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July 12, 2004

By E-mail: rule-comments@sec.gov

Securities and Exchange Commission
450 Fifth Street, NW
Washington DC 20549-0609
Attention: Jonathan G. Katz

Re: File Number S7-21-04
Proposed Rule: Asset-Backed Securities

Ladies and Gentlemen:

This letter is MBNA Corporation's ("MBNA") response to the Securities and Exchange Commission's (the "Commission") request for comment on the proposed new and amended rules and forms to address comprehensively the registration, disclosure and reporting requirements for asset backed securities ("ABS") under the Securities Act of 1933 and the Securities Exchange Act of 1934 (the "Proposal") issued May 3, 2004. We recognize and commend the Commission for your diligence in preparing a very comprehensive Proposal and appreciate the opportunity to provide comment.

MBNA Background

MBNA is a bank holding company and the parent of MBNA America Bank, N.A. (the "Bank"). The Bank has two wholly owned foreign banking subsidiaries, MBNA Europe Bank Limited and MBNA Canada Bank. MBNA's primary business is retail lending, providing credit cards and other retail lending products to individuals. At March 31, 2004, MBNA reported assets net of securitizations totaling \$61.1 billion. MBNA's

managed assets, including securitized loans were approximately \$147.1 billion as of March 31, 2004. MBNA has been globally active in both the public and private ABS market since 1986. Over the years, MBNA has executed 239 securitization transactions with total proceeds of approximately \$143 billion.

Beginning with our first registered issuance of asset backed securities in 1987 MBNA recognized the importance of a "well developed" ABS market. We believe that transparency provides the foundation necessary to attract broad investor participation and increased liquidity in the ABS market generally, and in MBNA ABS in particular. As such, we have always advocated transparency in both the offering and reporting processes for ABS. Below are a few examples of MBNA's activities to improve disclosure and reporting:

- Filing monthly hard copy reports with the Commission in order to provide more timely trust performance information (i.e. yields, credit losses, excess spread) to investors (1988)
- Posting master trust performance data on Bloomberg to provide easier access to trust data for investors (September 1992)
- Filing monthly electronic reports with the Commission (EDGAR) in order to provide investors with easier, more timely access to trust performance information (March 1997)
- Posting master trust performance data on the MBNATreasury.com web site to help broaden the availability of information (November 1997)
- Participation in the Commission's Plain English Pilot Program, introducing the first model of a "Plain English" base prospectus and prospectus supplement for the structured finance market (1997/1998)
- Enhancing Bloomberg reporting to reflect MBNA's new Master Owner Trust structure (June 2001)
- Posting the U.S. credit card ABS program documents such as the Pooling and Servicing Agreement, master owner trust collateral certificate Series Supplement, Indenture, MBNA series Indenture Supplement and Trust Agreement on the MBNATreasury.com web site to provide investors with easier access to the underlying program documents (October 2003)
- Enhancing base prospectus and prospectus supplements to expand MBNA's business description, summarize trustee roles and responsibilities, expand delinquency information, improve "back-up" servicer disclosure, include a table of historical receivable additions and provide detailed information on the most recent receivable addition (January 2004)

Attached is a copy of a recent prospectus and prospectus supplement (April 6, 2004) for the MBNA Credit Card Master Note Trust.

American Securitization Forum

Please note that as a member of the American Securitization Forum, MBNA participated in the development of and endorses the comments in their response letter. As a leading issuer in the credit card ABS market and because all of our registered securitization transactions utilize a credit card master trust structure, our comment letter will supplement the efforts of the American Securitization Forum by providing additional information related to credit card master trusts.

Comments

"Principles-Based" Approach

We believe that since its inception, the ABS market has grown and evolved substantially. Supporting this growth, disclosure and periodic reporting have developed and evolved as well, due to both investor requests as well as proactive issuer decisions to provide more information in a timely manner. We welcome the Commission's efforts to codify ABS disclosure and periodic reporting requirements and strongly support a principles-based approach. We observe and our specific comments point out, that in certain instances the Proposal goes beyond principles-based disclosure and prescribes specific requirements, either expressly or implicitly. As demonstrated by MBNA's voluntary actions (noted above), principles-based disclosure has functioned well and we would urge the Commission to consider that when finalizing the scope of the Proposal.

Flexibility

Principles-based disclosure allows flexibility and provides for the continued evolution of disclosure and reporting to meet investors' need for material information. The ABS market is comprised of a wide and evolving variety of assets with differing characteristics. Even within asset classes such as credit cards, there are facts and circumstances that warrant issuer specific disclosure. Principles-based disclosure requirements ensure that material information will be presented to investors, regardless of asset class or transaction structure.

