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Capital One Financial Corporation 1680 Capital One Drive McLean, VA 22102 (703) 720-1000

July 31, 2003

Major Projects & Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference No. 1200-001; Proposed Statement of Financial Accounting Standards, "Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment of FASB Statement No. 140."

Ladies and Gentlemen:

Capital One Financial Corporation ("Capital One" or the "Company") appreciates the opportunity to provide comments on the Exposure Draft issued by the Financial Accounting Standards Board (the "Board") entitled Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment to FASB Statement No. 140 (the "Exposure Draft"). Capital One is a leader in the direct marketing of MasterCard and Visa credit cards, auto loans and other consumer financial services. The Company actively participates in loan securitization transactions that either qualify as sales or secured borrowings in accordance with FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("SFAS 140").

The purpose of this letter is to respond to the Exposure Draft by highlighting implementation issues and practical problems that will arise by the acceptance of the Exposure Draft in its current form.

General Comments

We understand that the main goals of the Exposure Draft are (1) to provide additional guidance related to a qualifying special-purpose entity ("QSPE") when beneficial interests are reissued, and (2) to further restrict the types of relationships between the transferor and the QSPE providing the transferor with effective control over the transferred assets. We agree with several of the concepts outlined in the Exposure

Draft and believe that clarity should be provided around permitted activities of the QSPE. However, we strongly believe that certain provisions of the Exposure Draft go far beyond what is necessary to accomplish the Board's objectives, that these provisions have broad and harmful implications for financial institutions and other entities in the structured finance market, and that these provisions will cause significant changes to current structures which were not intended by the Board. We are concerned that the Board has not adequately addressed or considered all the implications of the Exposure Draft on current transactions or to the securization industry as a whole and that the cost and burden of implementing the requirements of the Exposure Draft is more complex than anticipated by the Board.

Additionally, the Exposure Draft does not allow transferors or other affected companies a sufficient amount of time to fully assess the impact of these potentially dramatic changes and either to make the necessary amendments to current structures or to create new structures to comply with the requirements of the Exposure Draft and maintain sale accounting.

The Exposure Draft incorporates certain risk and reward concepts from FIN 46, Consolidation of Variable Interest Entities, into SFAS 140, thereby undermining the financial components approach that underlies SFAS 140. We believe that the Board previously considered and ultimately dismissed the feasibility of the risk and rewards approach when deliberating SFAS 140. The Board had previously agreed that derecognition of assets based on the transfer of substantially all risks and rewards added difficulties in application because of the need to identify, measure, and weigh in the balance each of possibly many and varied risks and rewards embodied in a particular financial asset. The Board concluded that the risks and rewards approach allowed an entity to continue to recognize assets even though it had surrendered control over the assets.

By requiring transferors to assess whether or not the QSPE has entered into transactions with parties that meet the two-out-of-three factors test described in paragraph A12, the Exposure Draft improperly mixes the risks and rewards approach taken by FIN 46 with the financial components approach taken by SFAS 140. This risk and rewards approach only looks at the existence of certain relationships between the transferor and a QSPE, not the materiality of those relationships. Incorporation of elements of the risk and rewards approach into SFAS 140 would require the transferor to develop a mechanism to track relationships and constantly monitor those relationships, a burdensome and perhaps operationally impracticable change.

Reissuance of Beneficial Interests

We request that the Board clarify its intent with regard to structures that can reissue beneficial interests and specifically identify the scope of transactions that are subject to the guidance in the Exposure Draft. Specifically, the Board should clarify that the rules relating to reissuance of beneficial interest do not apply to traditional issuances

in revolving master trust structures, where each issuance results in a corresponding decrease in previously unsold seller interest.

In the June 23, 2003 Project Update, the staff of the Board stated that one principal objective of the Exposure Draft was to "specify the conditions under which a qualifying special purpose entity (SPE) is permitted to issue beneficial interests with maturities that are shorter than the maturities of the assets held by the qualifying SPE and roll over those beneficial interests at maturity..." As expressed by the Board in paragraph A6 of the Exposure Draft, the ability to roll over short-term beneficial interest may support a conclusion that the transferor has not surrendered control. However, the provisions of the Exposure Draft limiting the conditions of "reissuance" could be interpreted to reach far beyond the "roll over" concern the Board sought to address and prohibit additional issuances out of revolving master trusts.

The Board has previously decided that adding receivables to a revolving master trust, in itself, is neither a sale nor a secured borrowing because the transfer only increases the transferor's beneficial interest in the trust's assets. A sale does not occur unless the transferor receives assets other than beneficial interests in the transferred assets. Cash collected from transferred receivables are used to purchase additional receivables during a defined period and thereafter used to redeem beneficial interests. Accordingly, a sale of additional receivables is considered a separate transaction from the original sale that either satisfies the transferor's obligation under the revolving commitment for previous transactions or constitutes the issuance of new beneficial interests in a completely new transaction. Thus, revolving master trust structures do not maintain control of the assets and are not continuously repledging assets.

It may be that the Board also intended to focus on transactions where the transferor, its affiliates or agents have control to direct a trust to use proceeds of new issuances to repay outstanding beneficial interests *prior to maturity* and thus, maintain control over the assets and influence the residual cash flows of the trust through a call option.

