



Letter of Comment No: 13
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MBNA America Bank, N.A.
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July 30, 2003

Ms. Suzanne Q. 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 1200-001

Dear Ms. Bielstein:

MBNA America Bank, N.A. ("MBNA"), a national bank and the principal subsidiary of MBNA Corporation, appreciates the opportunity to comment on the Exposure Draft dated June 10, 2003, entitled Qualifying Special-Purpose Entities and Isolation of Transferred Assets – an amendment of FASB Statement No. 140 (the "Exposure Draft"). MBNA Corporation is the largest independent credit card lender in the world with \$57.2 billion in total assets, and \$81 billion of outstanding securitizations that it has originated and services, as of June 30, 2003.

Since 1986, MBNA has securitized over \$130 billion of credit card and other consumer loans through more than 210 separate transactions. We have taken extreme care in structuring our securitization transactions so that they meet all applicable regulatory and accounting requirements. We have also provided guidance to the Financial Accounting Standards Board (the "Board") and regulatory agencies on securitization matters and believe the depth of our securitization experience uniquely positions us to recommend needed changes to the Exposure Draft.

We appreciate the Board's efforts to provide additional guidance on the permitted activities of qualifying special purpose entities ("QSPEs"). We understand the Board's stated objectives of establishing guidance intended to:

1. Prevent derecognition by transferors that continue to retain effective control of transferred assets, and
2. Help ensure that SPEs will not qualify for the exception to Interpretation 46 if any party involved is in a position to enhance or protect the value of its own subordinated

interest by providing financial support or making decisions about reissuing beneficial interests.¹

However, we believe that the Board's approach for achieving its stated objectives will have the unintended consequence of disqualifying many QSPEs where control has been effectively surrendered and where legal isolation has been achieved under the original FASB Statement No. 140 ("FAS 140") requirements adopted in 2001. We do not think that the changes proposed in the Exposure Draft are necessary in order for the Board to achieve its goals. In its current form, the amendment will have impacts that are well beyond what is necessary to achieve the Board's stated objectives and which in many ways contradict the principles underlying FAS 140 and FASB Statement No. 125 ("FAS 125").

A summary outline of our specific comments on the Exposure draft is presented in the table below:

Part		Page
I.	<p>Restrictions on QSPEs that reissue beneficial interests</p> <ul style="list-style-type: none"> ➤ A better description of <i>reissuing beneficial interests</i> is needed to avoid the unintended consequence of improper consolidation. ➤ The limitations in paragraph 35(f) should apply only where reissuance creates the ability to materially influence residual cash flows. ➤ The "two out of three factors" test in paragraph 35(f) fails to consider the relative significance of relationships impacting the consolidation and derecognition analysis for the transferor. For example, the purchase of a small subordinate beneficial interest by a third party that also provides a small amount of liquidity within the same SPE, would cause the loss of "Q" treatment without the transferor's knowledge. 	3
II.	<p>Limitations on liquidity commitments, financial guarantees, etc.</p> <ul style="list-style-type: none"> ➤ FASB Interpretation No. 45 should be referenced to clarify the meaning of <i>guarantee</i>. ➤ The lack of discussion in the Exposure Draft about features in securitizations that would fail amended paragraph 35(e) will lead to inconsistent application which could result in less comparability of financial reporting among entities. 	5
III.	<p>Limitations on derivative counterparties</p> <ul style="list-style-type: none"> ➤ The term <i>agent</i> should be defined. ➤ The amendment goes too far by applying the limitation to all types of derivatives, unnecessarily prohibiting derivatives that do not have the same effect as support commitments or guarantees. ➤ Grandfathering of existing derivatives should be permitted. 	6

¹ See "How This Proposed Statement Would Improve Financial Reporting" on p. ii of the Exposure Draft.

IV.	QSPEs are prohibited from holding equity instruments ➤ A definition of <i>equity instrument</i> consistent with FASB Statement No. 115 should be provided.	7
V.	Effective dates and transition ➤ Grandfathering should be less restrictive. ➤ Sufficient transition time has not been provided.	8

I. Restrictions on QSPEs that reissue beneficial interests

Definition of *reissue*

In its discussion of reissuing beneficial interests, the Board does not define the term *reissue*. We believe this omission could cause practitioners to conclude that *reissuing beneficial interests* includes periodic term securitizations issued from typical master trust structures. Consequently, we believe that the proposed amendment, as written, could inadvertently result in master trust structures being disqualified. We do not believe this result to be the Board's intention.