Market Expectation

We are concerned that because the Proposal specifically lists disclosures to be included (if material), participants in the ABS market will expect that such information *is* material and *must* be included in disclosure and reporting. We do not believe that it is appropriate for ABS issuers to be compelled to include immaterial information in response to market expectations. Such immaterial disclosure may be unhelpful, confusing and potentially misleading.

Issuer Expense

Based on our interpretation of the Proposal, fulfilling the listed disclosure items, absent a reasonable materiality threshold would significantly increase issuer costs and lead time, adversely affecting issuers' ability to effectively access the ABS market. It is possible that some issuers will choose to stay out of the registered market in order to avoid the increased costs and lead times. The process of quantifying those costs will be complex and lengthy. If it would be helpful to the Commission, we can provide additional information.

Codification

We believe that the Proposal goes significantly beyond a codification of current staff positions and industry practice. We agree that material information should be provided to investors and that the cost of providing the information should not affect the materiality decision. However, to incorporate the specific disclosures listed in the Proposal, MBNA would need to substantially re-write its current prospectus disclosure and periodic reporting. We hope the Commission did not intend such extensive changes, as we firmly believe that our actions have demonstrated a commitment to providing investors with clear and effective disclosure of all material information for our ABS program. In fact, we think our prospectus disclosure and periodic reporting is among the best in the credit card industry.

In summary, we respectfully suggest that:

- The Proposal preserve flexibility for and the evolution of the marketplace by avoiding specific lists of required disclosure items (such as in Items 1110(b) and 1119);
- The Proposal clarify for the marketplace that all examples are for demonstrative purposes only and should not be viewed as presumptive requirements (such as in Items 1104(e), 1110(b), 1110(c) and 1119);
- In revising the Proposal, the Commission be mindful of the high costs in both time and money associated with any implication that disclosure of specific information is required, even if judged by the issuer to be immaterial;
- The Proposal incorporate current principles-based ABS disclosure practices.

Master Trust Benefits

The development of the master trust structure is perhaps the most important development in the history of the credit card securitization market. The ability to periodically add receivables to a master trust and periodically issue ABS from that master trust are the key distinguishing characteristics compared to discrete trusts used during the earlier years of credit card securitization. As noted in the Proposal, receivable additions are generally made to facilitate the issuance of new securities by the master trust. This ability to add

receivables and periodically issue new securities provides operational efficiencies for the seller as well as important benefits for investors. From an investor's perspective, a master trust provides one large diversified pool of receivables that in the aggregate produces identical performance characteristics for investors in all of the ABS issued by that master trust. Each series of securities issued from the master trust represents a pro rata undivided ownership interest in the receivables included in the master trust. The collections related to the receivables are allocated among each series of securities, producing identical yields, payment rates, delinquencies and credit losses for each series issued by the master trust. Because of this homogeneity of performance, there is no need for investors to differentiate between the collateral performance underlying different series issued by the same seller at different times, leading to greater market liquidity and investor confidence.

Static Pool Data

Static pool data is not clearly defined in the Proposal. For purposes of our comments, we assume that with respect to consumer loans, both amortizing and revolving, static pool data refers to data (i.e., credit losses and/or delinquency) for all the accounts opened by the originator during a given time period. While MBNA acknowledges that static pool data may be material for asset pools with large concentrations of unseasoned accounts, the inclusion of static pool data is generally not material to "well seasoned" revolving loans in master trusts with no large concentrations of unseasoned accounts, such as MBNA's.

Static Pool Data Presumed Material

Items 1104(e) and 1110(c) describe in great detail the requirement to provide static pool data, to the extent material. We are concerned that these provisions because of their specificity, will create a market expectation that static pool data is material and is required in all cases. Such an expectation may require issuers to include static pool data, even when not material. This unnecessary disclosure will not only increase issuer expense, but also confuse investors as to the significance of static pool data. Our concerns and specific suggestions are outlined below.

Why Investors Seek Static Pool Data

Investors are generally interested in static pool data for the following reasons:

- To determine the credit losses associated with accounts over a period of time, commonly referred to as "seasoning";
- To assess if the true level of credit losses in a pool of receivables is "masked" by the presence of unseasoned receivables; and
- To indicate changes in credit underwriting standards and loan servicing.

Seasoning

As newly originated accounts age through their lifecycle, the delinquency and charge-off rates normally increase from the low levels experienced by younger accounts. This process is commonly referred to as "seasoning." A loan portfolio or master trust with a large concentration of unseasoned accounts could understate or mask the underlying level of credit losses inherent in that portfolio. However, if a master trust does not contain any concentrations of unseasoned accounts, the underlying credit losses are not materially understated.

