Re: File Reference 1225-001

MBNA Corporation ("MBNA"), a bank holding company, appreciates the opportunity to comment on the Exposure Draft dated August 11, 2005, entitled Accounting for Transfers of Financial Assets—a amendment of FASB Statement No. 140 (the "Exposure Draft"). Through its principal subsidiary MBNA America Bank, N.A., a national bank, MBNA is the largest independent credit card lender in the world with $63 billion in total assets, and $85.1 billion of outstanding securitizations that it has originated and services, as of June 30, 2005.

Since 1986, MBNA has securitized over $155 billion of credit card and other consumer loans through more than 265 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 amount of work the Board has undertaken in its efforts to clarify the derecognition requirements for financial assets and to address the initial measurement of interests related to transferred financial assets held by a transferor. We also thank the Board for acknowledging and responding to comments made by constituents following the 2003 Exposure Draft. While we recognize that positive changes have been made, we continue to believe that some of the proposed changes are not necessary to achieve the Board's objectives. In some cases, the proposed changes are inconsistent with established legal or audit standards concerning legal isolation.

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

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A. Effective date and transition

Effective dates for legal isolation criteria

Clarification is needed around the effective date(s) for new or amended paragraphs dealing with the legal isolation of transferred assets. Paragraphs 4 and 5 seem to provide conflicting guidance on this point. Paragraph 4 states that the derecognition provisions of amended paragraph 9(a) are applicable upon issuance of the Statement, (the current FASB Project Agenda calls for issuance of the final amendment in the first quarter of 2006). Under paragraph 5, the provisions of new paragraphs 27A and 27B are applicable on July 1, 2006. Paragraphs 27A and 27B expand on the existing discussion about the types of evidence that support an assertion of legal isolation has been achieved.

It is unclear why the respective effective dates for paragraphs 9(a), 27A and 27B are not all the same. This is especially confusing in light of discussions we have had with the FASB staff that indicated paragraphs 27A and 27B are not intended to change the requirements for supporting an assertion of legal isolation, rather they are only meant to clarify the guidance currently provided in paragraph 27. We are confused by the need for different effective dates for the new paragraphs since they purportedly do not change the criteria for achieving or supporting an assertion of legal isolation.

Transition for rollover entities

Paragraph 8 of the Exposure Draft provides transition guidance for a currently qualifying SPE that fails to meet the conditions in new paragraphs 35(e) and 45A governing entities that reissue beneficial interests. Under the transition guidance, an entity that maintains its qualifying status under
previous accounting standards continues to be considered a qualifying special purpose entity ("QSPE") until six months after the effective date of the amendment, or until it has rolled over a majority of the beneficial interests outstanding at the effective date of the amendment, whichever is later.

Additional guidance is needed for applying this provision. It is not uncommon for credit card master trust structures to have the ability to issue both term securities (the proceeds of which are used to reduce the transferor's interest, and thus are not considered rollovers under paragraph 45A) and short-term notes (in many cases for operational efficiency, the proceeds of which can be used to retire maturing short-term notes, and thus are considered rollovers by definition). In considering whether a majority of outstanding beneficial interests has been rolled over for a QSPE that issues both rollover beneficial interests and those that are not rolled over, it is unclear whether we are to consider only the outstanding beneficial interests that roll over or all beneficial interests issued by that QSPE. In addition, it is unclear whether majority should be defined in terms of the number or the dollar value of beneficial interests outstanding as of the effective date.

B. Legal isolation

Meaning of "legally a sale"

Paragraphs 27A and 27B expand on the existing discussion in Statement 140 about evidence supporting an assertion that legal isolation has been achieved. We are particularly troubled by paragraph 27A, which states that a transferred financial asset is considered to have been legally isolated from the transferor only if a legal analysis would support that the transfer is "legally a sale."

It is not clear what is meant by the phrase "legally a sale." Neither paragraph 9(a) nor paragraph 27 requires that a transfer be deemed a true sale at law in order to have achieved legal isolation. Nor does either paragraph require that a transferor be able to conclude that a true sale opinion would be given if one were sought. We are concerned, however, that the proposed language in paragraph 27A could be interpreted otherwise.