The proceeds from traditional term issuances in revolving master trust structures, where each issuance or series results in a corresponding decrease in the remaining transferor's interest, are not used to retire maturing beneficial interests. Maturing beneficial interests are paid from the cash flows of the transferred assets, generally the payment of the principal balance of the transferred assets. As such, issuances from a master trust subsequent to the initial issuance of beneficial interests do not amount to a pledging of transferred assets. However, the Exposure Draft is unclear concerning this issue, and market participants seeking to apply the standard are likely to misinterpret the Board's intent. Unintended results would include (at the very least) reporting entities incurring significant unneeded costs to restructure their programs to remain compliant with FAS 140 and (at worst) disruption to the efficient functioning of the credit markets.

The discussion in paragraph A6 leads many practitioners to conclude that the Board's concern with reissuances is where the proceeds from new issuances of beneficial interests are used to pay holders of maturing beneficial interests. We therefore propose that the phrase *reissue beneficial interests* be defined to include only those transactions where the proceeds of new issuances of beneficial interests are used to directly retire maturing beneficial interests. In discussing this definition, we also suggest that the Board make reference to paragraph 79, wherein master trusts and revolving period securitizations are discussed, to further clarify its meaning that revolving period securitizations are not considered to be reissuances.

Additional limitations on QSPEs that can reissue beneficial interests

Our second concern with respect to reissuance is the Board's presumption that reissuing beneficial interests by an SPE will always create the potential for some party to materially influence its own, or some other party's economic return. In particular, we do not believe that the ability to make decisions about reissuing investment grade instruments that are limited to a tenor of 397 days or less provides a meaningful ability to influence any party's economic returns. MBNA's Emerald Note Program ("Emerald") issues extendable notes into the 397-day, 2a-7 market. Emerald issuance is restricted to an expected term not to exceed 99 days with a maximum 60 day weighted average remaining term to maturity. We have included at the end of this letter an analysis of the various tenors of the program over the past 18 months which demonstrates that economic returns can not be varied materially. Average spreads to one month LIBOR for issuance of one month, two month and three month notes were 4.5bp, 4.8bp and 4.5bp, respectively. Comparative pricing is not the primary driving factor in the decision to issue various maturities; rather the maturities are constrained first by the substantial issuance restrictions established in the governing documents of the commercial paper program and secondly by investor demand for specific maturities.

We suggest that the additional limitations included in paragraph 35(f) apply only where the range of permitted maturities creates the possibility to materially influence the residual cash flows in a transaction and that a restriction to maturities under 397 days be included as an example of a range that would not ordinarily create that possibility.²

The "two-out-of-three factors" test

The two-out-of-three factors test concerning concentrations of risks or concentrations of risks with decision-making, applicable to QSPEs which have the ability to reissue beneficial interests, is described in paragraph A12 and implemented by new paragraph 35(f). The two-out-of-three factors test is inappropriate because it gives no consideration to the degree of decision-making power an entity has or the relative materiality of any particular relationship.

We believe that to require all QSPEs which have the ability to reissue beneficial interests to also satisfy the additional limitations of paragraph 35(f) leads to the inappropriate disqualification of some QSPEs. We believe these disqualifications will be inconsistent with the principles underlying FAS 140, because in many cases the elements discussed in paragraph 35(f) - subordinated interests, liquidity facilities, and decision-making ability

² The 397-day tenor limit is recommended because that is the maximum maturity recognized by the Securities and Exchange Commission in Rule 2a-7 of the Investment Company Act, the primary regulation governing money market funds.

concerning reissuances - do not give the transferor or any other party effective control of the transferred assets.

Many entities will unjustly fail paragraph 35(f) because of situations where at least two indicators are present but where effective control is not retained by the transferor. For example, if a third party that provides liquidity to a short term program of a large master trust has an affiliate that incidentally buys a less-than-senior class security issued by that master trust, a violation of paragraph 35(f)(3) exists and the qualifying status of the SPE will have been nullified. This would likely occur without either the QSPE or transferor even being aware that the violation has occurred. Thus, even the most inconsequential involvement by a party to a set of transactions could result in a change to the overall consolidation analysis for the transferor.

A global financial institution serving as the liquidity provider, will likely trigger the nullifying event unintentionally, because in managing its own portfolio or in acting as a market maker in these securities, it could invest in a less-than-senior interest in a QSPE without the transferor's knowledge. The likelihood of this unintentional consequence is compounded by the fact that master trusts often issue hundreds of different series over the term of their existence.