MBNA's credit card master trust consists primarily of well-seasoned accounts. As of March 11, 2004, MBNA's credit card master trust contained \$73.3 billion of total receivables. The average age of accounts in the master trust was over 6 years with an even age-based distribution (see the table below and page S-60 in the attached prospectus supplement), representing a diversified, "well seasoned" portfolio. As a result, the loans held by MBNA's credit card master trust are less susceptible to performance metrics associated with new or unseasoned accounts and static pool data is less relevant.

Account Age	Receivables (in millions)	Percent Distribution
Less than 6 Months	\$1,084.5	1.5%
6 Months to 12 Months	3,968.3	5.4
12 Months to 24 Months	6,684.8	9.1
24 Months to 36 Months	6,129.9	8.4
36 Months to 48 Months	6,864.5	9.4
48 Months to 60 Months	6,760.6	9.2
60 Months to 72 Months	5,794.9	7.9
72 Months to 84 Months	6,334.2	8.7
84 Months to 96 Months	6,533.3	8.9
96 Months to 108 Months	4,563.9	6.2
108 Months to 120 Months	4,319.2	5.9
Over 120 Months	14,216.4	19.4
Total	\$73,254.5	100.0%

Impact of Account Additions

MBNA usually adds accounts and their underlying receivables to the master trust 3 or 4 times per year. When accounts are added to MBNA's master trust, they are randomly selected from available, non-securitized accounts in accordance with regulatory guidelines and transaction terms. The new receivables come from accounts that may be new or many years old.

MBNA recognizes that investors may be concerned that accounts added to the trust may be less seasoned and could potentially mask the performance of the pre-addition portfolio. We believe that concerns related to the lack of seasoning and masked performance are more relevant when the addition of unseasoned accounts and their underlying receivables constitutes a material change to the master trust. For example, an addition equal to 10% or less of the total master trust does not represent a material change to the master trust, particularly if there have not been any material changes to credit underwriting standards.

Another important consideration is that static pool credit loss data doesn't exist for very young, recently opened accounts (i.e., less than 6 months), there simply hasn't been enough time for those accounts to reach the charge-off stage. In situations where a concentration of young accounts are added, static loss data may not be the best tool for understanding the impact of an addition on the future performance of the trust.

Disclosure of Account and Receivable Additions

MBNA discloses the date and size of each addition to the master trust (beginning with January 2001). Additionally, MBNA's prospectus now discloses the range of balances, credit limits, delinquency, age and geographic distribution for the total master trust and the most recent receivables addition (see pages S-61 to S-63 in the attached prospectus supplement). This is the same information provided to the rating agencies for use in their ratings process.

No Material Differences between Managed and Securitized Loans

As of July 1, 2004 over 95% of credit card receivables eligible for inclusion in MBNA's credit card master trust had already been added to the master trust. Therefore, MBNA does not have the ability to add a large pool of new receivables to the master trust. Because of this limitation, we believe there are no material differences between managed pool and securitized pool data that would require a need for separate static pool reporting on both the managed and securitized pools.

Difficulties in Providing Static Pool Data

Providing static pool data that is meaningful and easy to interpret presents some very difficult challenges for issuers. For example, there is limited availability of historical data, particularly with respect to purchased portfolios. MBNA frequently purchases credit card loan portfolios. Receivables included in purchased portfolios are routinely added to MBNA master trusts. Static pool data often is not available with respect to such receivables because acquired portfolios reside on different processing systems and the seller may not have provided extensive historical static pool or vintage data (although we may have other historical performance data for the assets). Further, once MBNA begins servicing the acquired portfolios, the implementation of its authorization, account

closure, and collection strategies generally improves the performance of the acquired receivables and static pool information becomes irrelevant or potentially misleading. Because of the change in servicing and our belief that other historical performance information is more useful, MBNA does not use static pool data to determine the value of the potential acquisition.

MBNA recognizes that investors should have an understanding of portfolio acquisitions and the potential impact to the master trust. Currently, MBNA provides disclosure related to portfolio acquisitions in its prospectus (see page 68 of attached prospectus). Items discussed in the prospectus include the fact that the accounts were originally established using credit criteria that is different from MBNA's and, more importantly, that once the accounts are serviced by MBNA, they are subject to the same policies and procedures as other MBNA accounts, including application of MBNA's credit criteria.

Issuer Costs

The static pool data contemplated by Items 1104(e) and 1110(c) currently does not exist with respect to MBNA's master trusts. The costs associated with developing such data would be significant. In addition, as indicated above, static pool data with respect to purchased portfolios may not be available at all.