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If so, we believe that SFAS 140 already addresses this issue by specifically prohibiting sale accounting if the transferor can effectively retain control over the assets through a call option or other right that gives it the ability to unilaterally cause the transferee to return specific transferred assets. However, SFAS 140 does allow beneficial interest holders the ability to put their interest back to a QSPE and the QSPE is allowed to repurchase or redeem beneficial interests when the put is exercised by the beneficial interest holders. The Board concluded that in those circumstances the disposal is forced on the OSPE and that no discretion is involved.

Therefore, we respectfully request the Board to clarify that the proposed changes to SFAS 140 relating to reissuance of beneficial interests do not apply to traditional master trusts involving revolving assets, such as the trusts used in credit card securitizations, where an issuance of beneficial interests results in a decrease of the unsold seller interest.

Derivatives

We disagree with the position expressed in the Exposure Draft that all transferor-provided derivatives give the transferor a controlling financial interest that results in effective control over the transferred assets. We consequently believe that SFAS 140 should continue to permit derivatives, such as "plain-vanilla" swaps, that do not raise the Board's concerns.

SFAS 140 already requires derivatives to be passive, and no discretion is permitted by the QSPE in this regard, because all requirements related to these instruments must be specified in the legal documents establishing the trust or issuance of beneficial interests. As a result, QSPEs should be allowed to enter into "plain vanilla" derivatives, such as standard fixed for floating interest rate swaps and currency swaps, with a transferor, its affiliates or its agents on an arm's-length basis, as there is no indication that such instruments effectively provide control over the transferred assets.

Moreover, in those circumstances the counterparty is not considered a beneficial interest holder and has no right to pledge or exchange assets in the trust. Changes in the value of the derivative instrument are subject to market conditions outside the control of the transferor and the QSPE and is in no way connected to the performance of the underlying assets in the trust. Derivatives can only be entered into by a QSPE at the time beneficial interests are issued and notional amounts are limited to the beneficial interests issued to parties other than the transferor. Accordingly, when derivatives are entered into by the QSPE, the terms are at the current market rates and changes to residual cash flows are subject to market conditions not under the control by the transferor.

We specifically request that the Board consider arrangements where the transferor is simply intermediating swaps between the QSPE and a non affiliated party ("back to back" swaps). Such arrangements effectively transfer exposure related to the swap and the QSPE from the transferor to a non-affiliated party. We struggle to see how such involvement can in any way impact the isolation of the transferred assets.

Therefore, we respectfully request the Board to revise the Exposure Draft to permit these arm's-length "plain-vanilla" derivatives between the QSPE and the transferor, its affiliates or its agents, including back-to-back structures, and other such derivative transactions where the counterparty is not given effective control over the transferred assets. An absolute prohibition of transferor involved swaps would preclude sale treatment in a material number of our securization structures currently in place.

Two-Step Transactions

The Exposure Draft also requires that the second step of a two-step transfer involve a QSPE to meet the legal isolation criteria of SFAS 140. Currently, there are many instances where two-step transfers do not involve a QSPE in the second step and these structures satisfy the isolation criteria and result in sale accounting treatment. We fail to see how inserting another SPE into the mix changes the overall substance of the transaction. We ask that the Board clarify its reasoning behind this provision and provide examples of how the investors will receive any added benefit by requiring such provision.

We also request that the Board specifically address whether a two-step structure is required in circumstances when isolation can be achieved in one-step structures involving OSPEs.

Transition Rules

Capital One appreciates the significant time and research that the Board has put into developing existing rules around the permitted activities of QSPEs. Likewise, market participants have put a lot of time and energy into reviewing existing structures and making the necessary changes to comply with the complex rules of SFAS 140. If the Exposure Draft is finalized in its current form, we believe that the changes necessary to implement its requirements will require affected companies to invest a significant amount of time, money and resources to comply with the amended SFAS 140.

Accordingly, if the Exposure Draft is adopted in its current form, we request that the Board allow structures requiring third-party consent to amend, including traditional revolving master trust structures, additional time to obtain investor consent and make the necessary modifications to comply with the Exposure Draft. We also request where QSPEs would become non-qualifying as a result of prohibited derivative transactions or commitments and guarantees with the transferor, the Board provide that such QSPEs would be grandfathered so long as no new beneficial interests issued from the revolving master trust benefit from such previous derivative arrangements.

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This letter assumes that the Board did not intend its proposed changes to impact revolving master trusts and certain derivatives entered into by a transferor and a QSPE, such as "plain vanilla" swaps. However, the ambiguity of the Exposure Draft makes it difficult for institutions to respond to the issues that the Exposure Draft (perhaps unintentionally) seems to create. Therefore, if the Board did intend to revise existing accounting rules regarding revolving master trusts or the other topics addressed in this letter, we believe that the Board should reissue an Exposure Draft that more clearly states the Board's intent and permit an extended period of public comment in that regard.

Capital One appreciates the opportunity to comment on the Exposure Draft, and we look forward to assisting the Board as this process continues. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

/s/ Stephen Linehan

Stephen Linehan Senior Vice President and Treasurer Capital One Financial Corporation