The insignificant nature of relationships like the one in the above example does not indicate the retention of effective control by the transferor or the ability of any party to enhance or protect the value of its own interest in the QSPE and thus should not impact the consolidation and derecognition analysis for the transferor. The proposed amendment in its current form would result in consolidation of the QSPE in this example and would diminish, rather than improve, the quality of financial reporting as a result.

We suggest that the test be modified such that a QSPE that reissues beneficial interests (as limited by the 397-day maximum maturity proposed above) will fail paragraph 35(f) only where the transferor *materially* meets two or more factors and the reissuances create the possibility for some party to materially affect residual cash flows. Trivial or incidental relationships or transactions which could not reasonably result in the retention of effective control should not cause a QSPE to fail these limitations.

II. Limitations on liquidity commitments, financial guarantees, etc.

Definition of guarantee

The term *guarantee* is not defined in the Exposure Draft. We suggest that a footnote reference be added to confirm that a guarantee is defined as being within the scope of FASB Interpretation No. 45.

Liquidity commitments and other arrangements

There is substantial uncertainty among market participants concerning what types of arrangements would fail paragraph 35(e). The proposed amendment is unclear on this point. For example, the summary of the proposed amendment suggests that the transferor can hold subordinated retained interests without jeopardizing QSPE status. However, the actual text of the amended Statement does not include a similar clarification.

There are many other commonly-used features in securitizations which are potentially at odds with the prohibition on liquidity commitments between the QSPE and the transferor, its affiliates or agents as currently written. These include, among other things, standard representations and warranties (where a transferor is obligated to repurchase assets that are found not to meet the eligibility standards required by the transferee), non-cash and non-credit adjustments to receivables (e.g. rebates and returns in credit card transactions), and interchange payments remitted to the QSPE (also in credit card securitizations). Transfers to satisfy the requirement to maintain a certain minimum receivables balance would seem to be acceptable pursuant to the parenthetical reference in the first sentence of paragraph 35(e). It is unclear which, if any, of the other features mentioned above would violate paragraph 35(e).

We suggest that any subordinated interests or other arrangements which do not effectively serve as credit enhancements, do not require discretion on the part of the transferor or the QSPE, and which do not interfere with the legal isolation of the transferred assets should not be prohibited. We do not see any conceptual justification for prohibiting such arrangements.

III. Limitations on derivative counterparties

Definition of agent

The term *agent* is not defined in the Exposure Draft. Would an unrelated swap counterparty be considered an agent? Further discussion is needed to describe what characteristics of a relationship are necessary for it to be deemed an agency relationship.

Derivatives

The Board's proposed limitation on derivatives in amended paragraph 35(c)(2), prohibits a QSPE from entering into any type of derivative with the transferor, its affiliates and agents. This limitation is understood to have originated with the Board's concern over total return swaps, which the Board recognizes as another type of support commitment or guarantee. However, to prohibit the use of all derivatives is unnecessarily broad because it forbids the use of instruments such as interest rate swaps, which provide only interest rate protection, not credit protection. A QSPE will have to enter into an interest rate

swap with an unrelated entity in order to achieve the desired interest rate protection. This will represent an added cost of implementing the amendment that will provide no incremental benefit to financial reporting.

In order to achieve its objective, the Board has only to prohibit the use of derivative instruments that provide the same effect as support commitments or guarantees. To prohibit derivatives which do not involve substantially all of the expected losses or expected residual returns from the underlying assets is not necessary to achieve the Board's objectives. We believe the prohibition in paragraph 35(c)(2) should apply only to derivatives which are expected to absorb a substantial percentage of the expected losses on the underlying assets, if incurred, or entitle the transferor, affiliate or agent to receive a substantial percentage of the expected residual returns from the underlying assets, if realized.

In any case, we believe that grandfathering should be granted for derivatives which were in place prior to the effective date of the amended statement, other than derivatives which are, in essence, credit protection. We believe that this grandfathering provision should permit the issuance of additional derivatives during the transition period, provided that those instruments do not constitute credit protection. It is unclear in the Exposure Draft whether executing any new derivative instruments under the grandfathering provision is permitted.

IV. QSPEs are prohibited from holding equity instruments

The term *equity instrument* is not defined in the Exposure Draft. We suggest that the Board define this term in the amendment or reference the definition provided in FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* ("FAS 115"). There is concern that where a QSPE holds a certificated interest in another securitization vehicle and that second vehicle holds only debt instruments, the certificate held by the QSPE could be deemed to have characteristics that are similar to an equity security. FAS 115 is clear that all securitized debt instruments, such as CMOs, REMICs, and interest-only and principal-only strips *are* debt instruments. Thus we believe clarification is needed to confirm that such certificates would be treated as debt instruments consistent with the definition in FAS 115.