Changes in Credit Underwriting Standards and Loan Servicing

We agree that changes in credit underwriting standards that could have a material effect on the credit quality of receivables in or added to the master trust should be disclosed. Likewise, disclosure should be made about changes to loan servicing, such as changes to credit underwriting and loan collection strategies that could materially affect the performance of the pool. In some, but not all cases, static or vintage pool data can be used as an aid to help quantify the impact of any changes to material credit underwriting. Even in situations where static pool data would seem helpful, the information should be used cautiously as the data is retrospective and may not reflect macro-economic conditions, current servicer activities or the current quality of the portfolio. We believe that disclosure of static pool data as contemplated by the Proposal is not necessary in many situations and a pure principles-based approach would support effective disclosure of changes to underwriting standards and loan servicing.

Importance of Currently Disclosed Information

MBNA has consistently disclosed material master trust information monthly under the current principles-based regime. Delinquency, loss performance and yields on MBNA's credit card master trusts have been reported monthly on Bloomberg, the MBNATreasury.com web site and through EDGAR. This represents over 15 years of monthly information available to investors. We believe that when taken together, our

current disclosures with respect to the master trust and receivable additions provide investors with all material information.

We respectfully suggest the following:

- The final rule should adopt a pure principles-based approach to support the evolution of the ABS market, to avoid confusion in the market place with respect to the significance of static pool data, and to minimize unnecessary issuer cost.
- Items 1104(e) and 1110(c) should simply require a qualitative description of delinquency and loss trends for the underlying receivables.
- For revolving credit card master trusts, characteristics of new accounts/receivables added to or concentrations of receivables in the master trust should be evaluated. Material variances in credit quality should be disclosed and quantified, which may include static pool data.
- To these ends, we suggest that Item 1110(c) be deleted, and we suggest the following revised Item 1104(e), :

“§ 229.1104 (Item 1104) Sponsors.

Provide the following information about the sponsor:

* * *

(e) Delinquency and loss information. Identify any known trends or uncertainties that the sponsor reasonably expects will have a material impact on delinquency and loss rates. To the extent the delinquency and loss information included in the prospectus discloses material increases in delinquency or loss rates, provide a narrative discussion of the reasons for such increases, to the extent known. If the sponsor knows of events that will cause a material change in the performance and risk of the pool assets, such events shall be disclosed. Identify and describe any material variances in credit quality for additions of a significant amount of pool assets.

Instructions to paragraph (e) of item 1104. 1. The sponsor’s discussion and analysis shall be of the delinquency and loss information and of other statistical data that the sponsor believes will enhance an investor’s understanding of the material elements of portfolio performance and risk. The discussion and analysis shall focus specifically on material events and uncertainties known to the sponsor that would cause reported delinquency and loss information not to be necessarily indicative of future performance.

2. The information provided pursuant to this item need only include that which is available to the sponsor without undue effort or expense.
3. An asset addition shall be deemed not to involve a significant amount of pool assets if the amount of such assets, as measured by principal balance, does not exceed 10 percent of the total amount of pool assets comprising the pool immediately prior to such addition.”

If the Commission is unwilling to adopt a principles-based approach, we request the following:

- The Commission should provide some qualifying remarks balancing the implicit presumption that static pool data is material and that materiality should be measured based on the specific facts and circumstances, resulting in varying levels of disclosure, even within asset type.
- The Commission should specify that the addition of receivables comprising less than 10% of the total balance in a master trust, and where there have not been any material changes to credit underwriting standards, would not cause a material change to the credit quality of the pool and should not require static pool disclosure.
- Should the SEC choose not to revise Item 1104(e) in a manner like that set forth above, we recommend the addition of the following instructions (with similar instructions to be added to Item 1110(c)):

“§ 229.1104 (Item 1104) Sponsors.

* * *

Instructions to paragraph (e) of item 1104. 1. Static pool data is required only to the extent material. The determination of whether static pool data is material will vary depending on the particular facts and circumstances, including, but not limited to, the nature of the sponsor’s securitization platform, the characteristics and quality of the underlying assets, and the characteristics and quality of credit enhancement and other support for the underlying assets, including any internal credit enhancement. Static pool data will be material only where it reveals a trend or pattern concerning one or more material elements of performance and risk that is not evident from data relating to the aggregate asset pool. As a result, disclosure of static pool data may vary from one securitization platform to another, including among issuers in the same asset sector.

2. To the extent material, static pool data may be required in connection with the addition of a significant amount of pool assets. An asset addition

shall be deemed not to involve a significant amount of pool assets if the amount of such assets, as measured by principal balance, does not exceed 10 percent of the total amount of pool assets comprising the pool immediately prior to such addition.”

Standardized Credit Scores

Item 1110 requires a description of "material characteristics that may be common" for many asset types and includes examples of common "material characteristics." For example, Item 1110(b)(11) identifies as material "ranges of standardized credit scores of obligors and other information regarding obligor credit quality". The specificity of this provision implies that standardized credit scores are always material.