Such an interpretation would be inconsistent with current auditing guidance on legal isolation, which the Board affirms in paragraph B4 of the Exposure Draft. Pursuant to this guidance, financial assets can be derecognized by a transferor that is not eligible to be a debtor under the Bankruptcy Code (such as an FDIC-insured depository institution) if an alternative set of legal opinions is delivered in place of a true sale opinion.1 Because the consequences of a mistaken interpretation would be significant, we request that the ambiguity of the phrase "legally a sale" be cured by deleting clause (a) of paragraph 27A in its entirety.

C. Reissuance of beneficial interests

Defining "more than trivial"

Paragraph 35(e) states that if a QSPE's governing documents permit rollovers of beneficial interests, no party (including that party's consolidated affiliates or agents) can have the opportunity to obtain a more-than-trivial incremental benefit by virtue of having more than one type of involvement with the

1 See AU 9336, 1.14, Example 2.
entity. Examples of involvement noted in the Exposure Draft include providing liquidity support, providing credit enhancement and the right or obligation to specify the terms and conditions of the beneficial interests to be issued. There is inherent difficulty in applying any provision that requires judgment; determining when a benefit is “more-than-trivial” is a prime example. It would be helpful to both issuers and their auditors if the final Statement could include some examples of arrangements that the Board has seen that they consider to provide some party with a more-than-trivial incremental benefit.

With respect to a party having the right to specify the terms of beneficial interests, we are concerned that absent guidance to the contrary, auditors will take the position that any time a party has more than one form of involvement with the entity, the benefits to that party must be presumed to be more-than-trivial (and thus the entity would lose its QSPE status). As we noted in our comments to the Board following the June 2003 Exposure Draft, 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 included in our July 2003 comment letter an analysis of the various tenors of the program over an 18-month period. That analysis demonstrated that economic returns could not be varied materially. Average spreads to one month LIBOR for issuance of one-, two- 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.

In most cases, the rollover of commercial paper in these situations is simply more operationally efficient. A pool of securitized credit card loans experiences high payment rates/quick turnover. Therefore, the principal collections in MBNA’s credit card master trust are more than sufficient to repay maturing short-term beneficial interests each month as currently structured. However, it is much more operationally complex to establish a structure meeting a strict interpretation of the current definition of rollover of beneficial interests which would require the trustee to transfer allocated principal payments to repay maturing beneficial interests while the proceeds of new beneficial interests are transferred to the seller. It is much simpler to settle the trade on a net basis. We suggest that the definition be amended to read: “Reissuances of beneficial interests to obtain cash or other assets to retire or otherwise settle existing beneficial interests held by parties other than the transferor, that could not otherwise be settled by the cash flows on the securitized assets.”

Alternatively, we suggest that the limitations included in paragraph 45A(c) 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 of less than 397 days be included as an example of a range that would not ordinarily create that possibility.\(^2\)

\(^2\) 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.
Application to entities that issue both rollover and non-rollover interests

We note that paragraph 35(e) and the opening of paragraph 45A discuss rollovers in a manner that distinguishes between entities that roll over beneficial interests from entities that do not. In contrast, the closing of paragraph 45A and the definition of rollovers of beneficial interests in Appendix E refer to rollovers in a manner that distinguishes between the types of beneficial interests. Specifically, the Board states: “Beneficial interests issued by a revolving-period master trust are not considered rollovers if the proceeds are applied to reduce the transferor’s interest.”

This raises the question of how to apply the proposed guidance to a master trust structure that has the ability to issue both types of beneficial interests. As noted earlier, it is not uncommon for master trust structures to issue both term securities (the proceeds of which are used to reduce the transferor’s interest, and thus are not considered rollovers under paragraph 45A) and short-term notes (the proceeds of which are used to retire maturing short-term notes, and thus are considered rollovers by definition). It is unclear whether master trust structures of this type should be viewed as “rollover entities” in their entirety or whether the short-term note program should be evaluated separately from the “non-rollover” activity. While we believe adoption of the amended definition of rollover specified above would generally resolve this question, we would appreciate clarification on this point, particularly for structures that would still be considered “rollover” under the amended definition.

In addition to the question noted above concerning the application of the transition provisions to this type of master trust, there is another implication to this point. In considering the various forms of involvement and whether a more-than-trivial economic benefit is achieved by virtue of any party having more than one type of involvement, there is uncertainty as to whether we must consider the decision-making ability related to the term issuances (which do not relate to the rollover issuances) as well as to beneficial interests that are rolled over.

