that automatically occur (e.g., commercial paper that rolls over every 30 days) and the ability to reissue in cases where the transferor has discretion but such discretion only provides a trivial benefit to the transferor (e.g., the decision making ability to select any commercial paper tenor within the limit of 397 days¹).

Certain master trust programs allow for the transferor to select either asset-backed commercial paper funding or term funding when selling additional ownership interests. We believe that such decision-making is effectively the equivalent of setting up a discrete trust for each securitization, and therefore, such decision-making does not represent discretion on the part of the trust. Revolving master trusts would be unfairly penalized if such decision-making would taint QSPE status.

Secondary Comments:

What Constitutes a Subordinated Beneficial Interest:

Paragraph 5.e. implicitly makes a distinction between financial guarantees (which are deemed to be unacceptable) and subordinated beneficial interests (which are deemed to be acceptable) as forms of credit enhancements. Because of this distinction, we believe that clarification of paragraph 5.e. is required particularly related to cash spread accounts. Cash spread accounts are commonly used in securitization structures and, in the case of credit card securitizations, generally represent the accumulation of excess spread within the trust. In particular, we believe cash spread accounts are a form of subordinated beneficial interests and should not be viewed as financial guarantees. This is supported by FASB Staff Implementation Guide for Statement No. 140, Question 75, which categorizes the accounting for such cash spread accounts with subordinated beneficial interests and distinguishes it from financial guarantees and credit derivatives, which are viewed as liabilities. Consistent with the proposed amendment, credit enhancements that represent subordinated beneficial interests do not taint QSPE status. Accordingly, we propose the following additional language for paragraph 5.e.:

...That prohibition applies to liquidity commitments, financial guarantees, ...However, this prohibition does not apply to credit enhancements in the form of subordinated beneficial interests such as cash spread accounts or seller's interest.

Derivatives, including Removal of Accounts Provisions ("ROAPs"):

Paragraph 5.e. explicitly prohibits derivatives between the transferor and the trust. In this regard, we believe that clarification of paragraph 5.e. is required. In particular, we recommend that the final standard explicitly state that clean-up call options and removal of account provisions (or ROAPs) should not be viewed as a derivative entered into by the transferor with the master trust. We believe that this is consistent with the Board's intent since the ED does not delete the clean-up call and ROAP provisions of Statement 140. Additionally, Statement 140 did not consider

¹ It should be noted that the 397-day tenor limit is drawn from Rule 2a-7 under the Investment Company Act, the primary regulation governing money market funds.

these derivatives for purposes of determining QSPE status. Furthermore, DIG Issue D-1 is addressing whether there is an embedded derivative in a beneficial interest requiring separate accounting recognition. If such separate accounting is required, a large number of securitization transactions will no longer qualify as QSPEs. Accordingly, we propose the following additional language for paragraph 5.e.:

...It also applies to total return swaps ... However, this prohibition excludes clean-up call provisions, removal of account provisions and potential embedded derivatives that may be deemed to exist under DIG Issue D-1.

Additionally, we believe that the final standard should not amend the existing provisions in SFAS No. 140 that allow a transferor to enter into a passive derivative contract with a QSPE provided that such contract does not function as a guarantee.

Effective Date and Transition Provisions:

Paragraphs 12 and 13 provisions related to the effective date and transition are extremely problematic for revolving master trusts. In particular, we believe that specific grandfathering provisions for revolving period securitizations are required. As currently drafted, a master trust would never be grandfathered under the Exposure Draft. Specifically, adding new accounts and selling additional beneficial interests are ongoing activities of master trusts. We recommend that if a master trust no longer is a QSPE as result of this amendment to FASB Statement No. 140, then those prior issuances should be grandfathered.

In light of the significant market, economic and bank regulatory impact the final amendment to Statement No. 140 may have, we strongly recommend that a longer transition period be allowed in the final standard. Specifically we recommend that the effective date be a minimum of six months after the issuance of the final standard. A longer transition period has the following advantages:

- Allows the Board and preparers time to understand, analyze and coordinate the proposed changes by the accounting standard setters to loan accounting with the consolidation of assets on the balance sheet.
- Allows companies to explore structuring alternatives under the revised qualifying special purpose entity rules.
- Allows companies time to modify their loan systems. Such system modification
 would be necessitated by the conclusions reached by the AICPA on purchased loans
 and EITF No. 02-9, "Accounting for Changes That Result in a Transferor Regaining
 Control of Financial Assets Sold," which require assets to be accounted for as if they
 were repurchased at fair value when QSPE status is lost.

An additional transition period also should be permitted when a formerly qualifying SPE must be modified to retain QSPE status and such modifications require the consent of the holders of pre-existing beneficial interests. This is consistent with the approach that was followed when

Statement 125 was amended by Statement 140. In particular, FASB Technical Bulletin No. 01-1, "Effective Date for Certain Financial Institutions of Certain Provisions of Statement 140 Related to the Isolation of Transferred Financial Assets," was issued to give affected entities time to "cure" their securitization structures.