In granting credit, MBNA utilizes a "judgmental"¹ approach that incorporates a variety of factors instead of relying strictly on standardized credit scores. MBNA believes that information surrounding the credit underwriting process and data used to determine suitability and extension of credit are material and should be disclosed. However, this need not always include generic third party credit score information, particularly when credit scores are not the primary basis for the credit decision. The utilization of a principles-based approach will lead to relevant disclosure on this issue.

The reliability of credit scores has been subject to extensive debate. Recent studies and reports have alleged that a substantial percentage of credit reports contain significant inaccuracies. Because of these credit reporting problems, credit scores are often inaccurate and not the most reliable predictors of performance. In fact, MBNA uses internally generated measures of credit risk to manage our portfolios.

In summary, standardized credit scores need to be treated with the same caution as static pool data. The materiality of standardized credit scores can vary based on the specific facts and circumstances of each issuer. While standardized credit scores may provide material information with respect to issuers who underwrite primarily based on those standardized scores, disclosure of standardized credit scores for issuers those that do not, such as MBNA, may be misleading.

We respectfully submit that:

- Item 1110(b) is not necessary because issuers and sponsors are required to disclose material information to investors.

If the Commission determines to include Item 1110(b), we would recommend that:

¹ Individual credit analysts are used in MBNA's judgmental credit review process. The credit analysts first make a credit decision, and then assign an appropriate credit limit.

- The first paragraph of Item 1110(b) be revised to read: "...examples of *common* characteristics that may *or may not* be *material* for many asset types include ...". This simple change will clarify that the enumerated items under Item 1110(b) are only to be included if material.

Interest Rate and Currency Swaps

We agree that credit enhancement and other support related to an ABS transaction requires additional disclosure, particularly as to the mechanics of the credit enhancement. We further believe that information on any material enhancement providers is useful to investors. However, we would like to request that the Commission clarify certain aspects of Item 1113. On occasion, MBNA uses interest rate and currency swaps in its securitization program. We have three primary concerns related to disclosure requirements that could apply to these swaps.

First, the Proposal requires different standards of disclosure for any "enhancement" based on a percentage of the cash flows the provider is liable or contingently liable to pay (the "Cash Flow Test"). We would like to recommend methods of measuring the Cash Flow Test for interest rate and currency swaps.

Second, the Proposal is very specific in describing the type of financial information required when an entity is liable or contingently liable for either 10%-20% or more than 20% of the cash flows. We agree that more financial information should be disclosed as entities become liable for a larger percentage of the cash flows. However, we are concerned that the specific disclosure requirements in the Proposal could limit the use of an important securitization tool, as some swap counterparties may be unwilling or unable to provide the required disclosure. For example, many counterparties do not produce U.S. GAAP financial statements or may be a component of a larger institution and thus the required information about the counterparty may be unavailable.

Finally, financial disclosure related to a third party often relies on information provided by that party. While we recognize the potential importance of information to investors, we are not the primary source for this information as we are merely reporting information provided by the counterparty. We believe that the disclosure should state the source of the information and that the liability of the issuer/sponsor for this type of disclosure should be limited. Provided such disclosure is based on reasonable reliance on the information provided by third parties, and the issuer/sponsor has acted with ordinary care in reporting such information, the issuer/sponsor should be exempt from liability for these disclosures. It should also be noted that indemnification of the issuer/sponsor by the source of the information would be difficult. Without this exemption, the staff is forcing the issuer/sponsor to disclose and take on liability to investors for statements made by unrelated third parties.

Certain Swaps not Credit Enhancement

Our interpretation of Item 1113 is that if the purpose of the swap is to ensure timely payment of the ABS (i.e., credit enhancement), then there should be additional disclosure related to the swap provider. However, MBNA utilizes interest rate swaps in some of its securitization transactions that while providing a cash flow within the securitization, they do not provide credit enhancement or ensure timely payments to investors. Under MBNA's structure, the credit ratings of the securitization do not depend on payments from the swap counterparty (a "non-ratings dependant counterparty"). The level of credit enhancement (typically met by the issuance of subordinated securities and excess spread) in the structure is established by the rating agencies so that the investor receives their coupon payment (based on the security's rating) regardless of any swap payment.

Because the Proposal does not currently require additional financial information for direct credit enhancement providers if the amount of enhancement is less than 10% of the cash flows supporting the class of ABS, and interest rate swap structures as described above are not a form of credit enhancement, disclosure related to a non-ratings dependent counterparty should be consistent with the requirements for direct credit enhancement providers with a less than 10% liability. We recommend that Item 1113(b) include an instruction stating that in the case where the swap counterparty does not provide credit enhancement, such information otherwise required by Item 1113(b) may be omitted.