D. A transferee’s (or beneficial interest holder’s) ability to pledge or exchange under paragraph 9(b)

Application to transferors

The proposed additions to paragraph 9(b) will require that if a transferee is a qualifying SPE, each holder of beneficial interests issued by that qualifying SPE (including the transferor itself if it holds a beneficial interest) has the right to pledge or exchange its beneficial interests, and no condition both constrains the holder from taking advantage of its right to pledge or exchange and provides more than a trivial benefit to the transferor.

This imposes a new requirement that does not apply currently to transferors. In most credit card and other master trusts, the transferor is required to maintain some minimum ownership interest in the trust for tax purposes as well as for the basic purpose of absorbing the daily fluctuations in receivable balances. This (required minimum) restriction on the transferor’s beneficial interest, which is inherent in many master trust structures in place today, will presumably invalidate sale accounting under the proposed amendment.
This requirement is unnecessary since the intent of 9(b) is to ensure the transferor has surrendered control of the transferred financial assets such that a transferee is free to pledge or exchange them. The extent to which a transferor itself is constrained from pledging or exchanging the transferred assets, we believe, should be viewed as a further indication that the transferor has in fact surrendered control. As a result, we recommend that the parenthetical text “(including the transferor itself if it holds a beneficial interest)” be removed from the proposed additions to paragraph 9(b).

**Multi-step transactions**

Another proposed amendment to paragraph 9(b) will require that if a transaction involves a series of steps designed to isolate the transferred financial assets, each entity that receives the transferred financial assets is a transferee, and each transferee must be able to pledge or exchange the assets (or its beneficial interest).

Given the opening sentences of amended paragraph 9(b), it could be interpreted that this requirement is not intended to apply to an intermediate transferee in a multi-step transfer where that transferee is a QSPE. However, misinterpretation of the Board’s intent on this point would have significant adverse consequences for issuers, so clarification is needed.

If it is the Board’s intent to require an intermediate transferee that is a QSPE to satisfy the 9(b) criterion, we oppose such a change because it is not needed for the purpose of ensuring that a transferor has surrendered control, and it will be unnecessarily problematic for many existing transactions. Moreover, if this is the Board’s intent, it is unclear how to reconcile this new requirement with the notion in Statement 140 that as long as the ultimate beneficial interest holders can pledge or exchange their beneficial interests without constraint, the criterion in paragraph 9(b) has been satisfied. If the Board is departing from its previous position of accepting that a QSPE is, by design, constrained from pledging or exchanging the assets transferred to it (due to limitations on its permitted activities), then no multi-step transaction involving QSPE-to-QSPE transfers could satisfy 9(b).

Further, clarification is needed as to whether the requirement that “each transfer must meet this condition” applies only where a multi-step transfer is used expressly for the purpose of achieving legal isolation of transferred assets. Certain QSPE-to-QSPE arrangements exist today for reasons altogether unrelated to legal isolation. For example, some securitizations involve placing a collateral interest in a certificate-issuing QSPE into a second qualifying SPE, which in turn issues beneficial interests - in the form of notes - in the collateral interest. This structure commonly exists to attract institutional investors that are subject to ERISA requirements. Because this second transfer is not needed for the purpose of achieving legal isolation, it should not be subject to the proposed multi-step transfer provisions of paragraph 9(b). We recommend the inclusion of clarifying language to specifically exclude from the scope of this requirement any transfer that is not required for the purpose of achieving legal isolation of the transferred assets.

**Conclusion**

We appreciate the opportunity to offer our views on the Board’s proposals concerning transfers of financial assets. As we have pointed out in our comments, we believe that certain provisions of the proposed amendment will have the unintended consequence of precluding the derecognition of assets
where the transferor does not retain effective control of the transferred assets and where legal isolation – as evaluated under established legal and auditing standards – has been achieved. In addition, we believe that the proposed rules for entities that reissue beneficial interests need greater clarification and, as currently written, will invalidate QSPE status in situations that do not provide the opportunity for a party to obtain a more-than-trivial incremental benefit from having multiple involvements with the entity.

We were pleased to learn that the Board has decided to host an education session with industry representatives scheduled for October 17, 2005, and we look forward to hearing further dialog concerning the Board's proposals in that forum.

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) 432-1103 or Randy Black, Chief Accounting Officer, MBNA America Bank, N.A. at (302) 453-6766.

Sincerely,

Kenneth A. Vecchione
Chief Financial Officer
MBNA Corporation