Likewise, clarification is needed that money market funds or similar investments - which are commonly purchased with cash collected from assets held by QSPEs - are not considered equity instruments. However, consistent with FAS 140, these investments should not require any decision making by the QSPE (the trustee makes these decisions consistent with the legal documents).

V. Effective dates and transition

We recognize that the Board has provided for grandfathering of formerly qualifying SPEs which fail to meet one or more condition imposed by the amendment. However, the grandfathering provision does not allow an existing QSPE to issue new beneficial interests or to receive additional assets other than ones it was committed to receive under arrangements made before the effective date. By not allowing adequate transition time during which a qualifying entity can continue to operate as it does pursuant to existing GAAP, the Board is failing to acknowledge that users of these structures have operated in good faith to maintain structures which comply with the requirements of FAS 125, FAS 140, the related implementation guidance and the numerous EITF consensus positions impacting QSPEs which have been issued over the past seven years. Entities which today are structured in compliance with FAS 140 should be given sufficient time to comply with changes which will otherwise disqualify them, and existing QSPEs should be permitted to continue to operate as they currently do, including issuing beneficial interests and receiving additional assets, during the transition period.

As currently drafted, the amendment would become effective at the beginning of the first interim period after final issuance. This could be no more than three months, but could be as little as one day depending on the date of issuance. Clearly, this does not ensure that adequate time for implementation of the provisions of the amended Statement will be provided. Certain changes which will be required for existing QSPEs to continue to be in compliance with the amended standard will require additional time to carry out, particularly where investor consent is required. The process of obtaining investor consent is complex and extremely difficult, if not impossible, to complete in the time provided by the Exposure Draft. Therefore, we propose a 2-tiered implementation scheme. Provisions of the amended Statement which will not require investor consent to implement will have an effective date beginning with the first interim period beginning after December 15, 2004.³ For those provisions which will require investor consent in order to implement, a transition period consistent with that provided in FASB Technical Bulletin 01-1 is appropriate.⁴

³ Statement No. 140, paragraph 337, notes "The Board decided that entities would be in a better position to implement this Statement if it were effective for transfers occurring after March 31, 2001, six months after issuance. The Board concluded that that interval should allow constituents the time needed to assess the standards, consider the effect of EITF issues and other implementation guidance, negotiate new contractual arrangements, and revise their accounting systems to conform to the amendment." We believe similar consideration is warranted for the conforming changes which will be required by this amendment.

⁴ Technical Bulletin 01-1 provided an extended transition period for certain transfers constrained under prior contractual arrangements in recognition of the difficulty in making those transfers conform to the FAS 140 isolation standards required for sale accounting. Among the factors acknowledged by the Board in that guidance as warranting additional transition time was the need for approval by outside beneficial interest-holders and the difficulty in obtaining that approval.

Required changes include identifying and making arrangements with additional liquidity providers; revising legal documents; obtaining new legal isolation opinions from legal counsel concerning all consolidated affiliates; and identifying and reviewing all relationships, however insignificant, where an agency relationship could be found to exist which would inadvertently (and perhaps unknowingly) nullify QSPE status.

In addition to the time requirements, there will be added costs associated with implementation. We are very concerned that the Board underestimates the time and expense involved in responding to and implementing the changes outlined in the proposed amendment. We do not share the Board's belief that these costs will be minimal. As noted above, there will be additional legal costs for such things as revising legal documents, obtaining expanded legal isolation opinions and soliciting investor consent for certain technical changes, as needed. There will also be additional auditing costs as entities will need to work closely with their auditors to review and assess various relationships, structures and transactions to avoid conflicts that would impact QSPE status and to ensure compliance with amended GAAP. Finally, in many instances there will be the need to arrange for additional liquidity providers to avoid the concentration limitation imposed by new subparagraph 35(f)(1).

An additional cost which does not appear to have been considered by the Board is the impact on the cost of credit provided to individuals and corporations. This will be the result of additional costs to bank issuers in the form of increased regulatory capital (where derecognition is not permitted) and increased loan loss reserve requirements.