Cash Flow Test Alternative

We also request that the Cash Flow Test for ABS structured with an interest rate or currency swap where the rating of the securities is more closely aligned with the rating of the swap counterparty be clarified. The clarification is needed because measuring the exposure related to a swap is more complex than a direct guarantee or credit enhancement. When measuring the exposure for an interest rate or currency swap, the easiest test would be based on the market value of the instrument. Unfortunately, these swaps are executed "at market" in the overwhelming majority of transactions and would therefore have a market value of zero at execution. Another approach commonly used by banks to determine credit exposure to swap counterparties is the calculation of a risk factor applied to the notional amount of the swap. Risk factors are generally derived using a normal distribution of changes in interest rate/currency values based on the maturity of the instrument. For example, interest rate swap risk factors used by MBNA in the 1st quarter 2004 ranged from a low of 0.50% for maturities less than or equal to 2 years, to a high of 4.75% for maturities greater than 7 years. We recommend the Commission adopt a risk factor approach when determining disclosure requirements for interest rate and currency swap counterparties. Alternatively, a simpler approach would be to conclude that when the rating of the ABS is closely aligned with the rating of the counterparty, counterparty descriptive information pursuant to Item 1113(b)(1) and financial information pursuant to Item 1113(b)(2)(i) should be disclosed.

Delinquent and Non-Performing Assets

The Proposal contains two additional conditions to meeting the definition of ABS. First, non-performing assets cannot be included in the original pool, at the time of issuance of the ABS (Item 1101(c)(2)(iii)). Second, under Item 1101(c)(2)(iv), delinquent assets cannot constitute 50% or more, measured by dollar volume, of the original asset pool at the time of issuance or 20% of the original asset pool, for the purpose of qualifying to register under Form S-3. Our transactions are structured to meet the above conditions. For example, delinquencies on credit card loans are generally in the mid-single digits, a fraction of the 20% limit and charged-off receivables are not eligible for addition to the master trust. Unfortunately, the Proposal includes a definition of delinquency inconsistent with current practices. We ask the Commission to consider the following comments and clarifications.

Definition of Delinquency

While we understand the Commission's objective to create standardized benchmarks for non-performing and delinquent receivables, policies related to the treatment of non-performing and delinquent receivables can differ across the broad range of participants in the securitization markets. We do not mean to imply that there are significant differences or a complete lack of consistency in the management of delinquent loans, but some differences do exist and the Proposal should allow for those differences.

MBNA is supervised by the Office of the Comptroller of the Currency ("OCC"). All banks and thrifts that are supervised by the OCC, Federal Reserve Board, Federal Deposit Insurance Corporation and the Office of Thrift Supervision are subject to the Uniform Retail Credit Classification and Account Management Policy promulgated by the Federal Financial Institutions Examination Council (the "FFIEC Guidelines").² The FFIEC Guidelines establish uniform practices for the management of delinquent and non-performing accounts. This creates a level of consistency among banks and thrifts, but not the entire securitization market. More importantly, the FFIEC guidelines have differences when compared to the definitions in the Proposal. For example, the FFIEC Guidelines allow open-ended accounts to be brought current, subject to specified limitations, without the customer being required to enter into a contractual agreement.

It would be impractical, costly and potentially impossible for an organization to track delinquencies and non-performing loans under both internal policies designed to comply with FFIEC Guidelines and the Proposal, especially considering that the differences in policies among organizations result in very small variances in reported delinquency. Given that the actual threshold levels of 20% and 50% are high, minor differences in reported delinquency would be immaterial. We recommend that issuers be permitted to maintain their existing policies for reporting delinquent and non-performing loans. We think the best approach is for: 1) the issuer to disclose its policies and processes for

² 65 FR 36903 (Jun. 12, 2000).

reporting delinquent and non-performing loans as well as quantifying delinquencies and non-performing loans; and 2) the Commission delete the definition of delinquency included in the Proposal.

Charged-off Assets in Pool

In some securitizations, particularly those involving revolving assets and master trust structures, the transaction agreements contemplate that the account may remain designated to the pool after being charged off. This is typically done to avoid the administrative expense of “de-flagging” the charged-off asset. In these instances, consistent with their charged-off status, the assets are assigned a zero balance and are not considered in the calculations of future allocations of cash flows under the transaction agreements. The Commission staff has previously confirmed that the presence of a charged-off asset in the asset pool under these circumstances would not cause a security to fail the definition of “asset-backed security.” We respectfully request that the Commission provide guidance confirming this staff interpretation in any final rules adopted by the Commission, particularly with respect to "non-performing" assets.

Distribution Reports on Proposed Form 10-D

We do not object to the addition of a new form ("Form 10-D") for periodic ABS reporting. However, we are concerned that the amount of information to be provided on Form 10-D represents a significant expansion in both the amount of data and the nature of data presentation with minimal additional benefit to investors. This expansion will require substantial time and expense to develop new reporting processes and maintain the new, ongoing reporting processes.