The comments below relate to special purpose entities other than credit card revolving securitization structures and other transfers of financial assets.

Undivided Interests:

Some financial statement preparers interpret paragraph 11 of the ED to require typical loan participations to be accounted for as financings rather than sales. We believe this is an unintended consequence of paragraph 11 of the ED. The proposed amendment would require all transfers of an undivided interest (effectively pro rata or senior participation interests in a financial asset, including loan participations and agency mortgage backed securities) to use a two-step securitization structure if sale accounting is to be achieved. Loan participations are not executed through special purpose entities but are governed by participation agreements among two or more financial institutions.

Equity Securities:

Paragraph 4.c.(1) precludes a QSPE from holding equity securities. We recommend that the final standard clarify that if an equity security is received in settlement for a customer default, it does not taint QSPE status. This is consistent with the current FASB Statement No. 140 provision allowing for a QSPE to obtain nonfinancial assets as part of a default.

Other Recommendations:

- We believe that the final standard should explicitly state that underwriting activity by an affiliate or related party of the transferor does not represent a commitment that taints QSPE status since such activity represents an arms length market transaction that is independent from the securitization transaction. For the same reason, the final standard should explicitly state that the purchase of subordinated beneficial interests by a third party liquidity provider should not taint QSPE status. In addition, in situations where the trust may invest available cash in short term instruments issued by the transferor or its affiliates, the principal repayment of that investment should not be deemed to represent the addition of assets to a trust.
- We recommend the incorporation of EITF No. 02-9 into the final amendment to Statement No. 140.
- We believe the final standard should provide examples highlighting the application of the standard to specific transaction structures.

General Comments:

Any amendment of SFAS Statement No. 140 should apply a consistent accounting model. As drafted, the ED mixes the control-based financial components approach of Statement No. 140 with the risks and rewards model of FIN No. 46. As a result, it is difficult to understand and apply a standard that does not have a consistent conceptual framework. This could lead to inconsistent interpretation and application across companies and confusion to users of financial statements.

Bank One appreciates the opportunity to comment on the Exposure Draft. If you have any questions on this comment letter or would like any additional information, please do not hesitate to contact Melissa J. Moore at (312) 336-4060 or William L. Tabaka at (312) 336-3723.

v # % 1 %,

Very truly yours,

Melissa J. Moore Controller and

Chief Accounting Officer

William L. Tabaka

Director of Reporting and Accounting Policy

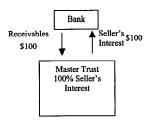
William L. Falain

Exhibit - "Schematic Representation of Revolving Master Trusts"

A credit card securitization effected through a master trust structure involves the following steps:

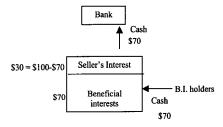
1. At the inception of the master trust

Bank transfers receivables to the trust in exchange for seller's interest. (No sale is recorded until beneficial interests are sold to unaffiliated third parties.)



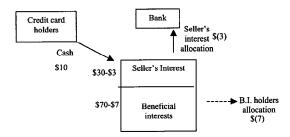
2. Initial issuance of beneficial interests (B.I.)

Trust issues beneficial interests and remits cash received from issuance to the Bank (sale is recorded). In addition, seller's interest is reduced directly by the amount of the beneficial interest issued.

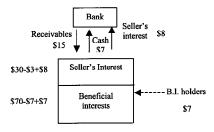


3. On an ongoing basis (monthly)

a. Principal collection on existing accounts are received (\$10). Beneficial
interests are paid down. The principal amount is allocated to the seller's
interest and the beneficial interests in their respective proportions (\$3 and
\$7).

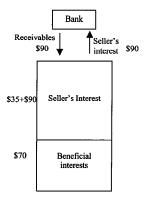


b. Newly originated receivables on existing trust accounts (\$15 partly paid for with the \$10 collected under 3.a. above) are sold monthly to the trust (increasing the seller's interest). Concurrently, the B.I. holders use the principal allocated to them in 3.a. above to buy their share of new receivables under the formal purchase commitment in order to maintain the original level of beneficial interest at \$70 (sale is recorded for \$7). Please note that the level of the seller's interest may increase/decrease simply as a result of the credit card holders' purchases/repayments.



4. New accounts are added to the trust

 New <u>accounts</u> are added to the trust (no sale is recorded until beneficial interests are sold to unaffiliated third parties).



- Beneficial interests for \$60 of the new \$90 receivable transfer are issued (sale is recorded).
- c. The cash from the newly issued beneficial interests is <u>not</u> used to pay the existing beneficial interest holders.

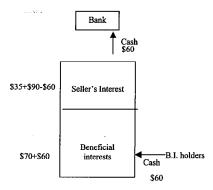


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