VI. Conclusion

We appreciate the opportunity to offer our views on the Board's proposals concerning qualifying special purpose entities. We sincerely believe that the proposed amendments will have significant adverse effects on the consistency and comparability of financial reporting, an outcome which is contrary to the Board's mission to develop standards that promote credible, transparent and comparable financial information. As we have pointed out in our comments, we believe that much of the amendment is too broad in its application and will have the unintended consequence of disqualifying many existing QSPEs where the transferor does not retain effective control of the transferred assets and where legal isolation has been achieved. While we can support the Board's stated objectives, we believe that the amendments as currently drafted represent a significant burden to practitioners which will produce little or no incremental benefit to investors and other users of financial information.

We are pleased to have the opportunity to participate in the FASB's public roundtable discussion of the draft amendment scheduled for August 28, 2003, and look forward to further discussing the Board's specific proposals and its underlying objectives in that forum.

Financial Accounting Standards Board
July 30, 2003

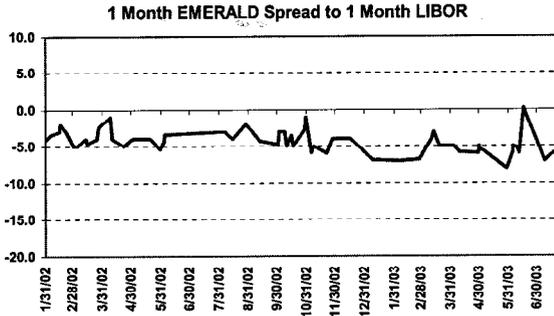
We urge the Board to consider these comments in finalizing the proposed amendment. If you have any questions on any of the comments contained in this letter, please contact me at (302) 453-2074 or Kenneth A. Vecchione, Senior Vice Chairman and Chief Financial Officer of MBNA America Bank, N.A. at (302) 432-1103.

Sincerely,

Vernon H.C. Wright
Executive Vice Chairman
MBNA America Bank, N.A.

Chief Financial Officer
MBNA Corporation

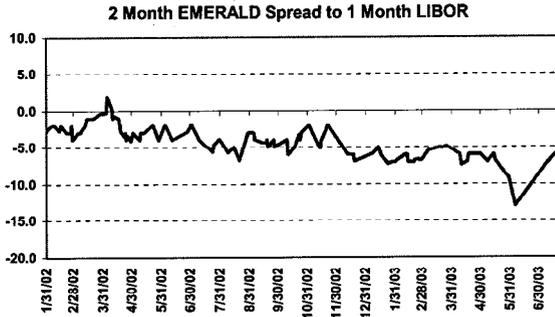
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Average 1 Month Spreads to 1 Month LIBOR

<u>Month</u>	<u>Month</u>	<u>Month</u>
Jan-02	Jul-02	Jan-03
Feb-02	Aug-02	Feb-03
Mar-02	Sep-02	Mar-03
Apr-02	Oct-02	Apr-03
May-02	Nov-02	May-03
Jun-02	Dec-02	Jun-03
		Average
		-4.5

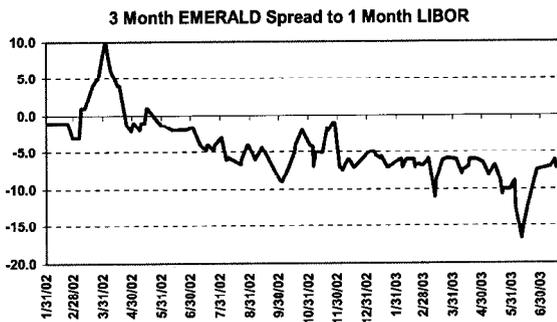
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Average 2 Month Spreads to 1 Month LIBOR

<u>Month</u>		<u>Month</u>		<u>Month</u>	
Jan-02	-2.7	Jul-02	-4.3	Jan-03	-6.4
Feb-02	-2.6	Aug-02	-5.1	Feb-03	-6.5
Mar-02	-2.0	Sep-02	-4.2	Mar-03	-5.1
Apr-02	-1.5	Oct-02	-4.2	Apr-03	-6.4
May-02	-3.0	Nov-02	-3.3	May-03	-7.3
Jun-02	-3.2	Dec-02	-6.2	Jun-03	-13.0
				Average	-4.8

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Average 3 Month Spreads to 1 Month LIBOR

<u>Month</u>	<u>Month</u>	<u>Month</u>
Jan-02	Jul-02	Jan-03
Feb-02	Aug-02	Feb-03
Mar-02	Sep-02	Mar-03
Apr-02	Oct-02	Apr-03
May-02	Nov-02	May-03
Jun-02	Dec-02	Jun-03
		Average
		-4.5