We ask that you consider the following points:

- Item 1119 of Regulation AB should clearly state that the items described therein are for illustrative purposes only and there should be no implication that all of the items listed must be included in all reports; what should be included should be what is needed to inform investors and the market of the ongoing performance of the pool of assets. Other events should be left to Form 8-K.
- Item 1119(e) - MBNA's credit card master trust contains approximately 42 million accounts. The applicable interest rates vary not only between accounts, but also within the account. Interest rates vary between accounts based on a number of factors including product type, affinity group and risk characteristics. Interest rates vary within an account based on promotional rates offered and type of transaction (i.e., cash advances or purchases). We believe our current disclosure included in the prospectus, combined with monthly reporting on the sources of cash flows (Item 1119(b)) provides the most relevant information to investors.
- Item 1119(f) - For credit card master trusts the beginning and ending balances in the Finance Charge and Principal accounts do not provide meaningful information to

investors. The allocation of funds in the Finance Charge and Principal accounts is most relevant to investors and included elsewhere on the monthly distribution reports.

- Item 1119(h) - This section includes a requirement to update many factors (such as weighted average coupon, weighted average life, weighted average remaining term, and prepayment speeds) that are not relevant to credit card or other revolving loan securitizations. Issuers should be guided by the specific information agreed to in the underlying documents (i.e., the pooling and servicing agreement) when deciding what information to include in Form 10-D.
- Items 1119(i) and 1119(n) - Our current monthly reporting is focused on the performance of the securitized loans including loss and delinquency data, and the distribution of funds to investors for the prior monthly period. Information about new issuance, additions and removals related to the master trust should only be included to the extent material and not included in a registration statement or a prospectus filed pursuant to Rule 424. Information related to the private ABS issued from the master trust should not be required if the issuance does not have a material impact on the investors.
- Certain information described in 1119 simply isn't available to be reported on a monthly basis. For example, recoveries on previously charged-off loans are not mapped back to individual charged-off accounts within our securitization processing system. Any recoveries related to charged-off balances are simply allocated to the master trust and treated as a cash inflow to the master trust. The amount of cash flows allocated to the investor can be identified and disclosed. It should also be noted that recoveries on credit card loans are very small and do not represent a material cash flow for investors. Another example of unavailable information relates to full balance payments. Full balance payment information is not currently available on MBNA's securitization processing system.

We recommend that the Commission clarify the importance of materiality and that any periodic reporting on Form 10-D be based on the current monthly distribution information reported on Form 8-K.

Other Items related to Form 10-D

Other comments related to Distribution Reports on Proposed Form 10-D, many related to the requests for comment, are provided below.

- The 15-day deadline from the distribution date is appropriate and should not be any shorter. We believe Form 10-D contains incremental requirements that will take time to analyze and prepare.
- There should not be a mandatory requirement to post Form 10-D on a web site. Any use of a web site should be at the issuer's option.

- The Commission should have the discretion to extend filing deadlines, particularly with the new reporting requirements. There should also be a provision that would allow the Commission to waive late filings as long as they have been cured. This is important given the consequence of non-compliance is loss of Form S-3 eligibility.

Limit Liability for Third Party Disclosure

Similar to our discussion of issuer liability for swap counterparty information, we have concerns about use and reliance of information from third parties, such as trustees required under Items 1108, 1113(b) and 1115. Our disclosures about third parties generally rely on information provided by those third parties. For example, the typical trustee is not willing to offer indemnification for any action, including providing disclosure information. Without this exemption, the Commission is forcing the issuer/sponsor to disclose and assume liability to investors for statements made by unrelated third parties that are beyond its knowledge and control.

Compliance with Servicing Criteria and Accountant's Attestation

Under the modified reporting system in the Proposal, the annual report on Form 10-K focuses on the attestation of compliance with minimum servicing criteria set for the in Item 1120(d), as examined by a registered public accountant. The uniform framework for attestation continues to focus on servicer performance, but replaces the Uniform Single Attestation Program for Mortgage Bankers ("USAP") with a standard set of criteria against which a "responsible party" for an ABS transaction is to measure servicing compliance. This standard set of servicing criteria is drawn to some extent from the USAP, but has been expanded, in the view of the Commission, to more adequately cover areas of asset-backed reporting that the Commission believes are currently at risk of being insufficiently covered.

We have the following concerns and recommendations:

- Many times, the securitization documents do not contractually bind a single party for all aspects of servicing and administration. The Proposal should be revised to assign the responsibility for assessing compliance to the party that has the contractual responsibility for performing their respective functions.
- The Commission proposes a "platform" level reporting approach over a transaction specific approach, which we believe is appropriate. However, our support for platform level assessments is dependent on an approach that limits the compliance assessments to items that each entity can meaningfully assess and would not extend to functions performed by unaffiliated third parties.
- We do not believe that material instances of non-compliance should result in a penalty as severe as ineligibility to use Form S-3.

- Item 1120 includes very specific lists of servicing criteria which we believe is inconsistent with a principles-based approach. In some instances, the servicing criteria contemplated by Item 1120 in the Proposal differs from the legal requirements of the securitization documents. If the Commission decides to retain a specific list of servicing criteria, we ask you to consider the recommendations included in the comment letter submitted by the American Securitization Forum in order to adopt servicing criteria deemed relevant by the broad-based industry group. We also strongly suggest that any proposed servicing criteria be provided with an appropriate comment period.
- With respect to the accountant's attestation report, we are concerned that an independent registered public accounting firm would not be able to issue an examination report under the existing standards for attestation engagements (AT 601) when there are multiple parties involved in the servicing or when the responsible party providing the compliance assessment does not perform the majority of the servicing procedures (e.g., when a substantial portion of the servicing is performed at the subservicer and trustee level). We understand that registered public accounting firms share our concern as to whether the proposed attestation requirements could be executed in all circumstances, particularly when the execution of servicing procedures is diffused among multiple service providers.

Passively Owning or Holding Pool Assets

One of the conditions necessary for a security to be considered an ABS is that the activities of the issuing entity be limited to "passively owning or holding the pool of assets, issuing the ABS supported or serviced by those assets, and other activities reasonably incidental thereto"(Item 1101(c)(2)(ii)). For transactions structured to achieve "sale" treatment under Statement of Financial Accounting Standards No. 140 ("FAS 140"), the requirement of a passive issuing entity is important. However, asset backed transactions could be structured as a financing, with the assets remaining on the balance sheet of the issuer. In these cases, the issuing entity may not be passive. We ask that the requirement of a passive issuing entity be removed as a condition to the definition of ABS.

Original Asset Pool

Reference to the "original" asset pool (e.g., with respect to the delinquency limitation in Item 1101(c)(2)(iv)) is unclear and difficult, if not impossible, to apply in the case of master trusts. Typical master trust structures allow for receivables to be added to the asset pool of the issuing entity. These additions occur for different reasons. For example, the addition could be used to facilitate a new ABS issuance or to maintain the seller's interest above minimum contractual requirements. We recommend that either the term "original" is deleted from the requirement or the non-performance/delinquency test is measured as of the date disclosed in the prospectus.

Exceptions to the "Discrete" Requirement - Master Trusts

Item 1101(c) of the Proposal requires that asset pools be "discrete", with certain exceptions. These exceptions relate to master trusts, pre-funding periods and revolving periods. We would like to make a technical recommendation to one of the current exceptions for a master trust. This exception is needed to satisfy the discrete asset pool requirement. As mentioned above, assets can be added to a master trust for reasons other than issuing new ABS. Securitization documents include a requirement that a minimum "seller's" interest be maintained. If the total amount of assets in the pool decline, which happens from time to time with credit card assets, the "seller's" interest also declines. In this situation, the seller may add new assets to the master trust independent of any decision to issue new ABS. We recommend that the Proposal be modified to allow periodic asset additions as part of normal master trust administration provided under the securitization documents and not only in connection with "future issuance".

Reporting Under EDGAR

Conversion of documents to ASCII is administratively burdensome and there are significant risks of delays due to transmission errors. This problem will be exacerbated by new requirements to file pool composition information and/or other statistical information, particularly if in graphical and tabular formats, as contemplated in Item 1119. In addition, requiring customized information (e.g., description of each distribution and performance of the asset pool for a monthly period) will not allow automation of the process to convert information to ASCII.

It would be cost prohibitive to have all reports filed by an external party.

We ask that the existing EDGAR systems be modified or supplemented to permit/provide:

- Filing of documents in a variety of commonly used word processing and spreadsheet file formats (including Excel and Word), in read-only format
- Filing of documents in PDF
- A web based process for posting documents to EDGAR
- The ability to preview documents and filings before they are filed
- The ability to identify errors through a means other than completing a test filing

Conclusion

Once again, MBNA thanks the Commission for your efforts to create a very comprehensive Proposal and ask that you give serious consideration to our comments. We also strongly support the recommendations in the comment letter submitted by the American Securitization Forum and urge you to consider those recommendations. As outlined above a principles-based approach appears to be the best solution for the continued development of the ABS market. If you have any questions regarding this submission or if we can provide further information, please contact me directly by telephone at 302-453-2074 or by e-mail at vernon.wright@mbna.com.

Yours truly,

A handwritten signature in black ink, appearing to read 'Vernon H.C. Wright', with a stylized flourish at the end.

Vernon H.C. Wright
Chief Financial Officer
MBNA Corporation